

**DEVELOPMENT AGREEMENT
FOR FRENCH ELECTRICITY FUTURES**

between
European Energy Exchange AG
Powernext S.A. and
European Commodity Clearing AG

dated 6 March 2008

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Annex 5
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**Development Agreement
for French Electricity Futures**

(the "**Agreement**")

between

- (1) **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 "**EEX**" -

- (2) **Powernext S.A.**, a stock corporation (*Société Anonyme*) under the laws of France, having its registered office at 5 Boulevard Montmartre, 75002 Paris

- hereinafter referred to as "**Powernext**" -

- hereinafter jointly referred to as the "**Parties**" -

and only with respect to Sections V and VI of this Agreement

- (3) **European Commodity Clearing 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 "**ECC**" -

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). As at the date hereof, its offer to its participants includes spot (i.e. intra-day and day-ahead) trading of electricity, futures trading of electricity and clearing of trades executed for such products on the exchange, as well as for the clearing of similar OTC trades. Powernext is currently using the services of LCH.Clearnet SA for the clearing of transactions carried out on products and contracts traded on the Powernext Exchanges.
- (B) 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 energy exchange. The European Energy Exchange is a regulated energy exchange according to the German Exchange Act (*Börsengesetz*). As at the date hereof, its offer to its participants includes inter alia spot (i.e. intra-day and day-ahead) trading of German, Swiss and Austrian electricity, futures trading of German and French electricity, options trading of German electricity, clearing of trades executed on the exchange and access to

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the clearing of similar OTC trades. The clearing is carried out by EEX's subsidiary European Commodity Clearing AG ("**ECC**").

- (C) ECC is a fully licensed credit institution (*Kreditinstitut*) which is supervised by the Federal Financial Supervisory Authority (BAFin) and operates a central counterparty clearing infrastructure for energy and other products with currently 15 international banks acting as General Clearing Members.
- (D) Therefore, in the Cooperation Agreement between EEX, Powernext and ECC concluded on the date hereof (the "**Cooperation Agreement**") it was agreed that the physical spot market for electricity is being transferred to [Spot Trading] SE in Paris. The market for French electricity futures, i.e. Derivatives traded at an exchange or OTC having as an underlying product electricity delivered in the French grid (the RTE grid) ("**FEF**")* shall be concentrated in Leipzig, while clearing shall be carried out by ECC. In that context EEX and Powernext agree as part of the "package" that they shall develop the European electricity futures exchange business (including FEF) jointly on one trading platform as provided in this Agreement.
- (E) The Parties envisage to implement the cooperation in two steps. In a first step EEX plans to spin-off its electricity Derivatives (as such term is defined in the Clearing Services Agreement referred to in Sec. 17) business in 2008 into a separate subsidiary, EEX Power Derivatives GmbH ("**EPD**"), with its seat in Leipzig. This subsidiary shall provide a platform for trading initially German, French, Austrian, Swiss electricity futures. In order to facilitate the preparation of the transfer of Powernext's FEF to EPD Powernext shall have the opportunity to already in 2008 acquire a nominal share as well as to nominate a member to EPD's supervisory board.
- (F) In a second step, Powernext shall contribute its FEF business to EPD with effect as of 1 January 2009. In return, Powernext will receive at the same time also with effect as of 1 January 2009 a 20% share in EPD.
- (G) EPD's business shall be cleared through ECC.
- (H) As provided herein, Powernext shall provide EPD with support and assistance with respect to the FEF business and shall undertake not to offer competing or substitute products for FEF.
- (I) EEX shall support EPD in its business on the basis of a service agreement, in particular EEX shall provide its IT platform to EPD and shall handle EPD's administration and regulatory requirements in Germany.
- (J) The Parties anticipate opening the shareholder structure of EPD to other energy exchanges which will contribute their Derivatives business to EPD and, possibly, to other partners.

NOW, THEREFORE, the Parties and ECC hereby agree as follows:

* In case Derivatives develop that have as an underlying product electricity that can be delivered alternatively in the French grid and/or in other grids the Derivatives shall be considered to be an FEF (and therefore subject to the provisions of this Agreement), but only to the extent proportionately with the percentage the electricity consumption served by the French grid has in proportion to the total electricity consumption served by all the grids covered by the Derivative.

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I. Phase I: Establishment of EPD

1 Spin-off of EEX's Electricity Derivatives business

- 1.1** EEX will spin-off all its electricity Derivatives business in 2008 into EPD, comprising in particular the products and assets listed in Sec. 1.2. EEX shall not withdraw this electricity Derivatives business from EPD and shall not trade those and similar electricity Derivatives products outside EPD.
- 1.2** EEX will transfer to EPD its electricity Derivatives products as well as assets and liabilities pertaining to them which are described in **Annex 1.2**. EEX will grant EPD the required intellectual property rights on the basis of licence agreements; customer relations with respect to EEX's Derivatives business will remain with EEX.
- 1.3** For commercial and tax purposes EEX shall aim to achieve the spin-off to have retroactive effect as of 1 January 2008.
- 1.4** EPD shall be a German limited liability company with its seat in Leipzig or another place to be determined by EEX. It shall have one or more managing directors and a supervisory board of initially seven members.
- 1.5** The Articles of Association of EPD shall be as set forth in **Annex 1.5**.
- 1.6** The Parties agree that EPD will enter into a profit and loss pooling agreement with EEX ("**PLPA**"). Under the PLPA EPD will transfer its profits to EEX while Powernext shall be entitled to a combination of a fixed and a variable share of the profits of EPD which shall be equal in the aggregate to its percentage shareholding in EPD. The PLPA shall have the wording as attached as **Annex 1.6**, unless the tax authorities do not approve it in a binding ruling to be applied for by EEX; in this case the Parties shall agree on a wording acceptable to the tax authorities which comes closest to what was intended in the version attached provided that Powernext shall not be adversely affected by any such changed wording. EEX undertakes to make payments to Powernext pursuant to the terms of the PLPA as finally agreed.
- 1.7** For Powernext's planning purposes it is agreed to establish EPD with a nominal share capital of € 100.000. Should EEX decide to establish EPD with a higher share capital and should this result in a net financial disadvantage for Powernext in its acquisition or disposal of shares in EPD under this Agreement because Powernext acquires shares in EPD or its shareholding in EPD is reduced, in either case at a nominal value this disadvantage shall be compensated by EEX.

2 Nominal Participation in EPD

- 2.1** In consideration for Powernext's agreement to transfer its entire FEF business to EEX, EEX shall transfer to Powernext one share in EPD in the nominal amount of EUR 100 ("**Nominal Participation**") without undue delay after the spin-off according to Sec. 1.1 has become effective, in accordance with a Share Purchase and Transfer Agreement to which Sec. 9.2 through to 9.5 shall apply accordingly.
- 2.2** The share transferred as Nominal Participation shall be taken into account when calculating the Powernext Share to be transferred to Powernext under Sec. 5.

3 Supervisory Board of EPD

- 3.1** After having acquired the Nominal Participation Powernext shall have the right to propose one candidate for the supervisory board of EPD. EEX undertakes to vote in favour of the candidate proposed by Powernext provided that the candidate fulfils the legal requirements and has no conflict of interest in his personal capacity.
- 3.2** If one Party requests the removal of one of the members of the supervisory board it has nominated the other Party will exercise its voting rights accordingly in any shareholders' meeting.
- 3.3** EEX may vote to remove the candidate proposed by Powernext from the supervisory board (i) if Powernext is no longer shareholder in EPD, (ii) if this Agreement has been terminated in accordance with Sec. 19.3 or (iii) if Powernext is subject to any Change of Control and thereby becomes a Competing Party. For purposes of this Section 3.3 only, the definition of Change of Control and Competing Party shall be deemed to refer to "electricity derivatives business" instead of Spot Business, with "electricity derivatives business" being defined as the business of offering as an exchange to third parties Derivatives trading contracts with electricity as underlying products ("**Electricity Derivatives Business**") and Company shall be deemed to refer to EPD.

II. Phase II: Transfer of FEF

4 Transfer of Powernext's FEF business

- 4.1** Powernext shall transfer in 2009 to EPD its entire FEF business comprising in particular the products and assets listed in Sec. 4.2, with retroactive effect as of 1 January 2009, provided that Powernext's obligation to effect such transfer is subject to the condition precedent that Powernext shall have received the favourable ruling of the French tax authorities referred to in Sec. 5 of the Cooperation Agreement.
- 4.2** Powernext will transfer to EPD all contracts for FEF products, subject to the agreement of the other parties thereto, and the rights and obligations of Powernext thereunder, as well as all agreements and customer relations relating to FEF which are required or presently used by Powernext for the proper transfer of the FEF business. Powernext intends that such transfer include at least the elements described in **Annex 4.2** and certain employees. Such transfer shall be subject to the continuing rights of Powernext with respect to FEF products as set forth in this Agreement. Powernext shall also grant an exclusive licence to EEX to use free of charge any intellectual property rights used by Powernext in connection with such contracts or FEF products. EEX is not obligated to make use of such intellectual property rights.
- 4.3** Powernext shall make all reasonable efforts in order to support the transfer of Powernext's FEF business to EEX. In particular, Powernext shall
- 4.3.1** inform the market participants together with EEX about the transfer of Powernext FEF to EPD;
- 4.3.2** work in cooperation with EEX towards the joint goal for market participants to use EPD as the platform for trading of FEF;

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- 4.3.3 provide technical assistance to EEX as necessary for the implementation for migration of Powernext FEF trading to EPD.

5 Powernext Share in EPD

- 5.1 In return for the transfer of its FEF business to EPD as provided in Sec. 4.1 Powernext shall receive (i) the Nominal Participation as set out in Sec. 2 and (ii) the Powernext Share according to Sec. 5.2. In connection with the transfer of the FEF business to EPD and the receipt by Powernext of shares in EPD, the Parties shall make to each other the representations and warranties and undertakings attached in **Annex 5.1**.
- 5.2 With effect as of 1 January 2009 Powernext will receive a 20% share in EPD ("**Powernext Share**"). The Nominal Participation shall be taken into account when determining the Powernext Share.
- 5.3 To implement Sec. 5.1 and 5.2, EEX shall enable Powernext to subscribe the Powernext Share in EPD by way of a capital increase of EPD's nominal capital for no payment of further consideration by Powernext other than the nominal value of such shares.
- 5.4 In case of later share capital increases of EPD Powernext shall be entitled to subscribe proportionately to shares of EPD up to 49% of EPD's shares together with shares of other minority shareholders at the same terms and conditions as the other parties entitled to subscribe to newly issued shares at that time, except in cases where the subscribing party contributes to EPD as a contribution in kind or otherwise directly in connection with the share capital increase additional electricity derivatives business or, in case of Eurex Zürich AG, Zürich Switzerland ("EUREX") or an affiliate of EUREX according to Sec. 15 ss. Aktiengesetz joining the contribution to EPD can also be other derivatives business.

6 Corporate governance rights regarding FEF

- 6.1 Both Powernext as well as EEX have a strong interest to maximize the trading of FEF at EPD. They undertake to make all reasonable efforts to support and promote the trading of FEF at EPD.
- 6.2 As soon as practicable, and in any event prior to the approval of Powernext's shareholders meeting to the transfer of the FEF business to EPD according to Section 9.1 of the Cooperation Agreement Powernext, EEX and EPD shall jointly agree on the manner of handling the trading of FEF at EPD in an FEF Handling Agreement. Such FEF Handling Agreement shall address among other issues:
- the FEF products offered by EPD and their possible discontinuation,
 - the price references of FEF products,
 - the procedure regarding proposals to the exchange council with regard to FEF products,
 - the development of new FEF products,
 - the pricing of FEF products,
 - the promotion of FEF products by EPD, Powernext and EEX,
 - the handling of relationships with FEF traders and FEF market makers, as well as

- the remuneration for FEF market makers and FEF brokers.

The FEF Handling Agreement shall provide that the relationships with FEF traders and with FEF market makers as well as the lobbying support with respect to FEF and relationships with the French authorities regarding trading with FEF, although under the corporate responsibility of EPD's management, will be handled primarily by EPD's Paris branch (primarily the individuals transferred from Powernext) and/or by Powernext itself (through a services agreement). This FEF team in EPD's Paris branch shall have the right to initiate and lead all aspects of the handling of the FEF business, including but not limited to remuneration for market makers, remuneration for brokers, pricing of trading and OTC registration fees, promotional plans to target specific customer segments, lobbying efforts, etc., provided that this shall be done within the framework of the FEF Handling Agreement and that the resulting costs are not higher than the costs incurred for comparable measures for other products traded at EPD. Any modification to the FEF Handling Agreement or the procedures set forth thereunder shall require the specific prior approval of Powernext.

- 6.3** EPD's Supervisory Board shall appoint a "FEF Development Committee" consisting of representatives of EEX, Powernext and such shareholders of EEX and Powernext as the Parties shall mutually agree, to formulate and propose to EPD's managing directors measures for the further development of the FEF market, which measures shall be considered in good faith by EPD's managing directors. The FEF Development Committee shall meet at least twice a year and more often if EEX or Powernext so requests.

III. EEX and Powernext Options

7 EEX Call Option

- 7.1** Powernext hereby irrevocably grants a call option to EEX to purchase and acquire all shares Powernext will own in EPD ("**EEX Call Option**") at the time the EEX Call Option is exercised. EEX's right to exercise the EEX Call Option is limited to the following cases:

- 7.1.1** If EEX terminates the Agreement according to Sec. 19.3;
- 7.1.2** If Powernext violates the non-compete obligation under Sec. 15.2 of this Agreement;
- 7.1.3** If Powernext violates provisions under this Agreement in such a way that this would be considered an "important reason" (*wichtiger Grund*) for purposes of an extraordinary termination and has not permanently discontinued and remedied the violation within one month after written notice of the violation by EEX;
- 7.1.4** If Powernext is subject to any Change of Control and all other shareholders in EPD at that time consider it in their free discretion that Powernext's shareholding in EPD under the changed control is harmful to EPD and agree unanimously to the termination of such shareholding by exercise of the EEX Call Option. For purposes of this Sec. 7.1.4 the definition of "Change of Control" and "Competing Party" shall be deemed to refer to the FEF Business instead of Spot Business and Company shall be deemed to refer to EPD.

- 7.2** The EEX Call Option can be exercised at the earliest as of the moment Powernext holds any shares in EPD and at the latest on 30 June 2015, provided that if the EEX Call Option is exercised under Sec 7.1.2, EEX shall exercise the EEX Call Option within a period of

three months as from it becomes aware of the violation by Powernext of its non-compete obligation.

8 Purchase price upon exercise of EEX Call Option

- 8.1** There shall be no purchase price for the shares subject to the EEX Call Option according to Sec. 7.1.1. The purchase price for the shares subject to the EEX Call Option according to Sec. 7.1.2 and Sec. 7.1.3 shall be 90% of the fair market value of the shares of EPD at the time Powernext acquired its Powernext Share, however, not exceeding 90% of the fair market value as of the date the option is exercised. The purchase price for the shares subject to an EEX Call Option according to Sec. 7.1.4 shall be the fair market value as of the date the option is exercised ("**EEX Option Price**").
- 8.2** The fair market value shall be based on the enterprise value of EPD as of the relevant date using the discounted-cash flow-method. The Parties shall agree on the fair market value. If no agreement can be reached within 2 month after receipt of the notice of the exercise of the EEX Call Option each Party may request that the market value will be determined by an independent auditor (the "**Expert**") who is subject to confidentiality obligations. If the Parties cannot agree on an auditor within 1 month after the request by one of the Parties the auditor shall finally and bindingly be determined by the President of the Institut für Wirtschaftsprüfer e.V., Düsseldorf. The appointed Expert shall, within one month of his designation, deliver his report to the Parties. The Expert's fees shall be borne by the both Parties equally.
- 8.3** Powernext shall be entitled to keep the dividends that it will have received during the time that it held the shares in EPD until the exercise of the EEX Call Option.

9 EEX Option Share Purchase Agreement

- 9.1** When the EEX Call Option shall be exercised this shall create a share transfer agreement between Powernext and EEX for all shares subject to the relevant option ("**EEX Option STA**"). The Parties shall be obliged to have the EEX Option STA notarised at Powernext's cost.
- 9.2** Under the EEX Option STA the relevant shares shall be sold without any express or implied representations, warranties or guarantees of any nature made by or on behalf of Powernext except for the following:
- 9.2.1** EPD is a duly organised and validly existing stock corporation under the laws of Germany.
- 9.2.2** The shares are validly issued and fully paid up.
- 9.2.3** Powernext has unrestricted ownership of the shares, free and clear of any third party rights, liens, encumbrances, pledges or any other restrictions with the exception of any restrictions of transferability that are contained in the articles of association of EPD.
- 9.2.4** Powernext is free to sell and transfer the shares to EEX. EPD has declared its consent.
- 9.3** Otherwise the EEX Option STA shall be subject to German law and shall have terms and conditions with similar economic effect to the purchase of shares through the Frankfurt stock exchange.

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- 9.4** If merger control proceedings are legally required under EC law and/or national law for or in connection with the acquisition of the shares in EPD, the Parties are obligated to undertake all measures in order to obtain the required approval.
- 9.5** Powernext and EEX may negotiate any additional terms and conditions usual in a share purchase agreement they jointly deem appropriate. If they shall not have reached agreement on such additional terms or conditions within one month after the exercise of the EEX Call Option the SPA shall have the content provided for in Sec. 9.2 through 9.3.
- 9.6** In case of the EEX Call Option according to Sec. 7, the purchase price under the EEX Option STA shall come due within one month after the determination of the EEX Option Price.

10 Powernext Put Option

- 10.1** Powernext shall have the right to require EEX to purchase all the shares of EPD held by Powernext (the "**Powernext Put Option**") in any of the following circumstances:
- 10.1.1** If Powernext receives a bona fide offer to purchase all of its shares in EPD (a "**Powernext Third Party Offer**") from a third party (a "**Proposed Powernext Transferee**") and Powernext accepts such offer but the transfer of such shares (the "**Powernext Offered Shares**") to the Proposed Powernext Transferee is not approved by the Shareholders' Meeting of EPD in accordance with Sec. 14 of the Articles of Association of EPD; or
 - 10.1.2** If EEX intends to dispose of shares that it owns in EPD (the "**EEX Transferred Shares**") to a third party which is not an affiliated company of EEX within the meaning of Sec. 15 et. seq. German Stock Corporation Act (an "**EEX Third Party Transferee**") such that EEX will no longer directly or indirectly own and control a majority of the share capital of EPD; or
 - 10.1.3** If EEX violates the non-compete obligation under Sec. 15.2 of this Agreement; or
 - 10.1.4** If EEX violates provisions under this Agreement in such a way that this would be considered an "important reason" (*wichtiger Grund*) for purposes of an extraordinary termination and has not permanently discontinued and remedied the violation within one month after written notice of the violation by Powernext.
- 10.2** In the event the circumstances referred to in Sec. 10.1.1 occur, the Powernext Put Option can be exercised by notice to EEX at any time within three months after the meeting of the shareholders of EPD at which such transfer is refused. However, the Powernext Put Option according to Sec. 10.1.1 cannot be exercised before 31 December 2015.
- 10.3** In the event the circumstances referred to in Sec. 10.1.2 occur, prior to any disposal of the EEX Transferred Shares to an EEX Third Party Transferee, EEX shall notify the disposal project to Powernext specifying the identity of the EEX Third Party Transferee, the identity of the undertaking controlling the EEX Third Party Transferee (as the case may be), the number of EEX Transferred Shares and the price offered by the EEX Third Party Transferee ("**Transfer Notice**"). Powernext shall have thirty (30) days as from receipt of the Transfer Notice from EEX in which to exercise the Powernext Put Option.
- 10.4** In the event the circumstances referred to in Sec. 10.1.3 occur, the Powernext Put Option may be exercised immediately and for a period of three months as from Powernext becoming aware of the violation by EEX of the non-compete obligation.

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- 10.5** The purchase price for the shares of EPD to be sold by Powernext and purchased by EEX following the exercise of the Powernext Put Option (the "**Transferred Shares**") shall be:
- 10.5.1** In the case of the exercise of the Powernext Put Option pursuant to Sec. 10.2, the price offered by the Proposed Powernext Transferee, however, not exceeding the fair market value of the Transferred Shares (based on the enterprise value of EPD as of the date of the exercise of the Powernext Put Option using the discounted-cash flow-method); or
 - 10.5.2** In the case of the exercise of the Powernext Put Option pursuant to Sec. 10.3, the higher of (i) the fair market value of the Transferred Shares (based on the enterprise value of EPD as of the date of the exercise of the Powernext Put Option using the discounted-cash flow-method) and (ii) the price (calculated on a per share basis) offered to EEX by the EEX Third Party Transferee; or
 - 10.5.3** In the case of the exercise of the Powernext Put Option pursuant to Sec. 10.1.3 or Sec. 10.1.4, 110% of the fair market value of the Transferred Shares, provided that the fair market value shall be determined as if the violation of the non-compete obligation or other provision by EEX had not occurred.
- 10.6** For the determination of the fair market value Sec. 8.2 shall apply accordingly.
- 10.7** The sale and purchase of the Transferred Shares shall take place within ninety (90) calendar days after the receipt by EEX of the notice from Powernext exercising the Powernext Put Option or, if later, within thirty (30) calendar days after the receipt by the Parties of the report of the Expert. The purchase price shall be paid on the date of the transfer of the Transferred Shares. On such date Powernext shall deliver (or caused to be delivered) to EEX any appropriate documents necessary to effect the transfer of the Transferred Shares and the letter of resignation of the member of the Supervisory Board designated by Powernext. The Parties shall be obliged to have the share transfer agreement notarised in case of Sec. 10.1.1 at Powernext's cost and in the cases of Sec. 10.1.2 to 10.1.4 at EEX's cost.
- 10.8** Powernext shall be entitled to keep the dividends attached to the Transferred Shares for the period during which it held the Transferred Shares until the exercise of the Powernext Put Option.
- 10.9** When the Powernext Put Option shall be exercised this shall create a share transfer agreement between Powernext and EEX for the Transferred Shares. The Parties shall be obliged to have the share transfer agreement notarised in case of Sec. 10.1.1 at Powernext's cost and in the cases of Sec. 10.1.2 to 10.1.4 at EEX's cost. The Transferred Shares shall be sold without any express or implied representations, warranties or guarantees of any nature made by or on behalf of Powernext except for the following:
- 10.9.1** Powernext has unrestricted ownership of the Transferred Shares, free and clear of any third party rights, liens, encumbrances, pledges or any other restrictions with the exception of any restrictions of transferability that may be contained in the articles of association of EPD.
 - 10.9.2** Powernext is free to sell and transfer the Transferred Shares to EEX.

11 New EDM Shareholders

- 11.1** The Parties anticipate opening the shareholder structure of EPD to other energy exchanges which will contribute their Derivatives business to EPD and, possibly, to other partners. Such new shareholders in EPD together with Powernext may acquire up to 49% in the shares of EPD.
- 11.2** In particular, it is contemplated that Eurex Zürich AG or one of its affiliated companies as defined in Sec. 15 ss. AktG (German Stock Corporation Act) ("**Eurex**") may be joining as an additional shareholder of EPD. However, Powernext's shareholding should not be diluted by a cash contribution of Eurex in a share capital increase of EPD. Therefore, to the extent that Eurex would not contribute derivatives business to EPD as a contribution in kind in return for shares but would make a cash contribution Powernext would be entitled to increase its shareholding in EPD proportionately as well for a proportionately equal cash contribution to EPD. In case of a contribution in kind, if requested by one shareholder the contribution in kind's value shall be determined through an independent auditor's opinion.

IV. Business organisation

12 Business plan, fee schedule

By 30 June 2008 at the latest, EEX and EPD shall jointly establish a business plan for EPD for the period 2008 through 2010 (the "**Business Plan**"). The Business Plan shall contain an initial fee schedule for products to be traded by EPD. EEX and EPD will provide the Business Plan to Powernext for comments. The Business Plan shall be in accordance with the provisions of the FEF Handling Agreement. EPD shall continue this business plan on an annual 3 year roll over basis. The respective Business Plan shall be submitted to EPD's supervisory board for approval. To the extent that any element of the initial or revised Business Plan relates to FEF, the rights of Powernext as set forth in Sec. 6 shall apply.

13 IT & service agreements

- 13.1** EEX will implement one single IT structure for EPD. The Parties agree that the trading platform of EPD will be run on the IT system used by the EEX group. The implementation of the listing of the Powernext FEF contracts on such IT system may occur as early as 1 February 2009 provided that (i) no anonymous OTC clearing for FEF will be allowed (either through technical or regulatory/legal means) and (ii) current members of Powernext having in the aggregate at least 80% of liquidity volume shall have effective access to such system at their front end through the Trayport Exchange Gateway; for the avoidance of doubt, access through the Trayport Exchange Gateway to the EEX group IT system will not affect the obligation to pay for the use of the EEX group IT system.
- 13.2** The parties undertake to procure that service agreements will be entered into between EPD and EEX regarding the provision of, inter alia, administration services by EEX and between EPD and ECC regarding the provision of, inter alia, IT services by ECC.
- 13.3** As part of its services to EPD EEX will handle EPD's regulatory requirements in Germany.

14 Admission of trading participants to EPD

- 14.1** Powernext trading participants which are not admitted to the trading of FEF at EEX and/or EPD will need to apply for membership to EPD in order to continue trading in FEF. EPD will support Powernext trading participants in their application for membership to EPD by providing the necessary information well in advance and in any other way that may be helpful or that can reasonably be expected by the trading participants.
- 14.2** The Parties aim to harmonise the admission process to their respective trading platforms.

15 Continuous support by Powernext

- 15.1** Also after the transfer of Powernext's FEF products to EPD Powernext shall continue to fully support EPD and the trading of FEF on EPD's platform. In particular, Powernext shall
- 15.1.1** facilitate and promote the use of FEF offered at EPD's trading platform;
 - 15.1.2** handle relationships with FEF market makers;
 - 15.1.3** support EPD in the development of new FEF products;
 - 15.1.4** use its relations with French regulatory authorities to support the development of a favourable regulatory environment of the trading of FEF and act as an intermediary between EPD and French regulatory authorities.
- 15.2** The Parties acknowledge that the purpose of EPD is to concentrate their common FEF trading businesses on one trading platform. The Parties agree that their FEF trading activities shall be handled through EPD, and shall not enter into competition with EPD in respect of FEF products or act for or participate in an enterprise which competes in the FEF business in such a way that they can exert a substantial influence on the management of such enterprise, whether directly or indirectly, on their own or another's behalf, for their own account or the account of a third party. This non-compete obligation relates to the present geographical area of activity of the Company and only to FEF or competing or substitute products or new Derivatives contracts which have as underlying product electricity delivered in the RTE grid. Within the meaning of this Clause 15.2 particularly a participation of 10% or more in the capital of an enterprise shall be deemed to give the shareholder the possibility of exerting a substantial influence on the management.
- 15.3** The non-compete obligation under 15.2 shall come into effect on the date of the execution of the agreement by the Parties and ECC and shall run for a duration of five years. At that point in time, the non-compete provision will automatically terminate. Notwithstanding this the Parties and ECC will at that point in time negotiate in good faith whether they want to extend their cooperation on a non-compete basis.
- 15.4** The Parties agree that trading of FEF should take place under one common trademark and that EPD is free to use its own trademarks or those licensed by Powernext for this purpose.

16 EPD presence in France

- 16.1** The Parties agree that after the contribution of the FEF business by Powernext to EPD, EPD will maintain a permanent establishment in France which performs certain key FEF activities for EPD's Paris branch at least as required by French tax law in order to avoid adverse tax consequences for Powernext and/or EPD. Furthermore, the Parties

acknowledge that apart from the performance of certain key activities by the permanent establishment of EPD in France EPD's business with FEF contracts will require a certain presence in the French market. Powernext shall provide marketing and other assistance to EPD on the basis of a services agreement the main terms of which, including the number of persons and the remuneration of Powernext, shall be determined by the Parties. The future services agreement between EPD and Powernext and the future services agreements between EPD and EEX as well as between Spot Trading SE and EEX or ECC shall be entered into at economically comparable terms and conditions.

V. Clearing

17 Clearing at ECC

The parties agree that all of EPD's business, exchange trading and OTC, shall be cleared by ECC according to the Clearing Services Agreement between EPD and ECC attached as **Annex 17**.

18 Powernext option for shares in ECC

According to the Option Agreement Powernext receives options for its proportional share in the Exchange Partner Share of ECC based on Powernext's contribution to ECC's total clearing fee volume. The Parties agree that for the calculation of Powernext's contribution to ECC's total clearing fee volume the clearing contribution from FEF cleared by ECC shall be fully counted for Powernext's option account.

VI. General

19 Term, Termination

19.1 This Agreement shall come into effect on the date of its execution by the Parties and ECC and shall run until 31 December 2030. The term of the Agreement shall be automatically extended by an additional 5 years unless the Agreement is terminated by one of the Parties and ECC by notice given at least two years before the end of its then current term. If the Agreement is terminated only by ECC the Agreement continues to remain in force between the other Parties.

19.2 Either Party may terminate this Agreement in case of termination of the Cooperation Agreement.

19.3 EEX may terminate this Agreement if by 31 July 2009 Powernext has not taken the steps required to be taken for the transfer of its FEF business in accordance with Sec. 4, unless Powernext was prevented from taking such steps for reasons beyond its control. Powernext may terminate this Agreement if by 30 June 2009 EEX has not taken the steps required to be taken for the spin-off of its Derivatives business in accordance with Sec. 1.1. This Agreement shall be automatically terminated if the Cooperation Agreement has been terminated pursuant to Sec 8.2 thereof. Termination for a reason set forth in this Sec. 19.3 sentences 1 and 2 shall be considered to be for good cause and shall allow the terminating Party to claim for damages (*Negatives Interesse*, i.e. damages caused by reliance on the performance by the Party in default).

- 19.4** The obligations of the Parties and ECC pursuant to Sec. 21 and Sec. 22 of this Agreement shall remain binding for the Parties also for a period of 2 years after the expiration or termination of this Agreement.

20 Conditions Precedent

The provisions of this Agreement shall become effective upon satisfaction of the following conditions precedent:

- 20.1** The Cooperation Agreement shall have entered into force and the conditions precedent in Sec. 9.1.6 and Sec. 9.2 Cooperation Agreement have been fulfilled.

21 Confidentiality of this Agreement

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

- 21.2** This Agreement shall not prohibit disclosure of any information if and to the extent:

- 21.2.1** 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;
- 21.2.2** 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;
- 21.2.3** 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;
- 21.2.4** the information is or becomes publicly available (other than by breach of this Agreement or any other confidentiality agreement between the Parties);
- 21.2.5** the other Party has given prior written approval to the disclosure or use; or
- 21.2.6** the information is independently developed after signature of this Agreement,

provided that prior to disclosure of any information pursuant to Clause 21.2.1 or 21.2.2, 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.

- 21.3** Unless otherwise required by applicable law or 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.

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

22 Miscellaneous

22.1 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.

22.2 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 and, to the extent EEC is affected, ECC shall attempt to agree on a replacement provision which comes closest to what was intended in the originally agreed provision.

22.3 Written Form

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

22.4 Applicable Laws and Legal Venue

The Agreement shall be governed by the laws of the Federal Republic of Germany, except for the Uniform Code on the International Sale of Goods.

22.5 Dispute Resolution

22.5.1 The Parties and ECC shall first try to settle any disputes arising from or in connection with this Agreement and its consummation by referring the matter for resolution to the chairmen of the supervisory board or board of directors, respectively, of the Parties. Both chairmen may agree to nominate an independent third party to act as mediator to assist them to resolve the matter. The cost of such mediator would be borne by both parties in equal shares.

22.5.2 In case the procedure according to Sec. 22.5.1 does not result in a resolution within 2 months after the referral, any dispute arising from or in connection with this Agreement and its consummation 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.

22.5.3 Each Party may nominate one arbitrator, EEX and ECC shall jointly nominate an arbitrator. The two arbitrators nominated by the Parties will nominate the third arbitrator as chairman.

22.5.4 The venue of the arbitration shall be Geneva, Switzerland. Judgement on the arbitral award may be entered by any court of competent jurisdiction.

22.5.5 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, or Leipzig, Germany and (ii) EEX shall be entitled to file a legal action before the competent court in Leipzig, Germany.

22.6 Expenses

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

22.7 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, as it appears 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:

22.7.1 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

22.7.2 If to Powernext

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

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

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

22.7.3 If to ECC:

European Commodity Clearing 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

23 Annexes

The following Annexes are an integral part of this Agreement:

Annex 1.2 – Description of EEX's Electricity Derivatives Business to be transferred to EPD

Annex 1.5 - Articles of Association of EPD

Annex 1.6 – Profit and Loss Pooling Agreement between EPD and EEX

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Annex 4.2 – Description of Powernext's FEF business to be transferred to EPD

Annex 5.1 – Representations, warranties and covenants

Annex 17 - Clearing Services Agreement between EPD and ECC

24 Further Cooperation

The Parties agree to cooperate in good faith to implement the terms of this Agreement and, in particular, agree that if it is necessary to modify certain provisions hereof or make certain elections hereunder in order to optimize the position of either Party from an accounting or tax perspective, they shall negotiate in good faith in order to reach agreement on such modification or elections, as the case may be.

25 Defined Terms

Defined Terms used in this Agreement, unless defined in this Agreement, shall have the meaning defined in the Cooperation Agreement or the Agreements annexed to it.

26 Entire Agreement

This Agreement, including the Annexes hereto, constitutes the entire understanding between the Parties and ECC with respect to the subject matter contained in the operational part of this Agreement, and supersedes any and all prior agreements, understandings, documents and arrangements, whether oral or written, between the Parties and ECC relating to the subject matters hereof.

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

IN WITNESS WHEREOF this Agreement has been signed by the Parties and ECC (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	Maik Neubauer
Title : CEO	Member of Board

For European Commodity Clearing AG:

Date :

Place :

Signature :

Name : Dr. Hans-Bernd Menzel

Title : CEO

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