Ratification Letter for Amendments to EFET General Agreements governed by German law concerning the incorporation of a trade restriction clause

Send to: **edrsAdmin@efet.org**

Cc: **secretariat@efet.org**

Dear Sirs

NOTICE AMENDMENTS (German law) – Ratification

The purpose of this letter (the "**Ratification Letter**") is to confirm our ratification of certain amendments to the Covered Principal Agreements (as defined below) as set out in Schedule 1 to this Ratification Letter (the "**Amendments**").

By ratifying the Amendments in accordance with the terms of this Ratification Letter (each person so ratifying the Amendments, including ourselves, being a "**Ratifying Party**"), any Covered Principal Agreement (as defined below) shall be deemed modified, amended and supplemented by the Amendments as if we had signed such Amendments bilaterally with each other corresponding Ratifying Party.

"**Principal Agreement**" means any of the agreements listed in Schedule 2 to this Ratification Letter.

"**Covered Principal Agreement**" shall mean any Principal Agreement:

(a) executed by ourselves and another Ratifying Party and entered into by the two Ratifying Parties on or prior to the Ratification Date (as defined below);

(b) governed by German law; and

(c) which both Ratifying Parties specify in Schedule 2 to their respective Ratification Letters as being subject to the Amendments.

As between ourselves and the corresponding Ratifying Party, the agreement to make the amendments stated in the Amendments to any Covered Principal Agreements will take effect as of the date the European Federation of Energy Traders ("**EFET**"), as agent, first publishes on the EDRS website at https://edrs.efet.org (the **"Website"**) a list of parties who have ratified the Amendments that lists both Ratifying Parties as having ratified the Amendments for any Covered Principal Agreements and uploads on the Website the Ratification Letters from both such Ratifying Parties to ratify the Amendments (such date, as stated on the Website, being with respect to the relevant Ratifying Parties, the "**Ratification Date**").

We acknowledge that such modification, amendment and supplementation by ratifying the Amendments in accordance with the terms of this Ratification Letter and also any modification, amendment and supplementation made in the context of the process described in this Ratification Letter shall have binding effect, irrespective of any requirements pursuant to the relevant clauses of a Covered Principal Agreement that any amendments shall be made only in writing signed by both parties thereto. This is however not to be considered as a general waiver of relevant form requirements agreed in a Covered Principal Agreement beyond the scope of the Amendments and this Ratification Letter.

HG

All terms not otherwise defined in this Ratification Letter shall have the meanings given to them in the Covered Principal Agreements.

1. Process; General Provisions

The following shall also apply in relation to the Amendments:

(a) EFET shall have the right, in its sole and absolute discretion, upon thirty (30) calendar days' notice on the Website (or by other suitable means) to designate a closing date for ratification of the Amendments (such closing date, the "**Limitation Date**"). After the Limitation Date, EFET will not accept any further Ratification Letters in respect of the Amendments.

(b) Each Ratifying Party will access the Website to enter information online that is required to generate the appropriate form of Ratification Letter. Each Ratifying Party will print out and sign by way of handwritten signature the Ratification Letter and upload a scan of the signed Ratification Letter as a PDF attachment into the "EDRS" system of the Website.

(c) If EFET, as agent, determines prior to its publication on the Website that a purported ratification is incomplete, not readable, contains extraneous material, is unsigned or is not in compliance with the terms of this Ratification Letter, EFET will not upload the purported ratification document and will attempt to contact the Ratifying Party. If there is reasonable evidence that a published Ratification Letter is the result of fraud or other criminal activity, then EFET reserves the right, as agent, to remove the name of such party from the list of those having ratified the Amendments and remove the published Ratification Letter from the Website, whereupon, without prejudice to any existing agreement to make the amendments set out in the Amendments based on such Ratification Letter, such purported ratification shall be incapable of forming the basis of any subsequent agreement to make the amendments set out in the Amendments.

(d) A copy of each Ratification Letter as uploaded by the Ratifying Party will be published by EFET on the Website and in accordance with the Terms of Use of the EFET Document Ratification System in force from time to time so that it may be viewed and downloaded and/or printed by all Ratifying Parties.

(e) This Ratification Letter is intended for use without negotiation, but without prejudice to any amendment, modification or waiver in respect of a Covered Principal Agreement that the parties may otherwise effect in accordance with the terms of that Covered Principal Agreement.

(f) Each Ratification Letter and any non-contractual obligations arising out of or in connection with it will, as between two Ratifying Parties, be governed by and construed in accordance with the substantive law of the Federal Republic of Germany, provided that the Amendments to each Covered Principal Agreement shall be governed by and construed in accordance with the governing law specified in that Covered Principal Agreement.

HG

(g) Any dispute between two Ratifying Parties arising out of or in connection with this Ratification Letter or any non-contractual obligations arising out of or connection with it will be subject to the dispute resolution mechanisms that apply to the first Principal Agreement listed in Schedule 2 to this Ratification Letter that is a Covered Principal Agreement with respect to those Ratifying Parties, and the provisions setting forth such dispute resolution mechanisms shall be incorporated into and shall apply to this Ratification Letter (as if references in the Covered Principal Agreement to the Covered Principal Agreement were references to this Ratification Letter), provided that any dispute between two Ratifying Parties arising out of or in connection with any Amendments to a Covered Principal Agreement will be subject to the dispute resolution mechanisms that apply to that Covered Principal Agreement.

2. Appointment; Release

We hereby appoint EFET as our agent for the purpose of administering our ratification of the Amendments and accordingly we waive, and hereby release EFET from, any claims or actions whatsoever (whether in contract, tort or otherwise) arising out of or in any way relating to this Ratification Letter or our ratification of the Amendments. For the purpose of administering our ratification of the Amendments, EFET shall also be exempted from the restrictions of Section 181 of the German Civil Code (*Bürgerliches Gesetzbuch* – BGB).

We acknowledge that the Ratifying Parties are responsible for determining the appropriateness of making the Amendments to each Covered Principal Agreement. We also acknowledge that the documentation of each Covered Principal Agreement remains the responsibility of the parties concerned. We hereby release EFET from any claims or actions whatsoever arising out of any use to which we may put the Amendments. We have satisfied ourselves that the Amendments are appropriate for use in the Covered Principal Agreements into which we have incorporated them, and the Amendments reflect our commercial intentions and do not conflict with our legal obligations. We also accept any possible adverse consequences which may occur as a result of our use of the Amendments. We also acknowledge that EFET has not reviewed the wording of any Covered Principal Agreement into which we have incorporated this wording, and we acknowledge that EFET has advised us to consider for ourselves both the applicable law and the specific Covered Principal Agreements into which we have incorporated the Amendments.

3. Representations and Undertakings

As of the Ratification Date, each Ratifying Party represents to the other corresponding Ratifying Party that:

(a) it is duly organised, validly existing and, if relevant under such laws, in good standing under the laws of its jurisdiction of incorporation, or, if it otherwise represents its status in or pursuant to the Covered Principal Agreement, has such status;

(b) the signing and the entering into by it of this Ratification Letter shall not violate any provision of its constitutional documents;

(c) it has the power and is authorised to execute, deliver and perform its obligations under this Ratification Letter and has taken all necessary action to authorise that

HG

execution, delivery and performance, and its execution, delivery and performance of this Ratification Letter does not violate or conflict with any other term or condition of any contract to which it is party or any constitutional document, rules, law or regulation applicable to it;

(d) it has all governmental, regulatory and other authorisations, licenses, approvals and consents necessary for it legally to perform its obligations under this Ratification Letter; and

(e) its entry into this Ratification Letter will not, in and of itself, adversely affect the enforceability, effectiveness or validity of any obligations owed, whether by it or by any third party, under any credit support document (howsoever described) in respect of its obligations relating to the Covered Principal Agreement as amended by this Ratification Letter.

4. Amendments

(a) In ratifying the Amendments, a Ratifying Party may not specify additional provisions, conditions or limitations to the Amendments in its Ratification Letter. Any such added provisions, conditions or limitations shall not be recognised and shall have no legal effect, and such Ratification Letter may not be accepted by EFET.

(b) Each Ratifying Party acknowledges and agrees that ratification of the Amendments is irrevocable.

(c) An amendment, modification or waiver in respect of the matters contemplated by the Amendments will only be effective in respect of a Covered Principal Agreement if made in accordance with the terms of the Covered Principal Agreement and then only with effect between the parties to that Covered Principal Agreement (and will only be effective to amend or override the provisions set forth in this Ratification Letter if it expressly refers in writing to this paragraph of this Ratification Letter).

5. Contact Details

Our contact details for the purposes of this Ratification Letter are:

Full company name:	enercity AG EW-BO
Address:	Ihmeplatz 2 30449 Hannover Germany
Telephone:	+49 511 430 3255
E-mail:	back-office@enercity.de

We consent to the disclosure by EFET of the name of the undersigned Ratifying Party and the Ratification Date on the Website. We also consent to the publication by EFET as described herein of a final copy of this Ratification Letter with the printed or typewritten name of each signatory to the Ratification Letter and we confirm that each such signatory has consented to such publication.

HG

Unless expressly set out in this Ratification Letter, this Ratification Letter shall be ratified pursuant to and shall in all respects be subject to the Terms of Use of the EFET Document Ratification System in force from time to time as published on the Website and as may be amended by EFET from time to time.

Yours faithfully

Name:	Michael Kranz	Heiko Pegel
Title:	Head of Energy Trading & Management	Head of Back-Office
Signature:	ppa. M. Kranz	i.A. Pegel
Date:	13.04.2022	

HG

Schedule 1

Amendments

1) Amendments

The following amendments shall be made to each Covered Principal Agreement as new clause § 7(a) (***Non-Performance Due to Trade Restriction***):

§ 7(a)

Non-Performance Due to Trade Restriction

1. **Definition of Trade Restriction:** For purposes of the Agreement, "**Trade Restriction**" means any law, regulation, decree, ordinance or legally binding order, rule or requirement of the United Nations or under the laws of the European Union, any EU Member State, the United Kingdom; or Switzerland relating to trade sanctions, trade embargoes and other foreign trade controls, export controls, non-proliferation, anti-terrorism and similar laws.

2. **Release from Delivery, Acceptance and Payment Obligations:** If a Trade Restriction: (i) is directly applicable to a Party; and (ii) fully or partially prevents this Party (the "**Trade Affected Party**") from performing or procuring the performance of any obligation otherwise required by this Agreement including, without limitation, its obligations to: (a) deliver, accept, sell or purchase Relevant Commodity or pay or receive monies under one or more Individual Contracts to, from, or through an Entity; or (b) engage in any other acts under the Agreement (each an "**Affected Obligation**"), because this would constitute a violation of, be inconsistent with, or expose the Trade Affected Party to a punitive measure under such Trade Restriction, and provided that the Trade Affected Party can legally bind itself under the national laws of the place of the Trade Affected Party's incorporation, registration, or establishment to comply with such Trade Restriction (such Trade Restriction being an "**Applicable Trade Restriction**"), then, without prejudice to § 7(a).6 (***Long Term Trade Restriction Limit***), no breach or default of this Agreement on the part of the Trade Affected Party as a result of the Applicable Trade Restriction shall be deemed to have occurred and, subject to § 7(a).5 (***Accrued Amounts***), it shall be released (and not merely suspended) from those Affected Obligations but only for the period of time and to the extent that such Applicable Trade Restriction prevents its performance. Without prejudice to § 7(a).6 (***Long Term Trade Restriction Limit***), the Trade Affected Party and the other Party (the "**Trade Restricted Party**") shall have no obligation to pay damages pursuant to § 8 (as specified below) with respect to any Contract Quantities which are undelivered or non-accepted or Default Quantities, as the context requires, arising under any Individual Contracts concluded under the Agreement as a result of any Applicable Trade Restriction affecting the Trade Affected Party's obligations under this Agreement nor shall any right to terminate the Agreement pursuant to § 10.5 (a) (***Non-Performance***) or § 10.5 (d) (***Failure to Deliver or Accept***) arise for the Trade Restricted Party or the Trade Affected Party as a result of any failure to perform or procure the performance of any Affected Obligation due to any Applicable Trade Restriction.

3. **Notification and Mitigation of Applicable Trade Restriction:** The Trade Affected Party shall to the extent permissible and as soon as practicable after learning of the Applicable Trade Restriction notify the Trade Restricted Party of the commencement of an Applicable Trade Restriction and of the Individual Contract(s) affected thereby and, to the extent then available, provide to the Trade Restricted Party a bona fide non-binding estimate of the extent and expected duration of its inability to perform. The Trade Restricted Party and the Trade Affected Party shall, to the extent permissible under any Applicable Trade Restriction: (i) use all commercially reasonable efforts to mitigate and overcome the effects of the Applicable

HS

Trade Restriction, which shall however not include an obligation to procure a licence to perform; and (ii) during the continuation of the Applicable Trade Restriction, provide the other Party with reasonable bona fide updates, when, and if available, of the extent and expected duration of its inability to perform such Individual Contract(s).

4. Effects of Applicable Trade Restriction on Trade Restricted Party: In the event, and to the extent, that a Trade Affected Party's delivery obligations are released due to an Applicable Trade Restriction (and if delivery and acceptance have not yet been performed), subject to § 7(a).5 (***Accrued Amounts***), the Trade Restricted Party's corresponding acceptance and payment obligations shall also be released. In the event, and to the extent that the Trade Affected Party's acceptance or payment obligations are released due to an Applicable Trade Restriction, the Trade Restricted Party's corresponding delivery obligations shall also be released.

5. Accrued Amounts: If, at the time any Applicable Trade Restriction comes into force preventing the payment or receipt of any monies by either Party, any monies have already accrued between the Parties for deliveries of Relevant Commodity or otherwise in respect of the period before such Applicable Trade Restriction came into force ("**Accrued Amounts**"), then the obligation to pay any such Accrued Amounts shall be suspended until such time as payments of monies may lawfully be made under any Applicable Trade Restriction or after the Applicable Trade Restriction ceases to apply.

6. Long Term Trade Restriction Limit: Where in respect of an Individual Contract the obligations of the Trade Affected Party have been adversely affected by an Applicable Trade Restriction on each Relevant Day for a consecutive period of 10 Relevant Days and by on average more than fifty (50) per cent of the aggregate contracted quantity during such period, then the Trade Affected Party and the Trade Restricted Party shall have the right to terminate such Individual Contract forthwith. In case of such termination, the terminating Party shall only be required to send notice of termination of such an Individual Contract to the other Party to the extent permissible. Such termination shall be without prejudice to the accrued rights and obligations of the Parties under such Individual Contract up to the date of termination (including, without limitation, the obligation to pay any Accrued Amounts once so permitted) but neither Party shall have any liability whatsoever to the other in respect of the unexpired portion of the Total Supply Period under such Individual Contract after the date of termination.

7. Consequential Amendments: References to "Force Majeure" in § 8 (as specified below), shall be understood as references to "Force Majeure in accordance with § 7 (***Non-Performance Due to Force Majeure***) or any Applicable Trade Restriction in accordance with § 7(a) (***Non-Performance Due to Trade Restriction)***" and references to "§ 7 (***Non-Performance Due to Force Majeure***)" in § 10.5(a) (***Non-Performance***) and § 10.5(d) (***Failure to Deliver or Accept***) shall be understood as references to "§ 7 (***Non-Performance Due to Force Majeure***) or § 7(a) (***Non-Performance Due to Trade Restriction)***".

References to § 8 means either a reference to § 8 (***Remedies for Failure to Deliver and Accept***) or § 8 (***Remedies for the Failure to Deliver or Accept the Contract Quantity***), as the context requires.

"**Relevant Commodity**" means either electricity or Natural Gas, as the context requires.

"**Relevant Day**" means either "day" or "Day", as the context requires

HG

2) Except as amended above, the Covered Principal Agreement(s) shall remain unamended and continue in full force and effect.

HG

Schedule 2

Covered Principal Agreements

The following Principal Agreements are specified as subject to the Amendments:

[x] EFET Power V2.1(a)	Any European Federation of Energy Traders General Agreement Concerning the Delivery and Acceptance of Electricity Version 2.1 (a) published on 21 September 2007 (**"EFET Power V2.1(a)"**), including all amendments thereto.
[x] EFET Power (prev)	Any European Federation of Energy Traders General Agreement Concerning the Delivery and Acceptance of Electricity Version 2.1 published on 20 December 2000 (**"EFET Power (prev)"**) and/ or any previous EFET General Agreement for Electricity, including, all amendments thereto.
[X] EFET Gas V2.0(a)	Any European Federation of Energy Traders General Agreement Concerning the Delivery and Acceptance of Natural Gas Version 2.0(a) published 11 May 2007 (**"EFET Gas V2.0(a)"**) including all amendments thereto.
[x] EFET Gas (prev)	Any European Federation of Energy Traders General Agreement Concerning the Delivery and Acceptance of Natural Gas Version 2.0 published 6 January 2003 (**"EFET Gas (prev)"**) and/ or any previous General Agreement for Natural Gas, including all amendments thereto.

HG