

EFETnet® Accession Agreement

EFETnet B.V., 34197646, registered office at Keizersgracht 62-64, 1015 CS Amsterdam, The Netherlands, represented by its managing director Hugh Brunswick

– EFETnet –

[Licensed User/company details]

– Licensed User –

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

WHEREAS:

- (A) EFETnet is a company that was founded by the European Federation of Energy Traders, a group of more than 70 energy trading companies, for the purpose of facilitating the energy trading process between and among its members and with other organisations active in the energy trading business.
- (B) The EFETnet Software is a software application for electronic process automation and communication in the energy trading industry and as defined in ‘EFETnet Software’, Schedule 6 to the General Terms and Conditions (GTC). EFETnet has published the GTC on www.efetnet.org.
- (C) EFETnet has invested in the development of the EFETnet Software by a third party supplier, Ponton Consulting GmbH (Ponton), and continues to invest in the provision of maintenance and other ancillary services by Ponton or by other software and service suppliers that may be selected at EFETnet’s sole discretion from time to time.
- (D) EFETnet owns the exclusive license for the EFET Box+ and a license for the Ponton X Suite.
- (E) Licensed User wishes to sublicense and use the EFETnet Software for electronic process automation and communication in energy trading and EFETnet wishes to make available and sublicense to Licensed User the EFETnet Software subject to the terms set out in this Agreement and the GTC.
- (F) The electronic process automation and communication shall take place between Licensed User and other Licensed Users of the EFETnet Software or third parties using software compatible with the EFETnet Software on the basis of bilateral agreements to be concluded between them. These bilateral agreements are not the subject of this Agreement.
- (G) By purchasing a sublicense of the EFETnet Software (including the provision of certain maintenance services relating thereto) Licensed User shall be given the opportunity to

participate in the newly developed electronic process automation and communication software in consideration for payment of the stipulated fees.

- (H) Licensed User accepts the obligation to follow the certification process as provided by Schedule 7 (Certification Requirements) as published on www.efetnet.org.

IT IS AGREED AS FOLLOWS:

1. FULL AND ENTIRE AGREEMENT

The full and entire agreement between the parties consists of:

- I. this **Accession Agreement** including all **Schedules as published on www.efetnet.org** and
- II. General Terms and Conditions (GTC) as published on www.efetnet.org .

2. LICENSE

- 2.1 EFETnet shall make the EFETnet Software available to the Licensed User and herewith grants to Licensed User a non-perpetual, non-exclusive, non-transferable sublicense to use the EFETnet Software for the term of this Agreement.

- 2.2 The sublicense shall be restricted to the use of the EFETnet Software for exchanging energy trade data compliant to the EFET Standards for process automation and communication and/or and other as specifically permitted by EFETnet and stated as such on www.efetnet.org with other licensed users of the EFETnet Software or those users of other software suppliers which are certified compliant with the EFETnet Standard and for use:

- (a) at the following Licensed User Site(s) of Licensed User:

- (b) In the Licensed User Role of:

either Trader

or Broker

- (c) for the automation of the following EFET Standard selected processes:

Electronic Confirmation Matching (eCM)

or Electronic Confirmation Matching SE (eCM^{SE})

and/or eCM EASYFax Extention

and/or Electronic Position Matching (ePM)

and/or _____ (Future Module)

and/or _____ (Future Module)

and/or _____ (Future Module)

“SE” versions of EFET Box+ Module(s) utilise a separate specific transaction based pricing model as defined in the prevailing Schedule 1 (Fee Schedule) available on www.efetnet.org . “SE” versions of EFET Box+ Module(s) may be made available from time to time at the sole discretion of EFETnet and where available are intended for use by Licensed Users with smaller monthly transaction volumes for the relevant EFET Standard process(es).

2.3 Only Licensed User, its employees and the following affiliated companies and their employees are entitled to use the EFETnet Software

(a) _____

(b) _____

(c) _____

2.4 EFETnet shall, through its supplier Ponton, provide the Maintenance Services to Licensed User and the affiliated companies for the EFETnet Software during the term of this Agreement.

2.5 EFETnet shall, through its supplier, provide the Certification Services to Licensed User and the affiliated companies for the EFETnet Software during the term of this Agreement conditional on payment of the certification fees as provided in Schedule 1 (Fee Schedule).

3. FEES

3.1 Licensed User shall pay to EFETnet the Initial Fees on signature of the Agreement and the first Monthly Fee upon Go Live, or in the 4th month following signature of the Agreement. Subsequent Monthly Fees are calculated using the fees specified in the prevailing Schedule 1 (Fee Schedule) available on www.efetnet.org, for the relevant Licensed User Role and selected processes under the Agreement. The payment is due fourteen (14) days after the date of the monthly invoice to be issued by EFETnet.

Should the money not have arrived by the due date, EFETnet is entitled to send out reminders providing for late payment charges. Late payment charges shall be EUR 100 for the first reminder and EUR 500 for the second reminder. The first reminder shall be sent any time after expiry of the due date. The second reminder shall be sent out at the earliest four weeks after the date where payment was due.

3.2 All invoiced fees are excluding VAT and other taxes (if any), which will be added if and insofar as the law requires.

- 3.3 All payments (all contractual fees including Initial Fees and the Monthly Fees as provided in the Fee Schedule for the relevant Licensed User Role and selected processes) due under this Agreement shall be transferred without deduction to the following bank account of EFETnet:

Account Number: 40 42 06 220
Bank Details: ABN/AMRO Bank, Amstelveen
Swift Code: ABNANL 2A
IBAN: NL18ABNA0404206220

- 3.4 Upon joining, Licensed User shall make an escrow payment in the amount of in the Fee Schedule which shall be due and payable upon signature of the Agreement and without deduction to the following dedicated escrow account (separate savings account) of EFETnet:

Account Number: 41 40 13 581
Bank Details : ABN/AMRO Bank
IBAN: NL19ABNA0414013581

EFETnet is entitled to withdraw any amounts from the escrow account of the respective Licensed User for each month in which this Licensed User has not paid its monthly fee, or other payments at the due date of such payment. The escrow payment shall not bear any interest.

Should Licensed User resume payment, Licensed User shall within ten (10) Business Days refund to EFETnet any amounts withdrawn from the escrow account in order to top up the escrow account to its nominal value.

Should Licensed User not resume payment and in case of termination, EFETnet is entitled to withdraw those escrow funds paid by this Licensed User to fund any outstanding payments of Licensed User. EFETnet will use the escrow amount of the respective Licensed User only to settle any outstanding monies due, and promptly release any remaining funds to the exiting Licensed User.

- 3.5 Licensed User undertakes to pay the certification fees as published in Schedule 1 (Fee Schedule).
- 3.6 Licensed User shall notify to EFETnet prior to paying the invoiced Fees that an invoice is in dispute due to the malfunction of the EFETnet Software, improper provision of the maintenance service or any other delayed or improper provision of services by Ponton or any other supplier to EFETnet. Notwithstanding such right to objection, Licensed User shall pay the disputed fees to EFETnet. EFETnet will ensure that the disputed fees are not released to Ponton or any other supplier to EFETnet without prior written notice by Licensed User to EFETnet. EFETnet is entitled to provide the name of the Licensed User jointly with the reasoning for the withholding of the payment to Ponton or any other supplier to EFETnet.
- 3.7 For each process selected in Clause 2.2 (c) the Licensed User shall pay the fees according to the Fee Schedule.

- 3.8 The Entrance Fee as defined in the Fee Schedule 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 EFETnet Software 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 EFETnet Software Module is available but in advance of an established community of users;
 - 3) Category 3: Licensed Users in this category assume the lowest risk as they join an established and functioning community.

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 increase for consumer prices in Germany the year 2007 is 2 percentage points. The fees from 1 January 2009 onwards are increased by 2%*).

3.10 EFETnet provides a 'single internet address' communication service for all Licensed Users for the purpose of streamlining EFETnet communications. Licensed User may opt out of the Fixed Charge by submitting a written notification to EFETnet. If Licensed User opts out of the Fixed Charge then Licensed User will be invoiced on a quarterly basis for any use of the 'single internet address' communication service at a Usage Charge specified in the Fee Schedule.

4. NOTICES AND DELIVERY ADDRESS

4.1 Unless otherwise notified by the relevant party in writing, all notices between the parties will be sent to the addresses set forth in the header of this Agreement.

4.2 If and insofar telefax copies or e-mails are permitted by this Agreement, the following numbers / e-mail addresses shall be used for contractual communications:

EFETnet telefax no.: 0031 - 20 - 520 75 10

EFETnet e-mail: management@efetnet.org with copy to h.brunswick@efetnet.org

Licensed User telefax no. _____

Licensed User e-mail: _____

Ponton telefax no.: +49 40 69213-355

Ponton e-mail: EFETnet-helpdesk@ponton-consulting.de

4.3 The EFETnet® Software will be delivered by sending an e-mail with a customised hyperlink to Licensed User. For this purpose, Licensed User must provide an e-mail address, of which the second level domain name is legally owned by Licensed User (e.g. name@companyname.com).

Delivery E-mail Address (if different from Licensed User e-mail address):

Details of the delivery process are provided in the EFETnet® General Terms and Conditions as published on www.efetnet.org.

5. TERM AND TERMINATION

- 5.1 This Agreement has an Initial Term which shall expire on December 31st, 2012.
- 5.2 Either party is entitled to terminate this Agreement by giving at least three months' prior written notice to the expiry of the calendar year.
- 5.3 If neither party terminates in accordance with Clause 5.2, this Agreement shall automatically renew for an indefinite term, during which either party shall be entitled to terminate this Agreement with three months' prior written notice.
- 5.4 This Agreement terminates automatically at the date EFETnet (i) loses its right to license the EFETnet Software or (ii) if the Maintenance and Support Services Agreement between EFETnet and Ponton is terminated or (iii) if insolvency proceedings are commenced over the assets of EFETnet or the Licensed User.

6. TERMINATION FOR GOOD CAUSE

- 6.1 Either party's right to terminate this Agreement for good cause ("*wichtiger Grund*") in the event of a material breach shall remain unaffected.
- 6.2 In particular, EFETnet shall be entitled to terminate this Agreement with immediate effect for good cause if:
- (a) Licensed User has not paid the Initial Fee within two weeks of the receipt of a written notice from EFETnet specifying that it is in default of its payment obligations;
 - (b) Licensed User has not paid two Monthly Fees (or portions of Monthly Fees or any other fees amounting in aggregate to two Monthly Fees); or
 - (c) Licensed User violates any sublicense restrictions and does not cure such violation within one week of the receipt of a written warning from EFETnet specifying the violation.
 - (e) Licensed User has not fulfilled the Certification Requirements as provided in Schedule 5 (System Requirements).

Drawings from the escrow account by EFETnet do not constitute payments in the meaning of Clause 6.2(a) to.

- 6.3 In particular, Licensed User shall be entitled to terminate this Agreement with immediate effect for good cause if, despite two written warnings, EFETnet is in default with its obligations under Clauses 5.1 and 8.6 of General Terms and Conditions.

- 6.4 Either party shall be entitled to terminate this Agreement with immediate effect for good cause if insolvency proceedings are issued by the Court against the other party (*Eröffnungsbeschluss*) or such proceedings are rejected due to the lack of assets (*Ablehnung mangels Masse*) or such party files itself a petition for insolvency (*eigener Insolvenzantrag*), respectively the equivalent actions occur under Dutch insolvency law.
- 6.5 Termination in accordance with this Clause 6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and effect.

7. INCLUSION OF GENERAL TERMS AND CONDITIONS

- 7.1 All further terms of the agreement between the parties are set out in the EFETnet ® General Terms and Conditions (GTC) as published on www.efetnet.org which forms an integral part of this Accession Agreement. In case of any potential contradiction with the GTC, this Accession Agreement shall prevail over the GTC.
- 7.2 Should Licensed User have any general terms and conditions of business, these shall not apply. This Accession Agreement (including EFETnet® General Terms and Conditions as published) contains the entire agreement between the parties relating to the sublicensing of the EFETnet Software and the provision of Maintenance Services.
- 7.3 EFETnet reserves the right to change the EFETnet® General Terms and Conditions as published on www.efetnet.org from time to time. EFETnet will notify Licensed User prior to implementing such changes and request Licensed User's consent thereto (the **Change Notice**).
- 7.4 The consent shall be deemed to be given if Licensed User does not object to the new General Terms and Conditions within two weeks after having received the Change Notice. Upon Licensed User's expressed or deemed consent the new EFETnet ® General Terms and Conditions as published on www.efetnet.org shall become effective with immediate effect.
- 7.5 If Licensed User unreasonably objects to the Change Notice, EFETnet shall be entitled to terminate this Agreement at any time with two months' written notice from date of receipt of such objection, provided however, that during such notice period the parties shall attempt to negotiate in good faith an amicable solution.

8. GENERAL

- 8.1 In the event that any provision of this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable or should such provision be impracticable for any reason, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement. In such a case, this Agreement shall be construed in a legally permissible way which reasonably effectuates the economic purposes and the interests of the parties.
- 8.2 This 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).

8.3 The courts of Hamburg, Germany shall have exclusive jurisdiction on any dispute.

This Accession Agreement and the General Terms and Conditions are effective in the same way for all signatories of this Agreement.

Place

Date

Signature (s)

EFETnet

Name: (H. Brunswick)

Function: Managing Director

Licensed User

Name (s):

Function: