

# EFET

## European Federation of Energy Traders

### Credit Support Annex

to the

### General Agreement

with an Effective Date of.....

between

.....

(“Party A”)

and

.....

(“Party B”)

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This Annex supplements, amends, forms part of and is subject to the General Agreement referred to above. The Parties agree to provide each other with Eligible Credit Support according to the following provisions. This shall serve to collateralize outstanding obligations between the Parties from time to time pursuant to the Agreement.

#### §1

#### Definitions and Interpretation

- 1. Definitions:** In addition to the other terms and phrases in the General Agreement, the capitalized terms used in this Annex shall have the meanings set out in Appendix 1.
- 2. Interpretation:** 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 other provisions of the General Agreement, this Annex will prevail. In the event of inconsistency between § 14 and the other provisions of this Annex, § 14 will 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 § 14.5. Should the Parties not have determined a Valuation Agent under § 14.5, the Party asserting a claim for transfer under § 3 or § 4 shall be the Valuation Agent. Should a Material Reason have occurred in relation to the Valuation Agent designated in accordance with sentences one or two of this § 2.1,

the Party in relation to which the Material Reason does not subsist, for so long as the Material Reason does not subsist, 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 on each Valuation Day and inform the Parties at the Notification Time of:
  - (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 or § 4.

### §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. 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.
2. **Delivery of Eligible Credit Support:** Subject to § 8, 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 Business Day following such request by either:
  - (a) transferring Cash to the account of the Transferee specified in § 13; or
  - (b) providing a Letter of Credit.

### §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.
2. **Return of Eligible Credit Support:** Subject to § 8, should a Transferee receive a request pursuant to § 4.1, then the Transferee shall transfer to the Transferor the requested Eligible Credit Support not later than close of business on the Business Day following such request by either:
  - (a) transferring Cash to the account of the Transferee specified in § 13; 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.

## §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 § 14.1, that Party shall be obliged to transfer pursuant to § 3 or § 4 only if the Value of the Eligible Credit Support to be transferred 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 § 14.2, that Party shall be obliged to transfer pursuant to § 3 or § 4 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 § 14.9, 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 calculation of Eligible Credit Support to be transferred, or the Value of any Eligible Credit Support, then such Party will notify the other Party and the Valuation Agent (if not the other Party), setting out the reasons for the objection, not later than the close of business on the Business Day following the day on which the relevant demand for Eligible Credit Support is received, or on the Business Day on which Eligible Credit Support is transferred, as relevant.

2. **Undisputed Amounts:** Where a Party disputes the Valuation Agent's calculation of Eligible Credit Support to be transferred, the appropriate Party will transfer the undisputed amount, if any, to the other Party no later than the time such transfer is due pursuant to this Annex.
3. **Resolution:** The Parties will 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 will 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 the relevant commodity market 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 an Individual Contract, each Party shall obtain one quotation and the Valuation Agent will take the arithmetic average of those obtained. Where neither the Valuation Agent nor the Parties are able to obtain the requisite quotations for an Individual Contract, the Valuation Agent's original calculations will be used for such Individual Contract. Following a recalculation pursuant to this § 8.3, the Valuation Agent 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 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 Material Reason:** The failure by a Party to transfer any amount which is the subject of a dispute to which this § 8 applies will not constitute a Material Reason for as long as the procedures set out in this § 8 are being carried out. For the avoidance of doubt, upon completion of those procedures, § 10 of this Annex will apply to any failure by a Party to make a required transfer on the relevant due date.

## §9

### Interest income on Cash

**Interest Income on Cash:** The Transferee shall pay interest on Cash at the Reference Interest Rate set out in § 14.8. Interest Amounts shall be paid on the first Business Day of each month for Eligible Credit Support held and received during the preceding month to the account of the Transferor specified in § 12.

## §10

### Material Reason

**Material Reason:** For the purposes of § 10.3 of the General Agreement, a Material Reason shall also exist with respect to a Party if such Party fails to transfer, when due, Eligible Credit Support under § 3, § 4 or § 8, and such failure is not cured within one (1) Business Day of written demand by the other Party.

## §11

### Termination of the Agreement

**Termination of the Agreement:** In the event of Early Termination of the Agreement, the Valuation Agent shall determine the Base Currency Equivalent of all Eligible Credit Support provided under this Annex on the Termination Date. Such amount shall be included in the Termination Amount to be determined pursuant to § 11 of the General Agreement as part of "other amounts payable" by the Transferee. At the same time, all claims of the Parties for the transfer of Eligible Credit Support pursuant to § 3 or § 4 shall expire.

## §12

### Expenses

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

### **§13** **Bank Accounts**

Transfers of Cash pursuant to § 3 and § 4 as well as payments of Interest Amounts shall be effected to the following accounts:

Party A:  
Bank:  
Account number:  
Swift:

Party B:  
Bank:  
Account number:  
Swift:

### **§14** **Specifications**

1. **Minimum Transfer Amount** means with respect to Party A: \_\_\_\_\_, and  
**Minimum Transfer Amount** means with respect to Party B: \_\_\_\_\_
2. **Threshold Amount** means with respect to Party A: \_\_\_\_\_, and  
**Threshold Amount** means with respect to Party B: \_\_\_\_\_, but in the event of a Material Reason or Material Adverse Change with respect to a Party, the Threshold Amount in respect of such Party shall be zero.
3. **Valuation Time:** \_\_\_\_\_
4. **Valuation Day:** \_\_\_\_\_
5. **Valuation Agent:** \_\_\_\_\_
6. **Notification Time:** \_\_\_\_\_
7. **Resolution Time:** \_\_\_\_\_
8. **Reference Interest Rate** means EURIBOR, unless otherwise specified here: \_\_\_\_\_
9. **Independent Amount** means with respect to Party A: \_\_\_\_\_, and  
**Independent Amount** means with respect to Party B: \_\_\_\_\_
10. **Base Currency** means Euro, unless otherwise specified here: \_\_\_\_\_
11. **Eligible Currency:** \_\_\_\_\_
12. **Additional provisions:** \_\_\_\_\_

**13. Rounding:** Amounts to be transferred in accordance with § 3 and § 4 shall be rounded up and down to the nearest integral multiple of € \_\_\_\_\_

# Appendix 1

## Defined Terms

Terms used in this Annex shall have the following meanings:

“**Base Currency**” has the meaning set out in § 14.10.

“**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.

“**Eligible Credit Support**” means either:

- (a) Cash; or
- (b) a Letter of Credit.

“**Eligible Currency**” has the meaning set out in § 14.11.

“**Exposure**” means in relation to a Party on a Valuation Day, the amount determined by the Valuation Agent to be due and payable to such Party pursuant to the method set out in § 11 of the General Agreement, being the amount that would be payable to such Party upon termination of all outstanding Individual Contracts at that time. 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 § 14.9.

“**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.

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

**"Minimum Transfer Amount"** is the amount designated as such in § 14.1.

**"Notification Time"** means the time designated as such in § 14.6.

**"Recalculation Day"** means the Valuation Day that gives rise to the dispute under § 8, provided, however, that if a subsequent Valuation Day occurs under § 3 prior to the resolution of the dispute, then the "Recalculation Day" shall mean the most recent Valuation Day under that § 3.

**"Reference Interest Rate"** has the meaning set out in § 14.8.

**"Resolution Time"** has the meaning set out in § 14.7.

**"Threshold Amount"** has the meaning set out in § 14.2.

**"Transferee"** has the meaning set out in § 3.

**"Transferor"** has the meaning set out in § 3.

**"Valuation Agent"** means the agent designated as such in § 14.5 or otherwise provided for in § 2.

**"Valuation Day"** means any Business Day designated as such in § 14.4.

**"Valuation Time"** means the time designated as such in § 14.3.

**"Value"** means, for any Valuation Day or other day for which Value is calculated pursuant to this Annex, and subject to § 8 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.

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

\_\_\_\_\_  
Signature(s) of Party A

\_\_\_\_\_  
Signature(s) of Party B

\_\_\_\_\_  
Name of signatory/ies

\_\_\_\_\_  
Name of signatory/ies

\_\_\_\_\_  
Title of signatory/ies

\_\_\_\_\_  
Title of signatory/ies

\_\_\_\_\_  
Name of Party A

\_\_\_\_\_  
Name of Party B