

EFET

European Federation of Energy Traders

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WAIVER: THE FOLLOWING GENERAL AGREEMENT WAS PREPARED BY EFET EXERCISING ITS BEST DUE DILIGENCE. HOWEVER, EFET, THE EFET MEMBERS, REPRESENTATIVES AND EFET COUNSEL INVOLVED IN ITS PREPARATION AND APPROVAL SHALL NOT BE LIABLE OR OTHERWISE RESPONSIBLE FOR ITS USE AND ANY DAMAGES OR LOSSES RESULTING OUT OF ITS USE IN ANY INDIVIDUAL CASE AND IN WHATEVER JURISDICTION. IT IS THEREFORE THE RESPONSIBILITY OF EACH PARTY WISHING TO USE THIS GENERAL AGREEMENT TO ENSURE THAT ITS TERMS AND CONDITIONS ARE LEGALLY BINDING, VALID AND ENFORCEABLE AND BEST SERVE TO PROTECT THE USER'S LEGAL INTEREST.

General Agreement

Concerning the Delivery and Acceptance of Electricity

Between

Société Nationale d'Électricité et de Thermique

having its registered office at 85 avenue Victor Hugo, 92503 Rueil Malmaison Cedex

("SNET")

and

EDF Trading Limited

having its registered office at 71 High Holborn, London WC1V 6ED

("EDFT")

(referred to jointly as the "**Parties**" and individually as a "**Party**")

entered into on December 15th 2003 (the "**Effective Date**")

EDF Trading Limited


John F. Rittenhouse
Chief Financial Officer

EFET

European Federation of Energy Traders

Election Sheet to the General Agreement

with an Effective Date of December 15th 2003

Between:

Société Nationale d'Électricité et de Thermique ("Party A") and EDF Trading Limited ("Party B")

PART I: CUSTOMIZATION OF PROVISIONS IN THE GENERAL AGREEMENT

§1 Subject of Agreement

§ 1.2 Pre-Existing Contracts: § 1.2 shall apply.

§2 Definitions and Construction

§ 2.4 References to Time: time references shall be as provided in the General Agreement (CET).

§3 Concluding and Confirming Individual Contracts

§ 3.4 Authorised Persons: § 3.4 shall not apply as written in the General Agreement but instead shall apply as follows:

"Authorised Persons: Individual Contracts may only be concluded between the authorized traders of the Parties. Absent prior notice to the contrary, each Party acknowledges and represents to the other that each of its employees purporting to represent, negotiate and enter into one or more binding Individual Contracts on such Party's behalf shall be deemed to be an authorized trader of that Party. For the purpose of this § 3.4, either Party shall, upon request from the other Party, provide it with an update list of the persons authorised to negotiate, confirm and sign on behalf of such Party."

§7 Non-Performance Due to Force Majeure

§ 7.1 Definition of Force Majeure: § 7.1 shall apply as written in the General Agreement.

§10 Term and Termination Rights

§ 10.2 Expiration Date: § 10.2 shall apply and there shall be no Expiration Date.

§ 10.4 Automatic Termination: § 10.4 shall not apply to Party A or to Party B, provided, however, that where there is a Material Reason under Section § 10.5 (c)(i),(iii),(iv), (v), (vi), (vii) or to the extent analogous thereto, (viii), and the Defaulting Party is governed by a system of law that would not otherwise permit termination to take place, then the Automatic Termination provisions of § 10.4 will apply with termination effective immediately prior to the commencement of the relevant Material Reason.

§ 10.5(b) Cross Default and Acceleration:

§ 10.5(b)(i) shall apply to Party A.

§ 10.5(b)(i) shall apply to Party B.

§ 10.5(b)(ii) shall be deleted and replaced with the following § 10.5(b)(ii) and shall apply to Party A and Party B:

“the failure of a Party or its Credit Support Provider or Controlling Party to make one or more payments under any Specified Transactions (after giving effect to any applicable notice requirement or grace period), in an aggregate amount of at least Euro 25 000 00,00 .

§ 10.5(c) Winding-up/Insolvency/Attachment:

[X] § 10.5(c) (iv) shall apply to Party A only if such proceedings (as are referred to in § 10.5(c)(iv)) are not withdrawn, dismissed, discharged, stayed or restrained within (i) fifteen (15) days of their institution by a third party against Party A or its Credit Support Provider, or (ii) zero (0) days if Party A or its Credit Support Provider voluntarily institutes any such proceedings.

[X] § 10.5(c) (iv) shall apply to Party B only if such proceedings (as are referred to in § 10.5(c)(iv)) are not withdrawn, dismissed, discharged, stayed or restrained within (i) fifteen (15) days of their institution by a third party against Party B or its Credit Support Provider, or (ii) zero (0) days if Party B or its Credit Support Provider voluntarily institutes any such proceedings.

§ 10.5(d) Failure to Deliver or Accept:

§ 10.5(d) shall apply.

§ 10.5 Other Material Reasons: Material Reasons shall be limited to those stated in the General Agreement.

§12

Limitation of Liability

§ 12 Application of Limitation: § 12 shall apply as written in the General Agreement.

§13

Invoicing and Payment

- § 13.2 Payment:** initial billing and payment information for each Party is set out in § 23 of this Election Sheet.
- § 13.3 Payment Netting:** § 13.3 shall not apply.
- § 13.5 Interest Rate:** the Interest Rate shall be the one month EURIBOR interest rate for 11:00 a.m. on the Due Date, plus two percent (2%) per annum.
- § 13.6 Disputed Amounts:** §13.6 (b) shall apply.

A new §3.7 shall be added to the Agreement as follows:

“7. Non compliant Invoices: In case the invoice does not comply with the European or National legislations, rules, regulations or any other binding order applicable to the Receiving Party, such Party shall inform without delay the Issuing Party of such non compliance and shall not be required to pay the amount in relation to the non compliant invoice until the Issuing Party provides it with a compliant invoice. Upon receipt of the compliant invoice, the Receiving Party shall pay without delay the Issuing Party the amount in relation to the said invoice and no Interest shall be due.”

§15

Settlement of Floating Prices and Fallback Procedures For Market Disruption

- § 15.5 Calculation Agent:** the Calculation Agent shall be the Seller provided that the Seller is not in default. Should the Seller be in default, then the Buyer shall act as Calculation Agent .

§16

Guarantees and Credit Support

- § 16 Credit Support Documents:** In respect of Party A **Credit Support Document shall mean** :such parent company guarantee(s) or other performance assurance or credit support document(s) as may be in existence or provided from time to time to Party B in respect of Party A's obligations under this Agreement or an Individual Contract.

In respect of Party B **Credit Support Document shall mean** : such performance assurance or credit support document(s) as may be in existence or provided from time to time to Party A in respect of Party B's obligations under this Agreement or an Individual Contract.

- § 16 Credit Support Provider:** Credit Support Provider(s) of Party A shall be: any provider(s) of a Credit Support Document in respect of Party A's obligations under this Agreement or an Individual Contract.

Credit Support Provider(s) of Party B shall be: any provider(s) of a Credit Support Document in respect of Party B's obligations under this Agreement or an Individual Contract.

§17
Performance Assurance

§ 17.2 Material Adverse Change:

the following categories of Material Adverse Change shall apply to Party A:

☒ §17.2 (a) (**Credit Rating**), and the minimum rating of Charbonnages de France shall be BBB- by Standard & Poor's Rating Group or its equivalent by Moody's;

☒ § 17.2 (b) (**Credit Rating of a Credit Support Provider that is a Bank**) and the minimum rating shall be : A2 by Moody's Investor Services Inc. or A by Standards & Poor's Rating Group;

☒ §17.2 (e) (**Expiry of Performance Assurance or Credit Support**), and the relevant time period be fifteen (15) days;

☒ § 17.2 (f) (**Failure of Performance Assurance or Credit Support**);

☒ § 17.2 (h) (**Impaired Ability to Perform**); and

☒ § 17.2 (i) (**Amalgamation/Merger**)

the following categories of Material Adverse Change shall apply to Party B:

☒ § 17.2 (a) (**Credit Rating**) , and the minimum rating of Party B shall be BBB- by Standard & Poor's Rating Group or its equivalent by Moody's;

☐ §17.2 (b) (**Credit Rating of Credit Support Provider that is a Bank**) and the minimum rating shall be : A2 by Moody's Investor Services Inc. or A by Standards & Poor's Rating Group;

☒ § 17.2 (e) (**Expiry of Performance Assurance or Credit Support**), and the relevant time period be fifteen (15) days;

☒ § 17.2 (f) (**Failure of Performance Assurance or Credit Support**);

☒ § 17.2 (h) (**Impaired Ability to Perform**); and

☒ § 17.2 (i) (**Amalgamation/Merger**)

§18
Provision of Financial Statements and Tangible Net Worth

§ 18.1 (a) Annual Reports: Party A shall deliver annual reports within 180 days following the end of each fiscal year.

Party B shall deliver annual reports within 180 days following the end of each fiscal year upon the request of Party A.

§ 18.1(b) Quarterly Reports: Party A need not deliver quarterly reports.
Party B need not deliver quarterly reports.

§18.2 Tangible Net Worth: Party A shall have no duty to notify as provided in §18.2.
Party B shall have no duty to notify as provided in §18.2.

§19
Assignment

§ 19.2 Assignment to Affiliates: Party A may assign in accordance with § 19.2.
Party B may assign in accordance with § 19.2.
provided, that in either case the respective Affiliate does not have its
registered office in a jurisdiction different from the assigning Party,

§20
Confidentiality

§ 20.1 Confidentiality Obligation: § 20 shall apply.

§21
Representation and Warranties

The Following Representations and Warranties are made:

	by Party A:	by Party B:
§21(a)	☒ yes ☐ no	☒ yes ☐ no
§21(b)	☒ yes ☐ no	☒ yes ☐ no
§21(c)	☒ yes ☐ no	☒ yes ☐ no
§21(d)	☒ yes ☐ no	☒ yes ☐ no
§21(e)	☒ yes ☐ no	☒ yes ☐ no
§21(f)	☒ yes ☐ no	☒ yes ☐ no
§21(g)	☒ yes ☐ no	☒ yes ☐ no
§21(h)	☒ yes ☐ no	☒ yes ☐ no
§21(i)	☒ yes ☐ no	☒ yes ☐ no
§21(j)	☒ yes ☐ no	☒ yes ☐ no
§21(k)	☐ yes ☒ no	☐ yes ☒ no
§21(l)	☒ yes ☐ no	☒ yes ☐ no
§21(m)	☐ yes ☒ no	☐ yes ☒ no
§21(n)	☒ yes ☐ no	☒ yes ☐ no

In addition Party B represents and warrants the following: Without affecting the rights and obligations of Party B under this Agreement, EDF Energy Merchants Limited ("EDFEM") may perform the rights and obligations of Party B under this Agreement on behalf of Party B. Party B represents and warrants that EDFEM is the duly appointed arranger and agent for Party B. As such, EDFEM shall always enter into any Transactions with Party A as agent and arranger for Party B. EDFEM shall never undertake any Transactions as principal and shall not have any liability or obligations to Party A. Accordingly the principal to all Transactions shall be Party B which shall have all liability and obligations to Party A, including in respect of any actions taken, or purported to be taken, on behalf of Party B by EDFEM. EDFEM is regulated in the conduct of investment business in the United Kingdom as an Energy Market Participant by the Financial Services Authority.

§22
Governing Law and Arbitration

§ 22.1 Governing Law: § 22.1 shall not apply as written in the General Agreement but instead shall apply as follows: "22.1 *Governing Law: This Agreement shall be construed and governed by the substantive laws of England and Wales,*

excluding any application or the "United Nations Convention on Contracts for the international Sale of Goods of April 11, 1980."

§ 22.2 Arbitration:

§ 22.2 shall not apply as written but instead shall be as follows:

"All disputes arising out of or in connection with the Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by a panel of three (3) arbitrators appointed in accordance with said Rules, ousting the jurisdiction of the ordinary courts. Any arbitration of this Agreement will take place in Paris, France, and the language of arbitration shall be English."

§23
Miscellaneous

§ 23.2 Notices, Invoices and Payments:

(a) TO PARTY A:

Société Nationale d'Électricité et de
Thermique

Notices & Correspondence

85 avenue Victor Hugo
92563 Rueil Malmaison Cedex
France

Telephone No:

+ 33 (1) 47.52.39.50

Fax No:

+ 33 (1) 47.52.39.96

Attention:

Emmanuel Milard

Invoices

Fax No:

+ 33 (1) 47.52.39.76

Attention:

Philippe LEFAUCHEUX, Back
office

Payments

Bank account details

BNP Paribas
3 place de la Défense
92800 Puteaux
France
Account: 30004 01328 00010490361
04
SWIFT : BNPAFRPPPTX (account
in Euro)

(b) **TO PARTY B:**

Notices & Correspondence

Address:

EDF Trading Limited

71 High Holborn

London WC1V 6ED

United Kingdom

Telephone No:

++ 44 20 7061 4000

Fax No:

++ 44 20 7061 5000

Attention:

Chief Financial Officer

Invoices

EDF Trading Limited

Fax No:

++ 44 20 7061 4805

Attention:

Middle Officer Manager

Payments

EDF Trading Limited

Bank account details

Bank:

Citibank N.A., London

Sort code:

18-50-08

Account Number:

8772487

Swift Code:

CITIGB2L

PART II: ADDITIONAL PROVISIONS TO THE GENERAL AGREEMENT

1. § 11.2 is amended so that it now reads as follows:

*"2. **Settlement Amount:** The **"Settlement Amount"** for an Individual Contract shall be the Gains less the aggregate of the Losses and Costs which the Terminating Party incurs as a result of the termination of the Individual Contract. The Gains and Losses shall be reasonably determined by comparing the value of the remaining term, contract quantities and contract prices in respect of the outstanding Individual Contracts as if those Contracts had not been terminated, to the equivalent quantities and relevant market prices for such remaining term(s), either as quoted by a bona fide third-party offer, or which are reasonably expected to be available in the market under a replacement contract(s). To ascertain the market prices of replacement contracts, the Terminating Party may consider other valuations, any and all of the settlement prices of relevant exchange traded futures contracts, quotations from leading dealers in the electricity contract market and other bona fide third party offers, all adjusted for the length of the relevant remaining term(s), and differences in transmission and other charges. For the purpose of this provision:*

*(a) **"Costs"** means brokerage fees, commissions and other third party costs and expenses reasonably incurred by the Terminating Party either in terminating any arrangement pursuant to which it has hedged its obligation or entering into new arrangements which replace a terminated Individual Contract and all reasonable legal fees, costs and expenses incurred by the Terminating Party in connection with its termination of such Individual Contract;*

*(b) **"Gains"** means an amount equal to the present value of the economic benefit to the Terminating Party, if any (exclusive of Costs), resulting from the termination of an Individual Contract, determined in a commercially reasonable manner; and*

(c) "**Losses**" means an amount equal to the present value of the economic loss to the Terminating Party, if any (exclusive of Costs), resulting from its termination of an Individual Contract, determined in a commercially reasonable manner.

In calculating the Settlement Amounts, the Terminating Party may, but is not obliged, to calculate its Gains and Losses as at the Early Termination Date, at its discretion, without entering into any replacement transactions."

2. § 14 is amended so that it now reads as follows:

*"1. **VAT:** All amounts referred to in this General Agreement are exclusive of any applicable VAT. The VAT treatment of the supply of electricity under an Individual Contract shall be determined pursuant to the VAT laws of the jurisdiction where a taxable transaction for VAT purposes is deemed to take place. If VAT is payable on any such amounts, the Buyer shall pay to the Seller an amount equal to the VAT at the rate applicable from time to time; provided that such amount shall only be required to be paid once the Seller provides the Buyer with a valid VAT invoice (applicable in the jurisdiction of supply) in relation to that amount. Each Party shall to the extent permitted by law provide the other with any additional valid VAT invoices as required for the purposes of this General Agreement.*

*2. **Zero-Rating:** Where in accordance with such VAT Rules any supplies under an Individual Contract may be Zero-Rated, such supplies shall be Zero-Rated and the following shall apply:*

(a) the Buyer hereby covenants to the Seller that it will do all such proper acts, deeds and things as are necessary (which may include and shall not be limited to providing to the Seller all such proper, true and accurate documentation or assistance as may reasonably be required by the relevant taxing authority) to ensure that such supply is Zero-Rated for the purposes of such VAT Rules; and

(b) in the event that the Buyer fails to comply with such obligation, the Buyer shall indemnify the Seller in respect of any and all VAT, penalties and interest incurred by the Seller as a result of the Buyer's failure to comply with the above covenant.

*3. **Seller's and Buyer's Tax Obligation:** The Seller shall pay or cause to be paid all Tax on or with respect to electricity delivered pursuant to an Individual Contract arising before the transfer of risk and title at the Delivery Point. The Buyer shall pay or cause to be paid all Tax on or with respect to the electricity delivered pursuant to an Individual Contract arising at or after the transfer of risk and title at the Delivery Point. In the event that the Seller is required by law to pay any Tax which is properly for the account of the Buyer, the Buyer shall promptly indemnify or reimburse the Seller in respect of such Tax. In the event that the Buyer is required by law to pay any Tax which is properly for the account of the Seller, the Buyer may deduct the amount of any such Tax from the sums due to the Seller under the Agreement and the Seller shall promptly indemnify or reimburse the Buyer in respect of any such Tax not so deducted.*

*4. **Taxes Targeted at End-Users:** The Buyer covenants to the Seller that, for the purposes of a Tax which is targeted at the end-user or consumer of electricity but which is levied up the distribution chain, either it will not be an end-user or consumer of such electricity delivered to it under any Individual Contract and/or that the Buyer has the status of an intermediary or any equivalent status as defined in any applicable legislation and/or that the electricity so delivered will either be transported out of the jurisdiction in which the Delivery Point is situated under such Individual Contract or will be re-sold within such jurisdiction.*

*5. **Exemption Certificates:** If, however, the Buyer intends to consume any of the electricity delivered under an Individual Contract, the Buyer shall provide to the Seller, if required under the applicable legislation, a Valid Certificate evidencing the exemption of the Buyer's relevant facility from the Tax which is targeted at the end-user or consumer of electricity, in respect of its fuel supply to the reasonable satisfaction of the Seller. If such a Valid Certificate, which is required by any applicable legislation, is not provided and/or the Seller is not so satisfied by the relevant time of invoicing, the Seller shall charge the Buyer and the Buyer shall pay to the Seller in addition to the Contract Price an amount equal to the Tax which is applicable to the end-user or consumer of electricity on the electricity delivered under such Individual Contract, at the rate applicable at the time of the sale. If the Buyer, subsequent to the Seller charging such Tax, provides the Seller within the applicable time (if*

any) with a Valid Certificate, the Seller shall reimburse the Buyer for any such Taxes paid by the Buyer.

6. **Indemnity:** In the event that, in respect of an Individual Contract, a Party is in breach of its obligations under § 14.4 (Taxes targeted at end-users) or § 14.5 (Exemption Certificates), it shall indemnify and hold harmless the other Party against any liability for Tax which is targeted at the end-user or consumer of electricity (and any associated charges or penalties) in respect of electricity delivered under such Individual Contract.

7. **New Taxes:** If any New Tax is applicable to an Individual Contract, and the Buyer is, by the use of reasonable endeavours, able to obtain any available exemption or relief therefrom or is contractually able to pass the same through to or be reimbursed in respect thereof by, a third party, the Buyer shall pay or cause to be paid, or reimburse the Seller if the Seller has paid, such New Tax, and the Buyer shall indemnify, defend and hold harmless the Seller from and against any claims for such New Tax.

8. **Termination for New Tax:**

Unless otherwise specified in the Election Sheet or in the terms of an Individual Contract the provisions of this § 14.8 shall only apply in respect of an Individual Contract if the period from the date on which the Parties concluded such Individual Contract pursuant to § 3.1 (Conclusion of Individual Contracts) to the end of the Total Supply Period exceeds one year.

Where the provisions of this § 14.8 apply in respect of an Individual Contract and:

- (a) a New Tax is imposed on a Party (the "**Taxed Party**") in respect of the Contract Quantity; and
- (b) having used reasonable endeavours to do so, the Taxed Party is unable contractually to pass on the cost of the New Tax to the other Party or a third party; and
- (c) the total amount of the New Tax that would be payable in respect of the balance of the total amount of electricity to be delivered during the remainder of the Total Supply Period (the "**Remaining Contract Quantity**"), shall exceed either (i) 50,000 Euros (or its equivalent in the currency of the applicable Contract Price), or (ii) five percent (5%) of the product of the Remaining Contract Quantity and the Contract Price;

then, the Taxed Party shall be entitled to terminate the Individual Contract subject to the following conditions:

- (d) the Taxed Party must give the other Party (the "**Non-Taxed Party**") at least five (5) Business Days' prior written notice (the "**Negotiation Period**") of its intent to terminate the Individual Contract (and which notice shall be given no later than 180 Days after the later of the enactment or the effective date of the relevant New Tax), and prior to the proposed termination the Taxed Party and the Non-Taxed Party shall attempt to reach an agreement as to the sharing of the New Tax;
- (e) if such agreement is not reached, the Non-Taxed Party shall have the right, but not the obligation, upon written notice within the Negotiation Period, to pay the New Tax for any continuous period it so elects on a calendar month to calendar month basis, and in such case the Taxed Party shall not have the right during such continuous period to terminate the Transaction on the basis of the New Tax; and
- (f) should the Non-Taxed Party elect to pay the New Tax on a calendar month to calendar month basis, upon giving five (5) Business Days' prior written notice to the Taxed Party of its election to cease payment of such New Tax, the Taxed Party shall again be subject to the provisions of this clause as if the New Tax had an effective date as of the date on which the Non-Taxed Party ceased payment of such New Tax;
- (g) if agreement as to sharing a New Tax is not reached and the Non-Taxed Party does not elect to pay the New Tax for any period of time within the Negotiation Period, the Individual Contract affected shall be terminated on the expiry of the Negotiation Period;
- (h) upon termination of the Individual Contract, the provisions of § 11 (Calculation of the Termination Amount) relating to the calculation and payment of the Termination Amount shall apply but only in respect of the Individual Contract(s) so terminated, and for these purposes:

(i) the Non-Taxed Party shall be understood to be the Terminating Party for the calculation of the Termination Amount; and

(ii) the effect (if any) of the relevant New Tax on the calculation of the Termination Amount (or any Settlement Amount) shall be expressly excluded in calculating pursuant to clause 11.2 (b) or (c) the present value of the economic loss or the economic benefit to the Terminating Party (exclusive of Costs) resulting from the termination of each such Individual Contract."

3. The following definition in Annex 1 shall be amended as follows:

The definition of "**Tangible Net Worth**" shall be amended by the replacement of the words "but limited to, goodwill", with the words "but not limited to, goodwill".

"**Tax**" means any tax, levy, impost, duty, charge, assessment, royalty, tariff or fee of any nature including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment, nomination and allocation under any Individual Contract, on electricity, or on the sale, transportation or supply of electricity. For the avoidance of doubt Tax shall exclude (i) any tax on net income or net wealth; (ii) a stamp, registration, documentation or similar tax, and (iv) VAT;

4. The following definitions shall be added to Annex 1 of the General Agreement:

"**Reasonable and Prudent Operator**" means a person acting in good faith, with the intention of performing its contractual obligations and who, in so doing, and in the general conduct of its undertaking, exercises that degree of skill, diligence and foresight which would reasonably and ordinarily be exercised by a skilled and experienced person complying with applicable law engaged in the same type of undertaking in similar conditions and circumstances."

"**Valid Certificate**" means any appropriate documentation accepted by the relevant taxing authorities or as required by applicable law, order, rule, regulations, decree or concession or the interpretation thereof;"

"**VAT**" means any value added tax or any tax analogous thereto but excluding any statutory late payment interest or penalties; and"

"**VAT Rules**" means any VAT law, order, rule, regulation, decree or concession or the interpretation thereof;"

"**Zero-Rated**" means, in respect of a supply, an intra-European Community supply or tax exempt export or tax free export under applicable VAT Rules and "Zero-Rating" shall be construed accordingly."

Executed by the duly authorised representative of each Party effective as of the Effective Date.

"Party A"

"Party B"

Société Nationale d'Électricité et de Thermique

EDF Trading Limited



Eric DYEUVRE
Président du Directoire

John Rittenhouse
Chief Financial Officer