

SECTION YY - CONTRACT RULES: ICE FUTURES ECX ERU FUTURES CONTRACT

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YY.1 CONTRACTS FOR THE TRANSFER OF ERUS BETWEEN ~~HOLDING~~ ACCOUNTS¹⁵

- (a) The ICE Futures ECX ERU Futures Contract Rules contained in this Section YY and the provisions of Sections I and ZZ, are applicable to the trading of ERU Contracts.
- (b) An ERU Contract shall be for the sale by the Seller and purchase by the Buyer of ERUs, for transfer from the ~~Holding~~ Account of the Seller to the ~~Holding~~ Account of the Buyer during the Delivery Period specified in the ERU Contract in accordance with, or pursuant to, these ICE Futures ECX ERU Futures Contract Rules, the Administrative Procedures and the Clearing House procedures. For the purposes of these ICE Futures ECX ERU Futures Contract Rules, transfer of ERUs as between ~~Holding~~ Accounts of the Buyer and the Seller maintained in ~~one or more Registries~~ the Registry pursuant to Rule YY.6 shall ~~, subject to Rule YY.1(d)~~ constitute "delivery".
- (c) ~~All deliveries. The Exchange shall, from time to time, determine the Registries to and from which delivery may be made, under an ERU Contract, shall be made to and from the Registry. For the avoidance of doubt, the Registries so determined by the Exchange may exclude one or more of the national registries established pursuant to the Kyoto Protocol, the Scheme and the Registry Regulations. The Exchange shall from time to time issue a list of such Registries and may, at any time, upon such notice as considered appropriate by the Exchange and notified to Members, add or withdraw a Registry from such list and any such change may, according to its terms, have effect on existing as well as new ERU Contracts.~~
- (d) ~~(i) The Clearing House shall from time to time determine and notify Members of one Registry or more and Holding Accounts, which it will use for the delivery of ERUs under an ERU Contract in accordance with Clearing House procedures, or determine and notify Members of a Non Eligible Registry and Holding Account which it will use, and the contract month for which it will use such Non Eligible Registry, for the delivery of ERUs under an ERU Contract in accordance with Clearing House procedures.~~
 - ~~(ii) In the event that the Clearing House elects to use a Non Eligible Registry, delivery may only be made under an ERU Contract for that contract month from and to the Holding Accounts within that Non Eligible Registry. For the avoidance of doubt, only the Transfer of ERUs between Holding Accounts of the Buyer and the Seller maintained in such Non Eligible Registry and pursuant to Rule YY.6 shall, constitute "delivery" and any reference to Registry, Initiating Registry or Acquiring Registry in these ICE Futures ECX ERU Futures Contract Rules and Procedures shall mean the Non Eligible Registry.~~
- (e) The Exchange shall from time to time, in its absolute discretion, determine the ERU Types for the purposes of identifying the ERUs which may be traded and delivered under an ERU Contract. The Exchange shall from time to time issue a list of such ERU Types and may, at any time, upon such notice as considered appropriate by the Exchange circulated to Members, add or withdraw an ERU Type from such list (and any such change may, according to its terms, have effect on existing as well as new ERU Contracts).
- (f) The Exchange may offer contract months for trading of ERU Contracts on the Market or otherwise pursuant to the Regulations as the Exchange may determine from time to time.

YY.2 QUANTITY

- (a) Subject to Rule YY.2(b), ERU Contracts shall be for one or more lots of ERUs to be delivered during the Delivery Period as specified in the ERU Contract (it being understood that one lot refers to 1000 ERUs).
- (b) The Exchange may, in its absolute discretion, determine from time to time that ERU Contracts shall be traded and delivered in a minimum number of lots or multiples thereof.

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YY.3 OTHER DEFINITIONS¹⁶

In these ICE Futures ECX ERU Futures Contract Rules and the related Administrative Procedures set out in Section ZZ, the following terms shall bear the meanings set out opposite each:

<u>“Account”</u>	<u>means an account maintained by the Registry pursuant to the Registry Regulations in order to record the holding and transfer of ERUs;</u>
“Account Holder”	means a person who has an person holding a Account in the <u>Registry registries system</u> as referenced in the Registry Regulations;
“Acquiring Registry”	means, in relation to an ERU Contract, the Registry at which the Holding Account of the Buyer is maintained as specified in the relevant Transfer Request;
“Authorised Representative”	means a natural person authorised pursuant to Article 23 <u>1</u> of the Registry Regulations to represent an Account Holder and submit process requests to <u>the</u> Registry on behalf of such Account Holder;
“Buyer”	means the purchaser of ERUs under an ERU Contract, and shall include the Clearing House as appropriate;
“Emission Reduction Unit” (“ERU”)	means a unit issued pursuant to Article 6 of the Kyoto Protocol and the decisions adopted pursuant to the UNFCCC or the Kyoto Protocol and is equal to one Tonne of Carbon Dioxide Equivalent. For the avoidance of doubt, the term “ERU” does not include any ERUs that, as of any relevant date, have been cancelled by, or merely surrendered to, a Competent Authority to be exchanged for EUAs pursuant to Article 11a of the Directive or the Linking Directive;
“ERU Contract”	means a Contract made pursuant to these ICE Futures ECX ERU Futures Contract Rules for the delivery of ERUs;
“ERU Delivery Amount”	means for each Margin Account an amount reflecting the gross number of ERUs which are to be delivered by a Seller for any Delivery Period in respect of all ERU Contracts to which it is party as Seller;
“ERU Type”	means any type of ERU other than those determined and notified to Members by the Exchange from time to time. For any ERU Type, the Exchange may specify such criteria as it deems appropriate, including without limitation the project type, nature and source of an ERU, the scheme and/or mechanism pursuant to which such ERU has been issued and the originating or issuing registry;
“Clearing House procedures”/“Procedures”	means the procedures of the Clearing House from time to time in force as prescribed under the Clearing House Rules;
<u>“Carbon Emissions Allowance” or “EUA”</u>	<u>means an allowance issued pursuant to Chapter III of the Directive to permit the emission of one Tonne Of Carbon Dioxide Equivalent during the relevant period;</u>
“Clearing House Directions”	means any instructions or requests that the Clearing House may issue to the Buyer or Seller from time to time in respect of the delivery of ERUs under an ERU Contract;
“Competent Authority”	means the competent authority designated by a Member State of the European Union to implement the Directive;
<u>“Clearing House procedures”/“Procedures”</u>	<u>means the procedures of the Clearing House from time to time in force as prescribed under the Clearing House Rules;</u>

¹⁶ Amended 4 April 2011, 27 July 2012

“Commitment Period Reserve”	means the commitment period reserve that each Annex 1 Party <u>to the UN Framework Convention on Climate Change</u> (including EU Member States, other than Cyprus and Malta) is required to maintain in <u>the its National Registry</u> in accordance with paragraphs 6 to 10 of Decision 11/CMP.1 of the Meeting of the Parties to the Kyoto Protocol for emissions trading and under Article 17 of the Kyoto Protocol as amended from time to time.
“Community Independent Transaction Log” “CITL”	means the independent transaction log provided for in Article 20(1) of Directive 2003/87/EC, for the purpose of recording the issue, transfer and cancellation of ERUs under the Scheme and established, operated and maintained pursuant to Article 5 of the Registry Regulations;
“Communication Link”	means the electronic exchange of messages/notifications (1) by which a Buyer and Seller communicate with at the Registry, and/or (2) by which at the Registry communicates with CITL <u>or EUTL, as the case may be,</u> and/or (3) by which CITL <u>or EUTL, as the case may be,</u> communicates with the UNFCCC International Transaction Log (where applicable), and/or (4) by which at the Registry communicates with the UNFCCC International Transaction Log (where applicable), and/or (5) by which the UNFCCC International Transaction Log communicates with the CDM Registry (where applicable), which in any case is necessary to facilitate a Transfer;
“Community Independent Transaction Log” “CITL”	means the predecessor log to the EUTL established pursuant to Commission Regulation (EC) No 2216/2004 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;
“Competent Authority”	means the authority or authorities designated by a Member State pursuant to Article 18 of the Directive;
“Delivery Costs”	means an amount payable by a Buyer or Seller which is attributable to a Transfer Request Failure referred to the Exchange under Rule YY.12(b) or a Transfer Request Delay. For Transfer Request Failures, such reasonable costs may include, but will not be limited to, any losses, costs, damages and expenses suffered or incurred by the Buyer or Seller as a result of it taking steps to acquire or dispose of ERUs in the event of a Transfer Request Failure. Delivery Costs resulting from Transfer Request Failures and Transfer Request Delays shall not, under any circumstances, include any Excess Emissions Penalties which a Buyer or Seller may incur under the Scheme;
“Delivery Period”	means the period beginning at 19.00 hours on the Business Day following the last day of trading of an ERU Contract and ending at 19:30 hours on the third Business Day following that last day of trading. Where a Transfer Request Delay occurs, the period shall end at such later time as the Clearing House may direct under Rule ZZ.6, which in any event shall not be a time beyond 19.30 hours on the fourth Business Day after the last day of trading. During this period, delivery of ERUs is to take place in accordance with the terms of these ICE Futures ECX ERU Futures Contract Rules, the Administrative Procedures and the Clearing House procedures;
“Directive”	means, as amended or supplemented from time to time, including by any law of a Member State, Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emissions allowance trading within the European Community and amending Council Directive 96/61EC. For the avoidance of doubt, such term includes as amended from time to time, including, without limitation, by Directive

	2009/29/EC of the European Parliament and of the Council of 23 April 2009 amending Directive 2003/87/EC so as to improve and extend the greenhouse gas emission allowance trading scheme of the European Community;
“Eligibility Criteria”	means the eligibility criteria set out in Article 17 of the Kyoto Protocol which defines the relevant principles, modalities, rules and guidelines, in particular for verification, reporting and accountability for emissions trading, as applicable to ERUs;
“EU Allowance” or “EUA”	means an allowance issued by a Competent Authority to emit one Tonne Of Carbon Dioxide Equivalent during a specified period, which shall be valid only for the purposes of meeting the requirements of the Directive and shall be transferable in accordance with the provisions of the Directive;
“Emission Reduction Unit” (“ERU “)	means a unit issued pursuant to Article 6 of the Kyoto Protocol and the decisions adopted pursuant to the UNFCCC or the Kyoto Protocol and is equal to one Tonne of Carbon Dioxide Equivalent. For the avoidance of doubt, the term “ERU” does not include any ERUs that, as of any relevant date, have been cancelled by, or merely surrendered to, a Competent Authority to be exchanged for EUAs pursuant to Article 11a of the Directive or the Linking Directive;
“ERU Contract”	means a Contract made pursuant to these ICE Futures ECX ERU Futures Contract Rules for the delivery of ERUs;
“ERU Delivery Amount”	means for each Margin Account an amount reflecting the gross number of ERUs which are to be delivered by a Seller for any Delivery Period in respect of all ERU Contracts to which it is party as Seller;
“ERU Transfer Request” (“Transfer Request”)	means a request to effect a Transfer submitted by the Seller to the Registry in respect of a Delivery Period in the manner required by the Registry Regulations and otherwise in accordance with these ICE Futures ECX ERU Futures Contract Rules, the Administrative Procedures and the Clearing House procedures;
“ERU Type”	means any type of ERU other than those determined and notified to Members by the Exchange from time to time. For any ERU Type, the Exchange may specify such criteria as it deems appropriate, including without limitation the project type, nature and source of an ERU and the scheme and/or mechanism pursuant to which such ERU has been issued;
“European Union” or “EU”	means the international organisation of European states established by the Treaty on European Union 1992 as amended from time to time;
“European Union Transaction Log” or “EUTL”	means the independent transaction log provided for in Article 20(1) of the Directive, for the purpose of recording the issue, transfer and cancellation of ERUs and other allowances under the Scheme and established, operated and maintained pursuant to Article 4 of the Registry Regulations;
“Excess Emissions Penalties”	means any excess emissions penalties for which a person may be liable for failure to surrender sufficient allowances to cover its emissions during any period pursuant to Article 16 of the Directive, as implemented by relevant national law;
“Exchange Delivery Settlement Price” (EDSP)	means, in respect of an ERU Contract, the settlement price determined by the Exchange in accordance with the Administrative Procedures;
“Greenhouse Gas” or “GHG”	means any greenhouse gas emission that is regulated by the Directive, including carbon dioxide emissions;
“Holding Account”	means a person holding account maintained by a Registry pursuant to the Registry Regulations in order to record the holding and transfer of ERUs;
“Initiating Registry”	means, in relation to an ERU Contract, the Registry at which the Holding Account of the Seller is maintained from which the Transfer, subject to Rule

	YY.1(d) is to be made, as specified in the relevant Transfer Request;
“Kyoto Protocol”	means the protocol to the UNFCCC adopted at the Third Conference of the Parties to the UNFCCC in Kyoto, Japan on 11 December 1997 as may be amended;
“Linking Directive”	means EU Directive 2004/101/EC amending the Directive;
“Margin Account”	means, in relation to a Clearing Member, either its House or Client margin account, Proprietary Account or Customer Account (as defined in the ICE Clear Europe Clearing Rules), in which the positions in its Position-Keeping Accounts are notionally recorded by the Clearing House for the purpose of calling margin on that Clearing Member’s positions in accordance with the Clearing House procedures;
“Non-Eligible Registry”	means any registry in an EU Member State which has not met the Eligibility Criteria prior to the last day of trading of the relevant contract month but which has implemented the Linking Directive in a manner that authorises private persons to hold ERUs and has Person Holding Accounts established in order to ensure the accurate accounting of the issue of holding, transfer, acquisition, surrender, cancellation, and replacement of ERUs under the Scheme, and which has been identified by the Clearing House as the Non-Eligible Registry which it will use for that contract month for the delivery of ERUs under an ERU Contract in accordance with Clearing House procedures.
	In the event that the Clearing House identifies a Non-Eligible Registry which it will use for a contract month notified by the Clearing House, having made such indication, any reference to a Registry, Initiating Registry, or Acquiring Registry in these ICE Futures ECX ERU Futures Contract Rules and Procedures shall mean the identified Non-Eligible Registry.
“Position-Keeping Account”	means any account within the Clearing House’s clearing system in which an Exchange Member’s positions with the Clearing House are recorded, being either: (1) any of the following commonly designated Position-Keeping Accounts: H, N, S, L, <u>D, U, F, W</u> or <u>GZ</u> (and, in the case of an Exchange Member that is not a member of the Clearing House, including an identifying three letter Member mnemonic); or, (2) any other account that the Clearing House makes available within its clearing system from time to time;
“Random Selection Mechanism”	means the automated mechanism used by the Clearing House to create a list setting out, in random order, all the Buyers for a Delivery Period for the purpose of providing the order in which the Clearing House shall transfer ERUs to the Holding -Accounts of such Buyers upon the credit of the Clearing House’s nominated Holding -Account with the ERUs from the Sellers’ Holding -Accounts in the relevant Delivery Period. The list so provided may also be used to identify one or more Buyers in the event of a failed or delayed delivery by the Clearing House pursuant to Rule YY.12;
“Registry”	means any the single Union registry in an EU Member State meeting the Eligibility Criteria and which has implemented the Linking Directive in a manner that authorises private persons to hold ERUs and has Person Holding Accounts established <u>pursuant to the Registry Regulations</u> in order to ensure the accurate accounting of the issue of holding, transfer, acquisition, surrender, cancellation, and replacement of, <u>among other things,</u> ERUs under the Scheme, and which has been identified as a Registry by the Exchange from time to time for the purposes of these ICE Futures ECX ERU Futures Contract Rule, provided however that, where the Clearing House identifies a Non-Eligible Registry which it will use for a contract month, any reference to a Registry in these ICE Futures ECX ERU Futures Contract Rules and Procedures shall mean the identified Non-Eligible Registry;

“Registry Regulations”	means the EU, in each case, as applicable and as amended from time to time; <u>(1) Commission Regulation (EU) No 2216/2004/920/2010 of 7 October, for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council, as amended from time to time including by EU Commission Regulation (EC) No 916/2007 and (2) Commission Regulation (EU) No 1193/2011 of 18 November 2011 establishing a Union Registry for the trading period commencing on 1 January 2013, and subsequent trading periods, of the Union emissions trading scheme pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council and amending Commission Regulations (EC) No 2216/2004 and (EU) No 920/2010;</u>
“Required Authorisations”	means all governmental and other licences, authorisations, permits, consents, contracts and other approvals (if any) that are required to enable a Seller and/or a Buyer (as appropriate) to fulfil any of its obligations under an ERU Contract;
“Relevant Authority”	means any body or authority established in any relevant jurisdiction from time to time to administer the Scheme in that jurisdiction;
“Scheme”	means the scheme for transferring allowances (including ERUs) established pursuant to the Directive, as implemented by relevant national law;
“Seller”	means the seller of ERUs under an ERU Contract, and shall include the Clearing House as appropriate;
“Tonne Of Carbon Dioxide Equivalent”	means one metric tonne of carbon dioxide or an amount of any other Greenhouse Gas with an equivalent global-warming potential;
“Transfer”	means the transfer of all ERUs required to be delivered under an ERU Contract from one Holder Holding Account to another under and in accordance with the Scheme;
“ERU Transfer Request” (“Transfer Request”)	means a request to effect a Transfer submitted by the Seller to the Initiating Registry in respect of a Delivery Period in the manner required by the Registry Regulations and otherwise in accordance with these ICE Futures ECX ERU Futures Contract Rules, the Administrative Procedures and the Clearing House procedures;
a “Transfer Request Delay”	is deemed to have taken place where: <ul style="list-style-type: none"> a) in the case of a Seller other than the Clearing House, the Seller makes a Transfer Request for a Delivery Period after 19.00 hours on the first Business Day after the last day of trading or such later time as the Clearing House may provide pursuant to Rule ZZ.6(c), but before 19.00 hours on the second Business Day after the last day of trading, in compliance with a Clearing House Direction or otherwise; b) in the case of a Buyer other than the Clearing House, the Buyer’s Holding Account is credited after 19.30 hours on the third Business Day after the last day of trading and on or before 19.30 hours on the fourth Business Day after the last day of trading in compliance with a Clearing House Direction or otherwise; and, c) the Clearing House has declared that there is a Transfer Request Delay in accordance with Rule ZZ.6(c) or ZZ.7(c); provided in each case, that a Transfer Request Delay will cease to exist where a Transfer Request Failure takes place;
a “Transfer Request Failure”	is deemed to have taken place where: <ul style="list-style-type: none"> a) in the case of a Seller other than the Clearing House, the Seller has failed to make a valid Transfer Request for a Delivery Period by 19.00 hours on the second Business Day after the last day of trading; or b) in the case of a Buyer being the Clearing House, the Buyer’s Holding

Account has not been credited by 19.00 hours on the third Business Day after the last day of trading; or

c) in the case of a Buyer other than the Clearing House, the Buyer's ~~Holding~~ Account has not been credited by 19.30 hours on the fourth Business Day after the last day of trading; or

d) the Clearing House has declared that there is a Transfer Request Failure in accordance with Rule ZZ.6(d) or ZZ.7(c);

“UNFCCC” means the United Nations Framework Convention on Climate Change;

“UNFCCC International Transaction Log” or “ITL” means the international transaction log established, operated and maintained by the Secretariat of the United Nations Framework Convention on Climate Change.

YY.4 PRICE¹⁷

- (a) The price of an ERU Contract shall be in Euros and Euro cents per ERU. ERU Contracts may be traded with minimum fluctuations of €0.01 (1 cent) per ERU.
- (b) The price of an ERU Contract shall be exclusive of any charges payable by either the Buyer or the Seller to any third party in respect of the maintenance of ~~Holding~~-Accounts, submission of Transfer Requests or effecting Transfers.
- (c) The price of an ERU Contract shall be exclusive of any Value Added Tax or any other duty that may be or become payable on the sale or transfer of ERUs under an ERU Contract and any such duties shall be borne by the Buyer.

YY.5 ERU TRANSFER REQUEST

For any Delivery Period in relation to which a Member is party as Seller to one or more relevant ERU Contracts, the Seller shall submit, for each Margin Account, one Transfer Request in respect of the ERU Delivery Amount for that Margin Account in accordance with:

- (a) Rule YY.6;
- (b) Rule ZZ.6, (or where the Seller is the Clearing House, in accordance with Rule ZZ.7); and,
- (c) the Registry Regulations, the Clearing House procedures and any Clearing House Directions.

YY.6 DELIVERY UNDER AN ERU CONTRACT¹⁸

For a Delivery Period:

- (a) In respect of an ERU Contract to which the Clearing House is party as the Buyer, delivery shall be effected upon the completion of the Transfer and confirmation by the ~~Acquiring~~-Registry of the credit to the Clearing House's nominated ~~Holding~~-Account of ERUs in accordance with Registry Regulations and with Rule ZZ.6 as appropriate. The Seller shall effect the Transfer by submitting a Transfer Request in accordance with these ICE Futures ECX ERU Futures Contract Rules, and in particular Rule ZZ.6, stipulating the receiving account as the Clearing House's ~~Holding~~-Account in the Registry ~~nominated by the Clearing House as the Acquiring Registry for that Transfer.~~
- (b) In respect of an ERU Contract to which the Clearing House is party as the Seller, delivery shall be effected upon the completion of the Transfer and confirmation by the ~~Acquiring~~-Registry of the credit to the Buyer's nominated ~~Holding~~-Account of ERUs in accordance with Registry Regulations and Rule ZZ.7 (a), (b) and, as appropriate, (c). The Clearing House shall effect the Transfer by submitting a Transfer Request in accordance with these ICE Futures ECX ERU Futures Contract

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¹⁸ Amended 27 July 2012

Rules, and in particular Rule ZZ.7, stipulating the receiving account as the Buyer's ~~Holding Account in the Registry~~ ~~nominated by the Buyer as the Acquiring Registry for that Transfer.~~

- (c) If at any time during the Delivery Period the Exchange or the Clearing House becomes aware that an ERU which is not an ERU Type ("Non-valid ERU") is, or has been, the subject of a Transfer Request, the Clearing House and affected parties may take such steps to rectify the situation in compliance with any Clearing House Directions provided that delivery still occurs in accordance with the terms and deadlines of these ICE Futures ECX ERU Futures Contract Rules, the Administrative Procedures and the Clearing House procedures. In the event that delivery cannot occur in accordance with the terms and deadlines of these ICE Futures ECX ERU Futures Contract Rules, the Administrative Procedures and the Clearing House procedures due to the Transfer Request being in respect of a Non-valid ERU, the Clearing House shall declare that there is a Transfer Request Failure and Rule YY.12 shall apply.
- (d) If at any time after the Delivery Period, the Exchange or the Clearing House becomes aware that an ERU which is not an ERU Type ("Non-valid ERU") has been the subject of a Transfer Request and has been delivered, the Exchange or the Clearing House shall notify the affected parties (and the Exchange if not previously aware) and, pursuant to Rule YY.13, such matter shall be determined in accordance with the arbitration provisions in the Regulations.
- (e) If at any time during the Delivery Period the Exchange or the Clearing House becomes aware of the refusal or rejection by ~~the~~ Registry, the Registry administrator, the CITL or EUTL, as the case may be. or the UNFCCC International Transaction Log of a Transfer Request because the Transfer Request would cause the ~~relevant~~ Registry to breach its Commitment Period Reserve, the Clearing House and affected parties may take such steps to rectify the situation in compliance with any Clearing House Directions provided that such steps ensure that delivery still occurs in accordance with the terms and deadlines of these ICE Futures ECX ERU Futures Contract Rules, the Administrative Procedures and the Clearing House procedures. In the event that appropriate steps cannot be taken and delivery can not therefore occur in accordance with the terms and deadlines of these ICE Futures ECX ERU Futures Contract Rules; the Administrative Procedures; and the Clearing House procedures, because the Transfer Request would cause the Registry to breach its Commitment Period Reserve, the Clearing House shall declare that there is a Transfer Request Failure and Rule YY.12 shall apply.

YY.7 EXCLUSION OF ~~LIABILITY~~ LIABILITY¹⁹

- (a) Save as specifically provided in these ICE Futures ECX ERU Futures Contract Rules, the Regulations and the Clearing House Rules (and to the extent permitted by law), the Exchange and the Clearing House accept no liability in connection with an ERU Contract, its performance, non-performance or its termination whether based on breach of contract, warranty, negligence or tort. In particular, but without limitation, neither the Exchange nor the Clearing House are responsible for or shall have any liability whatsoever to any Buyer or Seller for:
- (i) the availability, suitability, unavailability or malfunction of a Communication Link or any part thereof;
- (ii) the performance or non-performance by ~~the~~ Registry ~~or~~ CITL or EUTL, as the case may be. or UNFCCC International Transaction Log of their respective obligations under the Registry Regulations or otherwise;
- (iii) the validity or non-validity of any ERU for purposes of meeting the requirements of the Directive;
- ~~(iv)~~ any act or omission of any operator of a Communication Link or any part thereof; or
- ~~(v)~~ any act or omission of an Authorised Representative of any other party.
- (b) Without prejudice to the rights and obligations of any person party to a Corresponding Contract arising pursuant to a Corresponding Contract, a person who is not the Buyer, Seller, the Exchange or the Clearing House shall have no right under the Contracts (Rights of Third Parties) Act 1999 to

¹⁹ Amended 27 July 2012

enforce any provision contained in an ERU Contract made pursuant to these CE Futures ECX ERU Futures Contract Rules.

YY.8 PAYMENT UNDER AN ERU CONTRACT

- (a) Subject to delivery under ZZ.6 and without prejudice to paragraph (b) of this Rule ZZ.8, the Buyer shall pay the EDSP specified in the ERU Contract. Payment will be made by the time referred to in and in accordance with Rule ZZ.9.
- (b) Any difference between the EDSP with respect to the ERU Contract and the Contract Price shall be accounted for between the parties to the ERU Contract in accordance with the Clearing House procedures.

YY.9 SELLER'S OBLIGATIONS²⁰

- (a) In respect of an ERU Contract to which the Clearing House is party as the Buyer, the Seller shall:
 - (i) ensure that there are sufficient transferable ERUs of the ERU Type which may, pursuant to Rule YY.1(e), be traded and delivered under an ERU Contract in the ~~Holding~~-Account from which a Transfer is to be made to meet the terms of the relevant Transfer Request at the time the Seller submits such Transfer Request;
 - (ii) ensure that the ERUs delivered to the ~~Holding~~-Account of the Clearing House are ERUs of an ERU Type which may, pursuant to Rule YY.1(e), be traded and delivered under an ERU Contract;
 - (iii) deliver to the ~~Holding~~-Account of the Clearing House ERUs free and clear of all liens, security interests, claims and encumbrances or any interest in or to them by any other person so as to transfer unencumbered ERUs to the Clearing House;
 - (iv) conduct its affairs so as not to give ~~any~~the Registry or any ~~Relevant~~~~Competent~~ Authority cause to refuse, reject or cancel (whether in whole or in part) any Transfer Request or to suspend or restrict the Seller's right to request or effect any Transfer (including, without limitation, suspension or cancellation of any relevant ~~Holding~~-Account);
 - (v) ensure that it has and maintains such Communication Links and complies with such other conditions and requirements as are necessary to make Transfer Requests and effect Transfers in accordance with the Scheme and these CE Futures ECX ERU Futures Contract Rules, Administrative Procedures and Clearing House procedures;
 - (vi) maintain in full force and effect all Required Authorisations at all appropriate times;
 - (vii) have and maintain, during such periods as determined by the Exchange from time to time and at its own cost, one ~~Holding~~-Account for each Margin Account at ~~the~~ Registry exclusively for the transfer of ERUs;
 - (viii) ensure that the Authorised Representative notified to the Clearing House pursuant to Rule ZZ.4.(b)(iii) shall be contactable by the Clearing House at all appropriate times during the Delivery Period;
 - (ix) give the Clearing House, for the purposes of delivery under Rule YY.6, any details required by the Clearing House as specified in the Administrative Procedures, the Clearing House procedures or under any Clearing House Direction from time to time;
 - (x) comply with the applicable provisions of the Registry Regulations, these ICE Futures ECX ERU Futures Contract Rules, the Administrative Procedures, the Clearing House Rules and any Clearing House Direction in order that the Transfer Request is accepted by the Registry and actioned by the CITL ~~or EUTL, as the case may be.~~ and or the UNFCCC International Transaction Log if appropriate and the ~~Holding~~-Account is subsequently debited during the Delivery Period;

²⁰ Amended 27 July 2012

- (xi) notify the Clearing House immediately, in accordance with the Clearing House procedures, if the Seller fails to comply, or may fail to comply, in respect of any delivery obligations or deadlines under these ICE Futures ECX ERU Futures Contract Rules, the Administrative Procedures, the Clearing House Rules or any Clearing House Direction;
 - (xii) make payment of any amounts due and payable pursuant to and in accordance with these ICE Futures ECX ERU Futures Contract Rules, the Administrative Procedures, the Clearing House Rules ;
 - (xiii) perform all other obligations imposed on the Seller under these ICE Futures ECX ERU Futures Contract Rules, the Administrative Procedures and the Clearing House procedures; and
 - (xiv) be and continue to be a Clearing Member as defined in the Clearing House Rules.
- (b) The Seller shall be responsible for the performance of all of its obligations under the ERU Contract, and shall perform such obligations in a timely manner. The Seller shall be responsible for all actions and omissions of an Authorised Representative acting or purporting to act on its behalf in relation to any ERU Contract or any related obligations.
- (c) Subject to Rule YY.12, any obligation upon the Seller to pay any costs, charges or expenses of any form shall be for its own account and shall include, but not be limited to, all fees and charges levied by the ~~Initiating~~-Registry attributable to the Transfer Request or the holding of its ~~Holding~~-Account in respect of an ERU Contract to which the Seller is party.
- (d) In the event that ~~a~~the Clearing House as Buyer is invoiced, or otherwise charged, in respect of a levy, charge or tax attaching to an ERU which has been delivered under the terms of an ERU Contract which arose, or arises in relation to the relevant ERU prior to, or in connection with, its delivery, then the Seller shall indemnify the Clearing House as Buyer in respect of such levy, charge or tax. Without prejudice to the generality of the preceding sentence, in~~In the event that the Buyer being invoiced, or otherwise charged in~~ such circumstances ~~is~~ the Clearing House, ~~then the Clearing House may in its absolute discretion will~~ require the Seller who has delivered the relevant ERU to the Clearing House under the terms of an ERU Contract, to settle the relevant invoice or charge.

YY.10 BUYER'S OBLIGATIONS²¹

- (a) In respect of an ERU Contract to which the Clearing House is party as the Seller, the Buyer shall:
- (i) conduct its affairs so as not to give ~~any~~the Registry or any ~~Relevant~~Competent Authority cause to refuse, reject or cancel (whether in whole or in part) any Transfer Request or to suspend or restrict the Buyer's ability to receive any Transfer (including, without limitation, suspension or cancellation of any relevant ~~Holding~~-Account);
 - (ii) maintain in full force and effect all Required Authorisations at all appropriate times;
 - (iii) ensure that it has and maintains such Communication Links and complies with such other conditions and requirements as are necessary to effect Transfers in accordance with the Scheme and these ICE Futures ECX ERU Futures Contract Rules, Administrative Procedures and Clearing House procedures;
 - (iv) have and maintain during such periods as determined by the Exchange from time to time and at its own cost, one ~~Holding~~-Account at ~~a~~the Registry for each Margin Account exclusively for the transfer of ERUs;
 - (v) ensure that the Authorised Representative notified to the Clearing House pursuant to Rule ZZ.5(b)(iii) shall be contactable by the Clearing House at all appropriate times during the Delivery Period;
 - (vi) give the Clearing House details of the ~~Holding~~-Account for the purposes of delivery under Rule YY.6 and in accordance with the Administrative Procedures and any other details

²¹ Amended 27 July 2012

required by the Clearing House as specified in the Administrative Procedures or the Clearing House procedures from time to time;

- (vii) comply with the applicable provisions of the Registry Regulations, these ICE Futures ECX ERU Futures Contract Rules, the Administrative Procedures, the Clearing House procedures and any Clearing House Direction in order that the Transfer Request input by the Clearing House is accepted by the ~~Initiating~~-Registry, actioned by the CITL ~~or EUTL~~, as the case may be, and/or the UNFCCC International Transaction Log if appropriate and the ~~Holding~~-Account of the Buyer updated by the ~~Acquiring~~-Registry for a Delivery Period;
 - (viii) notify the Clearing House immediately, in accordance with the Clearing House procedures, if the Buyer fails to comply, or may fail to comply, in respect of any delivery obligations or deadlines under these ICE Futures ECX ERU Futures Contract Rules, the Administrative Procedures, the Clearing House Rules, the Clearing House procedures or any Clearing House Direction;
 - (ix) make payment of any amounts due and payable pursuant to and in accordance with these ICE Futures ECX ERU Futures Contract Rules, the Administrative Procedures, the Clearing House Rules or the Clearing House procedures;
 - (x) perform all other obligations imposed on the Buyer under these ICE Futures ECX ERU Futures Contract Rules, the Administrative Procedures and the Clearing House procedures; ~~and~~
 - (xi) be and continue to be a Clearing Member as defined in the Clearing House Rules; ~~and~~
 - (xii) advise the Clearing House within a reasonable time if the ERUs delivered to its ~~Holding~~ Account are ERUs of an ERU Type which may not, pursuant to Rule YY.1(e), be traded and delivered under an ERU Contract.
- (b) The Buyer shall be responsible for the performance of all of its obligations under the ERU Contract, and shall perform such obligations in a timely manner. The Buyer shall be responsible for all actions and omissions of an Authorised Representative acting or purporting to act on its behalf in relation to any ERU Contract or any related obligations.
- (c) Subject to Rule YY.12, any obligation upon the Buyer to pay costs, charges or expenses of any form shall be for its own account and shall include, but not be limited to, all fees and charges levied by the ~~Acquiring~~-Registry attributable to the Transfer Request and its ~~Holding~~-Account in respect of an ERU Contract to which the Buyer is party.

YY.11 BUYER'S AND SELLER'S SECURITY²²

The Buyer and the Seller may be required to put up such security as the Clearing House may from time to time require pursuant to the Clearing House Rules.

YY.12 FAILURE TO PERFORM AND/OR DELAY IN PERFORMANCE OF OBLIGATIONS AND DELIVERY COSTS UNDER AN ERU CONTRACT²³

Agreement to deliver ERUs on terms other than those specified in the Contract Rules and Administrative Procedures

- (a) On the occurrence of a Transfer Request Failure in accordance with Rules YY.6(c), YY.6(e), ZZ.6(d) or ZZ.7(c), a Seller may agree with the Clearing House to make delivery of ERUs to the Clearing House, or a Buyer may agree with the Clearing House to take delivery from the Clearing House of ERUs in a manner or on terms other than those specified in the Contract Rules and Administrative Procedures.
 - (i) In the event of an agreement between the Seller and the Clearing House or the Buyer and the Clearing House under the terms of Rule YY.12(a), the Seller or the Buyer (as the case may be) shall immediately give written notice of the fact of such agreement to the

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Exchange. In the event of no agreement being reached upon the occurrence of a Transfer Request Failure in accordance with Rules ZZ.6(d) or ZZ.7(c), the Clearing House shall refer the fact of the Transfer Request Failure to the Exchange in accordance with Rule YY.12(b).

- (ii) On agreement between the Seller and the Clearing House or the Buyer and the Clearing House under the terms of Rule YY.12(a), the Clearing House shall liquidate its Contract with the Seller or the Buyer (as the case may be) at the Exchange Delivery Settlement Price and cease, in respect of any arrangement made by the Clearing House and the Seller or Buyer (as the case may be) under this Rule YY.12(a), to owe any obligation towards the Seller or Buyer (as the case may be), under this ERU Contract. The relevant Seller or the Buyer, (as the case may be), shall cease in respect of any such arrangement made by the Clearing House and the Seller or Buyer (as the case may be) under this Rule YY.12(a), to owe any obligation towards the Clearing House, under this ERU Contract. For the avoidance of doubt, this shall be without prejudice to any obligations owed by the Buyer or Seller under the Clearing House Rules.
- (b) Where an agreement is not reached pursuant to Rule YY.12(a), the Clearing House shall refer the relevant Transfer Request Failure to the Exchange by the close of business on the Business Day following the day of the Transfer Request Failure and the Exchange or a body appointed by the Exchange:
- (i) shall direct the Clearing House to invoice back the affected Contracts at a price set by the Exchange at its discretion, or the body appointed by the Exchange at its discretion, taking into account any information it considers to be relevant for this purpose; and
 - (ii) shall notify the Clearing House and the Seller or the Buyer (as the case may be) of the price set to invoice back the affected Contracts.

No price set by the Exchange, or a body appointed by the Exchange, to invoice back the affected Contracts shall be referred to arbitration under the Arbitration Rules but this Rule YY.12 (a)(iii) shall be without prejudice to the right of the Member to refer any other matter to arbitration under the Arbitration Rules.

Delivery Costs

- (c) (i) If, in respect of an ERU Contract, there is a Transfer Request Failure which is referred to the Exchange under Rule YY.12(b) and/or Transfer Request Delay for a Delivery Period as a result of any failure or any delay on the part of the Seller (including the Clearing House) to comply with the applicable obligations under such ERU Contract, then the Seller (including the Clearing House) shall indemnify the Buyer in respect of any Delivery Costs attributable to that Transfer Request Failure and/or Transfer Request Delay;
- (ii) If, in respect of an ERU Contract there is a Transfer Request Failure which is referred to the Exchange under Rule YY.12(b) and/or a Transfer Request Delay for a Delivery Period as a result of any failure or delay on the part of the Buyer (including the Clearing House) to comply with the applicable obligations under an ERU Contract, then the Buyer (including the Clearing House) shall indemnify the Seller in respect of any Delivery Costs attributable to that Transfer Request Failure and/or Transfer Request Delay;
- (iii) For the purposes of calculating either the Seller's, or the Buyer's Delivery Costs, the relevant consequences of the Transfer Request Failure shall be considered in isolation from other Transfer Requests not made under an ERU Contract in respect of the Buyer's or Seller's ~~Holding~~ Accounts;
- (iv) Without prejudice to (i) or (ii) above, the Seller or the Buyer respectively shall indemnify the Clearing House against all costs reasonably incurred by the Clearing House in taking steps to mitigate the losses, charges, expenses or penalties which would otherwise be incurred as a result of the Seller's or the Buyer's (as the case may be) failure to comply with its obligations under an ERU Contract;

- (v) Where the level of Delivery Costs attributable to a Transfer Request Failure which is referred to the Exchange under Rule YY.12(b), cannot be agreed between the Clearing House and a Buyer/Seller within seven Business Days of the day on which trading ceases for the relevant contract month, the matter shall be referred to the Exchange, or a body appointed by the Exchange which shall, in its absolute discretion, determine the Delivery Costs and notify the Clearing House and the Buyer/Seller of such Delivery Costs. In the event that either party disputes the Delivery Costs so determined, the party may, within three Business Days of notification of the Delivery Costs by the Exchange, request in writing to the Exchange that the Delivery Costs be reviewed by the Exchange's Authorisation, Rules and Conduct Committee. The decision of this Committee shall be final and binding and no further review shall be permitted.
- (d) The Exchange and/or the Clearing House shall, under no circumstances, be liable for any indirect or consequential loss or loss of profits.
- (e) The Buyer and the Seller acknowledge that the right to be indemnified under this Rule YY.12 shall be their sole remedy in respect of any failure by any other party to comply with its obligations in respect of an ERU Contract. For the avoidance of doubt this shall be without prejudice to any obligations owed by the Buyer or Seller under the Clearing House Rules.
- (f) The Clearing House may take such steps in accordance with the terms of this YY.12, without prejudice to the provisions of these ICE Futures ECX ERU Futures Contract Rules and any other steps or sanctions which may be taken or applied under the Regulations (including, without limitation, the provisions of Sections D and E of the Regulations), or the Clearing House Rules.
- (g) The Clearing House may, by Clearing House Directions, instruct a Buyer or Seller that partial settlement is to take place under an ERU Contract to which they are party, in which case the provisions of this Rule YY.12 as to Transfer Request Failures or Transfer Request Delays may apply to only part of such ERU Contract where relevant.

YY.13 ARBITRATION AND DISPUTE RESOLUTION

The Buyer and the Seller acknowledge that, subject to the relevant provisions in Rule YY.12, any disputes relating to the ERU Contract shall be determined in accordance with the arbitration provisions in the Regulations.

YY.14 FORCE MAJEURE²⁴

- (a) (i) If, before the first and any subsequent Delivery Period, the UNFCCC International Transition Log [or the Scheme](#) is, as a result of official written public pronouncement by any duly authorised body representing the United Nations and/or the European Union, no longer scheduled to proceed or is to be discontinued or is significantly amended in a manner which prevents the performance of delivery and Transfer obligations in accordance with the ICE Futures ECX ERU Futures Contract Rules and Procedures, the Clearing House shall invoice back any open contract in accordance with the Clearing House procedures, at a price to be fixed by the Exchange or a body appointed by the Exchange, in its absolute discretion. Such price shall be binding on the parties and no dispute as to such price may be referred to arbitration under the Arbitration Rules. In such case neither the Buyer, the Clearing House, nor the Seller shall have any further delivery, Transfer or payment obligations under or in respect of the [open ICE Futures ECX ERU Futures Contract](#) ~~the subject of the open contract~~(s).
- (ii) If, before the first and any subsequent Delivery Period, the implementation of the UNFCCC Independent Transition Log is, as a result of official written public pronouncement by any duly authorised body representing the European Union, delayed to the extent that the delay prevents the performance of delivery and Transfer obligations in accordance with the ICE Futures ECX ERU Futures Contract Rules and Procedures, the Exchange ~~shall~~[may](#), at the close of business of the relevant contract month on the last day of trading for that contract month, transfer the open positions in the relevant contract month to the next forward contract month at a price and by such means to be fixed by the Exchange, in their absolute discretion.

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- (b) Subject to Rule YY.14(e), a Seller who is party to an ERU Contract shall not be liable in respect of any failure on its part to submit a Transfer Request in relation to any ERU Contract, any rejection/non acceptance of a Transfer Request or subsequent failure in the credit of ERUs to the Buyer's ~~Holding Account~~, nor shall a Buyer be liable in respect of any failure on its part to ensure the credit to its ~~Holding Account~~ of all ERUs under an ERU Contract if performance of such obligations is prevented by Force Majeure. In such case neither party shall be held to be in default under the ERU Contract and no payment shall be made under Rules YY.8 or YY.12.
- (c) Force Majeure shall, in relation to the Buyer or the Seller as the case may be, mean the occurrence of any event (except as provided otherwise in Rule YY.14(e)) which is outside the reasonable control of such party, and which prevents the debiting and crediting of the Buyer's or Seller's ~~Holding Accounts at the Registry respective Initiating and Acquiring Registries~~ so that a Transfer cannot be effected during the Delivery Period or results in an amount other than the ERU Delivery Amount being credited and debited. Without limitation to the foregoing, an event of Force Majeure shall include:
- (i) the provisions of the Kyoto Protocol and/or Scheme being suspended;
 - (ii) a public statement by an appropriate authority, or by the Registry, ~~nominated by the Clearing House as its Initiating and Acquiring Registry for a Delivery Period~~, of an occurrence of an event outside the reasonable control of the Registry so as to prevent a Transfer taking place during that Delivery Period, and which is endorsed by the Exchange as a declaration of Force Majeure in respect of ~~such the~~ Registry;
 - (iii) subject to Rule YY.14(e)(i)(iv), ~~the an Initiating and Acquiring Registry nominated for a Delivery Period by the Clearing House as its Initiating and Acquiring~~ Registry suspending the submission of Transfer Requests or the effecting of Transfers under the Registry Regulations or otherwise;
 - (iv) for the relevant Delivery Period, the inability to make or accept a Transfer due to an interruption in, delay to or permanent halting of a Transfer resulting from the intervention of the CITL ~~or EUTL, as the case may be~~, or UNFCCC International Transaction Log in relation to ~~the Registry nominated by the Clearing House as its Initiating and Acquiring Registry~~.
- (d) Where a Force Majeure event has arisen in relation to one or more ERU Contracts to which the Clearing House is party as Buyer which prevents the Transfer of ERUs or performance of other obligations, the Clearing House shall use the Random Selection Mechanism to identify and subsequently notify the relevant Buyers to which the Clearing House is party as Seller, that the Clearing House has declared a Force Majeure event in relation to such ERU Contracts in accordance with these CE Futures ECX ERU Futures Contract Rules, and/or the Regulations and/or the Clearing House Rules and/or the Clearing House procedures.
- (e) Subject to Rule YY.14(a) and Rule YY.14(c), the occurrence of the following events shall not give rise to Force Majeure:
- (i) the refusal or rejection by ~~the~~ Registry, the CITL ~~or EUTL, as the case may be~~, or the UNFCCC International Transaction Log for whatever reason, of a Transfer Request submitted by the Seller. For the avoidance of doubt, this shall include the refusal or rejection by ~~the~~ Registry, the Registry administrator, the CITL ~~or EUTL, as the case may be~~, or the UNFCCC International Transaction Log, as applicable, of a Transfer Request where the Transfer Request would cause the Registry to breach its Commitment Period Reserve;
 - ~~(ii) a declaration by one of the Initiating or Acquiring Registries, nominated by the Seller or the Buyer as the case may be, as its Initiating or Acquiring Registry for a Delivery Period, confirming that a Transfer is prevented from taking place during the Delivery Period, if such Registry is not the Registry nominated by the Clearing House as its Initiating and Acquiring Registry for that Delivery Period;~~
 - ~~(iii)~~ (ii) the failure of a Communication Link;

- ~~(iv)(iii)~~ the inability to make a Transfer owing to a problem within the central systems or processes established under the Scheme for the receipt and acceptance of Transfer Requests, but only to the extent that contingency arrangements exist under the Scheme by which the Seller or the Buyer can reasonably be expected to make or accept the Transfer (as the case may be) in accordance with any Clearing House Direction;
- (iv) an insufficient amount of (or in the event that there are no) ERUs in the Seller's **Holding** Account to enable the Seller to effect the Transfer, whether caused by non-allocation or low allocation of ERUs or for any other reason; or
- ~~(iv) the non-validity for any reason of any ERU for the purposes of meeting the requirements of the Directive.~~
- ~~(vi) the inability to make or accept a Transfer in relation to a Registry nominated by the Seller and/or Buyer where such Registry is not the Registry nominated by the Clearing House for the Delivery Period, due to an interruption in, delay to or permanent halting of a Transfer resulting from the intervention of the CITL or the UNFCCC International Transaction Log.~~
- (f) A Seller or a Buyer (other than the Clearing House) who is party to an ERU Contract shall not be entitled to relief through the occurrence of an event of Force Majeure under this Rule YY.14 unless such party has notified the Clearing House and the Exchange, or in the case of the Clearing House, the Clearing House shall not be entitled to relief through the occurrence of an event of Force Majeure under this Rule YY.14 unless the Clearing House has notified the other party and the Exchange, as soon as reasonably practicable after such party or the Clearing House, as the case may be, has become aware (or after it ought reasonably to have become aware) of such Force Majeure event and has continued to seek to perform its obligations in accordance with the ERU Contract (in which event it shall be entitled to such relief with effect from the commencement of such Force Majeure event).
- (g) Upon request by the Clearing House and/or the Exchange, a party seeking Force Majeure relief under this Rule YY.14 shall provide all information required by the Clearing House and/or the Exchange as soon as practicable to assist the Exchange in determining whether an event of Force Majeure has occurred. Whether an event of Force Majeure has occurred shall be determined by the Exchange. Where the Clearing House is not the party seeking relief through the occurrence of an event of Force Majeure, the Exchange shall consult a representative of the Clearing House in its determination.
- (h) If Force Majeure prevents the affected party from performing its obligations under an ERU Contract, the ERU Contract shall be invoiced back by the Clearing House, in accordance with the Clearing House procedures, at a price to be fixed by the Exchange, or a body appointed by the Exchange, in their absolute discretion. Such price shall be binding on the parties and no dispute as to such price may be referred to arbitration but completion of invoicing back shall be without prejudice to the right of either party to refer the question of the existence, extent or duration of the Force Majeure or any default or related dispute to arbitration under the Arbitration Rules.

