

Annex 5.1 to FEF Agreement

Representations, warranties and covenants

In connection with the transfer of the FEF business of Powernext (as described in Article 4 of the FEF Agreement referred to below, "the FEF Business") to EPD and the receipt by Powernext of shares in EPD, Powernext and EEX represent, warrant and agree as follows:

1 Powernext Warranties

Powernext hereby represents and warrants to EEX as follows:

1.1 Powernext is a corporation duly organized and incorporated and validly existing under the laws of France with full corporate power and authority to carry on and operate its business.

1.2 Powernext has full corporate power and capacity and authority to enter into the Development Agreement for French Electricity Futures (the "FEF Agreement") and the execution and delivery of the same and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate action. The FEF Agreement constitutes the legal, valid and binding obligation of Powernext, enforceable against Powernext in accordance with its terms.

1.3 The execution, delivery and performance of the FEF Agreement will neither:

- a) violate any of the provisions of the articles of association of Powernext; nor
- b) conflict with, or result in a breach of or default under, or give rise to a right of termination or cancellation of, or result in the creation of any encumbrance or accelerate the performance required by, the terms of any judgment, law or regulation or court order or any agreement or instrument to which Powernext is a party or to which it and/or any of its properties are subject.

1.4 All filings with, and all consents, waivers, approvals and authorizations of any governmental authority or any third party that are required in connection with the execution, performance and delivery by Powernext of the FEF Agreement or the performance by Powernext of any of the transactions contemplated thereby have been or will be obtained.

1.5 The information provided by or on behalf of Powernext to, or on behalf of EEX or in connection with, the transaction contemplated by the FEF Agreement was prepared and so provided in good faith.

1.6 Powernext has transferred to EPD the FEF Business in compliance with the terms and conditions of the FEF Agreement. 1.7. There is no encumbrance, and there is no agreement, arrangement or obligation to create or give an Encumbrance, in relation to any of the Powernext FEF Business.

1.8 Representations as to pro-forma accounts comparable to those given with respect to the Powernext Spot Business will be given if the FEF Business is transferred in the form of an autonomous business unit.

1.9 Powernext is not involved in a civil, criminal, arbitration, administrative or other proceedings relating to its FEF Business (i) in respect of which the potential loss or liability may exceed € 25 000 and (ii) the liability for which shall be transferred to EPD. No fact or circumstance exists which might give rise to a civil, criminal, arbitration, administration or other proceeding involving the FEF business. There is no outstanding judgment, order, decree, arbitral award or decision of a court, tribunal, arbitrator or governmental agency against Powernext relating to the FEF Business.

up

ANNEX 5.1
to the Development Agreement

2 EEX Warranties

EEX hereby represents and warrants to Powernext as follows with respect to EEX and EPD:

2.1 EEX and EPD are each corporations duly organized and incorporated and validly existing under the laws of Germany with full corporate power and authority to carry on and operate their respective businesses.

2.2 EEX has full corporate power and capacity and authority to enter into the FEF Agreement and the execution and delivery of the same and the consummation of the transactions contemplated thereby have been duly authorized by all necessary corporate action. The FEF Agreement constitutes upon their execution and delivery, the legal, valid and binding obligation of EEX, enforceable against it in accordance with their terms.

2.3 The execution, delivery and performance of the FEF Agreement will neither:

- a) violate any of the provisions of the articles of association of EEX or EPD; nor
- b) conflict with, or result in a breach of or default under, or give rise to a right of termination or cancellation of, or result in the creation of any encumbrance or accelerate the performance required by, the terms of any judgment, law or regulation or court order or any agreement or instrument to which EEX or EPD is a party or to which it and/or any of its properties are subject.

2.4 All filings with, and all consents, waivers, approvals and authorizations of any governmental authority or any third party that are or were required in connection with the execution, performance and delivery by EEX of the FEF Agreement or the performance by EEX or EPD of any of the transactions contemplated thereby have been or will be obtained.

2.5 The information provided by or on behalf of EEX to, or on behalf of Powernext or in connection with, the transaction contemplated by the FEF Agreement was prepared and so provided in good faith.

2.6 EPD is the sole legal and beneficial owner of the entirety of the EEX Electricity Derivatives Business as described in Article 1 of the FEF Agreement ("the EEX Derivatives Business"). EEX has transferred to EPD the EEX Derivatives Business in compliance with the terms and conditions of the FEF Agreement EPD has engaged in no activity other than the EEX Derivatives Business.

2.7 The allocation and issuance to Powernext of the Nominal Participation and the Powernext Share have been duly authorized by all necessary corporate (including shareholder) action on the part of EPD. The Nominal Participation and the Powernext Share shares have been properly allotted and issued to Powernext free from any encumbrance. There is no encumbrance, and there is no agreement, arrangement or obligation to create or give an encumbrance, in relation to any of the EEX Electricity Derivatives Business, and EEX owns the shares of EPD free and clear of any encumbrance and no agreement, arrangement or obligation to create or give an encumbrance, in relation to a share or unissued share in the capital of EPD exist. Other than the FEF Agreement there is no agreement, arrangement or obligation requiring the creation, allotment, issue, transfer, redemption or repayment of, or the grant to a person of the right (conditional or not) to require the allotment, issue, transfer, redemption or repayment of, a share in the capital of EPD.

2.8 The accounts of EPD for the period ended 31 December 2007 (the "EPD Warranted Accounts") have been prepared on a proper and consistent basis in accordance with applicable laws and German GAAP. Those accounts present a true and fair view of the assets, liabilities and state of affairs of the EPD as at 31 December 2007 and of the profits and losses of the EPD for 31 December 2007.

2.9 The EPD Warranted Accounts reserve or provide in accordance with German GAAP for all taxes liable to be assessed on EPD or for which it is or may become accountable, for all periods ending on or before 31 December 2007 The EPD Warranted Accounts reserve (in accordance with German GAAP) for all contingent or deferred liabilities for tax and pensions commitments for all

up

ANNEX 5.1 to the Development Agreement

periods ending on or before 31 December 2007, and no tax shall arise in respect of the period thereafter until the issuance of the Powernext Share to Powernext other than taxes arising in the ordinary and usual course of business including, inter alia, taxes on profits, operating taxes, professional taxes, wage taxes, VAT and social taxes and contributions. Since 31 December 2007 EPD has conducted its business in the ordinary course except to the extent affected by the transactions contemplated by the FEF Agreement.

2.10 EEX and/or EPD have obtained, and will have complied with, the terms and conditions of, any License. Each License shall be valid, in force and unconditional or subject only to a condition that shall have been satisfied. No License shall be revoked, suspended, cancelled, varied or not renewed as a result of the execution or performance of any Combination Document. For these purposes "**License**" means a permit, license, consent, approval, certificate, qualification or other authorization of any government or market authority required for the effective operation of the EEX Derivatives Business or for its ownership, possession, occupation and use of an asset.

2.11 Save to the extent provided for in the EPD Warranted Accounts EPD is not involved in a civil, criminal, arbitration, administrative or other proceedings (i) in respect of which the potential loss or liability may exceed € 25 000. No fact or circumstance exists which might give rise to a civil, criminal, arbitration, administration or other proceeding involving EPD or the EEX Derivatives Business. There is no outstanding judgment, order, decree, arbitral award or decision of a court, tribunal, arbitrator or governmental agency against EPD.

3 Remedies

In respect of a breach of the Representations and Warranties set forth in Clauses 1 and 2 above:

- a) the sole recourse shall be an action for damages against the relevant party giving the Representation and Warranty (the "**Debtor**") by EEX or Powernext, as the case may be, (the "**Claimant**"), provided that such damages shall not include any punitive damages; and
- b) the limitations set out in Clause 4 shall apply (other than in respect of Clauses 1.1 to 1.4 (inclusive) and Clauses 2.1 to 2.4 (inclusive)).

Save to the extent otherwise specifically provided in the Cooperation Agreement the Parties waive all or any rights they may have to rescission or restitution.

4 Limitations

4.1 A Debtor shall not be liable to the Claimant for any claim under Clause 3 (a "**Claim**");

- a) unless it receives from the Claimant written notice containing details of the Claim including the Claimant's estimate of the amount of the Claim:
 - (i) on or before the date of approval by the board or shareholders, as the case may be, of EPD, as the case may be, of financial statements for that company relating to the first complete accounting period falling after the issue to Powernext of the Powernext Share in the case of a Claim for breach of any of the Representations and Warranties other than a Claim covered by paragraph (ii) below;
 - (ii) in respect of any Claim relating to taxation or social security contributions, on or before the expiry of thirty (30) days after the expiry of the third anniversary of the date of the issue of Powernext of the Powernext Share;
- b) unless the liability of the Debtor after the application of the provisions of this Clause 4 other than this sub-clause 4.1 in respect of that individual Claim would exceed € 10,000 in which case the Claimant shall be entitled to claim the entire amount of the Claim, subject to the provisions of Clause 4.1(c);
- c) unless the aggregate amount of the liability of the Debtor following application of the provisions of this Clause 4 other than this sub-clause 4.1 for all Claims would exceed € 100,000, in which case the Debtor shall be liable to the Claimant only in respect of the losses exceeding € 100,000.

up

ANNEX 5.1
to the Development Agreement

4.2 The aggregate amount of the liability of the Debtor for all Claims shall not exceed € 5,000,000.

4.3 The Debtor shall not be liable for any Claim:

- a) if and to the extent that the fact, matter, event or circumstance giving rise to such Claim was fairly and reasonably disclosed by the Debtor to the Claimant prior to the signature of the Co-operation Agreement; or
- b) if and to the extent that the matter is specifically disclosed or is specifically provided or reserved for in the Powernext FEF Business Warranted Accounts or the EPD Warranted Accounts, as the case may be.

4.4 If the Claimant becomes aware that any claim has been made or is threatened in writing explaining the motives for such threat by a third party after the date of issuance of the Powernext Share (a "**Third Party Claim**") which, following the application of the provisions of this Clause 4, is likely to result in the Claimant being entitled to make a Claim against the Debtor:

- a) the Claimant shall give notice of such Third Party Claim to the Debtor as soon as reasonably practicable and in any event within seven (7) days of becoming aware of it and, in any event, at least seven (7) days prior to the expiry of the period allowed by law for responding to such Third Party Claim and shall give the Debtor and its professional advisors all reasonable information and facilities to investigate any such Third Party Claim. Failure by the Claimant in respect of its obligations under this Clause 4.4(a) shall absolve the Debtor from liability in respect of the Third Party Claim, to the extent that such failure causes or increases the Debtor's liability in respect of a Claim;
- b) the Debtor shall not make or permit any admission of liability, agreement or compromise in respect of such Third Party Claim without prior consultation with and prior written consent of the Claimant (not to be unreasonably withheld or delayed);
- c) the Debtor may for six months from the date of receipt of the notice referred to in Clause 4.4(a), take all such reasonable steps or proceedings as it may consider necessary to avoid, resist, defend, appeal or compromise any such Third Party Claim to the extent only that such acts or omissions do not cause or increase a Claim.

4.5 Any Claim shall (if not previously satisfied, settled or withdrawn) be deemed to have been withdrawn (and no new Claim may be made in respect of the matter giving rise to such withdrawn Claim) unless legal proceedings in respect of it (including any arbitration, conciliation or mediation proceedings) have been commenced within six months of notification to the Debtor pursuant to Clause 4.1.

4.6 In calculating the liability of the Debtor in respect of any Claim such Claim shall be reduced by:

a) the aggregate of:

- (i) any amount by which any asset shall have been under-stated; and
- (ii) any amount by which any liability shall have been overstated;

in the Powernext FEF Business Warranted Accounts or the EPD Warranted Accounts, less the aggregate of:

- (iii) any amount by which any other liabilities shall have been understated therein; and
- (iv) any amount by which any assets shall have been overstated therein;

b) the amount by which any provision or reserve (including any provision or reserve taken into account in calculating the net value of an asset) in the Powernext FEF Business Warranted Accounts or the EPD Warranted Accounts, as the case may be, has been established to have been unnecessary or excessive;

ANNEX 5.1
to the Development Agreement

- c) any amount recovered in respect of any debt written off in the Powernext FEF Business Warranted Accounts or, as the case may be, the EPD Warranted Accounts; and
- d) the extent that any liability is discharged or satisfied below the amount attributed thereto in the Powernext FEF Business Warranted Accounts or, as the case may be, the EPD Warranted Accounts;

provided that no amount shall be taken into account more than once pursuant to this Clause 4.6.

4.7 If any matter referred to in Clause 4.6 is established after payment has been made by the Debtor to the Claimant pursuant to one or more Claims, the Claimant shall forthwith refund to the Debtor an amount equivalent to the amount by which such matter would have reduced such payment if it had been established before the date of the Claim.

4.8 The liability of the Debtor in respect of any Claim shall be calculated taking into account any effective tax savings (excluding any increase in tax loss carry forwards) that are realized by the Claimant as a result of the tax deductibility of the loss in respect of which such Claim is made.

4.9 The Debtor shall have no liability in respect of any Claim in respect of any tax audit which merely modifies the tax period during which a deductible charge or amortization may be taken, or in which income or gain may be realized (except to the extent that either such modification results in any Relief¹ (otherwise useable within the same tax period) being lost or to the extent of penalties, interest and cost of funds).

4.10 The Debtor shall not be liable in respect of any Claim to the extent that such Claim is attributable to, or is increased as a result of, any legislation not in force at the date hereof or to any change of law or administrative practice which takes effect retrospectively or occurs as a result of any change in the basis or method of calculation of, or any increase in the rates of, taxation in force at the date hereof.

4.11 Where the Claimant is entitled to recover from a third party any sum which is the subject of an actual or potential Claim, the Claimant shall promptly notify the Debtor and, if so required by the Debtor, the Claimant shall, before seeking to recover any amount from the Debtor under this Agreement, first take all steps as the Debtor may reasonably require to enforce such recovery and thereafter any Claim shall be limited (in addition to the limitations on the liability of the Debtor referred to in this Clause) to the amount by which the loss or damage (including the costs of recovery) shall exceed the amount so recovered.

4.12 If the Debtor pays to the Claimant an amount in discharge of a Claim and the Claimant subsequently recovers from a third party a sum which is referable to the Claim (including without limitation by way of insurance), the Claimant shall forthwith repay to the Debtor:

- a) an amount equal to the sum recovered less any reasonable out-of-pocket costs and expenses incurred in recovering the same; or

if the figure resulting under paragraph (a) above is greater than the amount paid by the Debtor in respect of the relevant Claim, such lesser amount as shall have been so paid by the Debtor.

¹ Relief means any loss, relief, allowance, exemption, set-off, deduction, right to repayment or credit or other relief of a similar nature granted or available in relation to tax pursuant to any legislation or otherwise