

OPTION AGREEMENT

between

European Energy Exchange AG

and

Powernext S.A.

dated 6 March 2008

Linklaters

Rankestraße 21
10789 Berlin
Postfach 30 18 50
10746 Berlin

Telephone (49-30) 21496-0
Fax (49-30) 21496-100

Ref.: L-106488

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Annex 7
to the Cooperation Agreement

Option Agreement

(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 the „**EEX**“ -

and

(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**“ -

Preamble

WHEREAS

- (A) Powernext is a privately owned stock corporation located in France. It is an exchange, organized as a multilateral trading facility (MTF), recognised and supervised by the Autorité des Marchés Financiers (AMF) and the Commission de Régulation de l'Énergie (CRE). It offers its participants trading of electricity spot contracts, futures trading of electricity contracts and clearing of trades executed on the exchange as well as for the clearing of similar OTC trades. Powernext is currently using the services of LCH Clearnet S.A. for the clearing of its products. Powernext intends to transfer its electricity spot trading business to a newly established joint venture company of the Parties („**Spot Trading SE**“).
- (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 German Exchange Act (*Börsengesetz*). EEX offers its participants spot 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 the clearing of similar OTC trades. The clearing is carried out by EEX's subsidiary European Commodity Clearing AG („**ECC**“). EEX transferred its electricity spot trading business into a separate legal entity named EEX Power Spot GmbH („**D Spot Co**“), the shares in which shall subsequently be transferred to Spot Trading SE. In a later step D Spot Co shall be merged into Spot Trading SE. Furthermore, EEX intends in 2008 to transfer its electricity futures trading business into a separate legal entity, EEX Power Derivatives GmbH („**EPD**“), and Powernext intends to contribute its FEF business to EPD effective as of 1 January 2009.
- (C) In the Cooperation Agreement between EEX, Powernext and ECC („**Cooperation Agreement**“) signed on the day hereof the Parties have agreed that D Spot Co and Spot Trading SE will clear all their electricity spot products at ECC, that EPD will clear all its electricity futures products at ECC and that Powernext will clear at ECC all natural gas spot and futures products that it may launch. Prior to the date hereof D Spot Co and ECC have signed a clearing services agreement for the clearing of power spot products. On or

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about the date hereof, ECC and Powernext have signed a clearing services agreement for the clearing of natural gas products ("**Clearing Services Agreement Gas Powernext**"). ECC will enter into clearing services agreements as attached to the Cooperation Agreement with Spot Trading SE ("**Clearing Services Agreement Spot Trading SE**") following the establishment of Spot Trading SE and with EPD ("**Clearing Services Agreement EPD**") following the decision on the transfer of EEX's electricity futures business to EPD. Finally, should the Cooperation Agreement be terminated in certain circumstances, Powernext may require that ECC enter into a clearing services agreement with Powernext for the clearing by ECC of Powernext's electricity and gas spot and futures products ("**Clearing Services Agreement E & G Powernext**") with terms and conditions corresponding to the Clearing Services Agreement attached to the Cooperation Agreement.

- (D) ECC operates a central counterparty clearing infrastructure with currently 12 international banks acting as clearing members. ECC provides clearing services for all its customers on a commercial and non-discriminatory basis.
- (E) At present, except for one share held by ENDEX, all shares in ECC are owned by EEX. However, it is intended to open the shareholder structure of ECC (i) to regulated commodity exchanges that contribute clearing business ("**Exchange Partners**") and (ii) to further partners that contribute clearing business, also without being a regulated exchange, or that contribute to ECC in other ways, such as brokers and financial institutions ("**Non-Exchange Partners**", Exchange Partners and Non-Exchange Partners together "**Cooperation Partners**") after legal, fiscal and other major requirements have been satisfied.
- (F) Powernext recognises that EEX has undertaken considerable financial and other efforts in the establishment of its clearing business which shall be rewarded by a reservation for EEX of a permanent minimum share in ECC of 25.1%.
- (G) EEX expects that the Exchange Partners will be capable of having a market share of at least 10% of the total clearing fee volume generated by the Exchange Partners in ECC.
- (H) All Exchange Partners clearing their transactions through ECC together may acquire shares of a total of up to 49.9% in ECC's nominal capital ("**Exchange Partner Share**"). The proportion of the allotment for each individual Exchange Partner in the Exchange Partner Share will be determined corresponding to the clearing fee volume contribution of this Exchange Partner into ECC during the three calendar years prior to 2010 compared to the respective total clearing fee volume of the Exchange Partners of ECC. EEX with its clearing fee volume contribution will also participate in the allotment of the Exchange Partner Share. A further adjustment of the shareholding held by Powernext in ECC shall occur on the basis of clearing fee volume contribution of Powernext into ECC during the calendar years 2010, 2011 and 2012 compared to the respective total clearing fee volume of the Exchange Partners of ECC. Powernext shall also have the opportunity to acquire at an early stage one nominal share in ECC as provided in this Agreement.
- (I) The remaining shares of at least 50.1% in ECC, including the minimum share of 25.1% mentioned above (F), will be held by EEX, which may decide to reduce its shareholding by allotting shares to Non-Exchange Partners, either through sale or further capital increases.
- (J) Should an increase of ECC's nominal capital become necessary, either due to intervention of the financial supervisory authority or due to reasons of business development, the Parties will vote in favour of such capital increase.

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- (K) If at a later stage the shareholders in ECC resolve to list ECC's shares in an IPO the parties will support the IPO, in particular they shall vote their shares in ECC in the IPO's support.
- (L) The Parties want Powernext to have an opportunity to become an Exchange Partner. Therefore it is intended that Powernext shall be granted options to acquire shares in ECC as provided for in this Agreement.
- (M) In addition, the Parties share the opinion that it is in the best interest of their customers to maintain and increase trading volumes of derivatives in order to bolster the markets' liquidity. Taking into account the particularities of electricity and natural gas energy derivatives, the Parties consider it preferable that the same derivative products be traded on one platform.

NOW, THEREFORE, the Parties hereby agree as follows:

I. Option for Powernext

1 Initial Powernext Option

- 1.1 EEX shall either (i) enable Powernext to subscribe to a part of the Exchange Partner Share determined according to Sec. 1.2 by way of a capital increase of ECC's nominal capital and subject to the conditions set out in this Agreement or (ii), instead of the subscription to the share in ECC, EEX may choose to offer Powernext to purchase from EEX all or a part of the Exchange Partner Share's part determined according to Sec. 1.2 (in either case, the "**Initial Powernext Option**"). Powernext shall have the right, but not the obligation, to exercise the Initial Powernext Option at its sole discretion.
- 1.2 The part of the Exchange Partner Share available to Powernext under the Initial Powernext Option ("**Initial Powernext Share**") shall be up to the proportionate amount of the fee volume (exclusive of V.A.T., if any) that the clearing participants of Powernext and, for the trades described in Section 1.3, the clearing participants of Spot Trading SE and, for the trades described in Section 1.4, the clearing participants of EPD, have paid to ECC for services under the Clearing Services Agreement Spot Trading SE and the Clearing Services Agreement Gas Powernext or, as the case may be, the Clearing Services Agreement E & G Powernext ("**Powernext Fee Volume Contribution**") during the calendar years 2007 through 2009 compared to ECC's total clearing fee volume of the Exchange Partners (exclusive of V.A.T., if any) during this period.
- 1.3 For purposes of determining the Powernext Fee Volume Contribution the clearing fee volume (exclusive of V.A.T., if any) that the clearing participants of Spot Trading SE have paid to ECC for services under the Clearing Services Agreement Spot Trading SE or another clearing services agreement between Spot Trading SE and ECC shall be counted for Powernext's account if and insofar as the products traded under the relevant contracts have their delivery point in the French grid. The same principle shall apply if Powernext or Spot Trading SE have been merged with another entity whose clearing participants' fee volumes have to be considered for calculating an option for shares in the Exchange Partner Share under a similar Option Agreement.
- 1.4 For purposes of determining the Powernext Fee Volume Contribution the clearing fee volume (exclusive of V.A.T., if any) that the clearing participants of EPD have paid to ECC for services under the Clearing Services Agreement EPD or another clearing services agreement between EPD and ECC shall be counted for Powernext's account if and insofar

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the relevant traded contracts have as an underlying product electricity with its delivery point in the French grid (FEF, as defined in the Development Agreement for French Electricity Futures between EEX, Powernext and ECC).

- 1.5 In the event that ECC is required by Powernext to enter into the Clearing Services Agreement E & G Powernext, the Powernext Fee Volume Contribution shall be the clearing fee volume (exclusive of V.A.T., if any) that the clearing participants of Powernext have paid to ECC for services under the Clearing Services Agreement E & G Powernext.
- 1.6 The Initial Powernext Share shall be determined and be exact to two digits after the decimal point. The general rules for rounding (up/down) apply; they apply also to the calculation of the number of shares in ECC's nominal capital.
- 1.7 Powernext's Fee Volume Contribution and the total clearing fee volume of the Exchange Partners shall be finally and bindingly determined by ECC. Powernext shall be entitled to have this determination of Powernext's Fee Volume Contribution and the total clearing fee volume of the Exchange Partners verified by an independent auditor who is obliged not to pass on information about other clearing customers' information, at its own cost.

2 Exercise of Initial Powernext Option

- 2.1 In the event EEX chooses to sell Powernext the Initial Powernext Share according to Sec. 1.1 lit. (ii) EEX shall notify Powernext in writing no later than 30 June 2009. This notification shall be binding on EEX.
- 2.2 Powernext may exercise the Initial Powernext Option for the first time on 1 January 2010 and at the latest on 30 June 2010. The Initial Powernext Option shall be exercised by a written notice of acceptance ("**Acceptance Notice**") to EEX. Such exercising of the Initial Powernext Option shall not bind Powernext as to if or the number of shares Powernext wishes to acquire in ECC. This shall be determined in accordance with Sec. 2.4.
- 2.3 By 31 July 2010 EEX shall let Powernext know in writing the number of shares Powernext may acquire out of the Exchange Partner Share in accordance with Sec. 1.2. In addition, EEX shall let Powernext know in writing the acquisition price 14 Leipzig business days after having received the auditors opinion according to Sec. 4.
- 2.4 Within 14 Leipzig business days after the receipt by Powernext of the information according to Sec. 2.3 Powernext has to notify EEX in writing the number of shares Powernext wishes to acquire in ECC. For the avoidance of doubt, Powernext may chose not to purchase any shares under the Initial Powernext Option.
- 2.5 Powernext may only exercise the Initial Powernext Option if
 - 2.5.1 at the time of the exercise Clearing Services (as defined in the Clearing Services Agreement Spot Trading SE and the Clearing Services Agreement Gas Powernext or, as the case may be, the Clearing Services Agreement E & G Powernext) for products which are subject to such clearing services agreements are still exclusively provided by ECC, except for products the clearing of which has been rejected by ECC; and
 - 2.5.2 at the time of the exercise the Clearing Services Agreement Spot Trading SE and the Clearing Services Agreement Gas Powernext or, as the case may be, the Clearing Services Agreement E & G Powernext, have not been terminated or expired.

3 Implementation of Initial Powernext Option

- 3.1** In case of Sec. 1.1 lit. (i), the Initial Powernext Option shall be implemented according to Sec. 3.2 and 3.3; in case of Sec. 1.1 lit. (ii), the Initial Powernext Option shall be implemented according to Sec. 3.4 through 3.8.
- 3.2** EEX shall initiate without undue delay the necessary steps for a capital increase of ECC's nominal capital to create the shares to be allotted to Powernext and the other Exchange Partners after having received the notices according to Sec. 2.4 from all Exchange Partners. The shares allotted to Powernext in such a capital increase of ECC's nominal capital shall be entitled to participate in the profit of ECC as of 1 January 2010.
- 3.3** EEX shall only be obliged to initiate steps for a capital increase of ECC's nominal capital and/or assign shares to Powernext if
- 3.3.1** any applicable statutory time limits for prohibiting the acquisition of the shares, e.g. the 3-months time limit for the Federal Financial Supervisory Authority (*BaFin*) according to Sec. 2b Banking Act (*Kreditwesengesetz*) have lapsed and no prohibition order has been issued and
 - 3.3.2** if merger control proceedings are legally required under EC law and/or national law for or in connection with the acquisition of the Initial Powernext Share in ECC, if all required national and/or EC merger control proceedings have been completed without prohibition, be it by lapse of time or a written confirmation of the responsible national authority and/or the European Commission to that effect.
- 3.4** The Parties shall conclude the share purchase agreement ("**SPA**") within one month after EEX having received the notice according to Sec. 2.4 from Powernext. Both parties shall use their best efforts to ensure that all consents required for a consummation of the SPA shall be granted by the time of the conclusion of the SPA.
- 3.5** Under the SPA the shares shall be sold without any express or implied representations, warranties or guarantees of any nature made by or on behalf of EEX except for the following:
- 3.5.1** ECC is a duly organised and validly existing stock corporation under the laws of Germany.
 - 3.5.2** The shares are validly issued and fully paid up.
 - 3.5.3** EEX 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 may be contained in the articles of association of ECC.
 - 3.5.4** EEX is free to sell and transfer the Shares to Powernext. ECC has declared its consent.
- 3.6** The SPA shall contain the conditions precedent that the effectiveness of the SPA shall be subject to the conditions set out in Sec. 3.3, applied accordingly.
- 3.7** The transfer of the shares shall take legal effect only upon the receipt of the purchase price by EEX. Sec. 3.2 sent. 2 applies accordingly.

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- 3.8 Otherwise the SPA 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.

4 Acquisition Price

- 4.1 The acquisition price for the Initial Powernext Share shall be determined based on the enterprise value of ECC ("**Market Value**") as of 31 December 2009 using the Discounted-Cash flow-Method as described by the standard for enterprise valuation (*IDW S1*) in its version at that time as set by the German Auditors Institute, Düsseldorf (*"Institut der Wirtschaftsprüfer e.V."*).
- 4.2 The determination of the acquisition price shall be carried out by a person working for an internationally experienced independent firm of good standing. The Parties shall jointly agree on the person to be appointed. In the event the Parties are not able to agree within one month from the date of the exercise of the Powernext option, each Party may ask the President of the German Auditors Institute (*"Institut der Wirtschaftsprüfer e.V."*) to determine who the person will be. The person designated to determine the acquisition price (the "Auditor") shall be granted full access to the books and business documents of ECC required for the determination of the acquisition price. The costs of such a review and the price determination shall be borne by Powernext.
- 4.3 The Parties recognise the Market Value determined according to Sec. 4.1 as binding.
- 4.4 Powernext shall pay interest on the capital contribution or the purchase price from 1 January 2010 (inclusive of this day) until the date of payment (exclusive of this day) of the capital contribution or the purchase price, as the case may be. The interest rate shall be the 3-months-EURIBOR two Leipzig banking days prior to 1 January 2010.

5 Initial Powernext Participation

- 5.1 Once clearing has commenced under either the Clearing Services Agreement Spot Trading SE or the Clearing Services Agreement Gas Powernext or, as the case may be, the Clearing Services Agreement E & G Powernext, EEX shall offer Powernext to acquire one share in ECC ("**Initial Powernext Participation**") by way of a sale of the share according to Sec. 3.4 through Sec. 3.8.
- 5.2 When the conditions under 5.1 will have been fulfilled Powernext may notify EEX of its wish to acquire the Initial Powernext Participation by an Acceptance Notice given to EEX.
- 5.3 The preliminary price for the Initial Powernext Participation shall be EUR 20 (in words: twenty Euro).
- 5.4 The share acquired under the Initial Powernext Participation shall be taken into account when determining the amount of shares which can be acquired under the Initial Powernext Option.

6 Adjusted Powernext Option

- 6.1 Powernext shall be entitled to purchase from EEX a further part of the Exchange Partner Share held by EEX as determined according to Sec. 6.2 ("**Adjusted Powernext Option**").

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Powernext shall have the right, but not the obligation, to exercise the Adjusted Powernext Option at its sole discretion.

(The Initial Powernext Option and the Adjusted Powernext Option are jointly referred to as the "**Powernext Options**").

- 6.2** The part of the Exchange Partner Share available to Powernext under the Adjusted Powernext Option ("**Adjusted Powernext Share**") shall be the positive difference between the Initial Powernext Share held by Powernext or its affiliates plus any ECC shares Powernext or its affiliates may have acquired in the meantime and the percentage of the Powernext Fee Volume Contribution during the calendar years 2010 through 2012 (exclusive of V.A.T., if any) compared to ECC's total clearing fee volume of the Exchange Partners (exclusive of V.A.T., if any) during this period.

(The Initial Powernext Share and the Adjusted Powernext Share are jointly referred to as the "**Powernext Shares**").

- 6.3** Powernext may exercise the Adjusted Powernext Option for the first time on 1 January 2013 and at the latest on 31 March 2013. The Adjusted Powernext Option shall be exercised by an Acceptance Notice to EEX.
- 6.4** By 30 April 2013 EEX shall let Powernext know in writing the number of shares Powernext may acquire under the Adjusted Powernext Option. In addition, EEX shall let Powernext know in writing the acquisition price 14 Leipzig business days after having received the auditors opinion according to Sec. 6.8.
- 6.5** Within 14 Leipzig business days after the receipt by Powernext of the information according to Sec. 6.4 Powernext has to notify EEX in writing the number of shares Powernext wishes to acquire under the Adjusted Powernext Option. For the avoidance of doubt, Powernext may chose not purchase any shares under the Adjusted Powernext Option.
- 6.6** Powernext may only exercise the Adjusted Powernext Option if
- 6.6.1** at the time of the exercise Clearing Services (as defined in the Clearing Services Spot Trading SE and the Clearing Services Agreement Gas Powernext or, as the case may be, the Clearing Services Agreement E & G Powernext) for products which are subject to such clearing services agreements are still exclusively provided by ECC, except for products the clearing of which has been rejected by ECC;
 - 6.6.2** at the time of the exercise the Clearing Services Agreement Spot Trading SE and the Clearing Services Agreement Gas Powernext or, as the case may be, the Clearing Services Agreement E & G Powernext, have not been terminated or expired; and
 - 6.6.3** Powernext's Fee Volume Contribution in the calendar years 2010 through 2012 is in average not less than 10% of ECC's total clearing fee volumes in these years.
- 6.7** Secs. 1.4, 1.7, 3.4 through 3.8 and 4 shall apply accordingly.
- 6.8** The acquisition price for the Adjusted Powernext Share shall be determined in accordance with Sec. 4. However, the Market Value as of 31 December 2012 shall be applied.

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7 Exercise of Voting Right

In the interest of creating a truly European commodity clearing house Powernext undertakes to exercise, if requested in writing by EEX, its rights as shareholder in ECC in a way so as to allow new Cooperation Partners selected by EEX to acquire and subscribe shares in ECC. In particular, Powernext undertakes to vote upon EEX's request in favour of a capital increase, at the discretion of EEX also through the creation of approved capital (*genehmigtes Kapital*), for the benefit of new Non-Exchange Partners at the time when or after the Exchange Partner Share will be or has been allotted to the Exchange Partners. Such capital increase shall be implemented in a way to allow, but not require, Powernext to maintain the percentage of its shareholding in ECC.

II. Participation in ECC's Boards

8 Supervisory Board of ECC

- 8.1** After having acquired the Initial Powernext Participation (Sec. 5.1) Powernext shall have the right to propose one candidate for the supervisory board of ECC. EEX undertakes to vote in favour of the candidate proposed by Powernext provided that the profile of the candidate is suitable in view of the profiles of the other members of the supervisory board of ECC, fulfils the legal requirements and has no conflict of interest in his personal capacity and that the requirements under Sec. 5.1 are still met. EEX may vote to remove the candidate proposed by Powernext from the supervisory board if Spot Trading SE or Powernext has violated its exclusivity obligations set out in Sec. 11 of the Clearing Services Agreement Spot Trading SE or the Clearing Services Agreement Gas Powernext or, as the case may be, the Clearing Services Agreement E & G Powernext, respectively, or if Powernext is subject to any change of control as defined in Sec. 10.2.
- 8.2** Until the Exchange Partner Share shall have been allocated EEX may determine the number of supervisory board members in ECC's articles of association at its sole discretion.

9 Advisory Council of ECC

- 9.1** ECC's articles of association provide for an advisory council (*Beirat*) ("**Advisory Council**"). The primary function of the Advisory Council is to serve as an advisory body to the board of management (*Vorstand*) of ECC on all matters related to the operation of the clearing system. Membership in the Advisory Council shall be open to Cooperation Partners as well as to EEX's shareholders, its clearing members, traders, brokers or other parties who seem suitable to support ECC. Members shall be appointed by the ECC's general meeting (*Hauptversammlung*).
- 9.2** Following the Launch of Clearing Services under any of the clearing services agreements referred to herein (as such term defined in the relevant clearing services agreement) POWERNEXT shall have the right to propose one candidate for the Advisory Council, provided that ECC decides to establish such Advisory Council. Sec. 8.1 sent. 2 and 3 apply accordingly.

III. Share Call Option for EEX

10 EEX Call Options

10.1 Powernext hereby irrevocably grants a call option to EEX to purchase and acquire all shares Powernext will own in ECC ("**EEX Initial Call Option**") at the time the EEX Call Option is exercised. EEX can exercise the EEX Initial Call Option

10.1.1 if Powernext and/or Spot Trading SE use providers of Clearing Services (as defined in the Clearing Services Agreement Spot Trading SE and the Clearing Services Agreement Gas Powernext or, as the case may be, the Clearing Services Agreement E & G Powernext) for products which are subject to such Clearing Services Agreements, except for products the clearing of which has been rejected by ECC or if Spot Trading SE and/or Powernext violate their exclusivity obligations under Sec. 11 of the respective Clearing Services Agreements;

10.1.2 if the Clearing Services Agreement Spot Trading SE and/or the Clearing Services Agreement Gas Powernext or, as the case may be, the Clearing Services Agreement E & G Powernext, have been terminated or expired;

10.1.3 if Powernext's Fee Volume Contribution falls below 10% compared to ECC's total annual clearing fee volume generated by the Exchange Partners in two consecutive calendar years during the years 2010 through 2012 (the determination of these circumstances shall be made in accordance with Sec. 1.7);

10.1.4 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;

10.1.5 if Powernext is subject to any change of control as defined in Sec. 10.2 and all Exchange Partners which are shareholders in ECC at that time consider in their free discretion Powernext's shareholding in ECC under the changed control harmful to ECC and agree unanimously to the termination of the shareholding by the exercise of the EEX Initial Call Option; or

10.1.6 if Powernext exercises its voting right in violation of Sec. 7.

10.2 Control in the sense of Sec. 8.1 and Sec. 10.1.5 means where any competitor to EEX or to ECC, acting alone or in concert acquires direct or indirect control

10.2.1 of the affairs of Powernext, or

10.2.2 over more than 50% of the total voting rights conferred by all the issued shares in the capital of Powernext which are ordinarily exercisable in general meetings, or

10.2.3 of the composition of the board of directors or supervisory board of Powernext, or

10.2.4 over substantially all of Powernext's assets by a sale or other disposition of Powernext's assets.

For these purposes persons acting in concert are persons which actively co-operate pursuant to an agreement or understanding (whether formal or informal) with a view to obtaining or consolidating control of Powernext.

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10.3 If in the year 2013

- (i) one or several Exchange Partner(s) other than Powernext ("**Other Exchange Partner**") exercise the adjusted option under their respective cooperation and option agreement with EEX to increase their share in the Exchange Partner Share in a mechanism similar to the Adjusted Powernext Option and
- (ii) the number of shares to be sold by EEX under the adjusted options to the Other Exchange Partner would exceed the number of shares which EEX has in the Exchange Partner Share in excess of its proportionate amount of clearing fee volume contribution during the calendar years 2010 through 2012 compared to ECC's total clearing fee volume generated by the Exchange Partners during those years ("**Surplus Shares**") and
- (iii) Powernext will own shares in ECC in excess of the Powernext Fee Volume Contribution during the calendar years 2010 through 2012 compared to ECC's total clearing fee volume of the Exchange Partners during those years,

Powernext shall sell and transfer to the Other Exchange Partner proportionately such amount of shares which has to be transferred to the Other Exchange Partner in addition to the Surplus Shares ("**EEX Adjustment Call Option**"). The ratios in sent. 1 shall be exactly determined to two digits after the decimal point. The general rules for rounding (up/down) apply. The amount of shares that have to be transferred to according to this calculation shall be adjusted to the next higher whole number.

(The EEX Initial Call Option and the EEX Adjustment Call Option jointly referred to as the "**EEX Call Options**").

10.4 The EEX Initial Call Option can be exercised at the earliest as of the moment Powernext holds any Powernext Shares and at the latest on 30 June 2013. The EEX Adjustment Call Option can be exercised at the earliest on 1 January 2013 and at the latest on 30 June 2013.

10.5 The EEX Call Options shall be exercised by an Acceptance Notice to Powernext.

11 Purchase Price upon Exercise of EEX Call Option

11.1 The purchase price for the shares subject to an EEX Call Option according to Sec. 10.1.1, 10.1.2, 10.1.4 or 10.1.6 shall be the average price paid per share by Powernext when having acquired the shares, the purchase price for the shares subject to an EEX Call Option according to Sec. 10.1.2, in case Spot Trading SE and/or Powernext have terminated the relevant clearing services agreement for good cause which justifies an extraordinary termination, and according to Sec. 10.1.3 or 10.1.5 shall be the Market Value as of the date the option is exercised and the purchase price for the EEX Adjustment Call Option shall be the Market Value as of 31 December 2012 ("**EEX Option Price**"). Powernext shall be entitled to keep the dividends that it will have received during the time that it held the Powernext Shares acquired by EEX.

11.2 After an exercise of the EEX Call Options both EEX and Powernext may demand the determination of the EEX Option Price.

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12 EEX Call Option Share Purchase Agreement

- 12.1** When an EEX Call Option shall be exercised this shall create a share purchase agreement between Powernext and EEX, or in case of the EEX Adjustment Call Option between Powernext and the Other Exchange Partner, for all shares subject to the relevant option ("**EEX Call Option SPA**").
- 12.2** Under the EEX Call Option SPA the purchase price shall come due within one month after the determination of the EEX Option Price.
- 12.3** Sec. 3.5 through 3.8 shall apply accordingly.
- 12.4** 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. 3.4 to 3.8 of this Agreement.

IV. General Provisions

13 Exchange Partners' Shareholders Agreement

- 13.1** Without undue delay after the signing of this Agreement EEX and Powernext will negotiate and agree in good faith on a Shareholder's Agreement ("**Shareholders' Agreement**") which shall apply to all Exchange Partners also beyond the termination of this Agreement.
- 13.2** The Shareholders Agreement shall include, in the spirit of this Agreements Preamble, and replace the provisions of this Agreement which apply to the all of the Exchange Partners and which are of a multilateral nature, including but not necessarily limited to Sections 7, 8.2, 9, 10, 11, 12, 14, 17 and 18.6. The Shareholders' Agreement shall include a pre-emption right according to **Schedule 1**.
- 13.3** Under the Shareholders' Agreement EEX shall have a role among the Exchange Partners with the rights and obligations like they are foreseen in this Agreement. Furthermore, the Parties will endeavour to find agreement to a balanced composition of the supervisory board in ECC.
- 13.4** Moreover, the Parties agree that a robust corporate governance regime has to be implemented in order to reflect and preserve the high standards of business conduct and the trust of the market participants. In order to achieve this, the Parties will endeavour to agree with the other Exchange Partners that ECC will be governed in accordance with the standards defined by supervisory and regulatory authorities and market practice.

14 Holding Period

Powernext shall not sell or transfer or create any liens, encumbrances, pledges or other restrictions over its shares in ECC prior to 31 December 2013 or with effect prior to this date. This shall not apply in the case of EEX exercising a EEX Call Option or if all shareholders in ECC agree to the transfer.

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15 Term and Termination

- 15.1** This Agreement shall come into effect on the date of its execution by the Parties and shall run until 31 December 2013. Furthermore, this Agreement is terminated automatically if and when neither Powernext nor an affiliate are a shareholder in ECC any longer.
- 15.2** EEX may terminate this Agreement by giving three months notice
- 15.2.1** if Powernext and/or Spot Trading SE use providers of Clearing Services (as defined in the Clearing Services Agreement Spot Trading SE and the Clearing Services Agreement Gas Powernext or, as the case may be, the Clearing Services Agreement E & G Powernext) for products which are subject to such Clearing Services Agreements, except for products the clearing of which has been rejected by ECC or if Powernext or Spot Trading SE violates its exclusivity obligations under Sec. 11 of the respective Clearing Services Agreements;
 - 15.2.2** if the Clearing Services Agreement Spot Trading SE and/or the Clearing Services Agreement Gas Powernext or, as the case may be, the Clearing Services Agreement E & G Powernext, have been terminated or expired; or
 - 15.2.3** if Powernext is subject to any change of control as defined in Sec. 10.2.
- 15.3** Each Party may terminate this Agreement by giving one month notice if Powernext has not exercised the Adjusted Powernext Option within the timeframe set by Sec. 6.3.
- 15.4** The Parties' right to terminate for important reasons (*aus wichtigem Grund*) shall remain unaffected.
- 15.5** The obligations under Sec. 10 through 12, 17 and 18.1, 18.4 and 18.5 shall remain binding on the parties also after the termination of this Agreement.
- 15.6** Any liability of Powernext and EEX for breach of this Agreement or in the event of termination of this Agreement shall be limited to wrongful intent and gross negligence.

16 Condition Precedent

- 16.1** This Agreement shall be subject to the condition precedent that it is approved by EEX's supervisory board (*Aufsichtsrat*) and by the Board of Directors (*Conseil d'Administration*) of Powernext.
- 16.2** If not all conditions precedent of the Clearing Services Agreement Spot Trading SE have been fulfilled by 30 June 2008 this Agreement can be terminated by either Party with a notice period of one week.

17 Confidentiality of this Agreement

- 17.1** 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.

Annex 7
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- 17.2** This Agreement shall not prohibit disclosure of any information if and to the extent:
- 17.2.1** 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;
 - 17.2.2** 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;
 - 17.2.3** 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;
 - 17.2.4** the information is or becomes publicly available (other than by breach of this Agreement or any other confidentiality agreement between the Parties);
 - 17.2.5** the other Party has given prior approval to the disclosure or use; or
 - 17.2.6** the information is independently developed after closing,
- provided that prior to disclosure of any information pursuant to Clause 17.2.1 or 17.2.2, 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.
- 17.3** 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.
- 17.4** Unless permitted under Sec. 17.2 or otherwise required by law or applicable regulation, neither Party shall make any public announcement or issue a press release concerning this Agreement or the any of the clearing services agreements referred to herein without the prior consent of the respective other Party. The Parties will agree on a text for an announcement in due course following the signing of this Agreement.

18 Miscellaneous

18.1 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.

18.2 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.

Annex 7 to the Cooperation Agreement

18.3 Written Form

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

18.4 Applicable Laws and Legal Venue

The Agreement shall be governed by the laws of the Federal Republic of Germany, except for German law provisions regarding conflicts of laws and the Uniform Code on the International Sale of Goods.

18.5 Dispute Resolution

18.5.1 Any dispute arising from or in connection with this Agreement and its consummation shall be finally settled by three arbitrators in accordance with the arbitration rules of the German Institution of Arbitration (*Deutsche Institution für Schiedsgerichtsbarkeit e.V.*) without recourse to the courts of law. The language of the arbitration proceedings shall be English.

18.5.2 Each Party may nominate one arbitrator. The two arbitrators nominated by the parties will nominate the third arbitrator as chairman.

18.5.3 The venue of the arbitration shall be Frankfurt a.M., Germany.

18.5.4 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.

18.6 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.

18.7 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:

18.7.1 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

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18.7.2 If to Powernext S.A.

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

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

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

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 Maik Neubauer

Title : CEO Member of Board

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Schedule 1

1 Pre-emption Right

- 1.1** Should any Exchange Partner conclude an agreement on the sale of its shares in its Exchange Partner Share to a third party ("**Transferee**") the other Exchange Partners shall have a pre-emption right (*Vorkaufsrecht* within the meaning of Sec. 463 of the German Civil Code) in respect of these shares. For this purpose, the selling party ("**Transferor**") shall notify the other Exchange Partners of the conclusion of the share purchase agreement in writing together with a notarised copy of the share purchase agreement within two (2) weeks of its conclusion ("**Transfer Notice**").
- 1.2** The share purchase agreement with the Transferee shall contain all sales conditions and shall further be subject to, and made contingent upon, the Transferee assuming (*Vertragsübernahme*) all rights and obligations of the Transferor under and in connection with the Cooperation and Option Agreement.
- 1.3** Each Exchange Partner shall notify the Transferor in writing within four (4) weeks of the receipt of the Transfer Notice whether or not it exercises its pre-emption right or nominates a Nominee to acquire the shares. In this event, the purchase price shall be not be lower than the purchase price offered by the Transferee.
- 1.4** If none of the other Exchange Partners exercise the pre-emption right within the fore-mentioned four-weeks-period, the selling party shall be entitled to transfer - for the avoidance of doubt Sec. 1.3 above shall remain to be applicable - its shares to the Transferee, however, the terms must not be more favourable to the Transferee than those set out in the Transfer Notice. If the terms and conditions finally agreed with the Transferor are more favourable than those specified in the Transfer Notice, the selling party shall be required to repeat the aforementioned pre-emption right procedure with the updated information (Sec. 1.1 and 1.4 above shall apply accordingly).
- 1.5** All other Exchange Partners shall have a pre-emption right for shares of the Exchange Partner Share being offered for sale by the Transferor proportionate to their respective share in the Exchange Partner Share. If one party does not exercise its right the pre-emption right can be proportionately exercised by the parties who exercised their pre-emption right i.e. the Transferor shall offer the shares not pre-empted to the Exchange Partners who have exercised their pre-emption rights who shall have a proportionate right to pre-empt such shares within the period mentioned in Sec. 1.3.