

EFET

European Federation of Energy Traders

Amstelveenseweg 998 / 1081 JS Amsterdam
Tel: +31 20 5207970 / Fax: +31 20 64 64 055

E-mail: secretariat@efet.org

Webpage: www.efet.org

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

J.P. MORGAN VENTURES ENERGY CORPORATION

having its registered office at 902 Market Street, 7th Floor, Wilmington, New Castle, Delaware, United States of America

(**"PARTY A"**)

and

SOCIÉTÉ NATIONALE D'ÉLECTRICITÉ ET DE THERMIQUE SA ("Endesa France")

having its registered office at 2, rue Jacques Daguerre, 92565 Rueil Malmaison, France

(**"PARTY B"**)

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

entered into on July 2007 (the "**Effective Date**")

Am

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

J.P. MORGAN VENTURES ENERGY
CORPORATION


Name: John Anderson
Title: Vice Chairman

SOCIÉTÉ NATIONALE D'ÉLECTRICITÉ ET
DE THERMIQUE SA ("Endesa France")


Name: Albert Martin Rival
Title: Managing Director



EFET

European Federation of Energy Traders

Election Sheet to the General Agreement

With an Effective Date of 05/07/2007

Between

J.P. MORGAN VENTURES ENERGY CORPORATION

("Party A")

AND

SOCIÉTÉ NATIONALE D'ÉLECTRICITÉ ET DE THERMIQUE SA ("Endesa France")

("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

§ 3.2 Confirmations and

§ 3.3 Objections to Confirmations:

☒ § 3.2 and § 3.3 shall apply as amended in Part II of this Election Sheet.

§ 3.4 Authorised Persons:

☒ § 3.4 shall apply as amended in Part II of this Election Sheet.



§7

Non-Performance Due to Force Majeure

§ 7.1 Definition of Force Majeure:

[X] § 7.1 shall apply as amended in Part II of this Election Sheet.

§10

Term and Termination Rights

§ 10.2 Expiration Date:

[X] § 10.2 shall apply and no Expiration Date should be specified.

§ 10.4 Automatic Termination:

[X] § 10.4 shall not apply to Party A

[X] § 10.4 shall not apply to Party B

However, if a Party is governed by a system of law which does not permit termination to take place on or after the occurrence of the relevant Material Reason in accordance with the terms of this Agreement, then the Automatic Termination provisions of §10.4 will apply to such Party with termination effective immediately before the occurrence of a Material Reason specified in §10.5(c)(i), (iii), (v), (vi) or to the extent analogous thereto, (viii), and as of the time immediately preceding the institution of the relevant proceeding, specified in §10.5(c)(iv), or to the extent analogous thereto, (viii).

§ 10.5(b) Cross Default and Acceleration:

The wording of § 10.5(b)(i) and (ii) shall be deleted and replaced by the following:

- “(i) any default, event of default or other similar condition or event (however described) in respect of such Party, such Party’s Credit Support Provider (if such Party has a Credit Support Provider) or such Party’s Controlling Party (if such Party does not have a Credit Support Provider but has a Controlling Party) under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the Threshold Amount (as specified below) which has resulted in such Specified Indebtedness becoming due and payable, or
- (ii) the default of a Party or its Credit Support Provider or Controlling Party (individually or collectively) to make one or more payments on the due date thereof in an aggregate amount of not less than the Threshold Amount under one or more agreements or instruments relating to Specified Indebtedness (after giving effect to any applicable notice requirement or grace period).”

The following new § 10.5(b)(iii) shall be added:

“The Threshold Amount for Party A shall be 3% of the shareholder’s equity of JPMorgan Chase & Co determined in accordance with generally accepted accounting principles in such party’s jurisdiction of incorporation or organization as at the end of such party’s most recently completed financial year.

The Threshold Amount for Party B shall be EURO 10,000,000 (ten million Euros) or any equivalent thereof in any other currency or currencies as determined by Party A according to the official conversion rate reasonably selected by it.”



§ 10.5(b)(i) and (ii) shall apply to Party A.

§ 10.5(b)(i) and (ii) shall apply to Party B.

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

[X] § 10.5(c)(iv) shall apply to Party A and Party B with an applicable grace period of fifteen business days (15) unless the proceeding, relief or petition referred to in § 10.5(c)(iv) has been instituted against it by the Party itself or by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it, in which case no grace period shall apply.

§ 10.5(d) Failure to Deliver or Accept:

[X] § 10.5(d) shall apply as amended in Part II of this Election Sheet.

§ 10.5 Other Material Reasons:

[X] the following additional Material Reasons shall apply to Party A & B:

“The Party, any Credit Support Provider of such Party

(1) Defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction,

(2) Defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction

(3) Disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf) in an aggregate amount of not less than the applicable Threshold Amount (as specified below).

“**Specified Transaction**” means: any transaction now existing or hereafter entered into between one Party to this Agreement (or any Credit Support Provider or any Specified Entity, as applicable, of such Party) and the other Party to this Agreement (or any Credit Support Provider or any Specified Entity, as applicable, of such Party)

(a) Which is a Commodity swap, Commodity option, Commodity contract for differences, Commodity cap transaction, Commodity floor transaction, Commodity collar transaction or any other financially-settled derivative transaction with a Commodity as an underlying asset.



(b) For the purchase, sale or transfer of any Commodity or any physically-settled Commodity trading transaction or any other similar transaction (including any option with respect to any of these transactions).

(c) Which is any combination of these transactions and

(d) Any other transaction identified as a Specified Transaction in the relevant confirmation.

“Threshold Amount” means 300,000 Euro.

§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 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 (a) shall apply amended as follows:

“6. Disputed Amounts: Without prejudice to § 13.7 hereunder, if a Party, in good faith, disputes the accuracy of an invoice, it shall on or before the Due Date provide a written explanation of the basis for the dispute and shall pay:

The full amount invoiced no later than the Due Date except in case of Manifest Error. If any amount paid under dispute is finally determined to have not been due, such overpayment shall, at the election of the owed Party, be credited or returned to it within five (5) days of such determination, along with interest accrued at the Interest Rate from, and including, the date such amount was paid, to the other Party, but excluding, the date returned or credited.”

In case of Manifest Error the parties shall resolve it immediately by sending an amended invoice and paying the amount invoiced according to the contract.



Manifest Error: Means obvious inconsistencies between the economic terms orally agreed between the Parties and the economic terms stated in the invoice.

[X] §13.6 (b) shall not apply

A new §13.7 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.”

§14 **VAT and Other Taxes**

Shall apply as written in Part II of this Election Sheet.

[X] § 14.9 shall apply

§15 **Settlement of Floating Prices and Fallback Procedures For Market Disruption**

§ 15.5 Calculation Agent:

[X] the Calculation Agent shall be Seller, unless Seller is experiencing a Material Reason, in which case the Calculation Agent shall be Buyer.

§16 **Guarantees and Credit Support**

§ 16 Credit Support Documents: Party A shall provide Party B with the following Credit Support Document: Guarantee issued by JPMorgan Chase & Co. Such Guarantee will be governed and enforced under English law, excluding any application of the “United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980”. In addition, Party A warrants that at the time of issuance of the Guarantee, it will be enforceable under English law. In the event that the Guarantee becomes unenforceable due to a change of law, Party A shall provide an enforceable replacement Guarantee to Party B.

Party B shall provide Party A with the following Credit Support Document (s): As agreed from time to time between the Parties.

§ 16 Credit Support Provider: Credit Support Provider(s) of Party A shall be: JPMorgan Chase & Co (which, for the avoidance of doubt, shall be a Credit Support Provider for the purposes of § 17.2(a), but not a bank



for the purposes of § 17.2(b)) and/or any entity as agreed from time to time between the Parties.

Credit Support Provider(s) of Party B shall be:
As agreed from time to time between the Parties.

§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 in relation to JPMorgan Chase & Co shall be: BBB-(Standard & Poors) or Baa3 (Moody's);

☒ § 17.2(b) (**Credit Rating of Credit Support Provider that is a Bank**) and the minimum rating shall be A- (Standard & Poors) / A3 (Moody's) and Bank to be accepted by Party B;

☐ § 17.2(c) (**Financial Covenants**), and the EBIT to Interest ratio shall be: _____, the Funds from Operations to Total Debt ratio shall be: _____ and the Total Debt to Total Capitalisation ratio shall be: _____.

☐ § 17.2(d) (Decline in Tangible Net Worth), and the relevant figure is: _____,

☒ § 17.2(e) (Expiry of Performance Assurance or Credit Support), and

☒ the relevant time period shall be 10 Business Days, or

☐ no time period shall apply;

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

☐ § 17.2(g) (Failure of Control & Profit Transfer Agreement);

☐ § 17.2(h) (Impaired Ability to Perform);

☒ § 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 shall be: BBB-(Standard & Poors) or Baa3 (Moody's);

☒ § 17.2(b) (**Credit Rating of Credit Support Provider that is a Bank**) and the minimum rating shall be A- (Standard & Poors) / A3 (Moody's) and Bank to be accepted by Party B;

☐ § 17.2(c) (**Financial Covenants**), and the EBIT to Interest ratio shall be: _____, the Funds from Operations to Total Debt ratio shall be: _____, and the Total Debt to Total Capitalisation ratio shall be: _____.

☒ § 17.2(d) (Decline in Tangible Net Worth), and the relevant figure is: € 395 million (three hundred and ninety five million Euro) ,

☒ § 17.2(e) (Expiry of Performance Assurance or Credit Support), and

☒ the relevant time period shall be 10 Business Days, or

☐ no time period shall apply;

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

☐ § 17.2(g) (Failure of Control & Profit Transfer Agreement);

☐ § 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 but only to the extent that they are not available online at: www.jpmorganchase.com (or such other website advised by Party A); or
☐ Party A need not deliver Annual Reports, and
☒ Party B shall deliver Annual Reports but only to the extent that they are not available on the internet at: <http://www.endesafrance.fr>
☐ Party B need not deliver Annual Reports

18.1(b) Quarterly Reports:

- ☐ Party A shall deliver Quarterly Reports, or
☒ Party A need not deliver Quarterly Reports, and
☐ Party B shall deliver Quarterly Reports, or
☒ Party B need not deliver Quarterly Reports

§ 18.2 Tangible Net Worth:

- ☐ Party A shall have a duty to notify as provided in § 18.2, and the applicable figure for it shall be _____, or
☒ Party A shall have no duty to notify as provided in § 18.2, and
☐ Party B shall have a duty to notify as provided in § 18.2, and the applicable figure for it shall be, or
☒ Party B shall have no duty to notify as provided in § 18.2

§19
Assignment

§ 19.2 Assignment to Affiliates: ☒ Party A and Party B may assign all (but not part only) of its rights and obligations in accordance with the new §19.2 (standard paragraph 19.2 shall be deleted) and new section 19.3.

New section 19.2 will read as follows:

A party shall be entitled to assign its rights and obligations under the Agreement to an Affiliate or a Successor Entity provided that:

- (i) The creditworthiness of the Affiliate or Successor Entity (taking into account any credit support) shall not be materially weaker than the creditworthiness of the transferring party immediately prior to such assignment, and
- (ii) The Affiliate or Successor Entity is demonstrably capable of performing the obligations of the assignor under this Agreement; upon any such assignment and assumption of obligations, the transferring party shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such assignment and assumption, and
- (iii) In relation to Party B only, the respective Affiliate or successor entity has its registered office in the same jurisdiction as Party B or in any of the following countries: United Kingdom, Spain, France and Italy.



For the purposes of this Section "Successor Entity" means a partnership, corporation, trust or other organization in whatever form that succeeds to all or substantially all of that party's assets and business.

New section 19.3 will read as follows:

A Party may make a transfer of all or any parts of its interest in any amount payable to it from a defaulting Party under section 10.3.

§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
	As amended below	As amended below
§ 21(m)	N/A	☐ yes ☐ no
§ 21(n)	☒ yes ☐ no	☒ yes ☐ no

The representation in § 21(c) is amended by adding the following at the end thereof: "(subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law)";

§ 21(l) shall be deleted and replaced by the following:

"(l) it does not accept electricity as an end user."

In addition Party A makes the following representation:

"it regularly enters into agreements for the trading of electricity as contemplated by the Agreement, and does so on a professional basis, and may be reasonably characterised as a professional market party;

In addition each Party represents and warrants to the other the following:



That within the meaning of the German Electricity Tax Act (Stromsteuergesetz ("StromStG")) it is not an end user ("Letztverbraucher") and does not accept electricity as end user.

§22

Governing Law and Arbitration

§ 22.1 Governing Law:

[X] § 22.1 shall not apply as written but instead shall be as follows:

This Agreement shall be construed, governed and enforced in accordance with the laws of England and Wales, excluding any application of the "United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980".

§22.2 Arbitration:

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

"With respect any dispute, controversy or claim arising out of or connected with the Agreement and/or this § 22.2 ("Proceedings"), including a dispute as to their existence, validity, interpretation, breach or termination (a "Dispute"), each Party irrevocably submits to the exclusive jurisdiction of the High Court of London and waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such Party. Nothing in this Agreement precludes either Party from bringing Proceedings in any other jurisdiction in order to enforce any judgment obtained in any Proceedings referred to in the preceding sentence, nor will the bringing of such enforcement Proceedings in any one or more jurisdictions preclude the bringing of enforcement Proceedings in any other jurisdiction."

§22.3 Service of Process:

§ 22 is amended to add the following new § 22.3:

"3. Service of Process: Each Party irrevocably appoints the Process Agent (if any) specified opposite its name below to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any Party's Process Agent is unable to act as such, such Party will promptly notify the other Party and within 30 days appoint a substitute process agent acceptable to the other Party. The Parties irrevocably consent to service of process given in the manner provided for notices in § 23.2. Nothing in this Agreement will affect the right of either Party to serve process in any other manner permitted by law.

Party A appoints as its Process Agent: JPMorgan Chase Bank, N.A.,
London Branch, 125 London Wall, London EC2Y 5AJ

Party B appoints as its Process Agent: as advised from time to time by
party B

§23

Miscellaneous

§ 23.2 Notices, Invoices and Payments:

(a) **TO PARTY A:**



Notices & Correspondence

Address: J. P. Morgan Ventures Energy Corp.
c/o JPMorgan Chase Bank, N.A.
London Branch
125 London Wall London EC2Y 5AJ

Telephone No: +44 (0)207 325 1440, or
+44 (0)207 325 4647

Fax No: +44 (0)207 325 8150

Attention: Chief Derivatives Counsel (13th Floor) (Marked "URGENT")

Invoices

Fax No: +44 1202 320252

Attention: Energy Settlements

Confirmations

Fax No: +44 1202 3202511

Attention: Energy Confirmations

Payments

Bank account details As per instructions in the relevant invoice

(b) TO PARTY B:**Notices & Correspondence** Société Nationale d'Electricité et de Thermique, SA,

Address: ("Endesa France")
2, rue Jacques Daguerre
92565 Rueil Malmaison

France
Telephone No: +33 1 47 52 39 54

Fax No: +33 1 47 52 39 29

Attention: Jeronimo Ybarra: Markets Director

Invoices

Fax No: +33 1 47 52 39 29

Attention: Pascaline Dollet: Administrative, Back office & Fuel manager
FR76 3000 7999 9904 1615 0600088

Confirmations

(IBAN):NATEXIS Banques Populaires,
5, place de la Défense



92090 Paris la Défense Cedex 26

Bank Identifier Code (BIC) :

CCBPFRRPPAR

Am

PART II: ADDITIONAL PROVISIONS AND AMENDMENTS TO THE GENERAL AGREEMENT

1. In § 1.1 after the following words in the third line: "delivery and acceptance of electricity" the following words shall be added: ", other than transactions or options relating to electricity in England, Wales, or Scotland and/or transactions or options evidenced by confirmations or agreements which refer to another master agreement)". Also the following sentences: "All Individual Contracts and this General Agreement shall form a single agreement between the Parties (collectively referred to as the "Agreement"). The provisions of this General Agreement constitute an integral part of each Individual Contract.", shall be deleted and replaced by the following sentence: "All Individual Contracts, their Confirmations and this General Agreement shall form a single agreement between the Parties (collectively referred to as the "Agreement")."

2. In § 1.2, after the words in the second line "delivery and acceptance of electricity" the following words shall be added: ", other than transactions or options relating to electricity in England, Wales, or Scotland and/or transactions or options evidenced by confirmations or agreements which refer to another master agreement. The following sentence shall be added at the end of § 1.2: "Any confirmation relating to such transactions shall be deemed to be a Confirmation for all purposes hereof."

3. § 3.2 and § 3.3 shall be deleted and replaced by the following:

"§ 3.2 In the event that an Individual Contract is not concluded in written form, the Parties shall confirm their understanding of the agreed terms of the Individual Contract (each such written confirmation constituting a "Confirmation"). However, a written confirmation shall not constitute a requirement for a legally valid Individual Contract. A Confirmation shall contain the information stipulated in and shall be substantially in the form of the applicable confirmation sheet from among those attached to this General Agreement as Annex 2a-D and the parties shall use their best endeavours to exchange confirmations between them in accordance with the following procedure:

(a) the Seller or the Writer (as applicable) will, within three Business Days of the Individual Contract being concluded, send by facsimile to the Buyer or the Holder (as applicable) a signed Confirmation recording the details of the Individual Contract;

(b) if the Buyer or the Holder (as applicable) is satisfied that the Confirmation accurately reflects the Individual Contract it will sign and return the Confirmation by facsimile to the Seller or the Writer (as applicable) within three Business Days of receipt of the Confirmation;

(c) if the Buyer or the Holder is not so satisfied, it will inform the Seller or the Writer (as applicable) of any inaccuracies within three Business Days and the Seller or the Writer (as applicable) will, if it agrees that the Confirmation is inaccurate, issue a new Confirmation and the provisions of § 3.2(a) shall apply;

(e) if the Buyer or the Holder (as applicable) does not receive a Confirmation within three Business Days of an Individual Contract being entered into, the Buyer or the Holder (as applicable) shall send the Seller or the Writer (as applicable) a Confirmation and § 3.2(b), (c), and shall apply, mutatis mutandis, in relation to such Confirmation by replacing all references to "Buyer or the Holder" with references to "Seller or the Writer" and vice versa.

(f) failure by either Party to send or return a Confirmation shall not: (i) affect the validity or enforceability of any Individual Contract; or (ii) constitute a Material Reason under § 10.5(a)."

4. § 3.4 shall be renumbered § 3.3 and shall read as follows:

"3. **Authorised Traders:** Individual Contracts may only be concluded between the authorised traders of the Parties. In the absence of 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 Individual Contracts on such Party's behalf shall be deemed to be an authorised trader of that Party."

5. In § 5.3, "10: 00 am" shall be replaced by "3:00 pm".

6. In § 5 the following new § 5.5 shall be added:

"5. Late Payment: If the Premium for an Option is not received by the Writer on or before the Premium Payment Date, the Writer may elect: (i) to accept a late payment of such Premium; (ii) to give written notice of such non-payment and, if such payment shall not be received within two (2) Business Days of such notice, the Holder shall be in default under the Option and the Writer may treat the Option as void; or (iii) to give written notice of such non-payment and, if such payment shall not be received within two (2) Business Days of such notice, treat such non-payment as a Material Reason under § 10.5(a)(i) entitling the Writer to terminate all Individual Contracts under § 10.3. If the Writer elects to act under either clause (i) or (ii) of the preceding sentence, the Holder shall pay all out-of-pocket costs and actual damages incurred in connection with such unpaid or late Premium or void Option, including, without limitation, interest on such unpaid or late Premium at the Interest Rate together with, in either case, any other losses, costs or expenses incurred by the Writer with respect to such Option, including, the loss of its bargain, its actual cost of funding, or the loss incurred as a result of terminating, liquidating, obtaining or re-establishing a hedge or related trading position with respect to such Option."

7. In § 7.1 the following wording shall be added at the end thereof:

"Force Majeure specifically excludes: (i) any refusal (either partial or total) by the respective Network Operator to accept the Scheduling of a Party because of constraints or congestions in the UCTE Grid or at the agreed Delivery Point to the extent that it is possible to effect delivery and/or acceptance at the Delivery Point by arranging alternative sources of electricity; (ii) boycotts, strikes and lock-outs of all kinds, go-slows, occupation of factories and premises, and work stoppages which occur only in the enterprise of the Party seeking relief; or (iii) the inability to perform a payment obligation under the Agreement".

8. In § 8.1 the following sentence shall be added:

"Except as described in the foregoing sentence of this paragraph and as provided in § 10 and § 11, damages for loss of profit, loss of business, indirect or consequential damages in tort, negligence, contract or otherwise, shall be expressly excluded."

9. In § 8.2 the following sentence shall be added:

"Except as described in the foregoing sentence of this paragraph and as provided in § 10 and § 11, damages for loss of profit, loss of business, indirect or consequential damages in tort, negligence, contract or otherwise, shall be expressly excluded."

10. In § 10.3(d), the "." at the end of the sentence shall be deleted and the following words shall be added:

"provided, however, that where the Termination Amount is payable by the Terminating Party the obligations of the Terminating Party to pay the other Party shall not arise until, and are subject to the conditions precedent that (A) the Terminating Party shall have received confirmation satisfactory to it in its sole discretion, that (i) all Individual Contracts are terminated in accordance with this Agreement and (ii) each Specified Transaction shall have been terminated pursuant to its specified termination date or been terminated through the exercise by a Party of a right to terminate and all amounts due under each Specified Transaction by the other Party (or Credit Support Provider of such Party or any applicable Controlling Party of such Party) shall have been fully and finally paid, and (B) all obligations, contingent or absolute, matured or unmatured, of the other Party and any Affiliate of the other Party to make any payment to the Terminating Party shall be fully and finally performed.



11. A new § 10.3(g) is inserted after § 10.3(f) as follows:

“(g) Set-Off.

Upon the occurrence or designation of an Early Termination Date on account of a Material Reason with respect to a Party hereto (“Y”), any amount payable to Y by the other Party (“X”) or any Specified Entity of X (whether or not arising under this Agreement or any Specified Transaction with Y, whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation) will, at the option of X or any Specified Entity of X (and without prior notice to Y), be reduced by its setoff and recoupment against any amount(s) payable by Y to X or any Specified Entity of X (whether or not arising under this Agreement or any Specified Transaction of Y, whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation) and any such amount(s) payable by Y will be discharged promptly and in all respects to the extent it is so set off. X or any Specified Entity of X, will give notice to Y after any setoff and recoupment is effected under this paragraph.

(ii) For purposes of the foregoing, X and any Specified Entity of X, shall be entitled a) to convert any obligation denominated in one currency into the currency in which the other is denominated at such market rates of exchange as it deems appropriate in good faith and in a commercially reasonable manner, b) to convert any obligation to deliver non-cash property into an obligation to deliver cash in an amount determined by it as it deems appropriate in good faith and in a commercially reasonable manner.

(iii) If an obligation is unascertained, X or any Specified Entity of X, may in good faith estimate that obligation and set off and recoup in respect of that estimate, subject to the relevant Party’s accounting to the other(s) when the obligation is ascertained.

(iv) Nothing in this subsection shall be effective to create a charge or other security interest. This subsection shall be without prejudice and in addition to any right of setoff, recoupment, combination of accounts, lien or other right to which any Party or any of its Specified Entities, if applicable, is at any time otherwise entitled (whether by operation of law, contract or otherwise).

“Specified Entity” means in relation to Party A: any Affiliate, and means in relation to Party B: only for the purposes of this section, Affiliates of Party B incorporated in Europe, which now or in the future enters into any Specified Transaction with Party A.

12. § 10.5(a) is amended by inserting after the words “(Non-Performance Due to Force Majeure) in the last line of § 10.5(a), the words “or, in respect of an obligation to deliver electricity (and without prejudice to any right to terminate for failure to pay for electricity delivered), when such obligation is suspended due to § 9 (Suspension of Delivery)”.

13. § 10.5(d) is amended by inserting after the words “(Non-Performance Due to Force Majeure) in the fourth line of § 10.5(d), the words “or, in respect of an obligation to deliver electricity (and without prejudice to any right to terminate for failure to pay for electricity delivered), when such obligation is suspended due to § 9 (Suspension of Delivery)”.

14. In § 11.1 shall be deleted and replaced by the following:

“1. The Terminating Party shall calculate an amount (the “Termination Amount”) to be paid in accordance with § 10.3 (*Termination for Material Reasons*) and § 10.4 (*Automatic Termination*) by calculating the sum (whether positive or negative) of all Settlement Amounts for all Individual Contracts plus any or all other amounts payable between the Parties under or in connection with the Agreement. Such other amounts shall include but not be limited to amounts of cash held by one party as Performance Assurance pursuant to § 17.1 or as collateral under the terms of a credit support agreement. Unless otherwise provided under the terms of any agreement governing the provision of that Performance Assurance or any credit support agreement, the amount of cash so provided shall be deemed to be a Gain of the receiver (or the Loss of the

provider, as the case may be) arising in respect of an Individual Contract. If the Termination Amount is negative, an amount equal to the absolute value of the Termination Amount shall be payable to the Terminating Party by the other Party. If the Termination Amount is positive, an amount equal to the absolute value of the Termination Amount shall be payable to the other Party by the Terminating Party.

15. In § 13.3 the parenthetical “(for which purpose all EURO currencies shall be considered a single currency)” shall be deleted.

16. § 14 shall be deleted and replaced by:

§ 14 **VAT and Taxes**

1. **VAT:** All amounts referred to in this General Agreement are exclusive of 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.

Where in accordance with EU and national legislation any supplies under an Individual Contract may be Zero-Rated and/or subject to the reverse charge in accordance with Articles 38, 39 or 195 of Council Directive 2006/112/EC, the following shall apply:

- (a) the Buyer and the Seller hereby covenant 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 or subject to the reverse charge for the purposes of such legislation; and
- (b) in the event that the Buyer or the Seller fails to comply with such obligation, the non-complying party shall indemnify the other party in respect of any and all VAT, penalties and interest incurred by the other party as a result of the non-complying party's failure to comply with the above covenant;
- (c) in the absence of the Buyer providing any documentation referred to in (a) above the Seller reserves the right to charge local VAT.

2. **Other Taxes:** All amounts referred to in this General Agreement are exclusive of “Other Taxes”. In the case of Other Taxes, if the cost of an Other Tax is charged or passed on by the Seller to the Buyer, the Buyer shall pay this amount of Other Tax to the Seller; provided that such amount of Other Tax is identified separately on the invoice issued by the Seller and confirmation is received by the Buyer, where applicable, that such amount of Other Tax has been duly paid or accounted for to the relevant Tax authority, as appropriate.

Where in accordance with EU and/or national legislation there is an exemption or other relief, as applicable, from Other Taxes in respect of any supplies under an Individual Contract, the following shall apply:

- (a) the Buyer and the Seller hereby covenant that they 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 exempt from Other Taxes for the purposes of such legislation;



(b) in the event that the Buyer or the Seller fails to comply with such obligation, the non-complying party shall indemnify the other party in respect of any and all Other Taxes, penalties and interest incurred by the other party as a result of the non-complying party's failure to comply with the above covenant; and

(c) in the absence of the Buyer providing any documentation as referred to in (a) above the Seller reserves the right to charge Other Taxes.

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 after the transfer of risk and title at the Delivery Point. Subject to §14.2 the Parties shall pay all Tax arising at the transfer of risk and title at the Delivery Point in accordance with applicable local laws. 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, either

(a) it will not be an end-user or consumer of such electricity delivered to it under any Individual Contract, or

(b) that the Buyer has the status of an intermediary or any equivalent status as defined in any applicable legislation, or

(c) 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,

and the Buyer will provide such documentation as may be required by applicable legislation to evidence any of the foregoing.

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 energy 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 and the Seller is liable to pay the Tax targeted at the end-user or consumer of electricity, 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, provided the Seller has reclaimed such Tax.

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 two years.

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"**), unless otherwise specified in the Election Sheet, shall exceed 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 to the Taxed Party 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 Individual Contract on the basis of the New Tax;
- (f) should the Non-Taxed Party elect to pay the New Tax on a calendar month to calendar month basis, the Non-Taxed Party may elect to cease the payment of the New Tax upon giving five (5) Business Days' prior written notice to the Taxed Party of its election to cease payment of such New Tax, in which case the Non-Taxed Party shall indemnify the Taxed Party for the New Tax and related interest and penalties that may be incurred by the Taxed Party in respect of the period during which the Non-Taxed Party had elected to pay the New Tax and the Taxed Party shall again be subject to the provisions of this § 14.8 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.

9. **Withholding Tax:** If this § 14.9 is specified as applying in the Election Sheet, the following shall apply between the Parties:

(a) **Payments Free and Clear:** All payments under an Individual Contract shall be made without any withholding of or deduction for or on account of any Tax unless such withholding or deduction is required by law. If a Party is so required to withhold or deduct Tax from a payment to be made by it, then that Party ("**Paying Party**") shall notify the other Party ("**Receiving Party**") immediately of such requirement and pay to the appropriate authorities all amounts withheld or deducted by it. If a receipt or other evidence can be issued evidencing the payment to the authorities, the Paying Party shall deliver such evidence (or a certified copy thereof) to the Receiving Party.

(b) **Grossing-Up:** The Paying Party shall increase the amount of any payment which is required to be made subject to a withholding or deduction to the extent necessary to ensure that, after the making of the required withholding or deduction, the Receiving Party receives the same amount it would have received had no such withholding or deduction been made or required to be made, except that no increase shall be made in respect of any Tax:

- (i) which is only imposed as a result of a connection between the Receiving Party and the jurisdiction of the authority imposing the Tax (including, without limitation, a connection arising from the Receiving Party having or having had a permanent establishment or other fixed place of business in that jurisdiction, or having been present or engaged in business in that jurisdiction) other than the mere execution or delivery of this General Agreement, any Confirmation or any Credit Support Document; or
- (ii) which could have been avoided if the Receiving Party had delivered to the Paying Party or to the appropriate authority as reasonably requested by the Paying Party, any declaration, certificate, or other documents specified in the Election Sheet in a form reasonably satisfactory to the Paying Party; or
- (iii) which is only imposed as a result of any Tax representation made by the Receiving Party in the Election Sheet for the purposes of this § 14.9, failing or ceasing to be true and accurate provided that this paragraph (iii) shall not apply (and the Paying Party shall be obliged to increase the amount of any payment pursuant to this § 14.9(b)) if such representation has failed or ceased to be true and accurate by reason of:
 - (aa) any change in, or in the application or interpretation, of any relevant law, enactment, directive, or published practice of any relevant Tax authority being a change occurring on or after the date on which the relevant Individual Contract is entered into; or
 - (bb) any action taken by a Tax authority, or brought in a court of competent jurisdiction, on or after the date on which the relevant Individual Contract is entered into.



11. In § 14 the following § 14.10 shall be added:

“10. In the event that deliveries are used for the Buyer's own consumption within Germany that would make it obligatory to pay taxes under the German Electricity Tax Act (Stromsteuergesetz), the Buyer shall inform the Seller in good time of the nature and the scope of this obligation to pay taxes and charges and shall indemnify the Seller against the resulting payment obligations.”

17. § 17.2 shall be amended as follows:

by adding at the end of § 17.2(i) the following words:

“If the applicable party or that party's Credit Support Provider has long term, unsecured and unsubordinated indebtedness or deposits which is or are publicly rated (such rating, a “Credit Rating”) by Moody's Investor Services, Inc. (“Moody's”), Standard and Poors Ratings Group (“S&P”) or any other internationally recognized rating agency (a “Rating Agency”), then the words “materially weaker” in line 2 of sub-paragraph 17.2(i) above shall mean, in the case of Party A, that the Credit Rating of such party (or, if applicable, the Credit Support Provider of such party) shall be rated lower than Baa3 by Moody's, or lower than BBB- by S&P or, in the event that there is no Credit Rating by either Moody's or S&P applicable to such party (or, if applicable, the Credit Support Provider of such party) but such party's long-term indebtedness or deposits is or are rated by a Rating Agency, lower than a rating equivalent to the foregoing by such Rating Agency and in the case of Party B, a decline in the Tangible Net Worth of Party B below €550,000,000 (five hundred and fifty million Euro)”.

18. § 19 shall be amended by adding at the end the following:

“If the applicable party or that party's Credit Support Provider has long term, unsecured and unsubordinated indebtedness or deposits which is or are publicly rated (such rating, a “Credit Rating”) by Moody's Investor Services, Inc. (“Moody's”), Standard and Poors Ratings Group (“S&P”) or any other internationally recognized rating agency (a “Rating Agency”), then the words “materially weaker” in line 2 of new sub-paragraph 19.2(i) above shall mean, in the case of Party A, that the Credit Rating of such party (or, if applicable, the Credit Support Provider of such party) shall be rated lower than Baa3 by Moody's, or lower than BBB- by S&P or, in the event that there is no Credit Rating by either Moody's or S&P applicable to such party (or, if applicable, the Credit Support Provider of such party) but such party's long-term indebtedness or deposits is or are rated by a Rating Agency, lower than a rating equivalent to the foregoing by such Rating Agency and in the case of Party B, a decline in the Tangible Net Worth of Party B below €550,000,000 (five hundred and fifty million Euro)”.

19. In respect of Party A only, the words “in connection with its principal line of business,” shall be deemed to be deleted from § 21(g).

20. In § 23 the following § 23.6 shall be added:

“6. **Condition Precedent:** Each Party's delivery, payment and acceptance obligations under this Agreement and each Individual Contract is subject to the condition precedent that (i) no Material Reason or event or circumstance which with the giving of notice or the passage of time, or both, would constitute a Material Reason has occurred and is continuing in respect of the other Party, the other Party's Credit Support Provider or the other Party's Controlling Party and (ii) no Early Termination Date has occurred or been effectively designated.”

21. In § 23 the following § 23.7 and § 23.8 shall be added:

“7. **No Waiver:** No waiver by either Party of any breach by the other Party in respect of an Individual Contract shall operate or be construed as a waiver of any other breach.

8. Counterparts: This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Agreement."

22. Annex 1

The following definitions shall apply as amended:

The definition of "**Affiliate**" is amended so that the words "under the common Control of a Party" are deleted and replaced by the words "under common Control with that Party".

"Annual Report" means in respect of one Party, the annual report of one Party, its Credit Support Provider and its Controlling Party (as applicable) containing consolidated financial statements certified by independent certified public accountants and prepared in accordance with the International Financial Reporting Standards (formerly International Accounting Standards) issued by the International Accounting Standards Board, together with the interpretations issued by the International Financial Reporting Interpretations Committee of the International Accounting Standards Board (as amended, supplemented or re-issued from time to time).

"Commodity" means and includes any tangible or intangible commodity of any type or description (including without limitation, electric energy and/or capacity, petroleum, natural gas and/or capacity, coal, fuel, oil or any other energy source and the products and by-products of any of the above, plastics, agricultural products, base and precious metals, emissions and emissions allowances, weather index and freight).

The definition of "**Credit Rating**" shall be amended by deleting the words "Standard and Poor's Rating Group (a division of McGraw-Hill Inc.)" and substituting it with the words "Standard and Poor's Ratings Services, a division of The McGraw-Hill Companies Inc. and any successor thereto" and further by deleting the words "Moody's Investor Services Inc." and by substituting in with the words "Moody's Investors Service and any successor thereto".

"New Tax" means in respect of an Individual Contract, any Tax (which for the avoidance of doubt and for the purpose of § 14.9, will not include, without limitation, income tax, taxes on the generation, transmission, distribution or use of electricity or taxes imposed generally on a Party's business) enacted and effective after the date on which the Individual Contract is entered into, or that portion of an existing Tax which constitutes an effective increase (taking effect after the date on which the Individual Contract is entered into) in applicable rates, or extension of any existing Tax to the extent that it is levied on a new or different class of persons as a result of any law, order, rule, regulation, decree or concession or the interpretation thereof by the relevant taxing authority, enacted and effective after the date on which the Individual Contract is entered into;

"Other Tax" means any energy Tax or excise duty excluding Taxes targeted at end users;

"Quarterly Report" means in respect of one Party, the quarterly unaudited report of one Party, its Credit Support Provider and its Controlling Party (as applicable) containing consolidated financial statements;

"Specified Indebtedness" means any financial indebtedness (whether present or future, contingent or otherwise, as principal or surety or otherwise) for borrowed money (which includes debts payable to Affiliates as well as debt instruments to financial institutions but excluding deposits received by a Party in the ordinary course of banking business;

"Tangible Net Worth" shall be amended by i) replacing at line 2 the word "of" after the word "purposes" by the word "by"; ii) by inserting at line 4 the word "not" between the words "but" and "limited"; and (iii) by inserting the following sentence at the end thereof: "Tangible Net Worth shall be determined according to an entity's most recent Annual Report or Quarterly Report."

“**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 (iii) VAT;

“**UCTE Grid**” means the high voltage electricity transmission network of all of the countries who are members (from time to time) of the Union for the Co-ordination of Transmission of Electricity (or any successor body thereto) and all electricity interconnectors between those countries.”

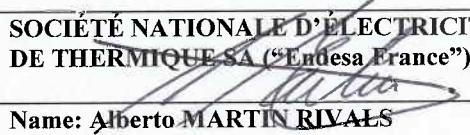
“**Valid Certificate**” means any appropriate documentation accepted by the relevant taxing authorities or as required by applicable law, order, rule, regulations, decree or concession or the interpretation thereof;

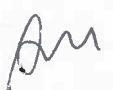
“**VAT**” means any value added tax or any tax analogous thereto but excluding any statutory late payment interest or penalties; and

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

“**Zero-Rated**” means, in respect of a supply, a 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.

J.P. MORGAN VENTURES ENERGY CORPORATION	SOCIÉTÉ NATIONALE D'ÉLECTRICITÉ ET DE THERMIQUE SA (“Endesa France”)
	
John Anderson Vice Chairman	Name: Alberto MARTIN RIVALS
	Title: Managing Director



GUARANTEE

This GUARANTEE, dated effective as of February 1, 2007 (*this "Guarantee"*), made by JPMORGAN CHASE & CO., a Delaware corporation and multi-bank financial holding company headquartered in New York, New York (*"Guarantor"*),

WITNESSETH:

WHEREAS, Guarantor's wholly owned subsidiary J.P. Morgan Ventures Energy Corporation (*"Obligor"*) intends, from time to time, to enter into or has entered into transactions relating to emissions and emission allowances, coal, crude oil and products refined therefrom, electricity and products and services related thereto (including without limitation energy, capacity, ancillary services and products, and renewable energy credits), natural gas, natural gas liquids, and freight, including without limitation physically settled and financially settled derivative transactions with respect thereto (including, without limitation, swaps, options and forward transactions)(such types of transactions including without limitation purchases, sales, exchanges, storage, transportation and transmission and options thereon) (*each and every such transaction a "Transaction" and together, the "Transactions"*), with SOCIÉTÉ NATIONALE D'ÉLECTRICITÉ ET DE THERMIQUE SA (*"Endesa France"*) (*the "Beneficiary"*), each such Transaction to be governed by a master agreement or other form of agreement duly executed by Obligor (*the "Transaction Documents"*), it being expressly agreed that a Transaction itself shall not be required to be in writing and may be agreed to orally, electronically and/or documented in a written confirmation or other form of agreement or may be entered into in any other manner as may be agreed to in writing by the Obligor and the Beneficiary; and

WHEREAS, the Guarantor derives substantial direct and indirect benefits from the entry by Obligor into Transactions with the Beneficiary; and

WHEREAS, this Guarantee has been executed in favor of Beneficiary, without regard to whether or not such Transactions are known or disclosed to Guarantor in advance of or following Obligor's entry into such Transactions;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby agrees as follows:

- (1) **Guarantee.** Guarantor absolutely and unconditionally guarantees to Beneficiary the timely and complete payment when due, whether by acceleration or otherwise, of all obligations and liabilities, whether now in existence or hereafter arising, of Obligor to such Beneficiary under the Transactions and the Transaction Documents (*such obligations and liabilities, the "Obligations"*). If Obligor fails to pay any Obligation when due, Guarantor shall, as an independent obligation, promptly upon receiving written notice of such failure from the Beneficiary or its agent, pay such Obligation to the Beneficiary in accordance with all terms and provisions of the Transaction and all applicable Transaction Documents, as if such payment were made by the Obligor.
- (2) **Guarantee of Payment, not Collection.** This Guarantee is a guarantee of payment and not of collection. The Beneficiary shall not be required to exhaust any right or remedy or to take any action against Obligor or any other person or entity or any collateral as a condition to payment by Guarantor hereunder.

- (3) **Guarantee Irrevocable; Scope.** This Guarantee is a continuing guarantee of all Obligations now or hereafter existing, and shall remain in full force and effect until it expires in accordance with Section 8 hereof. Notwithstanding anything to the contrary contained herein, The Beneficiary shall not be deemed a Beneficiary under the Guarantees dated November 27, 2006 and February 1, 2007 (and any amendments related thereto) issued by Guarantor to an unspecified group of Beneficiaries.
- (4) **Guarantee Absolute.** Guarantor's liability hereunder is absolute and unconditional irrespective of any matter or circumstance whatsoever with respect to the Obligations which might constitute a defense available to, or discharge of, Obligor or a guarantor, including, without limitation:
- (a) any change in the amount, time, manner or place of payment of, or in any other term of, any Obligation, or any other amendment or waiver of or any consent to departure from any terms of any Obligation;
 - (b) any release or amendment or waiver of, or consent to departure from, any other guarantee or support document, or any exchange, release or non-perfection of any collateral, for any Obligation;
 - (c) any lack of validity or enforceability of any Obligation;
 - (d) any injunction, stay or similar action in any bankruptcy, insolvency or other proceeding barring or limiting payment of any Obligation by Obligor;
 - (e) the absence of any action to enforce any Obligation or any collateral therefor;
 - (f) the rendering of any judgment against Obligor or any action to enforce the same;
 - (g) any bankruptcy or insolvency of Obligor or any similar event or circumstance or any proceeding relating thereto;
 - (h) any event or circumstance constituting fraud in the inducement or any other similar event or circumstance; and
 - (i) any lack or limitation of status or of power, or any incapacity or disability, of Obligor, or of any other guarantor or obligor in respect of any Obligation, or any change whatsoever in the objects, capital structure, constitution or business of Obligor.
- (5) **Waiver of Defenses.** Guarantor hereby waives diligence, presentment, demand of payment (except as provided in paragraph (1)), any right to require a proceeding against Obligor, protest or notice with respect to the Obligations and all demands whatsoever, and covenants that this Guarantee shall not be discharged except in accordance with Section 8 hereof. The grant of time or other indulgence to Obligor shall in no manner release Guarantor from any of its obligations hereunder.
- (6) **Reinstatement.** This Guarantee shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any Obligation is rescinded or must otherwise be returned by Beneficiary upon the insolvency, bankruptcy or reorganization of Obligor or otherwise, all as though the payment had not been made.

- (7) **Subrogation.** Guarantor shall be subrogated to all rights of the Beneficiary against the Obligor in respect of any amount paid by Guarantor hereunder; *provided* that Guarantor shall not be entitled to enforce or to receive any payments arising out of, or based upon, such right of subrogation until the Obligations to the Beneficiary shall have been finally and irrevocably paid in full.
- (8) **Expiration.** Unless earlier renewed in writing by Guarantor, this Guarantee shall expire at 3:00 pm New York Time on the fifth anniversary of the date hereof. Furthermore, Guarantor may terminate this Guarantee at any time upon twenty (20) calendar days' prior written notice to the Beneficiary, which notice shall be provided to Beneficiary in accordance with the Transaction Documents. Notwithstanding the foregoing, no such expiration or termination shall (a) affect the validity or enforceability of this Guarantee with respect to Obligations incurred by Obligor or Obligations of Obligor that relate to Transactions entered into prior to the effective date of such expiration, it being expressly agreed that such expiration shall not limit or terminate this Guarantee in respect of any Obligations arising, or relating to Transactions entered into, prior to the effectiveness of such expiration; or (b) prevent reinstatement of this Guarantee with respect to any such Obligations in accordance with Section 6 hereof.
- (9) **Representations/Warranties.** Guarantor represents and warrants to Beneficiary that, as of the date hereof and the date of entering into each Transaction:
- (a) It is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware;
 - (b) It has the full power and authority to execute and deliver this Guarantee and to perform its obligations hereunder; it has taken all necessary action to authorize such execution, delivery and performance; this Guarantee has been duly executed and delivered by Guarantor; and the execution, delivery and performance of this Guarantee by the Guarantor does not contravene or constitute a default under any statute, regulation or rule of any governmental authority or under any provision of the Guarantor's certificate of incorporation or by-laws or any contractual restriction binding on the Guarantor;
 - (c) This Guarantee constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, receivership and other similar laws affecting the rights of creditors generally, or by general principles of equity; and
 - (d) No authorization, approval or consent of, and no filing or registration with, any governmental authority is necessary for the execution, delivery or performance by Guarantor of this Guarantee or for the validity or enforceability hereof.
- (10) **Notices.** Any notice or communication required or permitted to be made under this Guarantee shall be made in the same manner and with the same effect, unless otherwise specifically provided herein, as set forth in the Transaction Documents. All notices and communications to the Guarantor with respect to this Guarantee, until the Beneficiary is notified to the contrary in writing, shall be sent to the Guarantor at:

JPMorgan Chase & Co.

270 Park Avenue,
New York, New York 10017-2070
Attn: Treasury Department, Regulatory and Guarantee Group- Peter W. Smith
Phone: 212-270-5815
Facsimile: 212-270-0819

All notices and communications to the Beneficiary with respect to this Guarantee, until the Guarantor is notified to the contrary in writing, shall be sent to the Beneficiary at:

SOCIÉTÉ NATIONALE D'ÉLECTRICITÉ ET DE THERMIQUE SA ("Endesa
France")

2, rue Jacques Daguerre
92565 Rueil Malmaison
France
Phone: +33 1 47 52 39 54
Facsimile: +33 1 47 52 39 29

- (11) **Captions.** The headings and captions in this Guarantee are for convenience only and shall not affect the interpretation or construction of this Guarantee.
- (12) **Not Insured.** This Guarantee is not insured by the Federal Deposit Insurance Corporation of the United States of America.
- (13) **GOVERNING LAW.** THIS GUARANTEE AND ALL MATTERS ARISING OUT OF OR RELATING TO THIS GUARANTEE SHALL BE GOVERNED BY, AND THIS GUARANTEE SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF ENGLAND AND WALES.
- (14) **Jurisdiction, Waiver and Process Agent.**
 - (a) The Guarantor agrees that the High Courts of London, England is to have exclusive jurisdiction to settle any disputes (including claims for set-off and counterclaims) which may arise in connection with the creation, validity, effect, interpretation or performance of, or the legal relationships established by, this Guarantee or otherwise arising in connection with this Guarantee and for such purpose irrevocably submit to the jurisdiction of the High Courts of London, England.
 - (b) The Guarantor irrevocably consents to service of process or any other document in connection with proceedings in any court by personal service, delivery at any address specified in this Guarantee or any other usual address, mail or in any other manner permitted by English law, the law of the place of service or the law of the jurisdiction where proceedings are instructed.

The Guarantor shall at all times maintain an agent for service of process and any other documents in proceedings in England or any other proceedings in connection with this Guarantee. Such agent shall be JPMorgan Chase Bank, N.A., London Branch, 125 London Wall, London EC2Y 5AJ Attention: Chief Derivatives Counsel (13th Floor) (Marked "URGENT") and any writ, judgment or other notice of legal process shall be sufficiently served on the Guarantor if delivered to such agent at its address for the time being.

- (15) **Third Party Rights.** A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy that exists or is available apart from that act.
- (16) The Guarantor may not assign its rights, interests or obligations hereunder to any other person without the prior written consent of the Beneficiary, except for an assignment and delegation of all of the Guarantor's rights and obligations hereunder to a partnership, corporation, trust or other organization that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations, including the Guarantor's obligations under this guarantee by contract, operation of law or otherwise.

IN WITNESS WHEREOF, Guarantor has caused this Guarantee to be executed in its name and on its behalf by its duly authorized officer as of the date first above written.

JPMORGAN CHASE & CO.

By: 

Name: Mark I. Kleinman

Title: Senior Vice President & Treasurer



SECRETARY'S CERTIFICATE

I, Colleen A. Meade, an Assistant Corporate Secretary of JPMorgan Chase & Co., a corporation organized under the laws of the State of Delaware, hereby certify that the following is a true and correct copy of resolutions adopted at a meeting of the Board of Directors of JPMorgan Chase & Co., New York, New York, on the 25th day of May 2004, which meeting was properly called and held and at which a quorum was present and voted in favor of said resolutions. I further certify that the said resolutions, at the date hereof, are still in full force and effect.

RESOLVED that loan agreements, contracts, indentures, mortgages, deeds, releases, conveyances, assignments, powers of attorney, transfers, certificates, certifications, declarations, leases, discharges, satisfactions, settlements, petitions, schedules, accounts, affidavits, bonds, undertakings, guarantees, proxies, requisitions, demands, proofs of debt, claims, records, notes signifying indebtedness of JPMorgan Chase & Co. (the "Corporation") and any other contracts, instruments or documents in connection with the conduct of the business of this Corporation, whether or not specified in this resolution may be signed, executed, acknowledged, verified, delivered or accepted on behalf of this Corporation by the Chairman of the Board, the Chief Executive Officer, the President, any Vice Chairman of the Board, any Vice Chairman, the Chief Financial Officer, any Executive Vice President, the Controller, a General Counsel, the Director Human Resources, any member of the Executive Committee of the Corporation whether or not specified in the foregoing list, any Senior Vice President, any Managing Director, or the Secretary, and the seal of this Corporation may be affixed to any thereof and attested by the Secretary or an Assistant Corporate Secretary; and

RESOLVED that powers of attorney may be executed on behalf of this Corporation by the Chairman of the Board, the Chief Executive Officer, the President, a Vice Chairman of the Board, a Vice Chairman, any member of the Executive Committee, any Executive Vice President, the Chief Financial Officer, the Chief Credit Officer, the Secretary, any Senior Vice President, and by any Managing Director having a rank equivalent to Senior Vice President.

I further certify that Mark I. Kleinman is a Senior Vice President and Treasurer of JPMorgan Chase & Co. (the Corporation) and is empowered to act in conformity with the above resolution. I also certify that the signature of said officer appearing below is a true and exact facsimile specimen of his or her signature.

WITNESS my hand and the seal of JPMorgan Chase & Co. on the 2nd day of May 2007.

Colleen A. Meade