

Profit and Loss Pooling Agreement

between

(1) European Energy Exchange AG

with its seat in Leipzig, registered in the Commercial Register of the Local Court in Leipzig (*Amtsgericht Leipzig*) under no. HR B 18409, duly represented by the managing directors Dr. Hans-Bernd Menzel and Maik Neubauer,

- hereinafter referred to as "**Parent**" -

and

(2) EEX Power Derivatives GmbH

with its seat in Leipzig, registered in the Commercial Register of the Local Court in Leipzig (*Amtsgericht Leipzig*) under no. HR B 23402, duly represented by the sole managing director Dr. Hans-Bernd Menzel,

- hereinafter referred to as "**Company**".

Recitals

The sole shareholders of the Company are the Parent with a share in the nominal value of EUR 99,900 and Powernext S.A. ("**Powernext**") with a share in the nominal value of EUR 100. It is planned that as of 1 January 2009 the stake of Powernext in the share capital of the Company shall be increased to 20% as set forth in the Development Agreement for French Electricity Futures dated 6 March 2008 between the Parent and Powernext.

In order to strengthen the group structure of the Parent and to establish a fiscal unity for corporate income tax and trade tax purposes between the Parent and the Company, it has been decided to conclude the following profit and loss pooling agreement.

NOW THEREFORE, the Parent and the Company, represented as stated above, agree as follows:

1 Transfer of Profits

- 1.1** The Company hereby agrees to transfer its full profit, as established under the provisions of the German Commercial Code (*HGB*), to the Parent. Subject to the accrual and dissolution of reserves according to Clauses 1.2 and 1.3 below and to sec. 30 et seq. German Limited Liability Company Act (*GmbHG*), the total annual profit of the Company, calculated disregarding the transfer of profits, reduced by a potential loss carried forward from the previous business year, shall be transferred to the Parent.

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- 1.2** With the consent of the Parent, the Company may transfer parts of the annual profit into other profit reserves (sec. 272 para. 3 German Commercial Code (*HGB*)), if and to the extent that such accrual is permitted by commercial law and is justified by economic reasons under reasonable commercial consideration.
- 1.3** On demand of the Parent, other profit reserves according to sec. 272 para. 3 HGB accrued during the term of this Agreement shall be dissolved and used to compensate an annual loss or be transferred as profit. Other reserves as well as profits which were generated prior to this Agreement becoming effective and have been forwarded on new account may neither be transferred to the Parent as profit nor be used to compensate an annual loss.
- 1.4** The obligation to transfer profits shall first apply for the whole profit of the business year of the Company, in which this Agreement becomes effective.
- 1.5** If and to the extent that an interim dividend may be paid, the Parent can demand an interim transfer of profits.

2 Assumption of Losses

- 2.1** The Parent undertakes to compensate pursuant to sec. 302 para. 1, 3 and 4 German Stock Corporation Act (*AktG*) any annual balance sheet loss of the Company otherwise occurring during the term of this Agreement to the extent that it is not compensated by the liquidation of amounts from other profit reserves in accordance with clause 1.3 which have been accrued during the term of this Agreement.
- 2.2** Clause 1.4 shall apply analogously with regard to the assumption of losses by the Parent.

3 Compensation

- 3.1** In consideration of the transfer to the Parent of all the profits of the Company, the Parent guarantees to Powernext and to any other outside shareholders of the Company within the meaning of Sec. 304 German Stock Corporation Act ("**Outside Shareholders**"), for the duration of this Agreement, the payment of an amount in cash as an adequate compensation calculated in accordance with this clause 3 (the "**Compensation Payment**").
- 3.2** The Compensation Payment consists of a fixed minimum compensation amount and a variable compensation amount.
- 3.2.1** The fixed minimum compensation amount amounts to EUR [_____] *adequate minimum compensation to be agreed upon with tax authorities* for each complete fiscal year of the Company and for each EUR 1 share in the Company's share capital.
- 3.2.2** The variable compensation amount will be determined as the Company's profit for the year net of tax transferred to the Parent according to this Agreement, multiplied by the percentage equal to the percentage participation of Powernext (or any other Outside Shareholders of the Company) in the share capital of the Company, less the fixed minimum compensation amount pursuant to section 3.2.1. Income taxes payable for the variable compensation amount shall be equal in this respect to the income taxes that normally would be payable for the relevant share of the Com-

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pany's profits on the level of the Company without taking into account the effect of this Agreement.

3.2.3 If the fixed minimum compensation amount for a fiscal year is higher than would be Powernext's (or another Outside Shareholder's) share in the net profit of the Company for the year (without taking into account the effect of this Agreement) attributable to the percentage of shares in the Company held by Powernext or the respective other Outside Shareholder, then the difference shall be carried forward, respectively, and reduce the variable compensation amount of future fiscal years accordingly.

3.3 The Compensation Payment shall be due and payable on the first bank business day, respectively, following the Parent's ordinary general meeting for the completed fiscal year. The calculation of the Compensation Payment shall be certified by the Company's auditor in the certified financial statements.

3.4 The Compensation Payment shall be made for the first time for the fiscal year during which this Agreement takes effect according to clause 6.1. The Compensation Payment shall decrease accordingly if this Agreement ends during a fiscal year of the Company or if the Company has recourse to a short fiscal year during the period for which the obligation to transfer profits according to clause 1.1 is applicable.

3.5 If the Company's share capital is increased through corporate funds by way of issuing new shares, then the compensation according to clause 3.2.1 shall decrease for each EUR 1 share in the share capital in a way that the total compensation amount remains unchanged. If the Company's share capital is increased by way of cash contributions or contributions in kind, then the compensation according to clause 3.2.1 shall decrease for each EUR 1 share in the share capital in accordance with the dilution effectuated by the share capital increase; the rights resulting from this section 3 shall also apply to the shares resulting from the capital increase taken over by Outside Shareholders.

3.6 If appraisal proceedings (*Spruchverfahren*) are instituted according to the German Appraisal Proceedings Act (*Spruchverfahrensgesetz*) and the court determines a higher Compensation Payment by way of a final and non-appealable decision, then Powernext and any other Outside Shareholder even if they already received a Compensation Payment in the meantime, may demand a corresponding adjustment of the Compensation Payment received by them. All other Outside Shareholders shall also be put on equal footing if the Parent undertakes vis-à-vis Powernext or another Outside Shareholder to pay a higher Compensation Payment pursuant to a settlement to prevent or terminate appraisal proceedings in accordance with the German Appraisal Proceedings Act.

4 Accounting, Due Date

4.1 The transfer of the profit or loss to the Parent will be carried out in such a way that it will be reflected in the annual financial statements of the Company.

4.2 The Parent's claim for transfer of profits according to Clause 1 shall become due and payable upon the end of the day on which the annual financial statements for the respective business year have been approved (*festgestellt*).

- 4.3** The Company's claim for compensation of an annual balance sheet loss according to Clause 2 shall become due upon the end of the last day of the business year of the Company, to which such respective claim relates. The compensation (including the accrued interest according to Clause 4.4) shall be paid no later than 14 days after the respective annual financial statements of the Company have been approved (*festgestellt*).
- 4.4** For the time period between the date the claim for transfer of profits according to Clause 1, or the claim for compensation of an annual balance sheet loss according to Clause 2, respectively, becomes due and the actual payment of such claim, interest shall accrue at the interest rate then stipulated by law. Claims because of delayed payment shall remain unaffected.

5 Right of Information, Annual Financial Statement

- 5.1** The Parent is entitled to inspect the books and business documents of the Company at any time. The Managing Directors of the Company shall provide the Parent with all requested information regarding all legal, business and operational matters of the Company at any time.
- 5.2** The annual financial statements of the Company shall be submitted to the Parent for information, examination and coordination purposes before they are approved.
- 5.3** Powernext shall have the right on an annual basis to require the Company and, if applicable, the Parent to provide promptly a detailed calculation of the amounts transferred to the Parent or to the Company pursuant to Clause 1 or Clause 2, as the case may be, and the calculation of the Compensation Payment payable to Powernext. Such calculation is without prejudice to any other right of Powernext under applicable law with respect to the calculation or payment of the Compensation Payment.

6 Effectiveness, Duration and Termination of the Agreement

- 6.1** This Agreement is subject to approval by the shareholders' meetings of the Company and the Parent. It will become effective upon its registration in the Commercial Register of the Company and applies retroactively to the entire business year of the Company in which this Agreement takes effect.
- 6.2** This Agreement can be terminated by each party by written notice with a notice period of three months to the end of a business year of the Company. It can be so terminated at the earliest with effect from the end of the business year which ends at least five years after the beginning of the business year, in which it became effective according to Clause 6.1 sentence 2.
- 6.3** Notwithstanding Clause 6.2 above, this Agreement can be terminated without observation of a notice period for important reason. In particular, it constitutes such important reason, if
- (a) due to a transfer of shares or for other reasons the requirements of a financial integration of the Company into the Parent according to tax law should be no longer given,

- (b) the Parent should contribute all or part of its shares in the Company to another company, or
- (c) the Parent or the Company should change its corporate form, merge, be split or be liquidated.

6.4 Notice of termination must be given in writing.

6.5 In the event of a termination of the Agreement in the course of a business year of the Company, the Parent shall compensate any losses of the Company according to Clause 2 above only pro rata temporis until the termination of the Agreement. Termination shall not affect the obligation of the Parent to pay the Compensation Payment due in respect of any period prior to effective termination.

6.6 In case of a mutually agreed termination, sec. 296 German Stock Corporation Act (AktG) must be complied with.

7 Final Provisions

7.1 This Agreement is governed by the laws of the Federal Republic of Germany.

7.2 Changes and amendments to this Agreement shall be valid only if made in writing signed by all the parties hereto. This shall also apply to amendments of this Clause 7.2. Sec. 295 AktG must be complied with.

7.3 If a provision of this Agreement should be or become invalid or not contain a necessary regulation, the validity of the other provisions of this Agreement shall not be effected thereby. The invalid provision shall be replaced and the gap be filled by a legally valid arrangement which corresponds as closely as possible to the intentions of the parties or what would have been the intentions of the parties according to the aim and purpose of this Agreement if they had recognised the invalidity of the provision or the gap.

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

European Energy Exchange AG

Date :
Place :

Signature :
Name : Dr. Hans-Bernd Menzel Maik Neubauer
Title : CEO Member of Board

EEX Power Derivatives GmbH

Date :
Place :
Signature :
Name : Dr. Hans-Bernd Menzel
Title : Managing Director