

EFET

European Federation of Energy Traders

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WAIVER: THE FOLLOWING GENERAL AGREEMENT WAS PREPARED BY EFET'S MEMBERS EXERCISING ALL REASONABLE CARE. HOWEVER, EFET, THE EFET MEMBERS, REPRESENTATIVES AND 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. USERS OF THIS GENERAL AGREEMENT ARE URGED TO CONSULT RELEVANT LEGAL OPINIONS MADE AVAILABLE THROUGH EFET AS WELL AS THEIR OWN COUNSEL.

General Agreement

Concerning the Delivery and Acceptance of Electricity

Between

Société Nationale d'Electricité et de Thermique, SA, having its registered office at 2, rue Jacques Daguerre,
F-92565 Rueil-Malmaison

("Endesa France")

and

Energie Ouest Suisse, having its registered office at Place de la Gare 12, CH-1001 Lausanne, represented by
EOS Trading

("EOS")

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

entered into on 5th December 2007 (the "Effective Date").

shall be delivered by letter (overnight mail or courier, postage prepaid) or facsimile as provided in the Election Sheet. Each Party may change its notice information by written notice to the other. Written notices, declarations and invoices shall be deemed received and effective:

- (a) if delivered by hand, on the Business Day delivered or on the first Business Day after the date of delivery if delivered on a day other than a Business Day;
- (b) if sent by first class post, on the 2nd Business Day after the date of posting, or if sent from one country to another, on the 5th Business Day after the day of posting; or
- (c) if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission if transmitted before 17.00 hours (recipient's time) on a Business Day or otherwise at 09.00 hours (recipient's time) on the first Business Day after transmission.

3. Amendments: Except as provided in § 3 (*Concluding and Confirming Individual Contracts*) with respect to Confirmations, any amendments or additions to this General Agreement shall be made only in writing signed by both Parties.

4. Partial Invalidity: If, at any time, any provision of this General Agreement or an Individual Contract is or becomes illegal, invalid or unenforceable, in any respect, under the law of any relevant jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of this General Agreement or of any Individual Contract, shall be in any way affected or impaired thereby. The Parties undertake to replace any illegal, invalid or unenforceable provision with a legal, valid and enforceable provision which comes as close as possible to the invalid provision as regards its economic intent.

5. Third Party Rights: The Parties do not intend that any third party shall have any rights under or be able to enforce the Agreement and the Parties exclude to the extent permitted under applicable law any such third party rights that might otherwise be implied.

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

"Party A"

*Société Nationale d'Electricité
Et de Thermique, SA,
("Endesa France")*



Alberto MARTIN RIVALIS
Managing Director

"Party B"

On behalf of EOS, EOS Trading



Hervé ROBERT

Head of Market Access



Frederic RIVIER

Head of Risk Management

EFET

European Federation of Energy Traders

Election Sheet to the General Agreement

With an Effective Date of 5th December 2007

Between

Société Nationale d'Electricité et de Thermique, SA, ("Endesa France")

A company incorporated with the number 399 361 468 RCS under the laws of the French Republic having its registered office at 2, rue Jacques Daguerre – 92565 Rueil- Malmaison

("Party A")

And

Energie Ouest Suisse (EOS), represented by EOS Trading

A company incorporated with the number CH-550-0076169-3 under the laws of the Switzerland having its registered office at Place de la Gare 12, CH-1001 Lausanne

("Party B")

PART I: CUSTOMIZATION OF PROVISIONS IN THE GENERAL AGREEMENT

§1

Subject of Agreement

§ 1.2 Pre-Existing Contracts:

[X] § 1.2 shall apply and the following sentences shall be added at the end of § 1.2:

"A list of such transactions is attached to this Election Sheet as Attachment A. The list shall not operate to exclude any Pre-Existing Contracts from the scope of this agreement that do not appear on the list."

§2

Definitions and Construction

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

§3
Concluding and Confirming Individual Contracts

§ 3.4 Authorised Persons: [X] § 3.4 shall not apply to Party A.
[X] § 3.4 shall not apply to Party B.

§7
Non-Performance Due to Force Majeure

§7.1 Definition of Force Majeure: [X] § 7.1 shall not apply as written in the General Agreement but instead shall be as follows:

"1. Definition of Force Majeure: For purposes of the General Agreement **"Force Majeure"** means an occurrence beyond the control ("extérieur") of the Party claiming Force Majeure (the **"Claiming Party"**) which it could not have been foreseen ("imprévisible"), avoided or overcome ("irrésistible") by that party and which makes it impossible for the Claiming Party to perform its delivery or acceptance obligations, including, but without limitation, due to one or more of the following (each such case being subject to the conditions mentioned in this § 7.1):

- (a) the failure of communications or computer systems of the relevant Network Operator(s) which prevents the Claiming Party from performing its obligations of delivery or acceptance; or
- (b) the relevant Network Operator's suspension of delivery or acceptance or its disregard of the Claiming Party's obligations with regard to Scheduling under the Individual Contract.

§8
Remedies For Failure to Deliver and Accept

The Parties expressly agree to complete provision 8 by adding a § 8.4 written as follows:

"§ 8.4. These remedies are in addition to any other rights or remedies available to a Party under this General Agreement."

Term and Termination Rights

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

§ 10.3 Termination for Material Reason:

[X] § 10.3 shall apply as amended as follows:
"If a Material Reason (as defined below) with respect to a Party has occurred and is continuing, the other Party (The "Terminating Party") may as of right ("de plein droit") terminate the Agreement ("Early Termination") by giving the other Party notice. A notice of Early

Termination may be given by telephone if that notice is confirmed in writing within two (2) Business Days.”

§ 10.4 Automatic Termination: [X] §10.4 shall not apply to Party A.

[X] §10.4 shall not apply to Party B.

§ 10.5(b) Cross Default and Acceleration:

[X] § 10.5(b)(i) and (ii) shall apply to Party A and to Party B amended as follows:

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

- (i) a default, event of default or other similar condition or event (however described) in respect of a Party, any Credit Support Provider of such Party (if such Party has a Credit Support Provider) or any Controlling Party of such 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 for that Party under § 10.5 (b)(iii)) which has resulted in such Specified Indebtedness becoming due and payable under such agreements or instruments before it would otherwise have been due and payable; or
- (ii) a default by such Party, such Credit Support Provider or such Controlling Party (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount (as specified for that Party under §10.5 (b) (iii)) under one or more agreements or instruments (after giving effect to any applicable notice requirement or grace period) and
- (iii) for the purpose of (i) and (ii) above, the Threshold Amount shall be:

for Party A : 10'000'000 €; and
for Party B : 10'000'000. €

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

[X] § 10.5 (c) (iv) shall be deleted and be replaced by:

- (a) institutes, or its Controlling Party institutes against it a proceeding seeking a judgement of insolvency or bankruptcy ("Réquisition de faillite", "Antrag zur Insolvenzeröffnung ") or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation. In this case the applicable grace period is zero (0) days.
- (b) has instituted against it by a third party a proceeding seeking a judgement of insolvency or bankruptcy ("Réquisition de faillite", "Antrag zur Insolvenzeröffnung") or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and which is not withdrawn, dismissed, discharged, stayed or restrained within ten (10) Business Days.

§ 10.5(d) Failure to Deliver or Accept:

[X] § 10.5(d) shall apply.

§ 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 or any applicable Specified Entity 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 (or such default continues for at least three (3) Business Days if there is no applicable notice requirement or grace period) in an aggregate amount of not less than the applicable Threshold Amount (as specified below) or
- (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 and the other Party to this Agreement (or any Credit Support Provider of such Party or any applicable Specified Entity 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.

For purposes of this clause, the word **“commodity”** means any tangible or intangible commodity of any type or description (including, without limitation, electric power, electric power capacity, petroleum, natural gas, natural gas liquids, coal, and by-products thereof).

“Specified Entity” means in relation to Party B for the purpose of this section, [counterparty trading vehicles] and in relation of Party A for the purpose of this section, none].”

“Threshold Amount” means 100,000 Euro.

§12

Limitation of Liability

§ 12 Application of Limitation:

[X] § 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:

[X] § 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 three percent (3%) per annum.

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§ 13.6 Disputed Amounts:

☒ § 13.6 (a) shall apply amended as follows:

“6. Disputed Amounts: 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) business 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.

☒ § 13.6 (b) shall not apply

§ 14
VAT and Taxes

§ 14.8 Termination for New Tax: ☒ unless otherwise specified in the terms of an Individual Contract the provisions of § 14.8 shall apply to such Individual Contract only in the circumstances specified in the first paragraph of § 14.8, or
[] subject to the terms of an Individual Contract, the provisions of § 14.8 shall only apply in the following circumstances:
[

§ 14.9 Withholding Tax:

☐
☒ § 14.9 shall apply, or
[] § 14.9 shall not apply

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

§ 15.3 (c) Dealer Fallback shall not apply as written but instead shall be amended as follows:

“On or after six (6) Business Days following the first Calculation Date on which the Market Disruption Event occurred or existed, the Parties shall promptly and jointly agree upon three independent leading participants in the relevant market (“**Dealers**”) selected in good faith from among participants of the highest credit standing which satisfy all the criteria that the Parties apply generally in deciding whether to offer or to make an extension of credit or to enter into a transaction comparable to the Individual Contract

that is affected by the Market Disruption Event. In case they do not agree upon the Dealers to designate, each Party shall designate one Dealer and the two dealers so designated shall designate the third Dealer. In case a Party fails to designate its Dealer, or the two Dealers appointed on behalf of the Party fail to agree on the choice of the third Dealer, either Party may request the institution specified in the Election Sheet to appoint the missing Dealer.

The Dealers shall be appointed to designate the third Dealer and/or to make a determination of the Alternative Settlement Price taking into consideration the latest available quotation for the relevant commodity reference price and any other information that in good faith is deemed relevant. The Alternative Settlement Price shall be the arithmetic mean of the three amounts determined to be the Alternative Settlement Price by each Dealer, in which case the calculation shall be binding and conclusive in the absence of manifest error."

"The institution which shall designate a missing Dealer in the circumstances foreseen by § 15.3 (c) shall be the Seller."

§ 15.5 Calculation Agent:

[X] The Calculation Agent shall be Seller unless a Material Reason with respect to Seller has occurred and is continuing, in which case Buyer shall be the Calculation Agent.

§16

Guarantees and Credit Support

§ 16 Credit Support Documents:

Party A shall provide Party B with any such Credit Support Document(s) as the Parties may agree from time to time and satisfactory to Party B.

Party B shall provide Party A with any such Credit Support Document(s) as the Parties may agree from time to time and satisfactory to Party A.

§ 16 Credit Support Provider:

Credit Support Provider(s) of Party A shall be any such Credit Support Provider as the Parties may agree from time to time and satisfactory to Party B.

Credit Support Provider(s) of Party B shall be any such Credit Support Provider as the Parties may agree from time to time and satisfactory to Party A.

§17

Performance Assurance

§ 17.2 Material Adverse Change:

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

[X] §17.2 (b) (Credit Rating of Credit Support Provider that is a Bank):

Shall apply if the Credit Rating is withdrawn or downgraded below any one of the following minimum ratings:

- a) "A" by Standard & Poor's Rating Group, or

b) "A2" by Moody's Investor Services Inc.

[X] §17.2 (d) (**decline in Tangible Net Worth**): and the relevant figure is: more than 20 (twenty) % decline within 1 (one) year ; on December 31, 2006 (31.12.2006, the Tangible Net Worth of Party A is € 520 777 801);

[X] §17.2 (e) (**Expiry of Performance Assurance or Credit Support**):
Shall apply and the relevant time period shall be 20 business days.

[X] §17.2 (f) (**Failure of Performance Assurance or Credit Support**);

[X] §17.2 (h) (**Impaired Ability to Perform**); and

[X] §17.2 (i) (**Amalgamation/Merger**)

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

[X] §17.2 (b) (**Credit Rating of Credit Support Provider that is a Bank**):

Shall apply if the Credit Rating is withdrawn or downgraded below any one of the following minimum ratings:

- a) "A" by Standard & Poor's Rating Group, or
- b) "A2" by Moody's Investor Services Inc.

[X] §17.2 (d) (**decline in tangible net worth**): and the relevant figure is: more than 20 (twenty) % decline within 1 (one) year on December 31, 2006 (31.12.2006, the Tangible Net Worth of Party B is CHF 507 million));

[X] §17.2 (e) (**Expiry of Performance Assurance or Credit Support**):
Shall apply and the relevant time period shall be 20 business days.

[X] §17.2 (f) (**Failure of Performance Assurance or Credit Support**);

[X] §17.2 (h) (**Impaired Ability to Perform**); and

[X] §17.2 (i) (**Amalgamation/Merger**)

§18

Provision of Financial Statements and Tangible Net Worth

§ 18.1 (a) Annual Reports: [X] Party A shall deliver annual reports to the extent that they are not available on the internet at: <http://www.snet-electricite.fr> or www.endesafrance.fr

[X] Party B shall deliver annual reports to the extent that they are not available on the internet at: <http://www.eosholding.ch>

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

§18.2 Tangible Net Worth: [X] Party A shall have shall have a duty to notify as provided in §18.2 and the applicable figure for it shall be more than 20% (twenty) decline since beginning of the current fiscal year in the Tangible Net Worth of such Relevant Entity of the Party, on which the credit standing of the Party is based

[X] Party B shall have a duty to notify as provided in §18.2 and the applicable figure for it shall be more than 20% (twenty) decline since

beginning of the current fiscal year in the Tangible Net Worth of such Relevant Entity of the Party, on which the credit standing of the Party is based.

§19

Assignment

§ 19.2 Assignment to Affiliates: ☒ Party A and Party B may assign all (but not part only) of their rights and obligations in accordance with the §19.2, provided that for both parties it shall be a condition precedent that:

- (i) the assigning Party provides at least twenty (20) business days prior written notice of the assignment and details of the assignee to the other Party,
- (ii) the non-assigning Party consents to such assignment, such consent shall not be unreasonably withheld,
- (iii) 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
- (iv) the assignee has its registered offices in the same jurisdiction as the assigning Party or in any of the following countries: United Kingdom, Spain, France.

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)	[DELETE]	[DELETE]

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§21(l)	☒ yes ☐ no	☒ yes ☐ no
§21(m)	☐ yes ☒ no	☐ 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) for Party B is deleted and replaced by the following:

"It does not accept electricity as an end user ("*Letztverbraucher*") within the meaning of the German Electricity Tax Act (*Stromsteuergesetz* ("*StromStG*")) of March 24, 1999."

§22

Governing Law and Arbitration

§ 22.1 Governing Law: ☒ §22.1 shall apply as written

§22.2 Arbitration: ☒ § 22.2 shall apply as written

"The seat of the Arbitration will be Frankfurt am Main, Germany, and the arbitration will be conducted in English language".

§23

Miscellaneous

§ 23.2 Notices, Invoices and Payments:

(a) **TO PARTY A:**

Société Nationale d'Electricité et de Thermique, SA, ("Endesa France")

Notices & Correspondence

Address:

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

Payments

Bank account details:

FR76 3000 7999 9904 1615 0600088

Bank Address:

(IBAN):NATEXIS Banques
Populaires,

5, place de la Défense
92090 Paris la Défense Cedex 26

Bank Identifier Code (BIC) :

CCBPRPPPAR

(b) TO PARTY B:

Notices & Correspondence

Address:

Energie Ouest Suisse (EOS)
EOS Trading
Chemin de Mornex 10

Case Postale 570

Telephone No:

CH – 1001 Lausanne

Fax No:

+41 21 341 28 60

Attention:

+41 21 341 28 02

Invoices

Peter Heydecker, Director

Energie Ouest Suisse

c/o Avenis

Chemin de Mornex 10

Case Postale 570

CH – 1001 Lausanne

Fax No:

+41 21 341 28 03

Attention:

Back Officer

Payments

Energie Ouest Suisse (EOS)

Bank account details

Banque Cantonale Vaudoise

Compte K 964.76.06

Swift BCVLCH2L

VAT

Switzerland: 198 274

PART II: ADDITIONAL PROVISIONS TO THE GENERAL AGREEMENT

1. In Annex 1 to the General Agreement (Defined Terms) term “**Tangible Net Worth**” shall be amended by inserting the word “not” between words “but” and “limited to, goodwill” in the last line of the sentence to read:

“Tangible Net Worth means the sum of all paid up shareholder cash contributions to the share capital account or any other capital account of the Relevant Entity ascribed for such purposes of the Relevant Entity and any accumulated earnings less any accumulated retained losses and intangible assets including, but not limited to, goodwill.”

2. New §§ 10.3(g) is added at the end of § 10.3(f):

(g) Set-off:

(i) Upon the occurrence or designation of an Early Termination Date on account of an Event of Default with respect to a Party hereto (“Y”), any amount payable to Y by the other Party (“X”) or any Specified Entity of X under this Agreement or any Specified Transaction with Y, or in respect of any other matured, liquidated or terminated payment obligation related to any Specified Transaction 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 under this Agreement or any Specified Transaction of Y (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 a Specified Entity of X, as appropriate, 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 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, and amounts may be set off and recouped irrespective of the currency, place of payment or booking office of any obligation to or from Y.

(iii) If an obligation is unascertained, X or any Specified Entity of X, as appropriate, 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 is at any time otherwise entitled (whether by operation of law, contract or otherwise).

(v) Condition Precedent to Payments to the Defaulting Party. All obligations of a Non-defaulting Party ("X") and any Specified Entity of X under this Agreement, or any Specified Transaction with the other Party ("Y"), or in respect of any other matured, liquidated or terminated payment obligation related to any Specified Transaction with Y, are subject to the condition precedent that Y shall have performed all of its obligations to X and any Specified Entity of X under this Agreement and any Specified Transaction with X, or in respect of any other matured, liquidated or terminated payment obligation related to any Specified Transaction, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation.

"Specified Entity" means in relation to Party A for the purpose of this section, Affiliates of Party A incorporated in Europe, which now or in the future enters into any Specified Transaction with Party B or any of Party B's Specified Entities and in relation of Party B for the purpose of this section, any Affiliate of Party B incorporated in Europe, which now or in the future enters into any Specified Transaction with Party A or any of Party A's Specified Entities."

3. The Parties expressly agree to add a new § 11.3 as follows:

"The Parties intend that such Termination Amount be considered as compulsory and final damages which are due in case of Early Termination for Material reason. In particular, such Amount shall not be questioned under the circumstances that the Terminating Party suffered a loss ("préjudice") of somewhat less important value than the Termination Amount."

4. Telephonic Recording: Subject to any specific consent required by applicable law, the parties:

- (ii) Consent to the recording of all telephone conversations between them in connection with this Agreement and any potential Transaction, with or without the use of a warning tone, and
- (ii) Agree to obtain any necessary consent and give any necessary notices of such recordings. The parties further agree that (insofar as may be permitted by applicable law) any such recordings may be submitted in evidence in any Proceedings related to this Agreement or any potential Transaction under this Agreement.

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

“Party A”

**Société Nationale d'Electricité
Et de Thermique, SA,
("Endesa France")**



Name: Alberto MARTIN RIVALS

Title: Managing Director

“Party B”

On behalf of EOS, EOS Trading



Hervé Robert

Head of Market Access



Frédéric Rivier

Head of Risk Management