

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

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

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

("Endesa France")

and

EZPADA s.r.o.

having its registered office at Jungmannova 24, 110 00 Prague, Czech Republic

("EZPADA s.r.o.")

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

entered into on September 25, 2007 (the "Effective Date")

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”

Ezpada s.r.o.



Name: Richard KUČÍK

Title: Executive Director

EFET

European Federation of Energy Traders

Election Sheet to the General Agreement

With an Effective Date of 25/09/2007

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

Ezpada s.r.o.

A company incorporated with the number 271 291 36 under the laws of the Czech Republic having its registered office at Jungmannova 24, 110 00 Prague, Czech Republic

("Party B")

PART I: CUSTOMIZATION OF PROVISIONS IN THE GENERAL AGREEMENT

§1

Subject of Agreement

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

§2

Definitions and Construction

§ 2.4 References to Time: time references shall be:

☒ as provided in the General Agreement (CET).

§3

Concluding and Confirming Individual Contracts



§ 3.4 Authorised Persons:

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

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

§7

Non-Performance Due to Force Majeure

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

§10

Term and Termination Rights

§ 10.2 Expiration Date:

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

§ 10.4 Automatic Termination:

[X] §10.4 shall apply to Party A, as long as allowed by the law governing its jurisdiction, with termination effective, as of right, immediately upon the occurrence of a Material Reason described in §10.5 (c) (but without prejudice to the applicability of the grace period referred to in §10.5 (c) (iv)) or described in §10.5 Other Material Reasons below.

[X] §10.4 shall apply to Party B, with termination effective, immediately upon the occurrence of a Material Reason described in §10.5 (c) (but without prejudice to the applicability of the grace period referred to in §10.5 (c) (iv)) or described in §10.5 Other Material Reasons below.

§ 10.5(b) Cross Default and Acceleration:

[X] § 10.5(b) (i) shall not apply to Party A.

[X] § 10.5(b) (i) shall not apply to Party B.

[X] § 10.5(b) (ii) shall not apply to Party A.

[X] § 10.5(b) (ii) shall not apply to Party B.

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

[X] § 10.5(c) (iv) shall apply and the applicable time period is within 0 days, except insofar a proceeding or petition referred to in § 10.5(c) (iv) has been instituted or presented by a third party against a Party in which case the time period is within five (5) 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.

§ 13.6 Disputed Amounts:

[X] § 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 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/or 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 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 Zero-Rated or subject to the reverse charge 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 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; and
- (c) in the absence of the Buyer providing any documentation as 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. 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.

5. 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 Natural Gas 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.

6. Withholding Tax:

- (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; 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.

“Other Tax” means any energy Tax or excise duty but not including Taxes targeted at end users

“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.

§15

Settlement of Floating Prices and Fallback Procedures For Market Disruption

§ 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 a Parent Company Guarantee from Ezpada AG



§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 a Parent Company Guarantee from **Ezpada AG**

§ 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: **Ezpada AG**

§17
Performance Assurance

§ 17.2 Material Adverse Change:

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

☒ §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.

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

Shall apply and the relevant time period shall be 5 days.

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

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

☒ §17.2 (i) (Amalgamation/Merger)

A new §17.2 (j) shall be added to the Agreement as follows:

☒ §17.2 (j) (COFACE Credit Rating):

Shall apply if the Credit Rating of Party A is withdrawn or downgraded below the following minimum rating: 5/10 or "10/20" by COFACE.

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

☒ §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**), shall apply if the Tangible Net Worth of the Credit Support Provider of Party B, which as of December 31, 2006 amounts to EUR 13.937.000 falls either (i) below Euro 9.755.900 or (ii) decreases by 25% or more with respect to the Tangible Net Worth of the previous fiscal year, but this specifically excludes decline in Tangible Net Worth due to change in accounting standards.

[X] §17.2 (e) (**Expiry of Performance Assurance or Credit Support**):

Shall apply and the relevant time period shall be 5 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**)

For the avoidance of doubt, in respect of the Credit Ratings referred to, in §17.2 (b), in the event that the applicable respective entity has each of two Credit Ratings, one being from Standard & Poor's Rating Group and the other from Moody's Investor Services Inc., and both such Credit Ratings are not of the same level of parity (commonly known as "split ratings"), then, for the avoidance of doubt, the lowest such Credit Rating will be used to determine conclusively whether or not the respective Material Adverse Change has occurred.

§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.endesafrance.fr>

[X] Party B shall deliver consolidated audited financial statements of Ezpada AG to the extent that they are not available on the internet at: www.ezpada.com

§ 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 no duty to notify as provided in §18.2.
[X] Party B shall have a duty to notify as provided in §18.2 and Party B shall have a duty to notify a **Decline** in the Tangible Net Worth with respect to the previous fiscal year.

§19

Assignment

§ 19.2 **Assignment to Affiliates:** [X] 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.

Provided that for both Parties the respective Affiliate does have its registered office in the same jurisdiction as the assigning Party or in any of the following countries: United Kingdom, Spain, France and Italy.

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.
- (iii) Both Parties, the respective Affiliate or successor entity does have its registered office in the same jurisdiction as the assigning Party 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: [X] § 20 shall apply.

§21 **Representation and Warranties**

The Following Representations and Warranties are made:

	by Party A:	by Party B:
§21(a)	[X] yes [] no	[X] yes [] no
§21(b)	[X] yes [] no	[X] yes [] no
§21(c)	[X] yes [] no	[X] yes [] no
§21(d)	[X] yes [] no	[X] yes [] no
§21(e)	[X] yes [] no	[X] yes [] no
§21(f)	[X] yes [] no	[X] yes [] no
§21(g)	[X] yes [] no	[X] yes [] no
§21(h)	[X] yes [] no	[X] yes [] no
§21(i)	[X] yes [] no	[X] yes [] no
§21(j)	[X] yes [] no	[X] yes [] no
§21(k)	[X] yes [] no	Not applicable
§21(l)	[] yes [X] no	[X] yes [] no
§21(m)	[] yes [X] no	Not applicable
§21(n)	[X] yes [] no	[X] 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:

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

This agreement shall be construed and governed 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, including a dispute as to their existence, validity, interpretation, breach or termination (a “Dispute”), each Party irrevocably submits to the exclusive jurisdiction of the English courts 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.”]

§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) : CCBPFRPPPAR

(b) **TO PARTY B**
Notices & Correspondence
Address:

Ezpada s. r. o.
Jungmannova 24
110 00 Praha 1
Czech Republic

Telephone No: +420 221 088 811

Fax No: +420 221 088 819

Attention Back Office/Settlements

Invoices Ezpada s.r.o.

Jungmannova 24

110 00 Prague 1

Czech Republic

Fax No: +420 221 088 819

Attention: Financial Manager

Payments

Bank account details As indicated in the invoice.

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.

(vi) Transfers to Address Reasonable Grounds for Insecurity. If either Party ("C") has reasonable grounds for insecurity regarding a potential default under this Agreement or any Specified Transaction by the other Party ("D"), then any right of a Specified Entity of C to receive payment from D or any Specified Entity of D may be assigned to C, in which case D hereby consents to any such assignment of the benefit of its obligations and agrees to use its best efforts to obtain any required consents from its relevant Specified Entity to any such assignment of the benefit of that obligation of that Specified Entity of D. C shall give written notice to D and any Specified Entity of D of any assignments of rights to C by Specified Entities of C pursuant to his provision.

"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. 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.

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”

Ezpada s.r.o.

Name: Richard KUČÍK

Title: Executive Director



- (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.

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”

Ezpada s.r.o.



Name: Richard KUČÍK

Title: Executive Director