

EFET

European Federation of Energy Traders

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WAIVER: THE FOLLOWING GENERAL AGREEMENT WAS PREPARED BY EFET'S MEMBERS EXERCISING ALL REASONABLE CARE. HOWEVER, EFET, THE EFET MEMBERS, REPRESENTATIVES AND COUNSEL INVOLVED IN ITS PREPARATION AND APPROVAL SHALL NOT BE LIABLE OR OTHERWISE RESPONSIBLE FOR ITS USE AND ANY DAMAGES OR LOSSES RESULTING OUT OF ITS USE IN ANY INDIVIDUAL CASE AND IN WHATEVER JURISDICTION. IT IS THEREFORE THE RESPONSIBILITY OF EACH PARTY WISHING TO USE THIS GENERAL AGREEMENT TO ENSURE THAT ITS TERMS AND CONDITIONS ARE LEGALLY BINDING, VALID AND ENFORCEABLE AND BEST SERVE TO PROTECT THE USER'S LEGAL INTEREST. USERS OF THIS GENERAL AGREEMENT ARE URGED TO CONSULT RELEVANT LEGAL OPINIONS MADE AVAILABLE THROUGH EFET AS WELL AS THEIR OWN COUNSEL.

General Agreement

Concerning the Delivery and Acceptance of Electricity

Between

xxx

having its registered office at xxx

("xxx" or Party A)

and

MVV Trading GmbH

having its registered office at Luisenring 49, 68159 Mannheim, Germany

("MVV Trading" or Party B)

(referred to jointly as the "Parties" and individually as a "Party")

entered into on _____ (the "Effective Date").

shall be delivered by letter (overnight mail or courier, postage pre-paid) or facsimile as provided in the Election Sheet. Each Party may change its notice information by written notice to the other. Written notices, declarations and invoices shall be deemed received and effective:

- (a) if delivered by hand, on the Business Day delivered or on the first Business Day after the date of delivery if delivered on a day other than a Business Day;
- (b) if sent by first class post, on the second Business Day after the date of posting, or if sent from one country to another, on the fifth Business Day after the day of posting; or
- (c) if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission if transmitted before 17.00 hours (recipient's time) on a Business Day or otherwise at 09.00 hours (recipient's time) on the first Business Day after transmission.

3. Amendments: Except as provided in § 3 (*Concluding and Confirming Individual Contracts*) with respect to Confirmations, any amendments or additions to this General Agreement shall be made only in writing signed by both Parties.

4. Partial Invalidity: If, at any time, any provision of this General Agreement or an Individual Contract is or becomes illegal, invalid or unenforceable, in any respect, under the law of any relevant jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of this General Agreement or of any Individual Contract, shall be in any way affected or impaired thereby. The Parties undertake to replace any illegal, invalid or unenforceable provision with a legal, valid and enforceable provision which comes as close as possible to the invalid provision as regards its economic intent.

5. Third Party Rights: The Parties do not intend that any third party shall have any rights under or be able to enforce the Agreement and the Parties exclude to the extent permitted under applicable law any such third party rights that might otherwise be implied.

Executed by the duly authorised representative of each Party effective as of the Effective Date.

xxx_

MVV Trading GmbH

[Name of Signatory/ies]

*Dr Thies Langmaack
Managing Director*

[Title of Signatory/ies]

*Stefan Sewckow
Managing Director*

EFET

European Federation of Energy Traders

Election Sheet to the General Agreement

with an Effective Date of

between xxx and MVV Trading GmbH

("Party A")

("Party B")

PART I: CUSTOMISATION OF PROVISIONS IN THE GENERAL AGREEMENT

§1

Subject of Agreement

§1.2 Pre-Existing Contracts: § 1.2 shall apply, or
 § 1.2 shall not apply

§2

Definitions and Construction

§ 2.4 References to Time: time references shall be:
 as provided in the General Agreement (CET),
or
 to the following time:

§3

Concluding and Confirming Individual Contracts

§ 3.4 Authorised Persons: § 3.4 shall apply to Party A and Party B as follows:

The Parties agree to exchange lists of contact details for information purposes only upon signature of the General Agreement and afterwards on demand of the Parties.

§5

Primary Obligations for Options

§ 5.3 Exercises of Option and Deadline:

If in respect of an Individual Contract which provides for an Option no Exercise Deadline is specified:

the Exercise Deadline shall be as provided in § 5.3; or

the Exercise Deadline shall be: _____.

§7

Non-Performance Due to Force Majeure

§ 7.1 Definition of Force Majeure:

§ 7.1 shall apply as written in the General Agreement, or

§ 7.1 shall not apply as written but instead shall be as follows:

§10

Term and Termination Rights

§ 10.2 Expiration Date:

§ 10.2 shall apply and *there shall be no Expiration Date*

_____, or

§ 10.2 shall not apply and there shall be no Expiration Date

§ 10.4 Automatic Termination:

§ 10.4 shall apply to Party A and Party B upon occurrence of a Material Reason as described in § 10(5)(c)(iv) with termination effective immediately prior to the institution of any said proceeding; however, in the event of a Material Reason as described in § 10.5 (c)(iv) Automatic Termination shall only occur as provided in § 10.5 (c)(iv) of this Election Sheet.

§ 10.5(b) Cross Default and Acceleration:

§ 10.5 (b) shall apply to Party A and Party B as follows:

“§ 10.5.(b) (i) and (ii) shall be deleted and replaced by the following:

(i) any default, event of default or other similar condition or event (however described) in respect of such Party, such Party’s Credit Support Provider (if such Party has a Credit Support Provider) or such Party’s Controlling Party (if such party does not have a Credit Support Provider but has a Controlling Party) under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the Threshold Amount (specified for that Party under § 10.5(b) (iii)) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable before it would otherwise have been due and payable, or

(ii) a default by such Party or such Credit Support Provider or such Controlling Party (individually or collectively) to make one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount for that party under such agreements or instruments relating to Specified Indebtedness (after giving effect to any applicable notice requirement or grace period) and

(iii) for the purpose of the above, the Threshold Amount shall be for

for Party A: 3% of the Tangible Net Worth of Party A with respect to the Tangible Net Worth of the previous fiscal year

for Party B: 3% of the Tangible Net Worth of Party B's Credit Support Provider with respect to the Tangible Net Worth of the previous fiscal year

§ 10.5(c) Winding-up/Insolvency/Attachment:

In the first line of § 10.5(c), between the words "A Party" and "or its Credit Support Provider" the following words shall be inserted: "or, as the case may be, its Controlling Party".

§10.5 (c) (iv) shall apply to Party A and B and in respect of the Material Reason the Agreement shall be automatically terminated, pursuant to § 10.4 (Automatic Termination), upon the expiration of a period of

- 0 days if the counterpart or its Credit Support Provider introduces the petition against itself or

- 0 days, if the counterpart, its Controlling Party or its Credit Support Provider is indeed unable to pay its respective debts as they fall due, or is otherwise in a position which justifies the institution of such insolvency proceedings or

- 10 days after filing of a petition or motion for the formal commencement of any kind of insolvency proceedings (in German: "Antragstellung auf Eröffnung des Insolvenzverfahrens") against Party A or B, its Controlling Party or its Credit Support Provider by a third party, whichever occurs earlier; and the Party against which such proceeding or petition is instituted or presented does not present a sufficient evidence ("substantiiertes Beweis") that such institution is frivolous and vexatious or does not present a sufficient evidence ("substantiiertes Beweis") that this institution is withdrawn, dismissed, discharged, stayed or restrained within this period;

however, in any event upon the formal commencement of such insolvency proceedings (in German: "Eröffnung des Insolvenzverfahrens") against Party A or B its Controlling Party or their Credit Support Provider, whichever occurs earlier. In such event, Automatic Termination shall be deemed to have become effective immediately prior to the date of such Material Reason as described in § 10.5 (c)(iv).

As soon as it becomes aware that a Material Reason according to § 10.5 (c) occurs to a Party, this Party shall promptly notify the other Party of the occurrence of the Material Reason.

§ 10.5(d) Failure to Deliver or Accept:

§ 10.5(d) shall apply, or
 § 10.5(d) shall not apply

§ 10.5.(e) Force Majeur:

§ 10.5 (e) shall be deleted.

§ 10.5 (g) Other Material Reasons:

Material Reasons shall be limited to those stated in the General

Agreement and in addition shall include the following:

The failure of a Party to make one or more payments under any Specified Transactions (after giving effect to any applicable notice requirement or grace period) in an aggregate amount due of at least EUR 10,000. The failure of a party to make one or more payments under § 13.6b can not be deemed to be a Material Reason in respect of § 10.5, until the disputed amount is finally determined to have been due.

§ 11

Calculation of the Termination Amount

A new § 11.3. is added at the end of § 11.2:

- (I) The Termination Amount payable to one Party (the "Payee") by the other Party (the "Payer") will be reduced by its set-off against any amount(s) (the "Other Agreement Amount") payable by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement(s) between the Payee and the Payer or instrument(s) or undertaking(s) issued or executed by one Party to, or in favour of, the other Party (and the Other Agreement Amount will be discharged promptly and in all respects to the extent it is so set-off). Both Parties/ The Party which has declared the set-off will give notice to the other Party of any set-off affected under this provision.
- (II) The Termination Amount shall also be reduced by its set-off against any amount(s) payable by the Payee to the Payer's associates or associated entities as far as they are not co-debtor. If an amount is unascertained, the Terminating Party may reasonably estimate in good faith the amount to be set off. All relevant and available market data shall be taken into account. The other Party shall be informed immediately. Nothing in this provision shall be effective to create a charge or other security interest. This provision shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise)."

§12

Limitation of Liability

§ 12 Application of Limitation: § 12 shall be amended as follows:

§ 12.1 and § 12.2 shall apply as written in the General Agreement.

§ 12.3 and § 12.4 shall not apply as written in the General Agreement but instead shall be as follows:

3. Limitation of Liability: Subject to § 12.4, and not in case of a violation of fundamental contractual obligations based on intent and gross negligence, the liability of either Party under or in connection with this Agreement shall be limited to the damages reasonably foreseeable as the possible consequence of such injuring event at the time of entering into the affected agreement, taking into account all circumstances known or which should have been known at the time. Such limitation shall not apply to payments

under § 8 (*Remedies for Failure to Deliver and Accept*) and § 11 (*Calculation of the Termination Amount*).

4. Intentional Default, Fraud and Fundamental Rights: Nothing in the Agreement operates to exclude or limit a Party's liability for:

- (a) intentional default or gross negligence,
- (b) fraud; or
- (c) apart from the limitation provision in § 12.3, any action which endangers the fundamental legal rights of a Party or which violates a Party's fundamental contractual obligations ("*Kardinalpflichten*"); or
- (d) personal injury or death resulting from the negligence of such Party or any of its officers or employees.

[X] § 12.5 shall apply as written in the General Agreement.

§13 **Invoicing and Payment**

§ 13.2 Payment: initial billing and payment information for each Party is set out in § 23 of this Election Sheet. The Payment has to be made in Person by the contracting party.

§ 13.3 Payment Netting: [X] § 13.3 shall apply, or
[] § 13.3 shall not apply

§ 13.5 Interest Rate: The Interest Rate shall be the one month EURIBOR interest rate for 11:00 a.m. on the Due Date, plus 3 (three) percentage points per annum.

§ 13.6 Disputed Amounts: [X] §13.6 (a) shall apply, except in the event and to the extent of an obvious invoicing error in which case 13.6(b) will apply
[] §13.6 (b) shall apply

§14 **VAT and Other Taxes**

§ 14.1 VAT: § 14.1, subsection one, shall be amended in line two by adding, after the words "Electricity" the words "or related services".

§ 14.1, subsection two, shall be amended in line two by deleting, after the figure "39" the word "or" and replacing it by ", 44," and by adding after the figure "195" the words "196 or 199a" and in line three by adding after the words "Council Directive 2006/112/EC" the words "(as amended by any subsequent Directives) and in accordance with any associated national legislation".

§ 14.8 Termination for New Tax: [X] unless otherwise specified in the terms of an Individual Contract the provisions of § 14.8 shall apply to such Individual Contract only in the

circumstances specified in the first paragraph of § 14.8, or

subject to the terms of an Individual Contract, the provisions of § 14.8 shall only apply in the following circumstances:

[_____]

§ 14.9 Withholding Tax: § 14.9 shall apply, or
 § 14.9 shall not apply

§15

Settlement of Floating Prices and Fallback Procedures For Market Disruption

§ 15.5 Calculation Agent: the Calculation Agent shall be Seller, provided that Seller is not in default. Should Seller be in default, then Buyer will act as Calculation Agent. Default for this purpose shall be defined as experiencing a Material Reason as defined in § 10.5.

or

the Calculation Agent shall be _____

§16

Guarantees and Credit Support

§ 16 Credit Support Documents:

Party A shall provide Party B with the following Credit Support Document(s):

Such documents as are agreed by the Parties from time to time on or after the date of this General Agreement.

Party B shall provide Party A with the following Credit Support Document(s):

Such documents as are agreed by the Parties from time to time on or after the date of this General Agreement.

§ 16 Credit Support Provider: Credit Support Provider(s) of Party A shall be:
As agreed from time to time between the Parties.

Credit Support Provider(s) of Party B shall be:
MVV Energie AG or as agreed from time to time between the Parties.

§17

Performance Assurance

§ 17.2 Material Adverse Change:

the following categories of Material Adverse Change shall apply to **Party A**:

§17.2 (a) (**Credit Rating**), and the minimum rating shall be: BBB- with stable outlook (Standard & Poor's) or Baa 3 with stable outlook (Moody's), whereas the lower rating shall be decisive;

§17.2 (b) (**Credit Rating of Credit Support Provider that is a Bank**); A- (Standard & Poor's) or A3 (Moody's), whereas the lower rating shall be decisive, and the Parties agree that the words "or a provider of a Performance Assurance" shall be added after the words "Credit Support Provider" each time that they appear in this clause;

§17.2 (c) (**Financial Covenants**), and

the EBIT to Interest ratio shall be: _____,
the Funds From Operations to Total Debt ratio shall be: _____,
and
the Total Debt to Total Capitalisation ratio shall be: _____;

§17.2 (d) (**Decline in Tangible Net Worth**), shall apply if the Tangible Net Worth falls either (i) below 66% of the Tangible Net Worth as calculated on the day of the conclusion of the General Agreement, or (ii) decreases by 25% (twentyfive percent) or more with respect to the Tangible Net Worth of the previous fiscal year, but this specifically excludes decline in TNW due to changes in the accounting standards;

§17.2 (e) (**Expiry of Performance Assurance or Credit Support**), and

the relevant time period shall be 30 days, or
 no time period shall apply;

§17.2 (f) (**Failure of Performance Assurance or Credit Support**);

§17.2 (g) (**Failure of Control & Profit Transfer Agreement**);

§17.2 (h) (**Impaired Ability to Perform**); and

§17.2 (i) (**Amalgamation/Merger**)

the following categories of Material Adverse Change shall apply to **Party B**:

§17.2 (a) (**Credit Rating**), and the minimum rating shall be: BBB- with stable outlook (Standard & Poor's) or Baa 3 with stable outlook (Moody's), whereas the lower rating shall be decisive;

§17.2 (b) (**Credit Rating of Credit Support Provider that is a Bank**); A- (Standard & Poor's) or A3 (Moody's), whereas the lower rating shall be decisive; and the Parties agree that the words "or a provider of a Performance Assurance" shall be added after the words "Credit Support Provider" each time that they appear in this clause;

§17.2 (c) (**Financial Covenants**), and

the EBIT to Interest ratio shall be: _____,
the Funds From Operations to Total Debt ratio shall be: _____,
and

the Total Debt to Total Capitalisation ratio shall be: _____;

§17.2 (d) (**Decline in Tangible Net Worth**) shall apply if the Tangible Net Worth falls either (i) below 66% of the Tangible Net Worth as calculated on the day of the conclusion of the General Agreement, or (ii) decreases by 25% (twentyfive percent) or more with respect to the Tangible Net Worth of the previous fiscal year, but this specifically excludes decline in TNW due to changes in the accounting standards; for the avoidance of doubt: the Decline in Tangible Net Worth is referred to Party B's Credit Support Provider.

§17.2 (e) (**Expiry of Performance Assurance or Credit Support**), and

the relevant time period shall be 30 days, or
 no time period shall apply;

§17.2 (f) (**Failure of Performance Assurance or Credit Support**);

§17.2 (g) (**Failure of Control & Profit Transfer Agreement**);

§17.2 (h) (**Impaired Ability to Perform**); and

§17.2 (i) (**Amalgamation/Merger**)

§18

Provision of Financial Statements and Tangible Net Worth

§ 18.1 (a) Annual Reports: Party A shall deliver annual reports of itself and of its Credit Support Provider as soon as available following the end of each fiscal year and to the extent that they are not available on the Internet at [•], or
 Party A need not deliver annual reports, and
 Party B shall deliver annual reports of its Credit Support Provider as soon as available following the end of each fiscal year and to the extent that they are not available on the Internet at "www.mvv-energie.de", or
 Party B need not deliver annual reports

§ 18.1(b) Quarterly Reports: Party A shall deliver quarterly reports, or
 Party A need not deliver quarterly reports, and
 Party B shall deliver quarterly reports, or
 Party B need not deliver quarterly reports

§18.2 Tangible Net Worth: Party A shall have a duty to notify as provided in §18.2, and the applicable figure for it shall be _____, or
 Party A shall have no duty to notify as provided in §18.2, and
 Party B shall have a duty to notify as provided in §18.2, and the applicable figure for it shall be _____, or
 Party B shall have no duty to notify as provided in §18.2

§19

Assignment

§ 19.2 Assignment to Affiliates: Shall apply to Party A and B as follows:

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“Each Party shall be entitled to assign and transfer the Agreement without the prior written consent of the other Party to an Affiliate of an equivalent or greater creditworthiness and in the same jurisdiction as the assigning and transferring Party. Such Assignment and transfer shall only become effective upon notice being received by the other Party and; provided that any Credit Support Document issued or agreed on behalf of the assigning Party has first been reissued or amended to support the obligations of the Affiliate for the benefit of the other Party.”

§20
Confidentiality

§ 20.1 Confidentiality Obligation: § 20 shall apply, and in addition the confidentiality undertakings in § 20.1 shall also apply to this Election Sheet.

§ 20.2 Exclusions from Confidential Information:

§ 20.2 (a) and (c), (d), (e) shall apply as written.

§ 20.2 (b) shall apply, and shall be amended as follows:

The words “provided that in the case of a disclosure to an intended assignee, such disclosure is made subject to a confidentiality agreement not less onerous than that contained in this § 20” shall be added after the words "intended assignee;" in the last line of § 20.2(b) (*Exclusion from Confidential Information*).

§21
Representation and Warranties

The Following Representations and Warranties are made:

	by Party A:	by Party B:
§21(a)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(b)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(c)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(d)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(e)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(f)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(g)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(h)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(i)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(j)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(k)	[DELETED]	[DELETED]
§21(l)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(m)	[] yes <input checked="" type="checkbox"/> no	[] yes <input checked="" type="checkbox"/> no
§21(n)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no

In addition Party A represents and warrants the following: _____
 In addition Party B represents and warrants the following: _____

§22

Governing Law and Arbitration

§ 22.1 Governing Law:

§ 22.1 shall apply as written, or
 § 22.1 shall not apply as written but instead shall be as follows:

§ 22.2 Arbitration:

§ 22.2 shall apply as written and the language of the arbitration shall be:
German, or
 § 22.2 shall not apply as written but instead shall be as follows:
Any disputes which arise in connection with this Agreement shall be referred to resolution to the public courts in Germany. The language of dispute resolution shall be German.

§23

Miscellaneous

§ 23.2 Notices, Invoices and Payments:

§ 23.2, shall be amended by deleting the word “*invoice*” and replacing the comma (“,”) between the words “*notices*” and “*declarations*” with the word “*and*”.

A new sentence will be added at the end of § 23.2:

“Invoices will be exchanged between the Parties via e-mail to the following e-mail addresses:

Party A: xxx

Party B: Rechnungseingang0007@mvv.de

(a) **TO PARTY A:**

Notices & Correspondence

Address:

Telephone No:

Fax No:

Attention: [Job Title]

Invoices

Telephone No.:

Fax No:

Attention: [Job Title]

Payments

Bank account details

account No:

bank code

bank name

SWIFT-Code

IBAN

VAT

EIC

(b) **TO PARTY B:**

Notices & Correspondence

MVV TRADING GMBH

Address:

Luisenring 49
D-68159 Mannheim

Telephone No:

+49 621 290 3725

Fax No:

+49 621 290 3141

Attention:

Back Office

Invoices, Confirmations

MVV TRADING GMBH

Telephone No:

+49 621 290 3725

Fax No:

+49 621 290 3141

Attention:

Back Office

Payments

MVV TRADING GMBH

Bank account details

account No:

00440 024 00

bank code

670 700 10

bank name

Deutsche Bank

IBAN

DE70 6707 0010 0044 0024 00

VAT

DE 2101 64 702

SWIFT-Code

DEUTDESMXXX

EIC

11XMVVTRADING--1

PART II: ADDITIONAL PROVISIONS TO THE GENERAL AGREEMENT

In § 3.2 the following sentence shall be added:

“In the event of any inconsistency, the oral agreement shall prevail over any written agreement, provided the

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oral agreement has been recorded.”

§ 7.5 Long Term Force Majeur Limit:

A new § 7.5 is added at the end of § 7.4:

Long Term Force Majeur Limit: Where in respect of an Individual Contract the obligations of the Claiming Party have been adversely affected by Force Majeur for a period of 60 days exceeding the Long Term Force Majeur Limit then the Party which is not the Claiming Party shall have the right to terminate all affected Individual Contracts forthwith by written notice to the Claiming Party. Such termination shall be without prejudice to the accrued rights and obligations of the Parties under all affected Individual Contracts up to the date of termination but neither Party shall have any liability whatsoever to the other in respect of the unexpired portion of the Total Supply Period under the affected Individual Contracts after the date of termination.

For the purposes of this clause "Long Term Force Majeure Limit" shall mean thirty (30) consecutive days or sixty (60) days in aggregate within a period of one calendar year, as the case may be."

§ 10.5(a) Definition of Material Reason / Non Performance:

§ 10.5(a)(i) shall be amended as follows:

(i) under the Agreement; provided, that in the case of a failure to pay, such failure is not cured within three (3) Business Days of a written demand, or, in the case of a failure to deliver any Performance Assurance such failure is not cured within the period set out in § 17.1, or, in the case of any other failure of performance, such failure is not cured within ten (10) Business Days of a written demand”.

§ 13 Invoicing and Payment

- a. All references (including relevant descriptions or definitions (but, for the avoidance of doubt, not deleting any reference to tenor)) to EURIBOR will be deleted in their entirety and such wording will be replaced with the new definition as set out in Annex 1 – Defined Terms
- b. The following wording shall be inserted:

No Index Cessation Effective Date with respect to EURIBOR

If, by 11:00 a.m. CET (or the amended publication time for EURIBOR, if any, as specified by the EURIBOR benchmark administrator in the EURIBOR benchmark methodology) on that Reset Date, EURIBOR for a period of the Designated Maturity in respect of the Reset Date has not been published on the Reuters Screen EURIBOR01 Page and an Index Cessation Effective Date with respect to EURIBOR has not occurred, then, references to EURIBOR will be deemed to be references to the last provided or published EURIBOR. If by 3:00 p.m., CET (or four hours after the amended publication time for EURIBOR), on that Reset Date, neither the administrator of EURIBOR nor an authorized distributor has provided or published EURIBOR for a period of the Designated Maturity in respect of the Reset Date and an Index Cessation Effective Date has not occurred, then, unless otherwise agreed by the Parties, the rate for that Reset Date will be:

- (A) a rate formally recommended for use by the administrator of EURIBOR; or
- (B) a rate formally recommended for use by the supervisor which is responsible for supervising EURIBOR or the administrator of EURIBOR,

in each case, during the period of non-publication of EURIBOR and for so long as an Index Cessation Effective Date has not occurred. If a rate described in sub-paragraph (A) is available, that rate shall apply. If no such rate is available but a rate described in sub-paragraph (B) is available, that rate shall apply. If neither a rate described in sub-paragraph (A) nor a rate described in sub-paragraph (B) is

available, then the Calculation Agent shall determine a commercially reasonable alternative for EURIBOR, taking into account any rate implemented by central counterparties and/or futures exchanges, in each case with trading volumes in derivatives or futures referencing EURIBOR that the Calculation Agent considers sufficient for that rate to be a representative alternative rate.

Index Cessation Effective Date with respect to EURIBOR

If an Index Cessation Effective Date occurs with respect to EURIBOR, then the rate for a Reset Date occurring two or more TARGET Settlement Days after the Index Cessation Effective Date will be such rate as replaces EURIBOR pursuant to the prevailing fallbacks mechanics ISDA (the International Swaps and Derivatives Association), or any successor to ISDA, has in place (the “Applicable Fallback Rate”), as at the Index Cessation Effective Date, after the Calculation Agent has made such adjustments as are necessary to account for any difference in term structure or tenor of the Applicable Fallback Rate and all provisions in this section shall be read as though references to EURIBOR are instead references to the Applicable Fallback Rate.

§ 14 VAT and Taxes is amended by adding the following new 14.10 at the end of § 14.9:

„For the purpose of the EU Council Directive 2006/112/EC (the “Directive”) each Party covenants that it is a “taxable dealer” as defined in the Directive; the Parties agree that for this purpose a Party’s own consumption is considered negligible, if not more than 5% of the purchased amount will be used for a Party’s own business or non-business purposes.

Each Party further covenants that, as at the Effective Date, and unless otherwise informed in writing by a Party, the place of establishment for VAT purposes, is as set out below.

Each Party undertakes to inform the other Party as soon as reasonably practicable if the covenants given under this subsection have failed or ceased to be true and accurate at any time after the Effective Date and provide accurate information. In the event that a Party fails to inform the other pursuant to this paragraph, that Party shall, as being the other Party’s sole remedy, indemnify, defend and hold the other Party harmless and indemnified in respect of any VAT and any associated charges, penalties imposed on that Party by any relevant tax authority, including interest, as a result of that Party’s failure to comply with the above undertaking.

Party A:
Place of establishment:
VAT Registration Number:

Party B:
Place of establishment: Germany
VAT Registration Number: DE 2101 64 702”

§ 17.1 Right to Require Performance Assurance

The words “and from an entity” shall be inserted after the word “amount” and before the word “reasonably” in the fifth line of §17.1.

The words “For the avoidance of doubt, in the event that an entity providing Performance Assurance on behalf of a Party does not thereafter continue to be reasonably acceptable to the Requesting Party, the Requesting Party shall have the right to require the other Party to provide to it additional Performance Assurance in accordance herewith.” shall be inserted at the end of §17.1.

Amendment to Annex 1 (Defined Terms):

“**Affiliate**” means with respect to a Party, any Entity Controlled, directly or indirectly, by that Party, any Entity that Controls, directly or indirectly that Party or any entity directly or indirectly under the common Control with a Party;”

“Central European Time” or **“CET”** means GMT + 2 hours during the summer-time period and GMT + 1 hour during the rest of the year and for these purposes the “summer time period” shall be as defined in the Eighth Directive (97/44/EC) and Directive 2000/81/EC and any succeeding EC legislation on summer-time arrangements.

“Commodity” means any tangible or intangible commodity of any type or description (including, without limitation, electric power, electric power capacity, natural gas, natural gas liquids, heating oil, other petroleum by-products or fuel, coal, freight, environmental products such as CO₂ emission allowances, greenhouse gas emission allowances, levy exemption certificates and renewable energy certificates).

“EURIBOR” means that the rate for a Reset Date will be EURIBOR (the Euro wholesale funding rate known as the Euro Interbank Offered Rate provided by the European Money Markets Institute, as the administrator of the benchmark (or a successor administrator)) for the period agreed between the Parties (the “Designated Maturity”) which appears on the Reuters Screen EURIBOR01 Page as of 11:00 a.m., CET (or any amended publication time as specified the benchmark administrator in the EURIBOR benchmark determination methodology), on the day that is two TARGET Settlement Days preceding that Reset Date.

“Reset Date” means for the purpose of the above the date payment becomes overdue, and the same date each period of the Designated Maturity thereafter until the date on which the other Party receives payment of the overdue amount and all interest that has accrued, provided that if a relevant month does not contain such number of days, the Reset Date for such month shall be the last day of such month.

“TARGET Settlement Day” means any day on which TARGET2 (the Trans-European Automated Real-time Gross Settlement Express Transfer system) is open for the settlement of payments in Euro.

“Index Cessation Effective Date” means, in respect of an Index Cessation Event, the first date in respect of which EURIBOR, or (if an Applicable Fallback Rate is being used) such Applicable Fallback Rate, is no longer provided. If EURIBOR, or, as the case may be, such Applicable Fallback Rate, ceases to be provided on the same day that it is required to determine the rate for a Reset Date pursuant to the terms of the contract but it was provided at the time at which it is to be observed pursuant to the terms of the contract (or, if no such time is specified in the contract, at the time at which it is ordinarily published), then the Index Cessation Effective Date will be the next day on which the rate would ordinarily have been published.

“Index Cessation Event” means, in respect of EURIBOR or, in the event an Applicable Fallback Rate is being used, such Applicable Fallback Rate:

- (a) a public statement or publication of information by or on behalf of the administrator of the index announcing that it has ceased or will cease to provide the index permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide the index; or
- b) a public statement or publication of information by the regulatory supervisor for the administrator of the index, the central bank for the currency of the index, an insolvency official with jurisdiction over the administrator for the index, a resolution authority with jurisdiction over the administrator for the index or a court or an entity with similar insolvency or resolution authority over the administrator will cease to provide the index permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide the index.

“Specified Transaction(s)” means (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between the Parties to this Agreement (or any Credit Support Provider of such party or any Controlling Party of such party) which is a Commodity swap, option, cap, floor or collar transaction, agreement for the purchase, sale or transfer of any Commodity or any other Commodity trading or Commodity derivative transaction or any other similar transaction (including any option with respect to any of these transactions) and (b) any combination of these transactions.

“Tangible Net Worth”

for Party A means the sum of all paid up shareholder cash contributions to the share capital account or any other capital account of the Relevant Entity ascribed for such purposes of the Relevant Entity and any accumulated earnings less any accumulated retained losses and intangible assets including, but not limited to, goodwill;

for Party B means the sum of the adjusted equity of the Relevant Entity less intangible assets including, but not

limited to, goodwill.

Executed by the duly authorised representative of each Party effective as of the Effective Date.

"Party A"
xxx

"Party B"
MVV Trading GmbH

[Name of Signatory/ies]

*Dr Thies Langmaack
Managing Director*

[Title of Signatory/ies]

*Stefan Sewckow
Managing Director*

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