

EFET

European Federation of Energy Traders

Allowances Appendix
to the
General Agreement
Concerning the Delivery and Acceptance of Electricity

ALLOWANCES APPENDIX

dated as of 25 June 2007
(the "Allowances Appendix Effective Date")

Between

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

("Party A")

and

Endesa Trading S.A., Sociedad Unipersonal

("Party B")

Check the box and fill in date ONLY if you are using this Allowances Appendix to modify and supplement a previously executed General Agreement between the Parties:

[X] By executing this Allowances Appendix in the signature block at the end hereof, the Parties hereby modify, supplement and amend the terms of that certain previously executed General Agreement entered into and dated as of 30/04/2003, to provide that the terms of this Allowances Appendix shall be incorporated therein and shall be applicable to and thereafter govern all Allowance Transactions (as defined below).



This EFET Allowances Appendix Version 2.0 /July 20, 2005 (New Appendix) and its Part II cancels and replaces the old Allowances Appendix Version 1.0 March 2004 and its Part II (Old Appendix) entered into between Endesa Trading SA, Sociedad Unipersonal and Société Nationale d'Electricité et de Thermique SA on 1 March 2005. Each allowance transaction between the Parties entered into before the Effective Date subject to the old Appendix but which remain either not yet fully or partially performed by one or both Parties, is deemed to be an individual contract under this new Appendix.

Part II:

ELECTIONS FOR CUSTOMIZATION OF PROVISIONS IN THE ALLOWANCES APPENDIX:

§ 4

Primary Obligations for Delivery and Acceptance of Allowances

§ 4.3 Physical Settlement Netting:

☐

§ 4.3 shall not apply, or

☒

§ 4.3 shall apply; and for this purpose the relevant Allowance Type(s) shall include CERs and EUAs

and each Party's Physical Settlement Netting Accounts in their designated Registries shall be as follows:

Party A: Account Number(s): FR 120.607.0 , in
Account Registry(ies):FRANCE ; and

Party B: Account Number(s): 121.1184.0 in
Account Registry(ies): FRANCE

§ 7

Non-Performance Due to Force Majeure

§ 7.4 (b) Force Majeure Termination Payment:

☒

§ 7.4(b)(i) (No Termination Payment) shall apply; or

§ 8

Remedies for Failure to Deliver and Accept

§ 8. 3(a) EEP and EEP Equivalent

☒

EEP shall not apply

☒

EEP Equivalent shall not apply

§ 13

Invoicing and Payment

§ 13.2 Payment:

☒

Payment Cycle A shall apply, or

☐

Payment Cycle B shall apply

§ 13.3.1 Cross Product Payment Netting:

☐

Payments due in relation to Individual Contracts in Respect of electricity shall be netted against payments due in relation to Allowance Transactions.

§ 22

Governing Law and Arbitration



§ 22.3 Expert Determination:

§ 22.3(d) [X] § 22.3 shall not apply

**Annex 1
to the
Allowances Appendix**

Defined Terms

“Delivery Business Day”

The relevant jurisdiction for the purposes of the definition of Delivery Business Day that each Party specifies as applying to it shall be as follows:

Party A: Paris (France); and
Party B: Madrid (Spain)

ADDITIONAL PROVISIONS APPLICABLE ONLY TO ALLOWANCE TRANSACTIONS:

1. Section (14) of the Allowances Appendix shall be deleted in its entirety and shall be read as follows: “For purposes of Allowances Transactions only, § 14 of the General Agreement, as amended in the Election Sheet, shall apply except for (i) § 14.1 (*VAT*) that shall be deleted in its entirety and replaced with the wording below, and § 14.3 (*Withholding Tax*) of the unamended version of the General Agreement shall be applicable for purposes of the Allowance Appendix and shall be added hereunder as new § 14.6 (*Withholding Tax*).

“§ 14.1 VAT. All amounts referred to in this Agreement are exclusive of any applicable VAT chargeable on the supply or supplies for which such amounts form the whole or part of the consideration for VAT purposes. The VAT treatment of any Transfer under an Allowance Transaction shall be determined pursuant to the VAT law of the jurisdiction where the Buyer is established for VAT purposes. The Buyer shall be under no obligation to make any payment to the Seller in respect of VAT which the Buyer must self-assess under the reverse charge rule or any similar system in the Buyer's jurisdiction. Each Party shall to the extent permitted by law provide the other with any additional valid VAT invoices as required for the purposes of this Agreement and, to the extent required by law, shall correctly account for any VAT properly due in its jurisdiction.”



This page need ONLY be executed by Parties that checked and completed the box on the first page hereof. Those appending this Allowance s Appendix to a General Agreement at the time of its execution need only append it to the General Agreement.

IN WITNESS whereof this Allowances Appendix has been duly executed by the authorized representatives of each Party on the respective dates set out below with effect from the Allowances Appendix Effective Date.

“Party A”

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

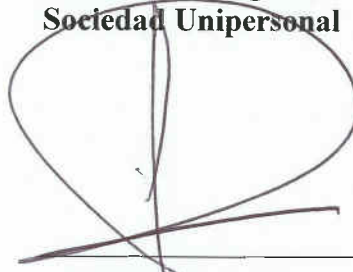


Alberto MARTIN RIVALS

Managing Director

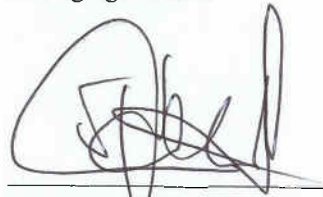
“Party B”

**Endesa Trading SA,
Sociedad Unipersonal**



Joaquín Rodríguez Jadraque

Managing Director



Celia Ordóñez Gómez

Managing Director

✓

EFET

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ALLOWANCES APPENDIX

to the
EFET General Agreement
Concerning the Delivery and Acceptance of Electricity
(the "Allowances Appendix")

NOTICE & WAIVER: THIS ALLOWANCES APPENDIX 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. IT IS THEREFORE THE RESPONSIBILITY OF EACH PARTY WISHING TO USE THIS ALLOWANCES APPENDIX AND THE EFET AGREEMENT TO ENSURE ITS TERMS AND CONDITIONS ARE LEGALLY BINDING, VALID AND ENFORCEABLE AND THAT THEY BEST SERVE TO PROTECT THE USER'S LEGAL INTERESTS. USERS OF THIS ALLOWANCES APPENDIX ARE URGED TO CONSULT RELEVANT LEGAL OPINIONS MADE AVAILABLE THROUGH EFET AS WELL AS THEIR OWN COUNSEL.

EFET

European Federation of Energy Traders

Allowances Appendix
to the
General Agreement
Concerning the Delivery and Acceptance of Electricity

ALLOWANCES APPENDIX

dated as of 25 June 2004
(the "Allowances Appendix Effective Date")

Between
Société Nationale d'électricité et de thermique, S.A., (Endesa France)

("Party A")

and
Endesa Trading S.A., Sociedad Unipersonal

("Party B")

Check the box and fill in date ONLY if you are using this Allowances Appendix to modify and supplement a previously executed General Agreement between the Parties:

☐ By executing this Allowances Appendix in the signature block at the end hereof, the Parties hereby modify, supplement and amend the terms of that certain previously executed General Agreement entered into and dated as of _____, _____ to provide that the terms of this Allowances Appendix shall be incorporated therein and shall be applicable to and thereafter govern all Allowance Transactions (as defined below).

Am

ALLOWANCES APPENDIX

Applicability of Allowances Appendix. This Allowances Appendix to the General Agreement (inclusive of this Allowances Appendix's Annexes) modifies, supplements and amends, to the extent set forth herein, certain provisions of the General Agreement (which, pursuant to § 1.1 of the General Agreement, includes its Annexes and Election Sheet) and shall only apply to and govern all Individual Contracts entered into by the Parties for and concerning the Transfer and acceptance of Transfer of Allowances (each such Individual Contract an "Allowance Transaction", and collectively, the "Allowance Transactions") save as expressly provided to the contrary with respect to any Section or Sections of the General Agreement or this Allowances Appendix. Any and all future Individual Contracts between the Parties that constitute Allowance Transactions shall be automatically subject to the General Agreement, as it is modified, supplemented and amended by its Annexes, Election Sheet and this Allowances Appendix, without any further action by the Parties, unless the agreed upon terms of such Individual Contract expressly provide that it shall not be. For all other types of Individual Contracts, the General Agreement shall remain unchanged. The provisions of the General Agreement are hereby modified, supplemented and amended (except as expressly noted to the contrary herein) only in respect of such Allowance Transactions in accordance with the following:

Part I: General Terms

(1) **Subject of Allowances Appendix.** The EU and the Member States as well as some Non-Member States plan to establish or have established Rules under which participants may trade Allowances. The purpose of this Allowances Appendix is to modify certain provisions of the General Agreement in order that its terms facilitate the purchase, sale and Transfer of Allowances by the Parties. In addition to the provisions of the General Agreement, the provisions of this Allowances Appendix shall therefore be applicable for the purchase, sale and Transfer of Allowances between participants of Emissions Trading Scheme(s) in both or either of Member States or Non-Member States.

(2) **Definitions and Construction.** Capitalized terms used but not defined in this Allowances Appendix shall have the meanings as set out in Annex 1 to this Allowances Appendix and otherwise as ascribed to them in either this Allowances Appendix or the General Agreement. In the event of any inconsistency between definitions found in this Allowances Appendix and in the General Agreement, this Allowances Appendix's definitions will prevail for purposes of all Allowance Transactions. All references to "electricity", "Network Operator", "Contract Capacity", and "Transmission" or "flows" in the General Agreement shall, in the context of Allowance Transactions, be construed as references to "Allowances", "Relevant Authority", "Specified Vintage", and "Transfer(s)" respectively. References to a Section (§) or Sections (§§) in this Allowances Appendix shall be references to a Section or Sections in the General Agreement unless otherwise stated. In the event of any inconsistency between the terms of an Allowance Transaction (whether evidenced in a Confirmation or otherwise) and the provisions of either this Allowances Appendix or the General Agreement (as amended by this Allowances Appendix), the terms of the Allowance Transaction shall prevail for the purpose of that Allowance Transaction. References to any law or statute include any amendment to, consolidation, re-enactment or replacement of such law or statute and, in the case of a Directive, its implementation under national law.

(3) **Concluding and Confirming Allowance Transactions.** All Allowance Transactions shall contain the information stipulated in, and if confirmed with a Confirmation shall be substantially in the form of, the sample confirmation sheet attached as Annex 2 (A) to this Allowances Appendix.

(4) **Primary Obligations for Delivery and Acceptance of Allowances.** For purposes of Allowance Transactions § 4 of the General Agreement is hereby amended by: (i) deletion of § 4.1 (*Delivery and Acceptance*) in its entirety and replacement with the new § 4.1 (*Delivery and Acceptance and Scheduling Obligations*) below; (ii) the following additions and deletions to the definition of "Schedule" found in § 4.2 (*Definition of Schedule*); and (iii) by the addition of a new § 4.3 (*Physical Settlement Netting*) as follows:

§ 4.1 Delivery, Acceptance and Scheduling Obligations.

- (a) Seller shall Schedule, sell and Transfer to Buyer, or, if applicable in accordance with the relevant provision of § 4.1(a)(i) and 4.1(a)(ii), cause to be Transferred, and Buyer shall Schedule, purchase and

accept Transfer of, or, if applicable in accordance with the relevant provision of § 4.1(a)(i) and 4.1(a)(ii), cause such Transfer to be accepted, the Contract Quantity at the Delivery Point, and the Buyer shall pay to the Seller the relevant Contract Price. Unless the Parties otherwise agree, the Seller shall Transfer the Contract Quantity at the Delivery Point during a Delivery Business Day between the hours of 9:00 a.m. and 5:00 p.m. CET and any Transfer taking place at a time after 5:00 p.m. CET on a Delivery Business Day shall be deemed to have taken place at 9:00 a.m. CET on the next Delivery Business Day.

- (i) For any Allowance Transaction in which no Transfer Point has been specified by the Parties, Seller shall Transfer, or cause the Transfer of, the Contract Quantity to the Delivery Point from any Trading Account in any Registry.
- (ii) Parties may limit the scope of their Transfer and acceptance of Transfer obligations by designating one or more specific Delivery Points and/or Transfer Points for any Allowance Transaction:
 - A. If one or more Delivery Points are specified by the Parties in respect of an Allowance Transaction, the Seller's obligations shall be limited to the obligation to Schedule, sell and Transfer to Buyer, or cause to be so Transferred, and the Buyer's obligations shall be limited to the obligation to Schedule, purchase and accept Transfer of the Contract Quantity at the Delivery Point(s) so specified.
 - B. If one or more Transfer Points are specified by the Parties in respect of an Allowance Transaction, the Seller's obligations shall be limited to the obligation to Schedule, sell and Transfer to Buyer and the Buyer's obligations shall be limited to the obligation to Schedule, purchase and accept Transfer of, or cause to be accepted such Transfer of, the Contract Quantity from the Transfer Point(s) so specified.
- (b) The Parties may agree in an Allowance Transaction that from an initially agreed upon list of Trading Accounts: (i) the Buyer may later select as the applicable Delivery Point(s) one or more of such Trading Accounts into which it wishes the Contract Quantity to be Transferred by the Seller on the Delivery Date (a "**Buyer's Choice Transaction**"); and/or (ii) the Seller may later select as the applicable Transfer Point(s) one or more of such Trading Accounts from which it wishes to Transfer the Contract Quantity to the Buyer on the Delivery Date (a "**Seller's Choice Transaction**"). Any such later selection shall be notified to the other Party as, and on or before any deadline, agreed upon for the giving of such notice and if such notice is not given, the Trading Accounts so specified shall be deemed to be listed in descending order of preference and the Allowance Transaction will be performed in accordance with the rules of a Cascade Transaction described in § 4.1(c) below.
- (c) The Parties may also list multiple Trading Accounts in respect of an Allowance Transaction without providing for any subsequent right or obligation to give notice of the selection of one or more Trading Accounts from such list (a "**Cascade Transaction**"). The Trading Accounts so specified, unless otherwise agreed and provided, shall be listed in descending order of preference such that the Delivery Point or the Transfer Point, as applicable, for an Allowance Transaction shall be the first Trading Account so listed, unless the Party(ies) is/are, as applicable, prevented from Transferring to or Transferring from that Trading Account by an event which would be a Force Majeure if that were the only Trading Account specified by the Party affected by the event, in which case the Delivery Point that can accept Transfer of Allowances or Transfer Point from which that Party can Transfer Allowances, as applicable, shall be the next listed Trading Account, until such list of Trading Accounts has been exhausted.
- (d) For the avoidance of doubt, specifying Delivery Point(s) and/or Transfer Point(s) in respect of any particular Allowance Transaction for purposes of this § 4.1, need not preclude the Parties from designating different Trading Accounts than the Physical Settlement Netting Accounts specified for the purposes of § 4.3 (**Physical Settlement Netting**) in Part II of this Allowances Appendix.

§ 4.2 Definition of Schedule. The addition at the end of the last sentence of § 4.2 (**Definition of "Schedule"**) of the following words: "For the purposes of Allowance Transactions, the definition of Schedule shall include, in accordance with

Applicable Rules, those actions necessary for Parties to comply with all obligations and requirements contained in the Applicable Rules, including, without limitation, the standards of the relevant Emission Trading Scheme(s) and Registry requirements in order to ensure that all their respective Trading Accounts are properly established, and that all their respective applicable requirements for effecting Transfer from Seller to Buyer at the applicable Delivery Point are met.

§ 4.3 Physical Settlement Netting.

- (a) If this § 4.3 is specified as applying in Part II of this Allowances Appendix; if on any date, Allowances of the same Allowance Type and Compliance Period would otherwise be Transferable in respect of two or more Allowance Transactions between the Parties and, if applicable, between designated pairs of Trading Accounts as specified as applying in Part II of this Allowances Appendix or otherwise agreed between the Parties (the “**Physical Settlement Netting Accounts**”), then, on such date, each Party’s obligation to Schedule and Transfer any such Allowances will be automatically satisfied and discharged and, if the aggregate number of Allowances that would otherwise have been Transferable by one Party exceeds the aggregate number of Allowances that would otherwise have been Transferable by the other Party, replaced by an obligation upon the Party from whom the larger aggregate number of Allowances would have been Transferable to Schedule and Transfer to the other Party a number of Allowances (of the same Allowance Type and Compliance Period) equal to the excess of the larger aggregate number of Allowances over the smaller aggregate number of Allowances (the “**Net Contract Quantity**”) (such process hereinafter referred to as “**Physical Settlement Netting**”). In such circumstances the Party Transferring the Net Contract Quantity shall be the “**Net Seller**” and the Party receiving the Net Contract Quantity shall be the “**Net Buyer**”. In instances where the Net Contract Quantity for a given date and Delivery Point is zero, the Parties shall be released from any obligation to Schedule and Transfer or accept such Transfer in respect of the applicable Allowance Transactions on such date. For the avoidance of doubt and subject to this § 4.3, the Parties fully intend at the time of entering into each Individual Contract that such Individual Contract will result in the physical Transfer of Allowances.
- (b) Unless otherwise provided, if there is more than one Allowance Transaction between the Parties providing for Transfer of Allowances of the same Allowance Type and Compliance Period at the same Delivery Point on the same date, all references in the General Agreement, this Allowances Appendix and an Individual Contract to a “Seller”, “Buyer”, “Contract Quantity” and “Individual Contract” shall be deemed to be references to a “Net Seller”, a “Net Buyer”, a “Net Contract Quantity” and to all such Individual Contracts.
- (c) For the avoidance of doubt, specifying Physical Settlement Netting Accounts under this § 4.3 (**Physical Settlement Netting**) need not preclude the Parties from designating Delivery Point(s) and/or Transfer Points under § 4.1 (**Delivery, Acceptance and Scheduling Obligations**) nor is it intended to prohibit the Parties from limiting their rights and obligations in respect of any particular Allowance Transaction to Transfer and accept Transfer of Allowances in accordance with § 4.1.

(5) **Primary Obligations for Options on Allowances.** Except to the extent otherwise modified herein, there shall be no change to § 5 (**Primary Obligations for Options**) of the General Agreement with respect to Allowance Transactions.

(6) **Delivery, Measurement, Transfer and Risk.** For purposes of Allowance Transactions, § 6 of the General Agreement is hereby amended by: (i) deletion of § 6.1 (**Current/Frequency/Voltages**) and § 6.3 (**Transfer of Rights of Title**) in their entirety and replacement with the new § 6.1 (**Specified Vintage/Contract Quantity/Trading Account**) and the new § 6.3 (**No Encumbrances**) below; and (ii) the following additions and deletions to § 6.7 (**Seller and Buyer Risks**):

§ 6.1 Specified Vintage/Contract Quantity/Trading Account: Allowances shall be Transferred in the Specified Vintage, Contract Quantity and at the relevant Delivery Point in accordance with the Delivery Schedule agreed in the Allowance Transaction and in accordance with the Applicable Rules, including, without limitation, the standards of the relevant Emissions Trading Scheme(s) and Registry responsible for the Delivery Point on the relevant Delivery Date.

§ 6.3 No Encumbrances. In respect of each Allowances Transaction, the Seller warrants and represents to the Buyer that for each Contract Quantity it has the right to Transfer (or cause to be Transferred) to the Buyer full entitlement to the Specified Vintage(s) of Allowances at the Delivery Point free and clear of all liens, security interests, encumbrances or similar adverse claims by any person and the Seller shall indemnify and hold harmless Buyer against any such adverse

claims in respect of the Delivered Quantity or any part thereof.

§ 6.7 Seller and Buyer Risks. The deletion of the text of the provision and its replacement with the following: “The Buyer and Seller shall, unless otherwise expressly agreed between them, each bear all risks associated with and shall be responsible for its own respective costs in performing its obligations under § 4 (*Primary Obligations For Delivery and Acceptance of Allowances*). Further, absent express agreement to the contrary between Buyer and Seller, all costs, fees and charges assessed or imposed by Relevant Authorities shall be the responsibility of the Party upon whom such cost, fee or charge is allocated by the Relevant Authority.”

(7) **§ 7 Non-Performance Due to Force Majeure.** For purposes of Allowance Transactions, § 7 of the General Agreement is hereby amended by deletion of § 7.1 (*Definition of Force Majeure*), § 7.2 (*Release from Delivery and Acceptance Obligations*), 7.3 (*Notification and Mitigation of Force Majeure*) and § 7.4 (*Effects of Force Majeure on Other Party*), in their entirety and their replacement with a new §7.1 (*Definition of Force Majeure*), a new § 7.2 (*Release from Delivery and Acceptance Obligations*), a new 7.3 (*Notification and Mitigation of Force Majeure*) and a new §7.4 (*Settlement of Allowance Transaction Prevented by Force Majeure*), as follows:

§ 7.1 Definition of Force Majeure. “Force Majeure” in the context of an Allowance Transaction means the occurrence of an event or circumstance beyond the control of the Party affected by Force Majeure (the “Affected Party”) that cannot, after using all reasonable efforts, be overcome and which makes it impossible for the Affected Party to perform its Transfer or acceptance of Transfer obligations in accordance with the terms of this Agreement and the relevant Emissions Trading Scheme. For the avoidance of doubt, but without limitation, Force Majeure shall not include an event or circumstance where there are insufficient Allowances in the relevant Trading Account(s) to effect the required Transfer whether that insufficiency is caused by the low or non-allocation of Allowances from a Member State or a Non-Member State or the failure of that Party to procure sufficient Allowances to meet its Transfer obligations.

§ 7.2 Suspension of Delivery and Acceptance Obligations. If a Party is fully or partly prevented due to Force Majeure from performing its obligations, as applicable, of Transfer or acceptance of Transfer, under one or more Allowance Transactions, no breach or default on the part of the Affected Party shall be deemed to have occurred and the obligations of both Parties with respect to the relevant Allowance Transaction(s) will be suspended for the period of time and to the extent that such Force Majeure prevents their performance. During the continuation of the Force Majeure, the Affected Party shall continue to use all reasonable endeavours to overcome the Force Majeure. Subject to § 7.4 (*Settlement of Allowance Transaction Prevented by Force Majeure*) below, upon the Force Majeure event being overcome or it ceasing to subsist, both Parties will, as soon as reasonably practicable thereafter (and in any event no later than the first Delivery Business Day following the cessation or Parties overcoming such Force Majeure event), resume full performance of their obligations under the Agreement in respect of the relevant Allowance Transaction(s) (including, for the avoidance of doubt, any suspended obligations).

§ 7.3 Notification and Mitigation of Force Majeure. The first Party learning of the occurrence of an event of Force Majeure shall, as soon as practicable, notify the other Party of the commencement of the Force Majeure. Each Party shall then undertake in good faith to determine, and notify the other Party with, to the extent then available, a non-binding estimate of the extent and expected duration of the Force Majeure event and its impact on performance of all Allowance Transaction(s) affected by the event of Force Majeure. The Affected Party shall use all commercially reasonable efforts to mitigate the effects of the Force Majeure and shall, during the continuation of the Force Majeure, provide the other Party with reasonable updates, when and if available, of the extent and expected duration of its inability to perform.

§7.4 Settlement of Allowance Transaction Prevented by Force Majeure.

- (a) **Termination for Force Majeure.** Where Force Majeure continues for a period of time ending on the earlier to occur of: (a) a period of nine (9) Delivery Business Days from the date that, but for the Force Majeure, would have been the Delivery Date of the relevant Allowance Transaction(s); (b) the Reconciliation Deadline; or (c) the day which falls three (3) Delivery Business Days prior to the End of Phase Reconciliation Deadline, either Party may, by written notice to the other Party, terminate all (but not less than all) of the Allowance Transaction(s) affected by the Force Majeure.
- (b) **Force Majeure Termination Payment.** In the event and to the extent that an Allowance Transaction is terminated in accordance with § 7.4(a), the Parties’ corresponding Transfer and acceptance of Transfer obligations under the terminated Allowance Transaction(s) shall be released and discharged. By

specifying in Part II of this Allowances Appendix which of the following subparagraphs (i), (ii) or (iii) they wish to be operative, the Parties shall designate the consequences that will follow as a result of the Force Majeure event and what, if any, rights and obligations they wish to apply between them in the event of termination of an Allowance Transaction due to Force Majeure:

- (i) **No Termination Payment.** No termination payment or other financial settlement obligation shall be applicable (other than, for the avoidance of doubt, payment for any Allowances Transferred under such Allowance Transaction which were not prevented due to Force Majeure and/or payment of any damages due for non-performance of any portion of the terminated Allowance Transaction not excused due to Force Majeure (hereinafter collectively, "**Unpaid Amounts**")) and each Party shall be permanently released and discharged of any further obligations with respect to the Allowance Transaction terminated by reason of Force Majeure.
- (ii) **Two-Way Market Quotation Termination Payment.** Each Party shall obtain five (5) mid-market quotations from Dealers for replacement Allowance Transaction(s) on the same terms as the unperformed portion(s) of the relevant Allowance Transaction(s) affected by Force Majeure (without taking into account the current credit-worthiness of the requesting Party or any Credit Support Documents or other Performance Assurance between the Parties). Each Party will then calculate the average of the quotations it obtained and the amount payable shall be equal to: (A) the sum of (i) one half of the difference between the higher amount determined by one Party ("X") and the lower amount determined by the other Party ("Y") and (ii) any Unpaid Amounts owing to X; less (B) any Unpaid Amounts owing to Y. If the resultant amount is a positive number, Y shall pay it to X; if it is a negative number, X shall pay the absolute value of such amount to Y. If the five (5) mid-market quotations cannot be obtained, all quotations will be deemed to be zero and no payment shall be due in respect of the termination of such Allowance Transaction.
- (iii) **Two-Way Loss Termination Payment.** Each Party will determine its Loss in respect of the relevant Allowance Transaction(s) and an amount will be payable equal to one half of the difference between the Loss of the Party with the higher Loss ("X") and the Loss of the Party with the lower Loss ("Y"). If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of such amount to Y.

Payments due under this § 7.4(b) shall, unless otherwise agreed, be invoiced and made in accordance with the requirements of the Payment Cycle selected by the Parties in respect of § 13.2 (**Payment**).

(8) **§ 8 Remedies for Failure to Deliver and Accept.** For purposes of Allowance Transactions, § 8 of the General Agreement is hereby deleted in its entirety and replaced with the following new § 8 (**Remedies for Failure to Deliver and Accept**):

§ 8.1 Failure to Deliver:

- (a) **One Delivery Business Day Grace Period.** When a Seller fails to Transfer to Buyer a Contract Quantity in whole or in part on a Delivery Date as required in accordance with the terms of an Allowance Transaction, and such failure is not excused by an event of Force Majeure or the Buyer's non-performance, the Seller may remedy such failure by Scheduling and Transferring such Contract Quantity (or undelivered portion thereof) to Buyer on the first Delivery Business Day following the Delivery Date, provided that such day is not on or after the Reconciliation Deadline following the relevant Delivery Date in respect of that Allowance, and further subject to the additional obligation of Seller to pay Buyer, as compensation for its late Transfer, interest calculated: (i) as follows for the one Delivery Business Day grace period; and (ii) as set forth in the applicable subpart of this § 8.1 for any longer period Seller fails to deliver the Allowances thereafter.

Interest for the one Delivery Business Day grace period shall accrue at the Interest Rate specified in §13.5 (**Default Interest**) for the period from (and including) the Delivery Date to (but excluding) the Delivery Business Day following the Delivery Date on the Total Contract Price of the undelivered Allowances, such Total Contract Price calculated as follows: the number of undelivered Allowances multiplied by a

fraction determined by dividing the Total Contract Price by the Contract Quantity.

- (b) **Buyer's Cover Costs.** In the event that the Seller fails to Transfer to Buyer all or any portion of a Contract Quantity as required by § 8.1(a) (*One Delivery Business Day Grace Period*) in accordance with the terms of an Allowance Transaction and Buyer has not agreed to a Deferred Delivery Date as provided for in § 8.1(c) (*Buyer's Right to Waive Its Cover Costs*), Seller shall incur the obligation to pay Buyer, as compensation for its failure to Transfer, an amount (hereinafter "**Buyer's Cover Costs**") equal to either:

(i), if no EEP or EEP Equivalent is operative or applicable to the Allowance Transaction, the sum of:

- (A) the price, if any, in excess of the portion of the Total Contract Price applicable to the Allowances not Transferred to Buyer by the Seller, which the Buyer, acting in a commercially reasonable manner either did, or would have been able to, pay to purchase or otherwise acquire in an arm's length transaction from a third party or parties, a quantity of Allowances necessary to replace the Allowances not Transferred by the Seller;
- (B) such reasonable additional incidental costs as Buyer incurred in attempting to make or making such replacement purchase of Allowances to the extent those costs and expenses are not recovered in § 8.1(b)(i)(A) above; and
- (C) interest accrued during the one Delivery Business Day grace period as provided in § 8.1(a); plus interest, at the Interest Rate specified in § 13.5 (*Default Interest*), accrued from (and including) the Delivery Business Date following the Delivery Date, to (but excluding) the receipt by Buyer of damages for Seller's failure to deliver, such amount calculated using the following formula:

$$\text{Amount on which interest accrues} = \text{UA} \times [(\text{RP} - \text{CP})]$$

where: **UA** means undelivered Allowances, the total number of Allowances Seller failed to deliver;
RP means replacement price, the price Buyer paid (or, if it could have procured replacement Allowances but did not do so, the first price which Buyer would have been able to pay) for each replacement Allowance in the UA; and
CP means the aggregate Contract Price that Buyer would have been required to pay to Seller for all undelivered Allowances comprising the UA had Seller not defaulted on its delivery obligation;

or

- (ii) , if an EEP or EEP Equivalent has been made applicable to the Allowance Transaction and has arisen, and further subject to the fulfillment of all applicable requirements imposed in § 8.3 (*Excess Emissions Penalty ("EEP") and EEP Equivalent*), the amount calculated using the following formula:

- (A) the price at which the Buyer, using reasonable endeavours and in (an) arm's length transaction(s), is or would be able to purchase, as soon as reasonably possible following the Reconciliation Deadline, replacement Allowances in the quantity of those not delivered to it by Seller (such quantity reduced, if applicable, by the number of Allowances Buyer was able to purchase prior to the Reconciliation Deadline as contemplated by § 8.1(b)(i), damages for the cost of which being recoverable pursuant to element (G) of this formula, hereinbelow)(the net resulting number of Allowances corresponding to the, as applicable, EEP or EEP Equivalent, being referred to hereinafter as the "**Undelivered EEP Amount**" or "**UEA**";
- (B) minus the price that Buyer would have been required to pay Seller for those Allowances comprising UEA, had Seller delivered those Allowances to Buyer in accordance with

the terms of the Allowance Transaction;

- (C) plus the amount of, as applicable, the EEP or EEP Equivalent on the UEA;
- (D) plus interest accrued during the one Delivery Business Day grace period, calculated as provided in §8.1(a);
- (E) plus interest, at the Interest Rate specified in § 13.5 (**Default Interest**), accrued from (and including) the first date on which Buyer would be able to purchase, following the Reconciliation Deadline, the UEA of next Compliance Year replacement Allowances, to (but excluding) the date of Buyer's receipt of damages for Seller's failure to deliver, on the amount determined using the following formula:

Amount on which interest accrues = UEA x (REP – CP)

where:

UEA has the meaning set forth above;

REP means the Replacement EEP Price, which shall be the (per Allowance) price of next Compliance Year Allowances calculated pursuant to § 8.1(b)(ii)(A), above; and

CP means the per Allowance Contract Price that Buyer would have been required to pay to Seller for each undelivered Allowances comprising the UEA had Seller not defaulted on its delivery obligation;

- (F) plus such reasonable additional incidental costs as Buyer incurred in, as applicable, both attempting unsuccessfully to make purchase of replacement Allowances in order to avoid the accrual of an EEP or EEP Equivalent, and in making replacement purchase(s) of next Compliance Year Allowances as described in § 8.1(b)(ii)(A), above; to the extent those costs and expenses are not recovered via § 8.1(b)(i)(A) above (which additional incidental damages, for the avoidance of doubt, may also include interest accrued at the Interest Rate specified in § 13.5 (**Default Interest**), from (and including) the date on which an EEP or EEP Equivalent is paid, to (but excluding) the receipt by Buyer of damages for Seller's failure to deliver); and
- (G) plus, if applicable, Buyer's Cover Costs incurred in replacing that portion of Allowances not Transferred to Buyer by Seller for which Buyer did not incur an EEP or EEP Equivalent (and thus not comprising the UEA)(such portion of Allowances not Transferred being hereinafter referred to as the "**Non-UEA**"), calculated in accordance with the methodology set forth in § 8.1(b)(i), which methodology shall apply equally to this § 8(b)(ii)(G);
- (H) plus interest accrued on the value of the Non-UEA calculated in accordance with the methodology set forth in § 8.1(b)(i)(C), but in this context calculated on the amount of the Non-UEA, rather than the amount of the UA.

provided, always, that in the event that the number calculated through application of elements (A) through (H) of the formula set forth immediately above in this § 8.1(b)(ii) results in a negative number, such number shall be deemed to be zero and no damages will be owed in respect of such elements of this damages formula.

- (c) **Buyer's Right to Waive Its Cover Costs.** Buyer shall be entitled to invoice Seller for damages payable pursuant to § 8.1(b)(i) (**Buyer's Cover Costs**) in accordance with the requirements of Payment Cycle B as defined in § 13.2 (**Payment**). However, Buyer may alternatively, but shall be under no obligation to, defer the due date on the payment of such damages for a reasonable period of time (but in no event

beyond the applicable Reconciliation Deadline) if Seller has indicated to Buyer an intent to attempt to cure its Transfer default within a period of time acceptable to Buyer.

- (i) At any time prior to the due date applicable to the payment of damages due to Buyer under §8.1(b), Seller may offer to Transfer to Buyer replacement Allowances to Buyer on a new Delivery Date (the “**Deferred Delivery Date**”) for those it originally failed to Transfer. Buyer may, but is not required to, agree to accept such Transfer of replacement Allowances in lieu of the damages it is entitled to recover under § 8.1(b), provided that in such case Buyer shall be entitled to invoice Seller for interest for the intervening period calculated as the sum of interest accrued during the one Delivery Business Day grace period as provided in § 8.1(a); plus interest, at the Interest Rate specified in § 13.5 (**Default Interest**), from (and including) the first Delivery Business Day following the Delivery Date, to (but excluding) the date of actual Transfer of the previously undelivered Allowance(s), accrued on the amount calculated in accordance with the formula set forth in § 8.1(b)(i)(C).
- (ii) If Buyer agrees to accept Seller’s offer for Transfer of replacement Allowances on a Deferred Delivery Date as provided above in subparagraph (i), but Seller again defaults on its Transfer obligation, Buyer shall be entitled to invoice the Seller for an amount calculated in accordance with § 8.1(b) (**Buyer’s Cover Costs**) save that the amount it may so invoice Seller shall account for both:
 - (A) interest, (1) in the event that Buyer is subsequently able to make a replacement purchase of Allowances, calculated as provided in § 8.1(b)(i)(C); or (2) in the event Buyer is unable to make a replacement purchase of Allowances before the Reconciliation Deadline for the relevant Compliance Period, calculated as provided in §8.1(b)(ii)(D); and
 - (B) any increase in Buyer’s Cover Costs reflecting higher market prices pertaining to replacement Allowances on the Deferred Delivery Date when compared to those available in the market on the original Delivery Date.

§ 8.2 Failure to Accept:

- (a) **One Delivery Business Day Grace Period.** When a Buyer fails to accept Transfer of a Contract Quantity in whole or in part on a Delivery Date as required in accordance with the terms of an Allowance Transaction, and such failure is not excused by an event of Force Majeure or the Seller’s non-performance, the Seller shall afford Buyer an opportunity to remedy its failure by again attempting to Schedule and Transfer such Contract Quantity (or undelivered portion thereof) to Buyer on the first Delivery Business Day following the Delivery Date, provided that such day is not on or after the Reconciliation Deadline applicable to the Specified Vintage of the undelivered Allowance(s), and further subject to the additional obligation of Buyer to pay Seller, as compensation for its failure to accept Transfer of the Allowances, interest calculated: (i) as follows for the one Delivery Business Day grace period; and (ii) as set forth in the applicable subpart of this § 8.2 for any longer period Buyer fails to accept the Allowances thereafter.

Interest for the one Delivery Business Day grace period shall accrue at the Interest Rate specified in §13.5 (**Default Interest**) for the period from (and including) the Delivery Date to (but excluding) the Delivery Business Day following the Delivery Date on the Total Contract Price of the Allowances not accepted by Buyer, such Total Contract Price calculated as follows: the number of Allowances not accepted by Buyer multiplied by a fraction determined by dividing the Total Contract Price by the Contract Quantity.

- (b) **Seller’s Cover Costs.** In the event that the Buyer fails to accept Transfer of all or any portion of a Contract Quantity as required by § 8.2(a) (**One Delivery Business Day Grace Period**) in accordance with the terms of an Allowance Transaction and Seller has not agreed to a Deferred Acceptance Date as provided for in § 8.2(c) (**Seller’s Right to Waive Its Cover Costs**), Buyer shall incur the obligation to pay Seller, as compensation for its failure to accept Transfer of the Allowances, an amount (hereinafter “**Seller’s Cover Costs**”) equal to the sum of:

- (i) the price, if any, less than the portion of the Total Contract Price applicable to the Allowances not accepted by the Buyer, which the Seller, acting in a commercially reasonable manner either did, or would have been able to, receive, in an arm's length transaction with a third party or parties, from the resale of the Allowances not accepted by the Buyer;
- (ii) such reasonable additional incidental costs as Seller incurred in attempting to make or making such resale of the Allowances; and
- (iii) interest accrued during the one Delivery Business Day grace period as provided in §8.1(a); plus interest, at the Interest Rate specified in § 13.5 (**Default Interest**), accrued from (and including) the first Delivery Business Date following the Delivery Date, to (but excluding) the date of receipt by Seller of damages for Buyer's failure to accept, such amount calculated using the following formula:

Amount on which interest accrues = ANA x CP

where: ANA means Allowances not accepted, the total number of Allowances Buyer failed to accept; and

CP means the aggregate Contract Price that Buyer would have been required to pay to Seller for all Allowances not accepted by it.

- (c) **Seller's Right to Waive Its Cover Costs.** Seller shall be entitled to invoice Buyer for damages payable pursuant to § 8.2(b) (**Seller's Cover Costs**) in accordance with the requirements of Payment Cycle B as defined in § 13.2 (**Payment**). However, Seller may alternatively, but shall be under no obligation to, defer the due date on the payment of such damages for a reasonable period of time (but in no event beyond the applicable Reconciliation Deadline) if Buyer has indicated to Seller its intent to attempt to cure its acceptance default within a period of time acceptable to Seller.
 - (i) At any time prior to the due date applicable to the payment of damages due to Seller under §8.2(b), Buyer may offer to accept Transfer from Seller on a new Delivery Date (the "**Deferred Acceptance Date**") of the Allowances it failed to accept Transfer of on the original Delivery Date. Seller may, but is not required to, agree to attempt to again Transfer such replacement Allowances to Buyer on the Deferred Acceptance Date. If it so agrees, Seller, in lieu of the damages it is entitled to recover under § 8.2(b), shall be entitled to both Transfer and receive payment of the Contract Price for the Allowances on the Deferred Acceptance Date and to further invoice Buyer for interest for the intervening period calculated as the sum of the interest accrued during the one Delivery Business Day grace period as provided in § 8.2(a) plus interest at the Interest Rate specified in § 13.5 (**Default Interest**), from (and including) the Delivery Business Day following the Delivery Date to (but excluding) the date of actual acceptance of Transfer of the Allowance(s) previously not accepted, accrued on the amount calculated in accordance with the formula set forth in § 8.2(b)(iii).
 - (ii) If Seller agrees to Buyer's offer to accept Transfer of the Allowances on a Deferred Acceptance Date as provided above in subparagraph (i), but Buyer again defaults on its acceptance of Transfer obligation, Seller shall be entitled to invoice the Buyer for an amount calculated in accordance with § 8.2(b) (**Seller's Cover Costs**) save that the amount it may so invoice Buyer shall account for both:
 - (A) interest, calculated as provided in § 8.2(b)(iii); and
 - (B) any depreciation in Seller's Cover Costs reflecting lower prevailing market prices available for the resale of Allowances on the Deferred Acceptance Date when compared to those available in the market on the original Delivery Date.

§ 8.3 Excess Emissions Penalty ("EEP") and EEP Equivalent:

- (a) **Applicability.** The Parties to an Allowance Transaction desiring to make EEP or EEP Equivalent inapplicable and inoperative to the calculation of Buyer's Cover Costs for such Allowance Transaction may do so either globally by specifying EEP or EEP Equivalent as not applying in Part II of this Allowances Appendix, or in the terms of the Allowance Transaction itself.
- (b) **Excess Emissions Penalty.** If EEP is applicable, Buyer may invoice Seller in the amount of an EEP it incurs as the result of Seller's failure to Transfer to it Allowances when required pursuant to the terms of an Allowance Transaction.
- (c) **Excess Emissions Penalty Equivalent.** If EEP Equivalent is applicable, Buyer may invoice Seller for an EEP Equivalent it incurs as the result of Seller's failure to Transfer to it Allowances when required pursuant to the terms of an Allowance Transaction.
- (d) **Duty to Mitigate.** The Seller's obligation to pay the EEP or the EEP equivalent is subject always to the Buyer's overriding obligation to use commercially reasonable endeavours (including, without limitation, making use of any excess Allowances it may have available to it at the time, and/or procuring such Allowances as are available in the market) to satisfy its obligation to surrender the required number of Allowances necessary to avoid or otherwise mitigate its EEP or EEP Equivalent liability. For the avoidance of doubt, Buyers duty to mitigate its EEP or EEP Equivalent exposure is limited to management of its Allowance portfolio and shall not impose upon it any further obligation regarding its operation of any installation with an obligation to surrender Allowances to a Relevant Authority.
- (e) **Evidence of Commercially Reasonable Efforts.** Upon request, Buyer shall confirm to the Seller:
 - (i) that it has incurred EEP or EEP Equivalent consequent upon the Seller's failure to Transfer Allowances to it;
 - (ii) the extent to which the requirement for the Buyer to pay the EEP or the EEP Equivalent results from the Seller's failure to make such a Transfer;
 - (iii) that it was unable to mitigate its EEP or EEP equivalent exposure,
 and shall provide Seller with evidence: (A) that the, as applicable, EEP or EEP Equivalent was incurred by it; (B) that such EEP or EEP Equivalent was incurred as a result of Seller's failure to perform its Transfer obligation; and (C) of its commercially reasonable endeavours to mitigate its exposure to such EEP or EEP Equivalent as it has invoiced to Seller; provided, however, that should Seller elect to challenge the Buyer in respect of any of the above matters, then the burden for demonstrating: (A) that such EEP or EEP Equivalent was not actually incurred by Buyer; (B) that such EEP or EEP Equivalent was not incurred by Buyer as a result of Seller's non-performance; and/or (C) the insufficiency, lack of thoroughness or unreasonableness of such endeavours shall be on the Seller and, if § 22.3 (Expert Determination) is specified as applying in Part II of this Allowances Appendix the process by which such challenge will be determined shall be in accordance with the procedures set forth in § 22.3 (**Expert Determination**).
- (f) **Later Mitigation of Recovered EEP or EEP Equivalent.** To the extent an initially assessed and recovered EEP is later reduced and/or fully or partly returned or credited to a Buyer by a Relevant Authority for any reason whatsoever, only such reduced and finally assessed EEP shall apply. EEPs recovered by a Buyer in the form of damages under this § 8 which are later reduced or returned to such Buyer shall be returned upon demand to the Seller who paid such damages, and Buyer shall provide Seller with prompt notification of any such reduction or return. Similarly, in the event a Seller has made a Buyer whole for an EEP Equivalent, and all or any portion of the underlying EEP or EEP Equivalent upon which Seller's EEP Equivalent payment was based is later returned to the Buyer by its resale customer, Buyer shall return an equivalent amount of its own EEP Equivalent payment to Seller.

§ 8.4 Amounts Payable. Amounts that are due according to this § 8 shall be invoiced and paid in accordance with Payment Cycle B as defined in § 13.2 (*Payment*).

(9) Except to the extent otherwise modified herein, there shall be no change to § 9 (*Suspension of Delivery*) of the General Agreement with respect to Allowance Transactions.

(10) **§ 10 Term and Termination Rights.** § 10 of the General Agreement is hereby amended with respect to both Individual Contracts for electricity and Individual Contracts for Allowances at any time in which the Parties have outstanding Allowance Transactions remaining between them to be partially or fully performed by: (i) the addition in the second line of § 10.3(a) (*Termination for Material Reason*) after the words “may terminate the Agreement” of the words “or the Allowances Appendix only”; and (ii) the following amendments:

§ 10.5 Definition of Material Reason. The addition at the end of the second line of § 10.5 after the words “(each a “**Material Reason**”)” of the words “save that in the event of termination pursuant to § 10.5(a) (*Non Performance*) or § 10.5(f) (*Representation or Warranty*) of the General Agreement, the Non-Defaulting Party may, at its sole discretion, elect to terminate only the Allowances Appendix and not the previously executed General Agreement, if and only when such uncured non-performance, warranty breach or misrepresentation concerns only one or more Allowance Transactions. If the Non-Defaulting Party elects to terminate only the Allowances Appendix together with all Allowance Transactions thereunder, it may do so in the manner prescribed in § 10 (*Term and Termination Rights*) and § 11 (*Calculation of Termination Amount*), but only with respect to its Allowance Transactions and in such manner as to result in the accrual of an amount due from one party to the other party analogous to a Termination Amount but concerning only the Allowance Transaction(s) terminated (an “**Allowances Termination Amount**”).”

§ 10.5(d) Failure to Deliver or Accept. § 10.5(d) is deleted in its entirety.

§ 10.5(e) Force Majeure. § 10.5(e) is deleted in its entirety and replaced with the words: “Unless expressly agreed to the contrary by the Parties, Force Majeure’s impairment of a Party’s ability to perform its obligations with respect to any single Allowance Transaction shall not give rise to a Material Reason for initiating an Early Termination of either the Agreement or this Allowances Appendix and all then outstanding Allowance Transactions.”

(11) **§ 11 Calculation of the Termination Amount.** § 11 of the General Agreement is hereby amended for purposes of calculating any Allowances Termination Amount concerning one or more Allowance Transactions by the addition of the following words to § 11.2 (*Settlement Amount*) at the end of the definition of § 11.2(a) (*Costs*): “including, in the event that an EEP or EEP Equivalent is applicable to an Allowance Transaction, any EEP or EEP Equivalent actually assessed and not later reduced or recovered”.

(12) **§ 12 Limitation of Liability.** For the avoidance of doubt, the Parties agree that if an EEP or EEP Equivalent applies to an Allowance Transaction such EEP or EEP Equivalent shall not be considered an indirect or consequential damage of the type excluded from recovery of damages by § 12.3 (*Consequential Damage and Limitation of Liability*), and that such maximum amount of such EEP or EEP Equivalent, being an amount identifiable by them at the time of entering into their Allowance Transaction, is neither speculative nor difficult to ascertain. The Parties further agree and acknowledge that the formulae providing for calculating the amount of EEP and EEP Equivalent in this Allowances Appendix are reasonable in light of the anticipated harm that would be incurred by a Buyer and are therefore a genuine pre-estimate of the nature and magnitude of such harm. Further, the payment of such damages is not viewed by either Party as a penalty or in the nature of a penalty and each Party waives the right to contest those payments as an unreasonable penalty. Except to the extent otherwise modified herein by the Parties, there shall be no further changes to § 12 (*Limitation of Liability*) of the General Agreement with respect to Allowance Transactions.

(13) **§ 13 Invoicing and Payment.** For purposes of Allowance Transactions, § 13 of the General Agreement is hereby amended by: (i) the deletion of the last sentence in § 13.1 (*Invoice*) commencing: “Invoicing of Premiums due” and ending: “in the Individual Contracts.”; (ii) the deletion of the words in the first sentence of § 13.2 (*Payment*) commencing: “On or before the later to occur of”...up to and including the words: “following receipt of an invoice (the “**Due Date**”), a” and the addition of the words in § 13.2 as set-out below; (iii) the addition of the following new § 13.3.1 (*Cross Product Payment Netting*); and (iv) the deletion of § 13.4 (*Invoicing and Payment of Scheduled Contract Quantities*) in its entirety and replaced with a new § 13.4 (*Physical Settlement Netting Invoicing and Payment*), as follows :

§ 13.2 Payment. Payments due in relation to Allowance Transactions shall be in accordance with either Payment Cycle A or Payment Cycle B (each, a **“Payment Cycle”**), as specified as applying in Part II of this Allowances Appendix, as follows:

Payment Cycle A: “On or before the later to occur of either (a) the twentieth (20th) day of the calendar month or if not a Business Day the immediately following Business Day or (b) the fifth (5th) Business day following receipt of an invoice (the **“Due Date”**). A”;

Payment Cycle B: “On or before the fifth (5th) Business day after the later to occur of (a) the Delivery Date or (b) following receipt of an invoice (the **“Due Date”**). A”.

In the event the Parties do not designate a Payment Cycle as applying, Payment Cycle A shall apply.

§ 13.3.1 Cross Product Payment Netting. If the Parties have elected to make § 13.3 operative via their Election Sheet, payments in relation to Individual Contracts for electricity shall continue to be netted one against the other and payments in relation to Allowance Transactions shall also be netted one against the other, but unless so agreed and memorialized in Part II of this Allowances Appendix, payments in relation to Individual Contracts for electricity shall not be netted against payments in relation to Allowance Transactions.

§ 13.4 Physical Settlement Netting Invoicing and Payment. If the Parties have specified § 4.3 (*Physical Settlement Netting*) as applying in Part II of this Allowances Appendix, invoicing shall continue to be based on the Contract Quantity that would have been Transferred for an Allowance Transaction but for the provisions of § 4.3, and the invoice shall set forth the Total Contract Price on a gross basis and state the amount of VAT properly chargeable thereon as well as the net amount payable from one Party to the other Party.

(14) **§ 14 VAT and Taxes.** For purposes of Allowance Transactions, § 14 of the General Agreement is hereby amended by the deletion of § 14.1 (*VAT*), § 14.2 (*Seller's and Buyer's Tax Obligation*) and § 14.3 (*Withholding Tax*) in their entirety and their replacement with a new § 14.1 (*VAT*) and a new § 14.2 (*Other Taxes*), as follows:

§ 14.1 VAT. All amounts referred to in this Allowances Appendix are exclusive of any applicable VAT. The VAT treatment of any Transfer under an Allowance Transaction shall be determined pursuant to the VAT law 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; provided, however, 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 Transfer) in relation to that amount. Each Party shall to the extent permitted by law provide the other with any additional valid VAT invoices as required for the purposes of the Allowances Appendix.

§ 14.2 Other Taxes. Subject to each Party's obligations relating to VAT, each Party shall cause all royalties, taxes, duties and other sums (including any stamp duty, other documentary taxes, climate change levy or other environmental tax or levy) legally payable by that Party arising in connection with this Allowances Appendix to be paid. 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 this Allowances Appendix and the Seller shall promptly indemnify or reimburse the Buyer in respect of any such tax not so deducted.

(15)-(20) Except to the extent otherwise modified herein, there shall be no change to § 15 (*Floating Prices and Fallback Procedure for Market Disruption*), § 16 (*Guarantees and Credit Support*), § 17 (*Performance Assurance*), § 18 (*Provision of Financial Statements and Tangible Net Worth*), § 19 (*Assignment*) or § 20 (*Confidentiality*) of the General Agreement with respect to Allowance Transactions.

(21) **§ 21 Representation and Warranties.** § 21 of the General Agreement is hereby amended by the following additions and or deletions with respect only to Allowance Transactions:

§ 21(g) Deletion of the word “regularly” in the first line; and

§ 21(l) Deletion of § 21(l) in its entirety.

(22) § 22 Governing Law and Arbitration. For the purposes of Allowance Transactions, § 22 of the General Agreement is hereby amended by the addition of the following words both at the end of the final sentence of § 22.1 (*Governing Law*) and the end of the first sentence of § 22.2 (*Arbitration*): “subject to the referral to an Expert of disputes under § 8.3 (*EEP and EEP Equivalent*)”; and the addition of a new § 22(3) (*Expert Determination*), as follows:

§ 22.3 **Expert Determination.** If specified as applying in Part II of this Allowances Appendix:

- (a) For the purposes of resolving disputes under § 8.3 (*EEP and EEP Equivalent*), the Parties shall address payment of any disputed amounts in accordance with § 13.6 (*Disputed Amounts*) of the General Agreement. If the Parties, who shall negotiate in good faith in an attempt to resolve the dispute as speedily as possible, are unable to settle the disputed amount within a period of fourteen (14) days of the date a Party first notifies the other Party in writing of such a dispute, either Party may require this matter to be referred to an Expert for determination in accordance with this § 22.3.
- (b) If any matter under § 8.3 (*EEP and EEP Equivalent*) is referred to an Expert in accordance with this Agreement, the Expert is to be appointed by agreement between the Parties. If the Parties fail to agree upon that appointment within ten (10) Business Days of a Party notifying the other Party of its decision to refer the matter to an Expert, the General Secretary of EFET may appoint the Expert on the application of either Party.
- (c) The Expert shall act as an expert and not as an arbitrator and shall give his or her determination in writing.
- (d) Unless this § 22.3(d) is specified as not applying in Part II of this Allowances Appendix, the determination of the Expert shall, to the extent permitted by applicable law, be final, conclusive and binding upon the Parties and such determination shall be the sole and exclusive remedy of the Parties with respect to disputes arising under § 8.3 (e) (*Evidence of Commercially Reasonable Efforts*) and both Parties agree that they will not have recourse to, if applicable under the General Agreement, either arbitration in accordance with § 22.2 (*Arbitration*) or to the courts of law of the jurisdiction specified in accordance with § 22.1 (*Governing Law*) or any other court of competent jurisdiction save that each Party shall have the right to have the Expert's determination in respect to the dispute enforced by any court of competent jurisdiction or included by such arbitrator in findings of fact and conclusions of law. For the avoidance of doubt, notwithstanding the provisions of this § 22.3(d), nothing contained herein shall limit or in any way restrict the ability of any Party to challenge the appointment of the Expert failing to satisfy the criteria set forth in the definition of Expert contained in this Allowances Appendix.
- (e) The Expert shall determine the procedure to be followed by the Expert for the purpose of making a determination, but the Parties shall use their respective reasonable endeavours to ensure that the Expert makes a determination within twenty (20) Business Days of being appointed.
- (f) Each of the Parties shall bear one half of the costs of the Expert unless the Expert determines otherwise.
- (g) Pending determination of any dispute under this § 22.3, the Parties shall continue to the extent possible to perform their respective obligations under this Agreement.

(23) Except to the extent otherwise modified herein, there shall be no change to § 23 (*Miscellaneous*) of the General Agreement with respect to Allowance Transactions.

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Part II:

ELECTIONS FOR CUSTOMIZATION OF PROVISIONS IN THE ALLOWANCES APPENDIX:

§ 4

Primary Obligations for Delivery and Acceptance of Allowances

- § 4.3 Physical Settlement Netting: ☐ § 4.3 shall not apply, or
☐ § 4.3 shall apply; and for this purpose the relevant Allowance Type(s) shall include []
and each Party's Physical Settlement Netting Accounts in their designated Registries shall be as follows:
Party A: Account Number(s): [], in
Account Registry(ies): []; and
Party B: Account Number(s): [], in
Account Registry(ies) []

§ 7

Non-Performance Due to Force Majeure

- § 7.4 (b) Force Majeure Termination Payment: ☐ § 7.4(b)(i) (No Termination Payment) shall apply; or
☐ § 7.4(b)(ii) (Two-Way Market Quotation Termination Payment) shall apply; or
☐ § 7.4(b)(iii) (Two-Way Loss Termination Payment) shall apply

§ 8

Remedies for Failure to Deliver and Accept

- § 8. 3(a) EEP and EEP Equivalent ☐ EEP shall not apply
☐ EEP Equivalent shall not apply

§ 13

Invoicing and Payment

- § 13.2 Payment: ☐ Payment Cycle A shall apply, or
☐ Payment Cycle B shall apply
§ 13.3.1 Cross Product Payment Netting: ☐ Payments due in relation to Individual Contracts in respect of electricity shall be netted against payments due in relation to Allowance Transactions.

§ 22

Governing Law and Arbitration

- § 22.3 Expert Determination: ☐ § 22.3 shall apply, and
§ 22.3(d) ☐ § 22.3(d) shall not apply; or
☐ § 22.3 shall not apply



**Annex 1
to the
Allowances Appendix**

Defined Terms

“Delivery Business Day”

The relevant jurisdiction for the purposes of the definition of Delivery Business Day that each Party specifies as applying to it shall be as follows:

Party A: _____; and
Party B: _____

ADDITIONAL PROVISIONS APPLICABLE ONLY TO ALLOWANCE TRANSACTIONS:

[_____]

This page need ONLY be executed by Parties that checked and completed the box on the first page hereof. Those appending this Allowance s Appendix to a General Agreement at the time of its execution need only append it to the General Agreement.

IN WITNESS whereof this Allowances Appendix has been duly executed by the authorized representatives of each Party on the respective dates set out below with effect from the Allowances Appendix Effective Date.

“Party A”

Société Nationale d'électricité et de Chauffage
[Name of Party] (Endesa France)

Alberto Martín Rivals

[Name of Signatory/ies]

Managing Director

[Title of Signatory/ies]

“Party B”

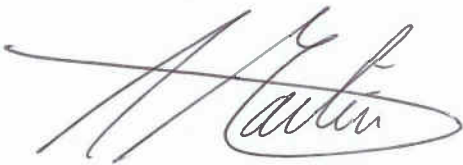
ENDESA TRADING SA, SOCIEDAD UNIPERSONAL
[Name of Party]

CELIA ORDÓÑEZ AND JOAQUÍN RODRÍGUEZ

[Name of Signatory/ies]

MANAGING DIRECTORS

[Title of Signatory/ies]



ENDESA EUROPA
Directora Económica y de Control



Celia Ordóñez Gómez

ENDESA EUROPA
Director Gestión de Energía



Joaquín Rodríguez Jadraque

EFET

European Federation of Energy Traders

ANNEX 1 to the ALLOWANCES APPENDIX

Defined Terms

Terms used in this Allowances Appendix shall have the following meanings:

“Allowance” means an allowance to emit one tonne of carbon dioxide (CO₂) or equivalent during a specified period valid for the purposes of meeting the requirements of applicable law and the relevant Emissions Trading Scheme applicable to the Buyer and the Delivery Point on the Delivery Date.

“Allowances Appendix” means this Allowances Appendix to the General Agreement (inclusive of its Annexes).

“Allowance Type” means a specific type of Allowance as defined by the Applicable Rules that the Parties have specified as applying in Part II of this Allowances Appendix or in an Individual Contract which may be used for determining compliance with emissions limitation commitments pursuant to and in accordance with the relevant Emissions Trading Scheme.

“Applicable Rule(s)” means that subset of the Rules which govern, relate to or otherwise concern the valid Transfer of Allowances to Buyer’s Trading Account in satisfaction of Seller’s obligation under an Allowance Transaction and, when applicable in context, which govern an entity’s emission-related obligations to its Relevant Authority.

“Allowances Termination Amount” shall have the meaning given in § 10.5 of this Allowances Appendix.

“Allowance Transaction” shall have the meaning given in the first paragraph of this Allowances Appendix.

“Buyer’s Choice Transaction” shall have the meaning given in § 4.1 (b) of this Allowances Appendix.

“Cascade Transaction” shall have the meaning given in § 4.1 (c) of this Allowances Appendix.

“Compliance Period” means that period of time in which an Allowance is valid for purposes of fulfilling the requirements of an entity subject to the jurisdiction and requirements of the Relevant Authority pursuant to its Applicable Rules.

“Compliance Year” means that period of time between each Reconciliation Deadline (if more than one) in a Compliance Period.

“Contract Price” means, in respect of an Allowance Transaction for a particular Specified Vintage, the amount agreed to be the purchase price for that Contract Quantity, excluding applicable taxes.

“Contract Quantity” means, in respect of an Allowance Transaction, the number of Allowances of one or more Specified Vintages as agreed to be bought and sold between the Parties.

“Delivery Business Day” means, in respect of an Allowance Transaction, and for the purposes of this Allowances Appendix only, any day which is not a Saturday or Sunday, on which commercial banks are open for general business at the places where each party specifies as applying to it in Part II of this Allowances Appendix. In the event that a Party does not so specify a place in Part II of this Allowances Appendix, then (that/those) place(s) shall be deemed to be the Seller and the Buyer’s addresses, as applicable, specified in § 23.2 (*Notices, Invoices and Payments*) of the General Agreement or, if

no such addresses have been specified in § 23.2, at the place(s) where (that/those) Party(ies) (has/have) (its/their) registered office.

“Delivered Quantity” means, in respect of an Allowance Transaction, the number of Allowances of a Specified Vintage of a Contract Quantity Transferred by the Buyer and accepted by the Seller at the Delivery Point.

“Delivery Date” means, in respect of an Allowance Transaction, the day agreed between the Parties on which the relevant Transfer from Seller to Buyer is to take place at the Delivery Point. If the Delivery Date is not a Delivery Business Day, it shall be deemed to be the first Delivery Business Day following the agreed day.

“Delivery Point” means, in respect of an Allowance Transaction, the Buyer’s Trading Account(s) that it has nominated in one or more Registry(ies) or such other Trading Account(s) as the Parties may agree in an Allowance Transaction.

“Delivery Schedule” means, in respect of an Allowance Transaction, the Schedule of Delivery Dates for the Transfer of (each) Contract Quantity(ies) as the Buyer and Seller may agree in an Allowance Transaction.

“Directive” means any EU directive or directives which govern the purchase, sale and Transfer of Allowances.

“Directive 2003/87/EC” 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.

“End of Phase Reconciliation Deadline” means, in respect of an Allowance Transaction, the final Reconciliation Deadline determined in accordance with Applicable Rules for the surrender of Allowances in respect of a Compliance Period for a Specified Vintage.

“Emissions Trading Scheme(s)” means the scheme(s) to effect the Transfer of Allowances between participants in both or either of Member or Non-Member States as implemented by and including its Applicable Rules.

“EU” means the European Community as it exists from time to time.

“Excess Emissions Penalty” or **“EEP”** means a financial payment required to be made to a Relevant Authority pursuant to and in accordance with Article 16(3) or Article 16(4) of Directive 2003/87/EC (which, for the avoidance of doubt, shall not include any costs relating to or arising from the obligation to purchase and/or surrender Allowances in the following Compliance Year), or its equivalent under any other Emissions Trading Scheme.

“Excess Emissions Penalty Equivalent” or **“EEP Equivalent”** means an amount which the Buyer must pay to a third party in respect of any amount payable by that third party which arose as a result of the Buyer’s failure to Transfer the required Allowances to that third party and which in turn was a consequence of the Seller’s failure to Transfer the Contract Quantity to the Buyer under this Agreement (which, for the avoidance of doubt, shall not include any costs relating to the obligation to purchase and/or surrender Allowances in the following Compliance Year).

“Expert” means a person qualified by education, experience and/or training with the applicable Emissions Trading Schemes, Applicable Rules and Allowance Transactions who is able to review and understand the contents of a Party’s emission allowance trading portfolio and who neither is nor has been directly or indirectly under the employ of, affiliated with, or under the influence of either of the Parties or otherwise has any conflicting interest or duty.

“Loss” means an amount that each Party reasonably determines in good faith to be its total losses and costs (or gain, in which case it shall be expressed as a negative number) in connection with the termination of the applicable Allowance Transaction(s), or any unperformed portions thereof, including, if applicable, any EEP or EEP Equivalent, any loss of bargain, cost of funding (based on the actual costs of such Party whether or not greater than market costs) or, without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or re-establishing any related trading position (or any gain resulting from any of them). Loss shall not include legal fees or similar out-of-pocket expenses. Each Party may (but need not) determine its Loss by reference to quotations of average relevant rates or prices from two or more leading Dealers.

“Member State” means any one of the signatories to the EU from time to time.

“Non-Member State” means any state that is not a Member State.

“Participating Agreement” means any agreement, rule, procedure, instrument or other law or regulation which governs a Non-Member States’ participation in and the Transfer of Allowances to the Emissions Trading Scheme(s) of a Member State or another Non-Member State, as applicable.

“Payment Cycle” means either Payment Cycle A or Payment Cycle B as defined in § 13.2 (*Payment*).

“Physical Settlement Netting Accounts” shall have the meaning given in § 4.3(a) of this Allowances Appendix.

“Reconciliation Deadline” means, in respect of an Allowance Transaction, 30 April in any calendar year in relation to the immediately preceding calendar year, or as otherwise specified in the relevant Emissions Trading Scheme.

“Registry” means the registry established by each Member or Non-Member State, in accordance with Applicable Rules, in order to ensure the accurate accounting of the issue, holding, Transfer, surrender, cancellation and replacement of Allowances.

“Relevant Authority” means the body established by each Member State or Non-Member State from time to time to administer the relevant Emissions Trading Scheme(s) and emissions compliance responsibilities in its jurisdiction.

“Rules” mean the Directive, Emissions Trading Scheme(s), Participating Agreement and all other applicable guidance, regulations, rules and procedures (whether made at the direction of a government, governmental body, regulator, competent authority or otherwise) as modified, amended and/or supplemented from time to time relating to the trade of Allowances as contemplated by this Allowances Appendix.

“Seller’s Choice Transaction” shall have the meaning given in § 4.1 (b) of this Allowances Appendix.

“Specified Vintage” means, in respect of an Allowance Transaction and a Contract Quantity, the Compliance Period for which an Allowance is allocated in accordance with the relevant Emissions Trading Scheme(s), as agreed between the Parties at the time of entering into an Allowance Transaction.

“Total Contract Price” means the aggregate price to be paid for all Allowances required to be Transferred on a Delivery Date under an Allowance Transaction.

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

“Transfer” means (whether used as a verb or a noun) the movement of Allowances from one Trading Account to another under and in accordance with and for the purposes of the relevant Emissions Trading Scheme(s) (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 **Transferable**, **Transferring** and **Transferred** are to be construed accordingly.

“Transfer Point” means, in respect of an Allowance Transaction, the Seller’s Trading Account(s) that it has nominated in one or more Registry(ies) or such other Trading Account(s) as the Parties may agree in an Allowance Transaction.

“Undelivered EEP Amount” or **“UEA”** shall have the meaning given in § 8.1(b)(ii)(A).

“Unpaid Amounts” shall have the meaning given in § 7.4(b)(i).

“Value Added Tax” or **“VAT”** means any value added tax or any tax analogous thereto but excluding any statutory late payment of interest or penalties.

EFET

European Federation of Energy Traders

Annex 2 (A) to the ALLOWANCES APPENDIX

CONFIRMATION OF ALLOWANCE TRANSACTION (Fixed Price)

between

_____ as Seller

and

_____ as Buyer.

concluded on: __/__/__, __. __ hours (Trade Date)

Delivery Schedule (Delivery Date to each Delivery Point for each Contract Quantity and Specified Vintage)

Transfer Point(s) Trading Account and Registry of Seller	Delivery Point(s) Trading Account and Registry of the Buyer	Specified Vintage	Contract Quantity	Allowance Type	Delivery Date	Price per Allowance	Total Contract Price / Specified Vintage				
Total Contract Quantity:				Total Contract Price:							
Name of Broker (if applicable):											
Special Conditions & Terms:											
For this specific Allowances Transaction:											
[] EEP shall <u>not</u> apply.				[] EEP Equivalent shall <u>not</u> apply.							
[] EEP shall apply ¹ .				[] EEP Equivalent shall apply ¹ .							

¹ 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.

Other:

Physical Settlement Netting Accounts:

Party A: Account Number(s): [], in
Account Registry(ies): []; and

Party B: Account Number(s): [], in
Account Registry(ies): []

[] Buyer's Choice Transaction Notification Deadline: _____

[] Seller's Choice Transaction Notification Deadline: _____

[] Cascade Transaction

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: _____

