

THIS DRAFT LETTER CONTAINS SUGGESTED WORDING FOR USE BY PARTIES WHO HAVE ALREADY ENTERED INTO AN EFET ALLOWANCES APPENDIX (POWER) (VERSION 3.0/JUNE 20 2008) WITHOUT AMENDMENT AND WHO NOW WISH TO INCORPORATE THE CHANGES MADE TO THAT VERSION 3.0 IN THE ALLOWANCES APPENDIX (POWER) (VERSION 4.0/APRIL 3, 2012) SO AS TO ENABLE THE PARTIES TO ENTER INTO BOTH PHASE 2 AND PHASE 3 TRANSACTIONS. THIS DRAFT LETTER WAS PREPARED BY EFET'S MEMBERS EXERCISING ALL REASONABLE CARE AND DUE DILIGENCE. 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 FROM ITS USE IN ANY PARTICULAR CASE OR JURISDICTION.

[LETTERHEAD OF SIGNATORY]

[Insert counterparty contact details]

[Insert Date]

Dear [insert name]

Re: Amendments to the Allowances Appendix (Version 3.0/June 20 2008) to the European Federation of Energy Traders ("EFET") General Agreement Concerning the Delivery and Acceptance of Electricity between the Parties.

As you may be aware, EFET has published a new Version 4.0/April 3, 2012 of the Allowances Appendix (Power) which contains differences from the Allowances Appendix (Version 3.0/June 20 2008) to provide for the trading of AEUAs, EUAs, CERs and ERUs in Phase III of the EU Emissions Trading Scheme.

We wish to amend the Allowances Appendix that we have already entered into with you to reflect these changes and to ensure that we continue to trade in accordance with standard market terms.

By executing this amendment letter (the "**Letter**"), the parties agree to modify, supplement, amend and restate the terms of the Allowances Appendix (Version 3.0/June 20 2008) (the "**Allowances Appendix**") dated as of [,] to the EFET General Agreement Concerning the Delivery and Acceptance of Electricity (the "**General Agreement**") dated as of [,] between [] ("**Party A**") and [] ("**Party B**") (collectively, the "**Parties**").

Capitalised terms used but not defined in this Letter shall have the same meanings ascribed to them in the Allowances Appendix and the General Agreement (except as amended herein) and all references to a Section (§) or Sections (§§) in this Letter shall be references to a Section or Sections in the General Agreement.

The Parties hereby acknowledge and agree that, in accordance with § 23.3 (**Amendments**), the provisions of the General Agreement, as previously modified, supplemented and amended by the Allowances Appendix are now hereby further modified, supplemented and amended, effective as of the date of this Letter, as follows:

All Allowance Transactions entered into by the Parties on or after the date of this Letter shall become subject to the terms and conditions of the Allowances Appendix as modified, supplemented and amended by this Letter. [and]

[All Allowance Transactions entered into by the Parties before the date of this Letter [that remain unperformed] shall become subject to the terms and conditions of the Allowances Appendix as modified, supplemented and amended by this Letter.]¹

(A) **Amendments to the Allowances Appendix (General)**

(1) **Definitions and Construction.** The definition of “**Specified Vintage**” shall be deleted in its entirety and all references to it in the Allowances Appendix shall be replaced by references to “**Specified Compliance Period**”. The definition of “**Trading Account**” shall also be deleted in its entirety and any references to it in the Allowances Appendix shall be replaced by references to “**Holding Account**”.

(2) **Primary Obligations for Delivery and Acceptance of and Payment for Allowances.** § 4 (*Primary Obligations for Delivery and Acceptance of Allowances*) of the Allowances Appendix is, following the occurrence of the Migration Event only, hereby amended by the replacement of all references to "9.00 am CET" and "5.00 pm CET" with references to "10.00 am CET" and "4.00 pm CET" respectively in §4.1 (*Delivery, Acceptance and Scheduling Obligations*) and by the addition of a new §4.1(a)(ii)C following the occurrence of the Migration Event as follows:

"C. Where a Party, in its capacity as Buyer, has specified one or more Delivery Point(s), the other Party will, without delay, nominate each such Holding Account(s) specified by the Buyer as a 'trusted account' (for the purposes of the Registries Regulation) for each of its own Transfer Points."

(3) **Delivery, Measurement, Transfer and Risk.** §6 (*Delivery, Measurement, Transfer and Risk*) of the Allowances Appendix is hereby amended, following the occurrence of the Migration Event, by replacing § 6.3 (*No Encumbrances*) with the following:

"§ 6.3 **No Encumbrances.** In respect of each Allowance Transaction and at each Delivery Date, the Seller shall Transfer to the Buyer at the Delivery Point, Allowances free and clear of any liens, security interests, encumbrances or similar adverse claims by any person (the "**No Encumbrance Obligation**"). Where a Party is in breach of the No Encumbrance Obligation, the following shall apply:

- (a) The General Agreement and all other Individual Contracts agreed by the Parties under this General Agreement shall continue unaffected; and
- (b) Without prejudice to any defences available to the Seller (including, but not limited to, any defences of statutes of limitation or similar), following written notice of that breach from the Buyer to the Seller (irrespective of how long after the relevant Delivery Date such notice is provided) and subject to §6.3(d) below:
 - (i) the Buyer shall determine the Encumbrance Loss arising from that breach (the "**Encumbrance Loss Amount**") either on the date such notice is deemed to be received or as soon as reasonably practicable thereafter; and
 - (ii) shall notify the Seller of such Encumbrance Loss Amount due, including detailed support for its calculation.

The Buyer is not required to enter into replacement Individual Contracts in order to determine the Encumbrance Loss Amount.

- (c) By no later than the third (3rd) Business Day after the later of (i) receipt of a valid invoice in connection with such Encumbrance Loss Amount and (ii) receipt of the above-mentioned notice of detailed support of the Buyer's calculation of the Encumbrance Loss Amount, the Seller shall pay the Encumbrance Loss Amount to

¹ Delete as applicable

the Buyer, which amount shall bear interest in accordance with §13.5 (*Default Interest*). Upon payment of the Encumbrance Loss Amount by the Seller, the Parties shall have no further obligations in respect of that Individual Contract and that breach. The Buyer acknowledges that its exclusive remedies in respect of such breach are those set out in this §6.3.

- (d) Where a breach of the No Encumbrances Obligation is caused by the Transfer of an Affected Allowance, the Seller shall be liable for the Encumbrance Loss Amount if, at the date it first acquired, received or purchased such Affected Allowance, it was not acting in good faith; otherwise, the Seller shall only be liable for the Encumbrance Loss Amount (without prejudice to any other defences available to the Seller including, but not limited to, any defences of statutes of limitation or similar), if:
- (i) the Buyer, whether or not the holder of such Affected Allowance, who is subject to a claim of the Original Affected Party, has, in order to resist or avoid any Encumbrance Loss Amount from arising, used its best endeavours to defend such a claim in respect of that Affected Allowance (including, if available, by relying on Article 32(b) of the Registries Regulation or any equivalent legal principle under applicable national law) and was unsuccessful (other than for reasons of its own lack of good faith); or
 - (ii) the Buyer, whether or not the holder of such Affected Allowance, who acted in good faith in respect of its purchase of such Affected Allowance and who is subject to a claim of a third party (other than the Original Affected Party) in respect of that Affected Allowance, has used all reasonable endeavours to mitigate the Encumbrances Loss Amount."

(4) **Remedies for Failure to Deliver or Accept**, § 8 (*Remedies for Failure to Deliver or Accept*) of the Allowances Appendix is, following the occurrence of the Migration Event only, hereby amended by replacing each reference to 'one' with 'two' and each reference to 'first' with 'second' as follows:

§8.1 (*Failure to Deliver*) shall be amended by:

- (a) in §8.1(a) replacing the word "One" in the Heading "One Delivery Business Day Grace Period" with "Two";
- (b) in §8.1(a) replacing the word "first" with the word "second" in the fifth (5th) line of the first paragraph thereof;
- (c) in §8.1(a) replacing the word "one" with "two" in the eighth (8th) line of the first paragraph thereof;
- (d) in §8.1(a) replacing the word "one" with "two" in the first (1st) line of the second paragraph thereof;
- (e) in §8.1(a) inserting the word "second" before the words "Delivery Business Day following the Delivery Date" in the second (2nd) line of the second paragraph thereof;
- (f) in §8.1(b) replacing the word "One" with "Two" in the second (2nd) line thereof;
- (g) in §8.1(b)(i)(C) replacing the word "one" with "two" in the first (1st) line thereof;
- (h) in §8.1(b)(i)(C) inserting the word "second" before the words "Delivery Business Date following the Delivery Date" in the third (3rd) line thereof;
- (i) in §8.1(b)(ii)(D) replacing the word "one" with "two" in the first (1st) line thereof;
- (j) in §8.1(c)(i) replacing the word "one" with "two" in the seventh (7th) line thereof;

(k) in §8.1(c)(i) replacing the word “first” with “second” in the eighth (8th) line thereof.

§8.2 (*Failure to Accept*) shall be amended by:

- (a) in §8.2(a) replacing the word “One” in the Heading “One Delivery Business Day Grace Period” with “Two”;
- (b) in §8.2(a) replacing the word “first” with the word “second” in the sixth (6th) line of the first paragraph thereof;
- (c) in §8.2(a) replacing the word “one” with “two” in the ninth (9th) line of the first paragraph thereof;
- (d) in §8.2(a) replacing the word “one” with “two” in the first (1st) line of the second paragraph thereof;
- (e) in §8.2(a) inserting the word “second” before the words “Delivery Business Day following the Delivery Date” in the second (2nd) line of the second paragraph thereof;
- (f) in §8.2(b) replacing the word “One” with “Two” in the second (2nd) line thereof;
- (g) in §8.2(b)(iii) replacing the word “one” with “two” in the first (1st) line thereof;
- (h) in §8.2(b)(iii) replacing the word “first” with “second” in the third (3rd) line thereof;
- (i) in §8.2(c)(i) replacing the word “one” with “two” in the ninth (9th) line thereof;
- (j) in §8.2(c)(i) inserting the word “second” before the words “Delivery Business Day following the Delivery Date” in the tenth (10th) line thereof.

(5) **Limitation of Liability.** §12.3(a) (*Consequential Damage and Limitation of Liability*) is hereby amended by adding the words "(other than with respect to a claim under § 6.3 (*No Encumbrances*))" after the words "consequential Damages" in the first line thereof.

(6) **Invoicing and Payment.** §13.1 (*Invoice*) shall be amended by the deletion of the last sentence commencing: "Invoicing of Premiums due" and ending "in the Individual Contracts".

(7) **Annex 1 - Defined Terms.** Annex 1 to the Allowance Appendix shall be amended by:

(a) the amendment of the following existing definitions:

“**Allowance Type**” shall be amended by the addition of the words “an AEUA,” before the existing words “an EUA,”;

“**CDM**” or “**Clean Development Mechanism**” shall be amended by the deletion of the words “, which provides for the Transfer of CERs from non Annex I countries to Annex I countries (as defined therein)” at the end of the definition;

“**CITL**” shall be amended by the deletion of the word “Rules” and its replacement with the words “EU ETS Directive. For the avoidance of doubt, any reference to the CITL shall include a reference to the European Union Transaction Log or EUTL as referred to in the Registries Regulation”;

“**Compliance Period**” shall be amended by the deletion of all words after "means" and replaced with the following: “the Second Compliance Period or the Third Compliance Period”;

“Delayed Delivery Date” shall be amended with respect to Allowance Transactions with Delivery Dates occurring after the occurrence of the Migration Event by replacing all references to the word “one” with the word “two”;

“Directive 2003/87/EC” shall be deleted in its entirety and all references to it in the Allowances Appendix shall be replaced by references to the **“EU ETS Directive”**;

“Directive 2004/101/EC” shall be deleted in its entirety;

“End of Phase Reconciliation Deadline” shall be amended by the deletion of the words “for a Specified Vintage, where applicable” at the end of the definition;

“EUA” shall be deleted in its entirety and replaced with the following definition: “means a unit of account that is an “allowance” as defined in the EU ETS Directive and is issued pursuant to Chapter III thereof”;

“Marrakesh Accords” shall be deleted in its entirety;

“Registry” shall be amended by deleting all words after “means” and replacing them with: “the registry established by a Member State, Non-Member State or the EU, in accordance with Applicable Rules, in order to ensure the accurate accounting of the issue, holding, Transfer, acquisition, surrender, cancellation and replacement of Allowances. For the avoidance of doubt, references to a Registry shall include the Union Registry and the Holding Accounts within the Union Registry that are under the jurisdiction of a single National Administrator designated by a Member State and will together be deemed, for the purposes of this Allowances Appendix, to be a Registry for that Member State”;

“Rules” shall be amended by the addition of the words “as applicable” after the word “mean” on the first line of the definition, by the deletion and replacement of the words “Marrakesh Accords” with the words “the decisions of the COP/MOP” and by the addition of the words “the Registries Regulation” before the words “Emissions Trading Scheme(s)” on the 3rd line of the definition;

“Transfer” shall be amended by the replacement of the word “movement” with “transfer” in the first line and by the deletion of the words “(or such similar or analogous procedure or mechanism as, in effect on the Delivery Date, evidences the delivery and acceptance of the Allowance(s) and the vesting in, or for the benefit of, Buyer, the economic benefits of such Allowance(s))”;

and

- (b) the insertion of the following new definitions:

“Administrator Event” means the suspension of all or some of the processes in respect of a Registry on the CITL in accordance with the Registries Regulation by the National Administrator or the Central Administrator (as applicable) (i) where that Registry is not operated and maintained in accordance with the provisions of the Registries Regulation, or any other applicable law, or (ii) for the purposes of carrying out scheduled or emergency maintenance, or (iii) where there has been or following reasonable suspicion of, a breach of security which threatens the integrity of the registries system (including any back up facilities), or (iv) prior to the occurrence of the Migration Event only and to the extent not covered by (i) above, the Relevant Registry failing to maintain its Eligibility Criteria;

“AEUA” means a unit of account that is an “allowance” as defined in the EU ETS Directive and is issued under Chapter II thereof;

“Affected Allowance” means an Allowance which is or is alleged to have been the subject of an Unauthorised Transfer as confirmed by an Appropriate Source;

“Aircraft Operator” means an "aircraft operator" as defined in the EU ETS Directive;

“Appropriate Source” means any 'competent authority' and/or the 'Central Administrator' (as those terms are defined in the Registries Regulation), National Administrator or any other authority having power pursuant to the Directive and/or the Registries Regulation to block, suspend, refuse, reject, cancel or otherwise affect the Transfer (whether in whole or in part) of Allowances, any recognized law enforcement or tax authorities of a Member State, European Anti-fraud Office of the European Commission or Europol;

“Central Administrator” means the person designated by the EU Commission to maintain the EUTL pursuant to Article 20(1) of the EU ETS Directive;

“COP/MOP” means a conference of the parties serving as the meeting of the parties to the Kyoto Protocol;

“Encumbrance Loss Amount” means an amount reasonably determined by the Buyer in good faith to be its total losses and costs in connection with an Individual Contract including, but not limited to, any loss of bargain, cost of funding or, at the election of the Buyer but without duplication, loss or costs incurred as a result of its terminating, liquidating, obtaining or re-establishing any hedge or related trading position. Such amount includes losses and costs in respect of any payment already made under an Individual Contract prior to the delivery of the written notice by the Buyer and the Buyer's legal fees and out-of-pocket expenses but does not include Excess Emissions Penalty or any amount which the Buyer must pay to a third party in respect of any such penalty payable to any other party (or Relevant Authority) by that third party. The Parties agree that in circumstances where there was a breach of the No Encumbrances Obligation by the Seller caused by the Transfer of an Affected Allowance, the Buyer will be entitled to recover any losses arising out of or in connection with any claim, demand, action or proceeding brought against the Buyer by a third party consequent upon the Transfer by the Buyer of an Affected Allowance Transferred to it by the Seller under an Individual Contract;

“EU ETS Directive” means the Directive of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emissions allowance trading and amending Council Directive 96/61/EC, as amended from time to time;

“GHG” means any of the six gases listed in Annex A to the Kyoto Protocol, and such other gases as may be included in the Kyoto Protocol from time to time;

“GHG Reductions” means the removal, limitation, reduction, avoidance, sequestration or mitigation of GHG emissions relative to the scenario that reasonably represents the anthropogenic emissions by sources or anthropogenic removal by sinks of GHG in the absence of such removal, limitation, reduction, avoidance, sequestration or mitigation;

“Holding Account” means the form of record maintained by and in the relevant Registry to record the allocation (if applicable), Transfer and holding of Allowances;

“Migration Event” means an event following which Member State Registries and the Union Registry are suspended for (i) the purposes of the 'data migration process', whereby all necessary data (currently held in Member State Registries) are migrated to ensure that the Union Registry can hold and manage EU Allowances and (ii) the 'decoupling process', whereby distinct units of EU Allowances (that are not units issued under the Kyoto Protocol) are created following de-tagging of existing EU Allowances (that are units issued under the Kyoto Protocol). For the avoidance of doubt, it is not essential for a Migration Event that the process relating to the establishment of a consolidated system of Member State Registries, including the consolidation of external communication lines, information technology infrastructure etc. should occur;

“Migration Event Period” means the period immediately following the occurrence of a Migration Event during which the Member State Registries and the Union Registry are suspended and which period ends when access to the Union Registry is no longer suspended;

“National Administrator” means the entity responsible for managing, on behalf of a Member State, a set of user accounts under the jurisdiction of a Member State in the Union Registry as designated in accordance with Article 6 of the Registries Regulation;

“Operator” means an “operator” as defined in the EU ETS Directive;

“Original Affected Party” means the person from whose account the first Unauthorised Transfer of any Allowance occurred;

“Registry Transition Period” means a period of twenty (20) Delivery Business Days immediately following the date on which both the Migration Event Period has ended and the facility to open a Holding Account in the Union Registry has become available;

“Relevant Registry” means the Registry through which a Party is obliged to perform a Transfer or acceptance of Transfer obligation under and in accordance with an Allowance Transaction. Where a Party has specified more than one Holding Account for Transfer or acceptance purposes, the Relevant Registry shall be identified in accordance with § 4.1(b);

“Second Compliance Period” means, with respect to EUAs and AEUAs, the period referred to in Article 11(2) of the EU ETS Directive beginning 1 January 2008 and with respect to CERs and ERUs, the first commitment period under the Kyoto Protocol referencing the period in which the GHG Reductions, which are the subject of the relevant CERs or ERUs, were achieved;

“Specified Compliance Period” means, the Compliance Period specified by the Parties in the Confirmation for the Allowance Transaction;

“Third Compliance Period” means, with respect to EUAs and AEUAs, the period referred to in Article 16 of Directive 2009/29/EC starting 1 January 2013 to 31 December 2020 and with respect to CERs and ERUs, the period immediately following the first commitment period under the Kyoto Protocol referencing the period in which the GHG Reductions, which are the subject of the relevant CERs or ERUs, were achieved;

“Unauthorised Transfer” means the Transfer by debiting of any Allowance from an account holder's Holding Account and the crediting of a Holding Account of another person, where such Transfer is not initiated by the relevant authorised representative or additional authorised representative (as referred to in the Registries Regulation) of the first account holder;

“Union Registry” means the Registry referred to as the 'Community Registry' in Article 19(1) of the EU ETS Directive.

(B) Amendments to the Allowances Appendix (Phase 2 only):

The following amendments to the Allowances Appendix apply with respect to Allowance Transactions specifying the Second Compliance Period as the applicable Specified Compliance Period only and with Delivery Dates occurring on or after the Migration Event:

(1) Primary Obligations for Delivery and Acceptance of and Payment for Allowances. § 4 (*Primary Obligations for Delivery and Acceptance of Allowances*) of the Allowances Appendix is, hereby amended by the addition of a new §4.5 (*Effecting Delivery*), as follows:

"§ 4.5 Effecting Delivery.

- (a) With respect to an Allowance Transaction where the Delivery Date falls on any day between the date of the first occurrence of the Migration Event and the date that is thirty (30) calendar days following the end of the Migration Event Period inclusive, each Party agrees that it will use all reasonable endeavours to ensure it has a Holding Account validly registered in the Union Registry by no later than the end of the Registry Transition Period.

Where a Delivery Date for the Allowance Transaction falls on any day between the first occurrence of the Migration Event and the final day of the Registry Transition Period inclusive, the Transfer and acceptance obligations of both Parties which would otherwise be required to be performed on the Delivery Date will be postponed and will not be required to be performed until the day that is five (5) Delivery Business Days after the final day of the Registry Transition Period, whereupon such date will be deemed to be the new Delivery Date for such Transaction.

- (b) Notwithstanding the fact that the Delivery Points may be listed in order of preference in accordance with § 4.1(b) above, the Holding Accounts opened in the Union Registry shall thereafter be deemed an accepted additional Delivery Point for that Party and shall be the first listed Delivery Point for the purposes of § 4.1(b). To the extent that the Seller has specified a Holding Account(s) in a Member State Registry, the Holding Account opened in the Union Registry shall thereafter be deemed an accepted additional Transfer Point.
- (c) Where a Party (Party X) has failed to open a Holding Account in the Union Registry on or prior to the Delivery Date then, subject to (d) below, Party X will be deemed to have failed to perform its obligation under § 4.5(a). Such failure shall not constitute an Event of Default in respect of Party X, but the other party (Party Y) may by written notice to Party X rely on the provisions of § 8.1 (*Failure to Deliver*) (where Party X is the Seller) or the provisions of § 8.2 (*Failure to Accept*) (where Party X is the Buyer).
- (d) If following the notification from Party Y under (c) above, Party X provides evidence satisfactory to Party Y of its satisfaction of its obligation under § 4.5(a) within one (1) Delivery Business Day following receipt of the abovementioned notification, the provisions of (c) above shall not apply and instead it will be deemed that a Force Majeure had occurred on the Delivery Date and Party X shall be obliged to use all reasonable endeavours to overcome the Force Majeure. For the avoidance of doubt, it will not be unreasonable for Party Y to reject Party X's evidence where Party X has been refused a Holding Account by a National Administrator or where Party X cannot demonstrate that it has been unsuccessful in opening a Holding Account in the Union Registry with each of the National Administrators for the Member State Registries specified in the Allowance Transaction."

(2) **Non-Performance due to Force Majeure and Suspension Event.** § 7 (*Non-Performance due to Force Majeure and Suspension Event*) of the Allowances Appendix is hereby amended by replacing § 7.5(a) (*Definition of Suspension Event*), with the following:

"(a) **Definition of Suspension Event.** "Suspension Event" means the occurrence of any of the following events which makes it impossible for a Party affected by the Suspension Event (the "**Delivery SE Affected Party**") to perform its Transfer or acceptance of Transfer obligations in accordance with the terms of the Allowance Transaction and the relevant Emissions Trading Scheme, through a Relevant Registry:

- (i) the absence of ITL-Registry Operation; or
- (ii) the occurrence of an Administrator Event; or
- (iii) in respect of the Seller only, the occurrence of a Minimum Holding Event."

(3) **Annex 1 – Defined Terms.** Annex 1 to the Allowance Appendix shall be amended by the insertion of the following new definitions:

“**Registries Regulation**” means the Commission Regulation (EU) No. 920/2010 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision 280/2004/EC of the European Parliament and of the Council, as amended by Commission Regulation (EU) No. 1193/2011 and as may be amended from time to time;

“**Minimum Holding Event**” means the rejection by the CITL of a proposed external transfer from the Relevant Registry due to the total amount of relevant units in such Registry dropping below the quantity of units required to be held under Decision 11/CMP.1 of the Kyoto Protocol;

(4) **Amendment to Annex 2 (A) of the Allowances Appendix (Confirmation of Allowance Transactions)**. For the purposes of Allowance Transactions specifying the Second Compliance Period as the applicable Compliance Period, Annex 2 (A) to the Allowances Appendix (*Confirmation of Allowance Transactions (Including EUA, CER and ERU Transactions)*) shall be replaced by the form of Confirmation attached to this Letter at Schedule 1.

(C) **Amendments to the Allowances Appendix (Phase 3 only):**

The following amendments to the Allowances Appendix apply with respect to Allowance Transactions specifying the Third Compliance Period as the applicable Specified Compliance Period only:

(1) **Delivery, Measurement, Transfer and Risk. §6 (Delivery, Measurement, Transfer and Risk)** of the Allowances Appendix is hereby amended by replacing the reference to "Article 32(b)" in § 6.3(d)(i) with "Article 37".

(2) **Non-Performance due to Force Majeure and Suspension Event. § 7 (Non-Performance due to Force Majeure and Suspension Event)** of the Allowances Appendix is hereby amended by (i) the insertion of the words “, the delay or failure of a Member State or Central Administrator to replace Allowances of a Specified Compliance Period with Allowances for a subsequent Compliance Period” prior to the words “or the failure of that Party to procure sufficient Allowances to meet its Transfer obligations” in the penultimate sentence of § 7.1 (*Definition of Force Majeure*); and (ii) the replacing § 7.5(a) (*Definition of Suspension Event*), with the following:

“§ 7.5 Suspension Event.

(a) **Definition of Suspension Event.** “**Suspension Event**” means the occurrence of any of the following events which makes it impossible for a Party affected by the Suspension Event (the “**SE Affected Party**”) to perform its Transfer or acceptance of Transfer obligations in accordance with the terms of the Allowance Transaction and the relevant Emissions Trading Scheme, through a Relevant Registry:

- (i) the absence of Registry Operation; or
- (ii) the occurrence of an Administrator Event.”

(3) **Annex 1 - Defined Terms.** Annex 1 to the Allowance Appendix shall be amended by:

(a) the amendment of the following existing definitions:

“**Allowance Type**” shall be amended by the addition of the words “an Eligible Kyoto Unit,” after the existing words “an EUA,”;

“**CER**” shall be amended by the deletion of the words “, that is valid for the purposes of meeting emissions' related commitment obligations under the EU ETS” at the end of the definition;

“**ERU**” shall be amended by the deletion of the words “that is valid for the purposes of meeting emissions' related commitment obligations under the EU ETS” at the end of the definition;

“**TTL-Registry Operation**” shall be deleted in its entirety;

“**Long Stop Date**” shall be deleted in its entirety and replaced with the following definition: “means, in respect of a Suspension Event:

that occurs in relation to a Transfer or acceptance obligation that would otherwise be required to be performed within the period:

- (i) from (and including) 1 May 2013 to (and including) 31 December 2014, it shall be 1 June 2016;
- (ii) from (and including) 1 January 2015 to (and including) 31 December 2016, it shall be 1 June 2018;
- (iii) from (and including) 1 January 2017 to (and including) 31 December 2018, it shall be 1 June 2020;
- (iv) from (and including) 1 January 2019 to (and including) the twenty-fifth (25th) calendar day of the month in which the End of Phase Reconciliation Deadline is scheduled to occur, it shall be the twenty-fifth (25th) calendar day of the month in which the End of Phase Reconciliation Deadline is scheduled to occur.”;

and

- (b) the insertion of the following new definitions:

“**Administrator Event**” means the suspension of all or some of the processes in respect of a Registry on the CITL in accordance with the Registries Regulation by the National Administrator or the Central Administrator (as applicable) (i) where that Registry is not operated and maintained in accordance with the provisions of the Registries Regulation, or any other applicable law, or (ii) for the purposes of carrying out scheduled or emergency maintenance, or (iii) where there has been or following reasonable suspicion of, a breach of security which threatens the integrity of the registries system (including any back up facilities);

“**Eligible Kyoto Unit**” means a CER or ERU that, on the Delivery Date:

- (a) pursuant to the EU ETS Directive, may be exchanged by an Operator for an EU Allowance (valid in the Third Compliance Period) on a one-for-one basis, or used to comply with a requirement to surrender allowances in the Third Compliance Period on an equivalent one-to-one basis as an EU Allowance; and
- (b) has not previously been surrendered or otherwise used for compliance purposes by an Operator or Aircraft Operator in accordance with the EU ETS Directive;

“**National Administrator**” means the entity responsible for managing, on behalf of a Member State, a set of user accounts under the jurisdiction of a Member State in the Union Registry as designated in accordance with Article 7 of the Registries Regulation;

“**Registries Regulation**” means the EU Commission regulation no. 1193/2011 of 18 November 2011 establishing a Union Registry for the period commencing on 1 January 2013, and subsequent trading periods, of the Union emissions trading scheme pursuant to the

Directive 2003/87/EC and Decision 280/2004/EC of the European Parliament and of the Council and amending Regulations (EC) No. 2216/2004 and (EU) No. 920/2010;

“Registry Operation” means, other than by reason of the occurrence of an Administrator Event,:

- (a) the establishment of and continuing functioning of the Relevant Registry;
- (b) the establishment of and continuing functioning of the EUTL and the ITL; and/or
- (c) the link between each of the Relevant Registry, the EUTL and the ITL, as applicable.

(4) Insertion of new Annex 2(B) of the Allowances Appendix (Confirmation of Allowance Transactions). The Allowances Appendix shall be amended by the insertion of the form of Confirmation attached to this Letter at Schedule 2.

This Letter shall be duly executed by the authorised representatives of each Party and, when countersigned by you, constitutes a legally binding agreement between us. In order to record your agreement with and to be bound by the terms of this Letter, please sign and return the enclosed copy of this Letter.

Yours faithfully,

[Signatory’s Name]
For and on behalf of
[COMPANY’S NAME]

We agree with and consent to amendment of the Allowances Appendix to the General Agreement in accordance with the terms contained in his Letter.

[
For and on behalf of
[COUNTERPARTY’S NAME]

Dated: []

Schedule 1

EFET**European Federation of Energy Traders**

Annex 2 (A)
to the
ALLOWANCES APPENDIX (POWER)

CONFIRMATION OF
ALLOWANCE TRANSACTIONS (INCLUDING
AEUA, EUA, CER AND ERU TRANSACTIONS)
(Fixed Price, Second Compliance Period)

between

_____ as **Seller**

and

_____ as **Buyer**

as Parties to the

EFET General Agreement Concerning the Delivery and Acceptance of Electricity entered into and dated as of _____, _____

Allowance Transaction concluded on: _____ (**Trade Date**)

Name of Broker (if applicable):

Delivery Schedule

(Delivery Date to each Delivery Point for each Contract Quantity and, where applicable, Specified Vintage.)

Transfer Point(s):	Delivery Point(s):	Specified Compliance Period	Contract Quantity	Allowance Type	Delivery Date	Price per Allowance	Contract Price
Trading Account number and Registry of Seller (or, an Account to be determined at the specified Registry): (1) Acc. No.: _____	Trading Account number and Registry of Buyer (or, an Account to be determined at the specified Registry): (1) Acc. No.: _____	Second Compliance Period _____	_____	[AEUA] / [EUA] / [CER]/ [ERU]	_____	_____	€ _____

Date: _____

Signature: _____

Name: _____

Title: _____

Company: _____

Schedule 2

EFET

European Federation of Energy Traders

**Annex 2 (B)
to the
ALLOWANCES APPENDIX (POWER)**

**CONFIRMATION OF
ALLOWANCE TRANSACTIONS (INCLUDING AEUA,
EUA AND ELIGIBLE KYOTO UNIT TRANSACTIONS)
(Fixed Price, Third Compliance Period)**

between

_____ as **Seller**

and

_____ as **Buyer**

as Parties to the

EFET General Agreement Concerning the Delivery and Acceptance of Electricity entered into and dated as of _____, _____

Allowance Transaction concluded on: _____ (**Trade Date**) Name of Broker (if applicable):

Delivery Schedule

(Delivery Date to each Delivery Point for each Contract Quantity and Specified Compliance Period.)

Transfer Point(s):	Delivery Point(s):	Specified Compliance Period	Contract Quantity	Allowance Type	[Eligible Kyoto Unit] ³	Delivery Date	Price per Allowance	Contract Price

³ Delete column if no Kyoto Units are traded under this Phase 3 Confirmation.

Holding Account number and Registry of Seller (or, an Account to be determined at the specified Registry): (1) Acc. No.: Registry: (2) Acc. No.: Registry: (3) Acc. No.: Registry: (4) Acc. No.: Registry:	Holding Account number and Registry of Buyer (or, an Account to be determined at the specified Registry): (1) Acc. No.: Registry: (2) Acc. No.: Registry: (3) Acc. No.: Registry: (4) Acc. No.: Registry:	Third Compliance Period		[AEUA] / [EUA] / [Eligible Kyoto Unit]	[CER] / [ERU]			€
Total Contract Quantity:				Total Contract Price:				
Special Conditions & Terms: <p style="text-align: center;"><i>[INSERT ANY AMENDMENTS OR ADDITIONS TO THIS CONFIRMATION HERE]</i></p> For this specific Allowances Transaction: <p style="text-align: right;"> <input type="checkbox"/> EEP shall <u>not</u> apply. <input type="checkbox"/> EEP Equivalent shall <u>not</u> </p>								

apply. <input type="checkbox"/> EEP shall apply ⁴ . <input type="checkbox"/> EEP Equivalent shall apply ⁴ .	<input type="checkbox"/> EEP Equivalent shall apply ⁴ .
Other:	
Physical Settlement Netting Accounts:	
Party A: Account Number(s): [], in Account Registry(ies): []; and	
Party B: Account Number(s): [], in Account Registry(ies): []	

This Confirmation confirms the Allowance Transaction entered into pursuant to the EFET General Agreement Concerning the Delivery and Acceptance of Electricity between the Parties (General Agreement) as modified, supplemented and amended by the Allowances Appendix between the Parties (Allowances Appendix) and forms part of that General Agreement. In case of any inconsistencies between the terms of this Confirmation and the Allowance Transaction, please contact us immediately.

Date: _____ Signature: _____
Name: _____
Title: _____
Company: _____

⁴ Parties need only check the box to apply EEP and/or EEP Equivalent if they have specifically opted-out of either EEP and/or EEP Equivalent in § 8.3(a) (*EEP and EEP Equivalent*) of the EFET Allowances Appendix agreed between them.