

SHAREHOLDERS' AGREEMENT

between
European Energy Exchange AG
and
Powernext S.A.

dated 6 March 2008

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SHAREHOLDERS' AGREEMENT

(the "**Agreement**")

between

- (1) The **European Energy Exchange AG**, a stock corporation (*Aktiengesellschaft*) under the laws of Germany, having its registered office in Neumarkt 9-19, 04109 Leipzig
- hereinafter referred to as the "**EEX**" -
- and
- (2) **Powernext S.A.**, a stock corporation (*Société Anonyme*) under the laws of France, having its registered office at the 5 Boulevard Montmartre, 75002 Paris
- hereinafter referred to as "**Powernext**" -
- hereinafter jointly referred to as the "**Parties**" -

Preamble

WHEREAS

- (A) Powernext is a privately owned stock corporation located in France. It operates energy exchanges and/or multilateral trading facilities (MTF) (the "**Powernext Exchanges**"), recognised by the Autorité des Marchés Financiers (AMF) and the Commission de Régulation de l'Énergie (CRE).
- (B) The European Energy Exchange is a regulated energy exchange according to German Exchange Act (*Börsengesetz*). EEX is a privately-owned stock corporation according to the German Stock Corporation Act (*Aktiengesetz*) which holds the exchange licence of European Energy Exchange and runs the exchange.
- (C) Pursuant to a Cooperation Agreement dated as of today (the "**Cooperation Agreement**") the Parties have agreed to establish Spot Trading SE (the "**Company**") as a 50/50 joint venture between EEX and Powernext with its seat in Paris. Furthermore, they have agreed to transfer their respective electricity spot trading businesses to the Company. The Parties, the Company and the Company's subsidiaries will have their electricity and gas trading transactions cleared by European Commodity Clearing AG which has its company seat in Leipzig, Germany ("**ECC**"). In this Agreement, the Parties intend to set forth rules in relation to their respective shareholdings in the Company, supplementing the provisions of the Articles of Association of Spot Trading SE.

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NOW, THEREFORE, the Parties hereby agree as follows:

1 Definitions and interpretation

1.1 In this Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

Agreement	means this shareholders agreement as well as all and any recitals, schedules, exhibits and possible future amendments thereto;
Agreement Date	means the date when this Agreement shall be entered into by the Parties;
Articles	means the articles of incorporation of the Company;
Board or Board of Directors	means the board of directors of the Company;
CEO	means the <i>Directeur général</i> of Spot Trading SE;
Chairman of the Board or Chairman	Means the <i>Président du Conseil d'administration</i> of the Company;
Change of Control	means the acquisition of a Controlling Interest by a Competitor (together, if applicable, with persons acting in concert – as provided for in section L233-10 of the French Commercial Code- with any such Competitor);
Class E Shareholders	means the holders of Class E Shares of the Company;
Class P Shareholders	Means the holders of Class P Shares of the Company;
Combination Documents	means this Agreement, the Articles and those documents, agreements and arrangements which are Annexes, Schedules or Exhibits to this Agreement;
Competitor	means any Undertaking outside of any of the Parties' Group that carries out a Spot Business activity in any country or which is a member of a Group which includes an Undertaking which carries out a Spot Business activity in any country;
Competing Party	means any Party in which a Competitor shall take a Controlling Interest without such Competitor (i) immediately (or as soon as legally feasible) contributing, or causing to be contributed, its Spot Business, or the Spot Business of a member of its Group, as the case may be, whenever such Spot Business shall be undertaken, either before, upon or after such Competitor having taken the concerned Controlling Interest in a Party, to the Company and (ii) referring, or causing to be referred, as soon as legally feasible, the clearing of the related Spot trading contracts (if any) to ECC;

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Controlling Interest/Control	means the direct or indirect (i) shareholding and/or (ii) holding of voting rights and/or (iii) holding of other rights, in each case permitting the control of the board of directors, supervisory board or equivalent body or the control of the management of another entity;
Corporation	means a body corporate formed under the laws of any country;
Dispose	means the action of selling, transferring, assigning, granting options over, creating licences in respect of, creating or permitting any Encumbrance to exist over, or otherwise disposing of, or entering into any legally binding commitment to do any of the foregoing, and related expressions shall be construed accordingly;
Disposition Project	means any project a Party and/or its Group may have to Dispose of all or part of its Shares to a Third Party, (including a member of another Party's Group), whether such Third Party shall be identified or not at the time when the First Notification (as defined in section 7.1 hereof) is made
Encumbrance	means any mortgage, charge (whether fixed or floating), lien, hypothecation, pledge, right of usufruct, encumbrance, security interest or other third party right or interest over or in respect of a particular asset other than liens arising by operation of law in the ordinary course of business;
Earnings	means, with respect to the Company or a New Spot Partner, as the case may be, the fee volume that the respective company together with the subsidiaries controlled by it derives in a respective year from Spot Business;
ECC	European Commodity Clearing AG which has its company seat in Leipzig, Germany
Founding Partner	means any Class E Shareholder or Class P Shareholder of the Company;
General Meeting	means a general meeting of the Company's shareholders;
Group	means, in relation to a given Party or Competitor, any Person which, directly or indirectly, Controls, is Controlled by, or is under common Control with, such Party or such Competitor;
New Markets	means, at any time, any market territory other than Germany, France, Austria or Switzerland where the Company carries out Spot Business or offers New Products for trade;



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New Products	means contracts for the delivery of electricity with a term of up to two days (including the second day);
New Shareholder	means any Third Party subscribing to newly-issued shares in the capital of the Company or acquiring shares in the capital of the Company;
New Spot Partner	means any New Shareholder that is a Competitor which carries out, directly or indirectly within its Group, a Spot Business activity in any European country;
Party	means Powernext or EEX (as the case may be);
Shares	means the shares, interests or other equity securities to be issued by the Company;
Spot Business	means the business of offering as an exchange to third parties spot (i.e. intra-day and day-ahead) trading contracts for the delivery of electricity;
Third Party	means, regarding a given Party, an Undertaking which is not a member of such Party's Group;
Undertaking	means a Corporation or partnership or any unincorporated association situated in any jurisdiction carrying on a trade or business with or without a view to profit (and, in relation to an Undertaking which is not a company, expressions in this Agreement appropriate to companies shall be construed as references to the corresponding persons, officers, documents or organs (as the case may be) appropriate to Undertakings of that description).

- 1.2** Clause and paragraph headings in this Agreement are included for convenience only and shall not affect the interpretation of this Agreement.
- 1.3** The schedules to this Agreement shall form part of this Agreement and shall have the same force and effect as if set out in the body of this Agreement. Accordingly, references to this Agreement shall include references to its schedules.
- 1.4** In this Agreement, unless the context otherwise requires:
- a) the singular shall include the plural and vice versa;
 - b) references to persons shall include individuals, companies, undertakings and governmental, supranational and state agencies and regulatory bodies; and
 - c) references to Recitals, Clauses and Schedules and parts thereof are to Recitals, Clauses and Schedules of and to this Agreement and parts thereof respectively.
- 1.5** References to any statute or statutory provision or EC Directive include a reference to that statute or statutory provision or EC Directive as amended, extended, re-enacted, consolidated or replaced from time to time (whether before or after the date of this Agreement) and shall include any order, regulation, instrument or other subordinate legislation made under that statute, statutory provision or EC Directive.

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- 1.6** Any reference in this Agreement to any entity, act or event or any right, action, remedy, method of judicial proceeding, legal document, legal status, court official or any legal concept or thing in respect of any jurisdiction other than France shall be deemed to include a reference to the closest analogous equivalent thereto in that jurisdiction.

2 Principles of co-operation

- 2.1** The Parties will co-operate as shareholders of the Company aiming at the Company's best financial or, if this cannot be determined, commercial benefit.
- 2.2** In the interest of developing the Company's business the Parties will aim to promote the development and integration of an efficient and integrated European energy market.
- 2.3** The Parties will aim to make the Company a primary element of an integrated European electricity supply system providing electricity supply as secure, economically efficient and environmentally friendly as reasonably possible.
- 2.4** The Parties aim to make the Company the basis for a European – wide electricity spot trading platform. Therefore, the Company shall be open for future access for other European energy exchanges, which contribute electricity Spot Business on commercial and financial terms equivalent to those of the Parties when they established the Company.
- 2.5** Given the importance of information technology to the successful implementation of the Parties' goal of developing a European-wide electricity spot trading platform, the Parties agree that any decision regarding the information technology policy of the Company shall be based solely on considerations of economic efficiency and technical performance. These two factors should be evaluated both from the viewpoint of the exchanges and the participants. Besides this quantitative criteria the further expansion of the spot business of Spot Trading SE and the impacts on the IT Strategy should be evaluated.

3 Exercise of Voting Rights

- 3.1** Each Party undertakes to exercise its voting rights in the General Meeting of the Company and procures – as far as legally permissible - that the voting rights of its representatives in the Board of Directors will be exercised at all times in compliance with the Combination Documents.
- 3.2** In particular, each Party undertakes to exercise its voting right in the General Meeting regarding the election of members of the Board of Directors in favour of the candidates nominated by the other Party, provided that the respective candidate fulfils the legal requirements and, in his personal capacity, has no significant conflict of interest. In particular, the Parties will vote for the appointment of the Chairman of the Board, which is to be nominated by the members of the Board representing the Class E Shares, and the appointment of the CEO, which is to be nominated by the members of the Board representing the Class P Shares.
- 3.3** If one Party requests the removal of one of the directors it has appointed, the other Party will exercise its voting rights accordingly in any shareholders meeting convened for this purpose.
- 3.4** If the Class P Shareholder requests the removal of the CEO or the Class E Shareholder requests the removal of the Chairman, the other Party will exercise its voting rights accordingly in any Board meeting which has this item on its agenda.

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- 3.5** If a director is revoked, resigns dies or becomes incapacitated (the "**Leaving Director**"), then until another director is elected to replace the Leaving Director, one of the directors designated by the Party who has not nominated the Leaving Director shall abstain from voting at all meetings of the Board of Directors.
- 3.6** With respect to the designation or revocation of managing directors of any subsidiary of the Company, each Party will exercise its voting rights in any Board meeting which has any such item on its agenda in accordance with what the Parties have agreed with respect to their designation of such managing directors, including, without limitation, the agreement of the Parties as set forth in Sec. 2.9 of the Cooperation Agreement.

4 Deadlock resolution at Board of Directors

- 4.1** In order to resolve a deadlock with respect to certain decisions at the level of the Board of Directors, a Decision committee (the "**Decision Committee**") shall be established consisting of four members: the CEO and the Chairman of the Board, the Chairman of the Board of Powernext and the Chairman of the Supervisory Board of EEX. Each member of the Decision Committee shall have one vote, with (unless otherwise specified herein) a casting vote alternating between the Chairman of the Board of Powernext and the Chairman of the Supervisory Board of EEX, such alternation to be effective immediately after each use of the casting vote. The Chairman of the Supervisory Board of EEX shall be entitled to the first casting vote.
- 4.2** The voting of the Board of Directors shall be governed by the following principles (which shall also be reflected in internal board regulations (the "**Standing Rules**"), based on the model attached as **Annex 4.2**, which shall be accepted by all members of the Board at any time and be enforceable against them in such capacity):
- 4.2.1** In the voting of the Board of Directors, the Chairman of the Board shall always have a casting vote, unless the Combination Documents (and in particular section 4.2.5 of this Agreement) provide otherwise.
- 4.2.2** If a proposal by the CEO or the other board member nominated by the Class P Shareholders is rejected by the Board of Directors with the casting vote of the Chairman, the proposal is deemed finally rejected. This does not apply in the event of a rejection of a proposal by the CEO or the other Board member nominated by the Class P Shareholders with respect to (i) the offering of New Products, (ii) the termination of existing lines of products and contracts, (iii) the entering into New Markets, (iv) the exit from an existing markets territory by Spot Trading SE or one of its subsidiaries, including, but not limited to, the total or partial sale of shares in its German spot trading subsidiary, and/or (v) decisions on the membership fees and trading fees for the Spot Businesses of the Company and its subsidiary (a decision with respect to any such proposal being a "**Market Strategy Decision**"). In the case of any Market Strategy Decision the CEO has the right to appeal such decision to the General Meeting for resolution by a simple majority vote including the favourable vote of both the Class E Shareholders and the Class P Shareholders provided that after the date three years from the merger of D Spot Co into Spot Trading SE in accordance with Sec. 1.7 of the Cooperation Agreement, the favourable vote of both the Class E shareholders and the Class P Shareholders shall not be required any longer.

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- 4.2.3 If a proposal by the CEO or the other Board member nominated by the Class P Shareholders is rejected by the Board of Directors without the Chairman using his casting vote, the CEO has the right to appeal the proposal for decision to the Decision Committee.
- 4.2.4 If the Chairman or the other member of the Board nominated by the Class E Shareholders makes a proposal (it being agreed that instructions to the CEO by the Board pursuant to Article 20.2 of the Articles shall be deemed a "proposal" for purposes of this Agreement) and the proposal is approved using the Chairman's casting vote, the CEO has the right to appeal the proposal for decision to the Decision Committee, provided that in the event of a disapproval by the CEO or the other member of the Board nominated by the Class P Shareholders of a proposal made by the Chairman or the other member of the Board nominated by the Class E Shareholders with respect to a Market Strategy Decision, the CEO has the right to appeal such decision to the General Meeting for resolution by a simple majority vote including the favourable vote of both the Class E Shareholders and the Class P Shareholders provided that after the date three years from the merger of D Spot Co into Spot Trading SE in accordance with Sec. 1.7 of the Cooperation Agreement, the favourable vote of both the Class E shareholders and the Class P shareholders shall not be required any longer. If the proposal made by the Chairman or the other member of the Board nominated by the Class E Shareholders is not approved by the Board of Directors due to a lack of receiving a majority of votes, the proposal shall be deemed rejected.
- 4.2.5 Any decision to (i) remove the CEO, (ii) remove the Chairman or (iii) transfer the responsibility for the operation of the Company's business pursuant to section 17.2 of the Articles to the Chairman (as *Président-Directeur général*) instead of the CEO (as *Directeur général délégué*), shall be made by a decision of the Board with the favourable vote of at least three members out of four of the Board or three members out of four of the Decision Committee.
- 4.2.6 Decisions on New Shareholders joining the Company shall require a resolution of the General Meeting including a favourable vote of both Class E Shareholders and Class P Shareholders.
- 4.2.7 If a proposal has been appealed for decision to the Decision Committee in accordance with Section 4.2.3, 4.2.4 and/or 4.2.5, no decision of the Board shall be deemed to have been made and the proposal shall not be implemented before the Decision Committee has decided the matter.

5 Deadlock resolution at General Meeting

- 5.1 If the General Meeting cannot reach agreement on any resolution, the Parties shall hold a second General Meeting within three weeks to resolve the matter.
- 5.2 If the Parties cannot reach agreement at this second General Meeting each Party may demand that the Chairman of the Board refers the matter for joint decision to the chairmen of the supervisory board or board of directors, respectively, of the Parties (the "**Chairmen**"). Both Chairmen may agree to nominate an independent third party to act as mediator to assist them to resolve the deadlock (the "**Mediator**"). The cost for the Mediator shall be borne by both Parties in equal proportions. The Parties are obligated to implement the

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decision by the Chairmen to nominate a Mediator, but shall not be obligated to accept any recommendation made by the Mediator.

- 5.3 The Chairmen shall have a period of six weeks after the matter has been referred to them in order to take a joint decision on the matter according to Sec. 5.2, failing which the resolution in question shall be deemed to have been rejected.

6 Advisory board

- 6.1 The Company shall have an advisory board. The advisory board shall consist of eight members. EEX and Powernext shall nominate an equal number of persons to the advisory board. The members shall be nominated for a period of two years. Powernext shall nominate two persons representing the local TSOs and two persons representing major shareholders, EEX shall nominate also four persons.
- 6.2 The advisory board shall be a forum for the discussion of the interests of the stakeholders and shall advise the Company in respect to its further strategic development, it being acknowledged that such advice shall not be binding on the Company or its management. Furthermore, any material project that would impact the smooth functioning of the electrical transmission systems shall be systematically submitted to the advisory board by the Chairman of the Board of Directors or the CEO for discussion prior to any final decision by the Board of Directors with respect to such project. Such submission shall be made sufficiently in advance of the taking of any action by the Board of Directors so as to allow the members of the advisory board to make their advice known, it being acknowledged that such advice shall not be binding on the Company or its management. If an issue requires prompt decision by the Board of Directors the CEO or the Chairman may request that the members of the Advisory Board provide their advice, with or without an Advisory Board meeting, prior to the next meeting of the Board of Directors.

7 Disposition of Shares

- 7.1 Each Party (the "**Disposing Party**") agrees not to proceed with a Disposition Project regarding any of its Shares (the "**Concerned Shares**") without having first notified (the "**First Notification**") the Board, having obtained prior Board approval pursuant to section 10 of the Articles and having complied with Sections 7 and 8 hereof.
- 7.2 In the event that the Board would make a split decision regarding a Disposition Project pursuant to section 10 of the Articles, the decision to approve or reject the Disposition Project shall be made by the Decision Committee pursuant to the rules set forth in Section 4.1 hereof.
- 7.3 The approval by the Board or the Decision Committee of a Disposition Project shall remain in force for a period of two months after which the Disposing Party shall, in the event that it wishes to proceed with such Disposition Project, proceed with a new notification to the Board.
- 7.4 In the event that, on or before the tenth anniversary of the creation of the Company (the "**Initial Period**") and upon completion of the procedure set forth in Sections 7.1 to 7.3 hereof, a Disposition Project is rejected, the Disposing Party shall neither be authorised to proceed with such Disposition Project nor to dispose of the Concerned Shares in any other manner to any Third Party without first notifying another Disposition Project to the Board, which notification shall not occur prior to the sixth month following notification of the first re-

jected Disposition Project. However, after the Initial Period, any rejection of a Disposition Project shall be subject to the provisions of article L228-24 of the French Commercial Code (and/or such provision of law or regulation as shall supplement or replace the provisions thereof).

8 Right of First Refusal

- 8.1** Prior to any Disposition Project by a Party of all or any part of its Shares (the "**Transferred Shares**") that shall have been approved in compliance with the provisions of Section 7 hereof being effected to another Party or a Third Party (a "**Transferee**"), the other Parties (the "**Other Parties**", including the Transferee if it is a Party, and it being further understood that the Parties have included in this Section 8 reference to the possibility of there being more than one other Party in order to reflect their agreement that New Shareholders would benefit from the Right of First Refusal referred to herein) shall have a right of first refusal (the "**Right of First Refusal**") as set forth in this Section 8.
- 8.2** Prior to such Disposition Project being effected, the Disposing Party shall notify the Disposition Project to the Other Parties and to the Company specifying the identity of the Transferee (Party or Third Party), the identity of the Undertaking Controlling the Third Party (as the case may be), the number of Transferred Shares, the price offered by the Transferee (or, in the circumstances provided for in paragraph (b)(ii) of Section 8.4. below, by the Disposing Party), and a description of the transaction pursuant to which the Disposition is to be effected.
- 8.3** The Other Parties will have thirty (30) days as from receipt of notice of the Disposition Project to give notice to the Disposing Party and the Company that they intend to purchase the Transferred Shares. However, in the event that the Disposing Party is a Founding Partner, the other Founding Partner shall have a preferred Right of First Refusal that takes priority over any other Right of First Refusal. This priority Right of First Refusal may be exercised for all or part of the Transferred Shares. The provisions of Section 8.4 shall apply to the priority Right of First Refusal accordingly.
- 8.4** The Right of First Refusal will be exercisable as follows:
- (a) The Right of First Refusal of the Other Parties may only be exercised, whether collectively or individually, in respect of all of the Transferred Shares.
 - (b) In case of exercise of the Right of First Refusal, the purchase price of the Transferred Shares will be:
 - (i) in case of a sale (*vente*) of the Transferred Shares entirely for cash (*numéraire*), the purchase price agreed upon by the Disposing Party and the Transferee, or
 - (ii) in all other cases, in particular in the event the Disposition Project is, in whole or in part, for a consideration other than cash, a donation, exchange, contribution, merger or demerger or any combination of such forms of ownership transfer, the price offered in good faith by the Disposing Party or, in the event of a disagreement, the price determined by an expert appointed, upon request of the disagreeing Party or Parties, by order of the President of the Commercial Court (*Tribunal de commerce*) of Paris, ruling in a summary form (*forme des référés*) and without appeal, as set forth in article 1843-4 of the French civil code.

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- (c) If the total number of Transferred Shares offered to be purchased by the other Founding Partner is equal to the number of Transferred Shares, the Transferred Shares will be sold to the other Founding Partner. The sale of the Transferred Shares shall take place within the time period specified in the notification of the Disposition Project or, in the absence of any such period, within fifteen (15) days of the expiration of the thirty-day period provided for above.
- (d) Should the combined purchase offers of the other Founding Partner relate in total to a number of Shares which is less than the number of Transferred Shares but the Other Parties have exercised their Right of First Refusal for a number of Shares which, when added to that of the other Founding Partner, is equal to or higher than the number of Transferred Shares, the other Founding Partner may exercise its priority Right of First Refusal up to its offer, as provided in paragraph (c) above, the remaining Shares being allocated to the Other Parties who have exercised their Right of First Refusal in proportion to their Shares in the Company. The sale of the Transferred Shares to such Other Parties shall take place within the time period specified in the notification of the Disposition Project or, in the absence of any such period, within fifteen (15) days of the expiration of the thirty-day period provided for above.
- (e) In the absence of any offer to purchase or if the offers to purchase of the Other Parties concern a number of Transferred Shares lower than the number of Transferred Shares, the Disposing Party may proceed with the Disposition Project provided that such Disposition shall be completed within thirty (30) days of the expiration of the thirty-day period provided for above, failing which the Disposing Party shall be bound to conform again to the provisions of this Section 8.

8.5 In the circumstances referred to in Section 8.4.b.(ii) hereof, in the event of disagreement of one Other Party at least on the price at which the Transferred Shares are offered, the disagreement shall be notified to the Disposing Party, the Other Parties not concerned and the Company within the first fifteen (15) calendar days of the thirty-day period allowed for the exercise of the Right of First Refusal. The Disposing Party and the Other Party so disagreeing shall jointly designate an expert to determine the matter and in the absence of such designation within ten (10) calendar days, an expert may be designated by the President of the Tribunal de Commerce de Paris acting in summary proceedings following the application of the most diligent Party. The appointed expert shall, within one (1) month of his designation, deliver his report to the Disposing Party, the Other Parties and the Company. Any disagreement duly notified shall cause to be void the exercise of any Right of First Refusal which may have been notified by an Other Party prior to the notification of the expert's report. Upon receipt of the expert's report, all Other Parties may then exercise again their Right of First Refusal, at the lower of (i) the price offered in good faith by the Disposing Party and (ii) the price determined by the expert, within fifteen (15) calendar days of the notification of the price determined by the expert, provided that:

- the Disposing Party shall benefit from a right to cancel the Disposition Project in the event that the price determined by the expert shall be lower than 90 % of the price offered by the Disposing Party and provided that the Disposing Party shall have informed the Other Parties and the Company that it intends to cancel the Disposition Project within fifteen (15) calendar days following the delivery of the expert's report; and
- the expert's fees shall be borne by the Disposing Party if the price determined by the expert is lower than 90% of the price which the Disposing Party shall have of-

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ferred and by the disagreeing Party(ies) *pro rata* to their respective holdings in the Company's share capital in all other cases.

- 8.6 The Right of First Refusal shall terminate upon the tenth anniversary of the creation of the Company provided that, at that time, the provisions of article L228-24 of the French commerce code (or whatever legal statute supplementing or replacing the provisions thereof) (i) shall become applicable as set out in Section 7.4 hereof and (ii) shall provide for a mechanism whereby in the event that a Disposition Project is rejected either the Company or third parties (including shareholders of the Company) shall have the obligation to purchase the Shares which are the subject matter of the Disposition Project.

9 New Shareholders

- 9.1 The Parties agree that the shareholder structure of the Company shall be open to (i) other energy exchanges which have a leading role in the Spot Business in the countries where they operate and that can contribute substantially to the development of the Company's business and (ii) other Third Parties, including but not limited to Transmission Systems Operators, as agreed between the Parties.

- 9.2 All New Shareholders together may subscribe to Shares of a total of up to 49.8% in the Company's nominal capital (the "**New Partner Share**"). The Parties agree that if a New Shareholder joins as a shareholder through a capital increase, EEX and Powernext will decrease equally their respective shareholdings in the Company.

However, the Founding Partners shall always and in all circumstances retain a permanent minimum shareholding (including full economic and voting rights) in the Company of 25.1% each and the Parties acknowledge that the Company shall not register any Disposition which would cause any Founding Partner's shareholding to fall below such level.

- 9.3 As a guideline, subject to agreement with the Parties a New Spot Partner could subscribe to an amount of Shares up to the proportionate amount of the Earnings of the Spot Business contributed by the New Spot Partner compared to the Company's Earnings.

- 9.4 If not enough shares will be available for a New Shareholder to join the Company the other New Shareholders which are already shareholders shall be bound to reduce (e.g. through a share capital increase with waiver of their subscription right) their shareholdings in the New Partner Share accordingly in order to accommodate such additional New Shareholder.

- 9.5 The price for the subscription by a New Shareholder of the Shares shall be determined by negotiation between the Parties on the one hand and the New Shareholder on the other.

- 9.6 The acceptance of a New Shareholder as a shareholder of the Company requires a decision of the General Meeting including a favourable vote of a simple majority of both Class-E Shareholders and Class P Shareholders. In the event that the Parties agree to accept a New Shareholder as shareholder of the Company, the Parties shall ensure that all necessary resolutions will be passed and measures will be taken, e.g. to increase the share capital of the Company with a (proportional) exclusion of the subscription rights of the Parties, amendments to the Articles.

- 9.7 The shareholders shall ensure that a New Shareholder is vested, subject to provisions to the contrary in the Articles regarding for instance Class E Shares and Class P Shares, with rights as shareholder in the Company equivalent to the New Shareholder's shareholding in

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the Company, which shall be agreed upon in detail at the time of the New Shareholder becomes a shareholder.

10 No competition – Change of Control

10.1 The Parties undertake during the period of their cooperation as shareholders of the Company, not to carry on, or to engage in or to become economically interested in any European (including all European, EU or not, countries, Turkey, and Russia) business which is of the same or similar type to and is in competition with any part of the Spot Business or the business of the Company at any time.

10.2 In the event that a Change of Control of any Founding Partner occurs and such Party thereby becomes a Competing Party, the other Founding Partner (the "**Non-Competing Party**") will have the option, at its sole discretion, within the earlier of three months from the public announcement (unless conditional) or the completion of such Change of Control, to notify the Competing Party (the "**First Notification**") of the non-Competing Party's decision to purchase the Competing Party's shareholding in the Company and the price at which such purchase is proposed to be made.

In the event that within two weeks from the First Notification, the Competing Party notifies the Non-Competing Party that it does not accept the proposed price (the "**Second Notification**"), then the expertise process further described under Section 8.5 hereof shall apply.

The purchase of the Competing Party's shareholding in the Company shall occur within two weeks after the date when the price therefore is finally agreed or, as the case may be, decided by the expert.

From the First Notification until the date on which such purchase occurs, the Company shall not make any decision outside of the ordinary course of business without the prior written approval of both Parties.

11 Dividend Policy

The Parties agree that the Company shall pay dividends to its shareholders in the full amount of its distributable profits which distributions shall be made out of the cash of the Company available for such purpose from time to time but without recourse to borrowings.

12 Term, termination

12.1 This Agreement shall come into effect on the date of its execution by the Parties and shall run until December 31, 2030. It shall be automatically renewed for an additional term of twenty (20) years unless either Party shall give notice no later than December 31, 2029 of its intention not to renew this Agreement.

12.2 The obligations under Sec. 11 and 12 of this Agreement shall remain binding for the Parties for a period of three years after the termination of this Agreement.

13 Confidentiality of this Agreement

13.1 EEX and Powernext shall treat this Agreement and any information received or obtained as a result of or in connection with the entering into of this Agreement which relates to the existence and the provisions of this Agreement or to the negotiations relating to this Agreement as strictly confidential and not disclose or use it. However, EEX shall be entitled to

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share such information with ECC, provided that ECC procures compliance with this confidentiality obligation as if they were a party to this Agreement.

13.2 This Agreement shall not prohibit disclosure of any information if and to the extent:

- (a) the disclosure is required by law, any regulatory body or any recognised stock exchange on which the shares of EEX or Powernext or any of their affiliates are listed;
- (b) the disclosure is required for the purpose of any judicial proceedings arising out of this Agreement or any other agreement entered into under or pursuant to this Agreement or the disclosure is made to a tax authority in connection with the tax affairs of the disclosing Party;
- (c) the disclosure is made to professional advisers or actual or potential financiers of any Party on a need-to-know basis and on terms that such professional advisers or actual or potential financiers undertake to comply with the confidentiality obligations set out in this Agreement in respect of such information as if they were a party to this Agreement;
- (d) the information is or becomes publicly available (other than by breach of this Agreement or any other confidentiality agreement between the Parties);
- (e) the other Party has given prior approval to the disclosure or use; or
- (f) the information is independently developed after closing,

provided that prior to disclosure of any information pursuant to Clause (a) or (b) above, the Party concerned shall notify the other Party in advance of such requirement with a view to providing the said other Party with the opportunity to contest such disclosure or use or otherwise to agree on the timing and content of such disclosure or use.

13.3 Unless otherwise required by law or applicable regulation neither Party shall make any public announcement or issue a press release concerning this Agreement or any agreement referred to herein without the prior consent of the other Party. The Parties will agree on a wording for an announcement in due course following the signing of this Agreement.

13.4 The confidentiality agreement between the EEX and Powernext dated 18 November 2005 shall cease to have effect as of the date of this Agreement. This shall not affect any claims that have already arisen under this confidentiality agreement.

14 Miscellaneous

14.1 Prohibition of Assignment

Claims arising under this Agreement may not be assigned to third Parties without the express prior written consent of the respective other Party.

14.2 Invalid or Unenforceable Provisions

If any of the provisions of this Agreement are or become invalid or unenforceable in whole or in part, the validity of the remaining provisions shall remain unaffected. In relation to such an invalid or unenforceable provision, the Parties shall attempt to agree on a replacement provision which comes closest to what was intended in the originally agreed provision.

14.3 Written Form

Amendments to this Agreement are only valid if they are made in writing. This applies to amendments or the abolishment of this clause as well.

14.4 Applicable Laws and Legal Venue

The Agreement shall be governed by the laws of France.

14.5 Dispute Resolution

- (a) Any dispute arising from or in connection with this Agreement and its consummation and which does not fall under the deadlock resolution mechanism under Sec. 2 which takes precedence shall be finally settled by three arbitrators in accordance with the rules of Arbitration of the International Chamber of Commerce without recourse to the courts of law. The language of the arbitration proceedings shall be English.
- (b) Each Party may nominate one arbitrator. The two arbitrators nominated by the Parties will nominate the third arbitrator as chairman.
- (c) The venue of the arbitration shall be Geneva, Switzerland. Judgment on the arbitral award may be entered by any court of competent jurisdiction.
- (d) In the event mandatory applicable law requires any matter arising from or in connection with this Agreement and its consummation to be decided upon by a court of law, (i) Powernext shall be entitled to file a legal action before the competent court in Paris, France, and (ii) EEX shall be entitled to file a legal action before the competent court in Leipzig, Germany.

14.6 Expenses

Except as otherwise provided in this Agreement, each of the Parties shall bear its own costs incurred in connection with the preparation, negotiation, execution and implementation of this Agreement and the matters contemplated herein.

14.7 Notifications

Any notice or other formal communication given under this Agreement (which includes fax, but not email) must be in writing and may be delivered, or sent by post or fax to the Party to be served at its address appearing in this Agreement as follows or to such other contact person, address or fax number as a Party may notify to the respective other Party from time to time:

Annex 2.6
to the Cooperation Agreement

14.7.1 If to EEX:

European Energy Exchange AG
Attn: Dr. Hans-Bernd Menzel, CEO
Neumarkt 9-19
04109 Leipzig

Tel.: +49 (0) 341 / 21 56 400

Fax: +49 (0) 341 / 21 56 409

14.7.2 If to Powernext

Powernext S.A.
Attn: Mr. Conil-Lacoste, CEO
5 Boulevard Montmartre
75002 Paris

Tel.: +33 (0) 1 73 03 96 30

Fax: +33 (0) 1 73 03 96 01

14.8 Annexes

The following Annexes are an integral part of this Agreement:

Annex 4.2 – Standing Orders of the Board of Directors

This Agreement is entered into in two originals in the English language.

IN WITNESS WHEREOF this Agreement has been signed by the Parties (or their duly authorised representatives) on the dates stated below.



SIGNATURES

For Powernext S.A.:

Date :
Place :

Signature :
Name : Mr. Jean- François Conil-Lacoste
Title : CEO

For European Energy Exchange AG:

Date :
Place :

Signature :
Name : Dr. Hans-Bernd Menzel
Title : CEO

Date :
Place :

Signature :
Name : Maik Neubauer
Title : Member of the Board