

# 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.**

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### **General Agreement**

#### **Concerning the Delivery and Acceptance of Electricity**

Between

**PETROL Slovenian energy company d.d., Ljubljana** having its registered office at  
Dunajska cesta 50, 1000 Ljubljana, Slovenia

**("Party A")**  
And

**PETROL BUCHAREST ROM S.R.L.** having its registered office at 15 Piata Charles de Gaulle, 3rd floor,  
Charles de Gaulle Plaza Building, Office no. 305A, Sector 1, Bucharest

**("Party B")**

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

entered into on **20.01.2016** (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 2nd Business Day after the date of posting, or if sent from one country to another, on the 5th 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.

2. **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.

3. **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.

4. **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 authorized representative of each Party effective as of the Effective Date.

"Party A"

"Party B"

*PETROL d.d., Ljubljana*

*PETROL BUCHARETS ROM S.R.L.*

*Rok Vodnik*

*Gorazd Skubin*

*Member of the Board*

*Administrator*

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*Petrol, Slovenska energetska družba, d.d., Ljubljana  
1527 Ljubljana, Dunajska cesta 50*



# **EFET**

## **European Federation of Energy Traders**

### **Election Sheet to the General Agreement (Version 2.1(a)/September 21, 2007)**

with an Effective Date of 20.01.2016  
no: 2016-01/20

between  
**PETROL Slovenian energy company d.d., Ljubljana**  
Dunajska cesta 50, 1000 Ljubljana, Slovenia  
("Party A")

and  
**PETROL BUCHAREST ROM S.R.L.**  
15 Piata Charles de Gaulle, 3rd floor, Charles de Gaulle Plaza Building, Office no. 305A, Sector 1, Bucharest  
("Party B")

#### **PART I: CUSTOMISATION OF PROVISIONS IN THE GENERAL AGREEMENT**

##### **§1 Subject of Agreement**

**§1.2 Pre-Existing Contracts:** § 1.2 shall apply.

##### **§2 Definitions and Construction**

**§ 2.4 References to Time:** Time references shall be as provided in the General Agreement (CET).

##### **§3 Concluding and Confirming Individual Contracts**

**§ 3.4 Authorised Persons:** § 3.4 shall apply to Party A and Authorized Persons shall be designated in the "List of Authorized Persons and other Corporate Data" of Party A.  
§ 3.4 not apply.

##### **§7 Non-Performance Due to Force Majeure**

**§ 7.1 Definition of Force Majeure:** § 7.1 shall apply as written in the General Agreement.

##### **§10 Term and Termination Rights**

**§ 10.2 Expiration Date:** § 10.2 shall apply but there shall be no Expiration Date.

**§ 10.4 Automatic Termination:** §10.4 shall not apply to Party A.  
§10.4 shall not apply to Party B.

**§ 10.5(b) Cross Default and Acceleration:** § 10.5 (b) shall apply to Party A and to Party B. as follows:

The wording of § 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 (as defined in Annex 1) of any of them (individually or collectively) in an aggregate amount of not less than the Threshold Amount (as specified for that Party under § 10.5 (b) (iii)) which has resulted in such Specified Indebtedness becoming due and payable, before it would otherwise have been due and payable, or
- (ii) the default of a Party or its Credit Support Provider or 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 Threshold Amount for that Party (as specified under § 10.5 (b) (iii)) under one or more 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

Party A: Three percent (3%) of Tangible Net Worth

Party B: Three percent (3%) of Tangible Net Worth

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

[X] § 10.5(c)(iv) shall apply to Party A and its Credit Support Provider without any applicable grace period for Party A to have such proceedings (as are referred to in § 10.5(c)(iv)) withdrawn, dismissed, discharged, stayed or restrained, except insofar a proceeding or petition referred to in § 10.5(c) (iv) has been instituted or presented by a party other than the Party A in question, its Credit Support Provider or Controlling Party, in which case the applicable time period is 15 Calendar Days which start to run on the day when such proceeding has been instituted or such petition has been presented by a party other than Party A provided that such period shall immediately be reduced to 0 days in the event that such proceeding or petition results in a judgment or opening of insolvency or bankruptcy or the entry of an order for relief or the making of an order for winding-up or liquidation and any of such events constitute a Material Reason.

[X]§ 10.5(c)(iv) shall apply to Party B and its Credit Support Provider without any applicable grace period for Party B to have such proceedings (as are referred to in § 10.5(c)(iv)) withdrawn, dismissed, discharged, stayed or restrained, except insofar a proceeding or petition referred to in § 10.5(c) (iv) has been

instituted or presented by a party other than the Party B in question, its Credit Support Provider or Controlling Party, in which case the applicable time period is 15 Calendar Days which start to run on the day when such proceeding has been instituted or such petition has been presented by a party other than Party B provided that such period shall immediately be reduced to 0 days in the event that such proceeding or petition results in a judgment or opening of insolvency or bankruptcy or the entry of an order for relief or the making of an order for winding-up or liquidation and any of such events constitute a Material Reason

**§ 10.5(d) Failure to Deliver or Accept:** § 10.5(d) shall not apply.

**§ 10.5 (e) Force Majeure:** § 10.5 (e) shall only apply to the Individual Contracts whose obligations are affected by Force Majeure.

### **§13**

#### **Invoicing and Payment**

**§ 13.1 Invoicing:** § 13.1 shall be amended by entering the following sentences after the last sentence:  
“Parties agree to use its best efforts to ensure the electronic communications for invoicing purposes (*Electronic Invoicing*). Exact procedure and format of transmitted documents shall be communicated between Parties’ Accounting and IT departments. Electronic Invoicing shall not come into force if any Party objects its use.”

**§ 13.2 Payment:** initial billing and payment information for each Party is set out in § 23 of this Election Sheet.

**§ 13.3 Payment Netting:** § 13.3 shall apply and shall be amended by entering the following sentence after the last sentence:  
“Party A shall issue and transmit (additionally to the invoice) to Party B the Netting Statement stating amounts payable by both Parties under each and all invoices and to be signed by Party B. Parties agree the Netting Statement shall be transmitted through Electronic Invoicing if such grounds exist (§13.1). ”

If Party B is required to pay one or more amounts to Party A and at the same time Party A or its affiliate is required to pay one or more amounts to Party B, regardless of the legal basis amounts derives from (Individual Contract based on this Agreement or any other EFET GA or/and Long Term agreement concluded between Party B, Party A or its affiliate), and amounts are due, than such amounts with respect to each Party and to Party's affiliate shall be set-off, up to the minimum reciprocal owed amount, and the Parties shall discharge their respective payment obligations through netting. Set-off is effected by declaration to the Party B.

**§ 13.5 Interest Rate:** the Interest Rate shall be 1,62 % per annum. Interest Rate shall be calculated on ACT/ACT basis.

§ 13.6 Disputed Amounts: §13.6 (b) shall apply.

**§14**  
**VAT and Other Taxes**

§ 14.8 Termination for New Tax: § 14.8 shall apply.

§ 14.9 Withholding Tax: § 14.9 shall apply

**§15**  
**Settlement of Floating Prices and Fallback Procedures For Market Disruption**

§ 15.5 Calculation Agent: The Calculation Agent shall be Seller, unless the Seller is subject to or experiencing a Material Reason in which case the Buyer shall be the Calculating Agent.

**§16**  
**Guarantees and Credit Support**

§ 16 Credit Support Documents: Party A shall provide Party B with the following Credit Support Document(s): Initially none.

Party B shall provide Party A with the following Credit Support Document(s): Initially none. \_\_\_\_\_

**§ 16 Credit Support Provider:**

Credit Support Provider(s) of Party A shall be: Initially none.

Credit Support Provider(s) of Party B shall be: Initially none.

**§17**  
**Performance Assurance**

**17.1 Right to Require Performance Assurance:**

shall apply and shall be amended by entering the following sentence instead of the last sentence as following: Upon receipt of such written notice, the other Party shall within fifteen (15) Business Days provide to the Requesting Party the Performance Assurance required.

§ 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:  
\_\_\_\_\_;

☐ §17.2 (b) (Credit Rating of Credit Support Provider that is a Bank);

☐ §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), and the relevant figure is:

\_\_\_\_\_;

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

☒ the relevant time period shall be 15 calendar 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:

\_\_\_\_\_;

☐ §17.2 (b) (Credit Rating of Credit Support Provider that is a Bank);

☐ §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: \_\_\_\_\_;

The Net Debt to EBITDA shall be < 4

☐ §17.2 (d) (Decline in Tangible Net Worth), and the relevant figure is:

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

☒ the relevant time period shall be 15 calendar 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 not deliver annual reports. Party B shall not deliver annual reports.,

**§ 18.1(b) Quarterly Reports:** Party A need not to deliver quarterly reports.  
Party B need not to deliver quarterly reports

**§18.2 Tangible Net Worth:** Party A shall not have a duty to notify as provided in §18.2.  
Party B shall not have a duty to notify as provided in §18.2.

**§19**  
**Assignment**

**§ 19.2 Assignment to Affiliates:** Party A may assign                      Party B may assign.

**§20**  
**Confidentiality**

**§ 20.1 Confidentiality Obligation:** § 20.2(b) shall be amended as follows:

“is disclosed by a Party to the Network Operator, Affiliates,  
Associated companies, agents, professional advisers, bank or other  
financing institution, rating agency or intended assignee.”

**§ 20.3 Expiration:**

§ 20.3 shall be amended as follows:

“A Party’s obligation in respect of an Individual Contract under this § 20  
shall expire ten (10) years after expiration of such Individual Contract.”

**§21**  
**Representation and Warranties**

The Following Representations and Warranties are made:

	<b>by Party A:</b>	<b>by Party B:</b>
§21(a)	[x ] yes [ ] no	[x ] yes [ ] no
§21(b)	[x ] yes [ ] no	[x ] yes [ ] no
§21(c)	[x ] yes [ ] no	[x ] yes [ ] no
§21(d)	[x ] yes [ ] no	[x ] yes [ ] no
§21(e)	[x ] yes [ ] no	[x ] yes [ ] no
§21(f)	[x ] yes [ ] no	[x ] yes [ ] no
§21(g)	[x ] yes [ ] no	[x ] yes [ ] no
§21(h)	[x ] yes [ ] no	[x ] yes [ ] no
§21(i)	[x ] yes [ ] no	[x ] yes [ ] no
§21(j)	[x ] yes [ ] no	[x ] yes [ ] no
§21(k)	[DELETED]	[DELETED]
§21(l)	[x ] yes [ ] no	[x ] yes [ ] no
§21(m)	Not applicable.	Not applicable.
§21(n)	[x ] yes [ ] no	[x ] 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 not apply, but instead the governing law of the Agreement shall be the substantive law of Slovenia.

**§ 22.2 Arbitration:** § 22.2 shall not apply as written but instead shall be as follows:



“ Any dispute, controversy or claim arising out of or in connection with this Agreement, including the breach, termination or validity thereof, shall be finally settled by arbitration in accordance with the Arbitration Rules of the Ljubljana Arbitration Centre at the Chamber of Commerce and Industry of Slovenia. The seat of the arbitration shall be Ljubljana. The language to be used in the arbitral proceedings shall be English. “

## §23

### Miscellaneous

#### § 23.2 Notices, Invoices and Payments:

To Party A: To be determined in the “List of Authorized Persons and other Corporate Data” of Party A.

To Party B: To be determined in the “List of Authorized Persons and other Corporate Data” of Party B.

### PART II: ADDITIONAL PROVISIONS TO THE GENERAL AGREEMENT

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

"Party A"

"Party B"

\_\_\_\_\_  
*Petrol d.d., Ljubljana*

\_\_\_\_\_  
*Petrol Bucharest ROM s.r.l.*

\_\_\_\_\_  
*Rok Vodnik*

\_\_\_\_\_  
*Gorazd Skubin*

\_\_\_\_\_  
*Member of the Board*

\_\_\_\_\_  
*Administrator*

  
*Petrol, Slovenska energetska d.d.  
1527 Ljubljana, Dunajska cesta 127*

