

18<sup>th</sup> January 2007

## Change Notice

Dear Licensed User,

In accordance with the EFETnet Accession Agreement/Licensed User Agreement (Clause 7.3), we therewith notify you of changes of the EFETnet terms and conditions (GTC) as published on [www.efetnet.org](http://www.efetnet.org).

### 1. Summary of, and Reasons for Changes

These changes are due to the updating and extension of the current underlying agreements in place with Ponton Consulting to provide Software Upgrades and Maintenance Services to EFETnet and thereby to the EFETnet community of Licensed Users.

Due to the completion of the Initial Term of the current agreements with Ponton Consulting, we have updated and replaced the agreements between EFETnet and Ponton Consulting with a new set of agreements expiring on **31<sup>st</sup> December 2012**. The new 5 year term will provide the EFETnet Licensed User community with the appropriate period of stability going forward whilst leaving most of the agreement, including the termination rights, unaffected.

We have also extended the scope of the agreement with Ponton Consulting in anticipation of the development and support of new modules, in line with EFET Standards, which will extend the functionality to the EFETnet Software and which Licensed Users may optionally wish to use in conjunction with the current electronic confirmation matching (eCM) functionality.

In short, these are the key changes introduced by this Change Notice:

### 1.1. Changes to the Term and Fees

- **Term:** extension of the Initial Term to 31st December 2012
- **Fees:** automatic annual increase of fees in line with the German consumer price index for the preceding year; the Fee Schedule has been replaced

### 1.2. Changes to the Scope of the Licence (additional functionality)

- **License/Object of the Agreement:** extension of the scope of the licence to include optional Future Modules at the discretion of the Licensed User
- Clarification of the scope and **Definition of the EFETnet Software** in line with the provision of existing and Future Modules still to be developed
- Clarification of the **System Requirements** in line with the technology changes and extended functionality of the EFETnet Software which now includes electronic confirmation matching (eCM) and electronic position matching (ePM) modules.

Hereafter, we have enclosed a more detailed account of the changes to the agreement:

## 2. Details of Changes to the General Terms and Conditions

The GTCs have been amended as follows:

### 2.1. Changes to Clause 1

This clause has been amended to reflect the change in scope of the processes supported and the inclusion of brokers within the EFETnet community of Licensed Users:

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

#### **Changed to:**

1.2 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](http://www.efetnet.org).

### 2.2. Changes to Clause 6

This clause has been amended to replace references to Ponton with references to EFETnet, and so clarify the clause:

*6.2(c) Licensed User shall ensure that the Schedule 5 (System Requirements) are met by the Licensed User's electronic data processing system. The Schedule 5 (System Requirements) may be modified by Ponton from time to time, upon prior written notification to Licensed User. Ponton on EFETnet®'s behalf shall provide Licensed User with reasonable notice 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 and/or Ponton.*

#### **Changed to:**

6.2 (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.

### 2.3. Changes to Clause 8

This clause has been amended to refer to replace the reference to 'the Managing Director' with a reference to EFETnet, and so clarify the clause:

*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 the Managing Director on how to proceed with the issue. Reference is made to the procedure provided for in 9.4 of these Terms.*

**Changed to:**

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.

## **2.4. Changes to Clause 12**

This clause has been amended to align the GTCs with the Accession Agreement:

*12.4 Any amendment to, these General Terms and Conditions and/or, this Accession Agreement shall not be binding on the parties unless set out in writing, expressed to amend or waive these Terms and signed by an authorised representative of each party.*

**Changed to:**

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.

## **2.5. Changes to Clause 13 (“Definitions”)**

This clause has been modified by adding, amending and removing some definitions. The following sections specify separately the additions, amendments and removals.

### **2.5.1. Additional definitions:**

The enhanced functionality of the EFETnet Software has brought about the need for more definitions. These were so far not contained in the current version of the GTC:

“**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);

“**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;

**“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.

**“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);

### **2.5.2. Amended definitions:**

The enhanced functionality of the EFETnet Software has brought about the need for amend some of the definitions.

#### **Definition of:**

*“EFETnet® Software Upgrade” means expansions of functionality of the EFETnet® Software as well as implementations of further processes or new versions of the EFET Standard in its current version.*

#### **Changed to:**

**“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);

#### **Definition of:**

*“EFET Standard” means the EFET Standard, currently version 3.2, for Electronic Confirmation Matching proprietary to EFET as available on the EFET internet website at address [www.efet.org](http://www.efet.org).*

#### **Changed to:**

**“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](http://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](http://www.efet.org) in the future.

**Definition of:**

*”Initial Term” means a period until 15<sup>th</sup> December 2007.*

**Changed to:**

**”Initial Term”** means a period until 31<sup>st</sup> December 2012.

**Definition of:**

*”System Requirements” means those minimum Licensed User system requirements as set out in Schedule 5 (Systems Requirements) necessary to ensure adequate installation and running of the EFETnet® Software.*

**Changed to:**

**”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).

### **2.5.3. Definitions Removed**

This definition has been removed since it is no longer used within the Terms.

**”Additional Services”** together with all references including Clause 5.2 of the GTCs. The numbering in Clause 5 was modified accordingly.

## **2.6. Changes to Schedules to the GTCs**

### **2.6.1. Changes to Schedule 1 (Fee Schedule)**

The EFETnet 2007 Fee Schedule has been replaced (see attachment).

### **2.6.2. Changes to Schedule 5 (System Requirements)**

The EFETnet System Requirements Schedule has been replaced (see attachment).

### **2.6.3. Changes to Schedule 6 (EFETnet Software)**

The EFETnet Software schedule has been replaced (see attachment).

### **3. Changes to the Accession Agreement**

#### **3.1. Changes to Preamble**

This clause has been changed to align it with the new definitions:

*(D) EFETnet owns the exclusive license for the EFETnet Software.*

#### **Changed to:**

(D) EFETnet owns the exclusive license for the EFETnet Software EFET Box+ and a license for the Ponton X Suite.

#### **3.2. Changes to Clause 2**

Addition of 3 additional 'tick boxes' for potential Future Modules

#### **3.3. Changes to Clause 3**

This clause has been amended to become more general and align it with the amendment to Clause 2.2 (c):

*3.7 For the ePM Product, special payment terms have been agreed. The ePM Product or rights to receive the ePM Product are subject to a three month delay after availability of the product, execution of this Agreement, and upon receipt of the Entrance Fee as defined in the 2007 Fee Schedule.*

#### **Changed to:**

3.7 For each process selected in Clause 2.2 (c) the Licensed User shall pay the fees according to the Fee Schedule.

#### **3.4. Changes to Clause 3.4**

Following sentence is added to Clause 3.4 to clarify the status of the payments EFETnet holds in escrow: "The escrow payment shall not bear interest".

#### **3.5. Changes to Clause 3.8**

This clause has been amended to become more general and align it with the new definition of Future Module(s):

*The Entrance Fee as defined in the 2007 Fee Schedule is structured in relation to the risk assumed by Licensed User as follows:*

- 1) Category 1: Licensed Users in this category assume most risk as they become signatories to this Agreement in advance of the delivery of the EFETnet Software;*
- 2) Category 2: Licensed Users in this category assume a medium level of risk as they become signatories to this Agreement once the EFETnet Software is available but in advance of an established community of ePM users;*
- 3) Category 3: Licensed Users in this category assume the lowest risk as they join an established and functioning ePM community.*

#### **Changed to:**

The Entrance Fee as defined in Schedule 1 (Fee Schedule), where applicable, is structured in relation to the risk assumed by Licensed User by applying following principle:

- 1) Category 1: Licensed Users in this category assume most risk as they become signatories to this Agreement in advance of the delivery of new Future Module(s);
- 2) Category 2: Licensed Users in this category assume a medium level of risk as they become signatories to this Agreement once the new Future Module is available but in advance of an established community of Licensed Users;
- 3) Category 3: Licensed Users in this category assume the lowest risk as they join an established and functioning community of Licensed Users.

### **3.6. New Clause added to Clause 3**

This clause has been added to reflect the long term (5 year) agreement put in place with Ponton Consulting to supply services to the community of Licensed Users:

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

### **3.7. Changes to Clause 5**

This clause has been amended to reflect the extended term of the agreement:

*5.1 This Agreement has an Initial Term which shall expire on December 31<sup>st</sup>, 2007.*

#### **Changed to:**

5.1 This Agreement has an Initial Term which shall expire on December 31<sup>st</sup>, 2012.

## **4. Action Required by Licensed User**

Please review these changes carefully and let us know by 1<sup>st</sup> February 2008 whether you have any concerns about the changes made. This letter constitutes the Change Notice according to Clause 7.3 of the Accession Agreement.

As you are aware for purpose of efficiency we have transferred the provisions of the EFETnet Software Licensed User Agreement to the General Terms and Conditions posted on internet at [www.efetnet.org](http://www.efetnet.org). In the event of receipt of Change Notices, such as this one, we invite you also to refer to the site as a central reference for our standard terms of business as they change over time.

**Be reminded that your consent is deemed to be given if we do not receive your objections in writing by the date mentioned above and the changes will take effect without further action being necessary.**

With thanks for your co-operation we wish you the very best for 2008!

Best regards

Hugh Brunswick,  
Managing Director, EFETnet