

**ADDENDUM TO SCHEDULE TO MASTER AGREEMENT OF INTERNATIONAL SWAPS
AND DERIVATIVES ASSOCIATION, INC.**

(1) Application

By incorporating this Addendum in their ISDA Master Agreement, the parties agree that every Environmental Products Transaction between them entered into after the incorporation of this Addendum is a Transaction governed by the terms of this Addendum and the ISDA Master Agreement in which it is incorporated unless they expressly agree in writing otherwise.

This applies whether or not the parties refer to the ISDA Master Agreement or this Addendum.

(2) Confirmations

(a) The parties acknowledge that Environmental Products Transactions governed by the terms of this Addendum and the ISDA Master Agreement in which it is incorporated may be confirmed by the following methods unless agreed otherwise:

Letter

Facsimile

(b) A confirmation produced by any method constitutes a Confirmation for the purpose of this Agreement. Each such Confirmation supplements, forms part of, and is subject to the ISDA Master Agreement in which this Addendum is incorporated.

(c) The parties acknowledge that some Confirmations may describe some items by a term other than the defined term in this Addendum, the 2006 ISDA Definitions or the 2005 ISDA Commodity Definitions. For example:

~~“Settlement Payment Date”~~ may be referred to as “Maturity Date” or “Value Date”; and

“Floating Price” or “Floating Rate” may be referred to as “Reference Price”.

In any case where the intention is clear that a term used in a Confirmation is intended to specify the particulars for a defined term in this Addendum, the 2006 ISDA Definitions or the 2005 ISDA Commodity Definitions, then that term is to be deemed to be that defined term.

(3) Definitions

(a) The definitions and provisions contained in the 2006 ISDA Definitions, the 2005 ISDA Commodity Definitions and in this Addendum are incorporated into each Confirmation. If there is any inconsistency between those definitions and provisions and any such Confirmation, the Confirmation will govern. In the event of any inconsistency between the definitions and provisions contained in the 2006 ISDA Definitions and the definitions and provisions contained in the 2005 ISDA Commodity Definitions, the 2005 ISDA Commodity Definitions will govern.

- (b) Each Environmental Products Transaction is a "Transaction" for the purpose of the ISDA Master Agreement in which this Addendum is incorporated.
- (c) In this Addendum references to the 2006 ISDA Definitions and the 2005 ISDA Commodity Definitions are references to those publications as published by the International Swaps and Derivatives Association, Inc.
- (4) Environmental Products Transaction definitions and other provisions
- (a) The following definitions apply to this Addendum and to any Environmental Products Transaction.

"**Abandonment of Scheme**" is defined in paragraph 4(d).

"**ACCU**" means a unit issued under Division 2 of Part 11 of the CFI Act and transferable under Division 3 of Part 11 of the CFI Act.

"**Business Day**" is defined in the 2005 ISDA Commodity Definitions and unless otherwise specified in this Addendum the places to apply for the purposes of the definition are the capital cities of the State or Territory in Australia in which the parties' head offices are located.

"**CFI Act**" means the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth).

"**Clean Energy Act**" means the *Clean Energy Act 2011* (Cth).

"**Corporate Tax Rate**" is the rate (expressed as a decimal fraction) applicable to a company under the *Income Tax Rates Act 1986* (Cth) on the DeliverySettlement Date.

"**Eligible ACCU**" means a KACCU or an NKACCU that is also an "eligible Australian carbon credit unit" within the meaning of the *Clean Energy Act*.

"**Environmental Product**" means ESCs, GECs, GRECs, LGCs, STCs, VEECs, Eligible ACCUs and ~~KACCU~~ Voluntary NKACCUs.

"**ESC**" means a certificate created under Division 7 and registered under Division 9 of Part 9 of the NSW ESA and transferable under Division 10 of Part 9 of the NSW ESA.

"**GEC**" means a certificate created and registered under Division 1 of Part 4 of Chapter 5A of the QLD Act and transferable under Division 4 of Part 4 of Chapter 5A of that Act.

"**GREC**" means an LGC created by a generator accredited under the Program.

"**KACCU**" means a Kyoto Australian carbon credit unit within the meaning of the CFI Act.

"**LGC**" means a large-scale generation certificate created under Subdivision A of Division 4 of Part 2 of the REC Act registered under Division 5 of Part 2 of the REC Act and transferable under Division 6 of Part 2 of the REC Act and also includes certificates under the REC Act which are to be treated as LGCs under the transitional provisions.

"NKACCU" means a non-Kyoto Australian carbon credit unit within the meaning of the CFI Act.

"NSW ESA" means the *Electricity Supply Act 1995* (NSW).

"Program" means the National GreenPower Accreditation Program in force from time to time established by various government agencies collectively known as the "National GreenPower Steering Group".

"QLD Act" means the *Electricity Act 1994* (QLD).

"REC Act" means the *Renewable Energy (Electricity) Act 2000* (Cth).

"Registry Act" means the *Australian National Registry of Emissions Units Act 2011* (Cth).

"Relevant Act" means in the case of:

- (i) ESCs – the NSW ESA;
- (ii) GECs – the QLD Act;
- (iii) GRECs, LGCs or STCs – the REC Act;
- (iv) VEECs – the VEET Act; and
- (v) Eligible ACCUs and ~~KACCU~~- Voluntary NKACCUs – the CFI Act.

"Settlement Disruption Event" in relation to an Environmental Product, means an event beyond the control of the party affected as a result of which the Environmental Product cannot be transferred, or a transfer of the Environmental Product notified or accepted, in accordance with the party's obligation to deliver or accept delivery of Environmental Products under a Transaction. If an event or circumstance which would otherwise give rise to a Settlement Disruption Event also constitutes an Abandonment of Scheme it will be treated as an Abandonment of Scheme and will not constitute a Settlement Disruption Event.

"STC" means a small-scale technology certificate created under Subdivision B or BA of Division 4 of Part 2 or under section 30P of Division 4 of Part 2A of the REC Act registered under Division 5 of Part 2 of the REC Act and transferable under Division 6 of Part 2 of the REC Act.

"Surrender Date" means (other than for Eligible ACCUs and Voluntary NKACCUs) the date on which the Commodity must be surrendered or acquitted under:

- (i) (in the case of GRECs) the Program; and
- (ii) (in the case of ESCs, GECs, LGCs, STCs and VEECs) the Relevant Act,

and means (in the case of Eligible ACCUs and Voluntary NKACCUs):

- (iii) (in the case of Eligible ACCUs) if "Excess Emissions Penalty" is specified to be applicable to the Transaction in its Confirmation, the Reconciliation Deadline (as defined in paragraph 9); and

- (iv) otherwise, the date 9 Business Days after the DeliverySettlement Date.

"Tax Adjusted Legislative Charge" means:

- (i) in the case of ESCs the rate of the energy savings shortfall penalty determined under section 112 and 113 of the NSW ESA;
- (ii) in the case of GECs the shortfall charge determined under section 135FA of the QLD Act;
- (iii) in the case of LGCs and GRECs, the rate of charge as specified under the *Renewable Energy (Electricity) (Large-scale Generation Charge) Act 2000* (Cth);
- (iv) in the case of STCs the rate of charge as specified under the *Renewable Energy (Electricity) (Small-scale Technology Shortfall Charge) Act 2010* (Cth); and
- (v) in the case of VEECs the shortfall charge determined under section 28 of the VEET Act and clause 11 of the *Victorian Energy Efficiency Target Regulations 2008*;

and in each case divided by (1-Corporate Tax Rate).

"Unit" means for each Environmental Product, one certificate (except for Eligible ACCUs and KACCUsVoluntary NKACCUs where it means one unit).

"VEEC" means a certificate created under Division 3, Part 3 of the VEET Act and registered and transferable under Division 3, Part 3 of the VEET Act.

"VEET Act" means the *Victorian Energy Efficiency Target Act 2007* (Vic).

"Voluntary NKACCU" means an NKACCU that is not also an "eligible emissions unit" within the meaning of the Clean Energy Act.

- (b) Section 9 of the 2005 ISDA Commodity Definitions does not apply to any Environmental Products Transaction. For the purposes of any calculations referred to in those Definitions (unless otherwise specified), all percentages and quantities used in or resulting from such calculations, and all Australian Dollar (as defined in the 2006 ISDA Definitions) denominated amounts resulting from such calculations (including, without limitation, Fixed Amounts, and Cash Settlement Amounts), will be rounded to the nearest cent.
- (c) If any party to an Environmental Products Transaction:
 - (i) is liable to pay goods and services tax ("**GST**") on a supply made by it under that Transaction;
 - (ii) certifies to the recipient that it has not priced the supply to include GST; and
 - (iii) issues a valid tax invoice to the recipient within 28 days of the supplier's liability for GST on the supply arising,

then the recipient agrees to pay to the supplier an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate (without deduction or set off) at the same time and in the same manner as the consideration is payable for the supply. If the recipient is required by law to withhold an amount in respect of GST from a payment to be made to the supplier because the supplier has not quoted its ABN, the withholding and payment to the Commissioner of the amount will be a good discharge of its obligation to pay the amount to the supplier by way of GST under this paragraph.

However, the supplier agrees to issue a valid adjustment notice within 7 days of finding out that the actual amount of GST payable by it on the supply differs from the amount paid by the recipient. Payment adjustments must then be made between the parties within two Business Days to reflect the actual amount of GST payable.

All references have the same meaning as provided in the *New Tax System (Goods and Services Tax) Act 1999* (Cth).

- (d) If a scheme establishing an Environmental Product is repealed or terminated (such event being an “**Abandonment of Scheme**”) all obligations under Transactions for the relevant Environmental Products, which are required to be performed after the effective date of cessation of the scheme, shall cease on that date. The relevant Transactions shall automatically terminate on that date as though the obligations to be performed after that date had been performed in full such that neither party shall have a claim against the other arising from the repeal or termination of the scheme. The party with the delivery obligation shall promptly refund to the other party any amount (excluding any option premium) that has been paid by the other party in respect of Environmental Products which, but for this paragraph, would have been deliverable after the date of termination of the Transaction together with interest, at the Non-default Rate, on that amount for the period from (and including) the date the amount was paid to (but excluding) the date of termination of the Transactions in accordance with this clause.
- (5) Provisions applicable to forward commodity contracts and spot commodity contracts
- (a) This paragraph 5 applies to any Transaction including any Underlying Transaction which is, or is described in its Confirmation as, a forward commodity contract or a spot commodity contract (whether or not the ~~Settlement-Delivery~~ Date is fixed).
- (b) The following definitions apply:
- “**Buyer**” means the party specified as buyer in the Confirmation.
- “**Cash Settlement**” for a ~~DeliverySettlement~~ Date means that:
- (i) the Buyer must pay the Cash Settlement Amount to the Seller on the ~~Settlement-Payment~~ Date, if the Fixed Price exceeds the Cash Settlement Price; or
- (ii) the Seller must pay the Cash Settlement Amount to the Buyer on the ~~Settlement-Delivery~~ Date, if the Cash Settlement Price exceeds the Fixed Price.

"Cash Settlement Amount" for a DeliverySettlement Date means, unless the parties otherwise specify in the Confirmation, the absolute value of an amount calculated in accordance with the following formula:

$$\text{Number of Units to be Cash Settled} \times (\text{Fixed Price} - \text{Cash Settlement Price})$$

"Cash Settlement Price" for a DeliverySettlement Date means the amount specified, or determined pursuant to a method specified, in the Confirmation for that DeliverySettlement Date.

"Settlement-Delivery Date" means, subject to paragraph 7:

- (i) where Multiple Exercise is applicable, the first Business Day after the Exercise Date; and
- (ii) where Multiple Exercise is not applicable, the date specified in the Confirmation except that if that date is not a Business Day, then the next Business Day after that date and when a Transaction is, or is described in its Confirmation as, a floating forward transaction, then the Settlement-Delivery Date is to be a Business Day elected by the Seller (which election is to be made by giving the Buyer at least two Business Days' notice).

"Exercise Date" has the meaning given in paragraph 5(i).

"Fixed Amount" for a PaymentSettlement Date means, unless the parties otherwise specify in the Confirmation, the amount calculated in accordance with the following formula:

$$\text{Number of Units to be Physically Delivered} \times \text{Fixed Price per Unit}$$

"Payment Date" for a Delivery Date means the date specified in the Confirmation; or if no date is specified in the Confirmation, then it means the Delivery Date.

"Physical Settlement" for a DeliverySettlement Date means the Seller must deliver the Number of Units to be Physically Delivered to the Buyer on the Delivery Date, and the Buyer must pay the Fixed Amount to the Seller, on the Settlement-Payment Date.

"Quantity" means the quantity (expressed in Units) of the Commodity the subject of the Transaction.

"Seller" means the party specified as seller in the Confirmation.

- (c) Physical Settlement and Cash Settlement are applicable to any forward commodity contract for Environmental Products other than Eligible ACCUs and KACCUsVoluntary NKACCUs.
- (d) Physical Settlement (and not Cash Settlement) is applicable to any forward commodity contract for Eligible ACCUs and KACCUsVoluntary NKACCUs and to any spot contract for Environmental Products.
- (e) For the purposes of settlement of a Transaction to which this paragraph 5 applies (other than a forward commodity contract for Eligible ACCUs or KACCUsVoluntary NKACCUs or a spot contract):

“Number of Units to be Cash Settled” means:

- (i) if Multiple Exercise is specified to be applicable in the Confirmation, the number of Units nominated or deemed to be nominated to be cash settled on the applicable Exercise Date by the Seller under paragraph 5(g); and
- (ii) otherwise, the Quantity less the Number of Units to be Physically Delivered on that DeliverySettlement Date; and

“Number of Units to be Physically Delivered” means:

- (i) if Multiple Exercise is specified to be applicable in the Confirmation, the number of Units nominated or deemed to be nominated to be physically delivered on the applicable Exercise Date by the Seller under paragraph 5(g); and
 - (ii) otherwise, the number of Units nominated to be physically delivered by the Seller by notice not less than two Business Days before the DeliverySettlement Date or, if no such nomination is given, the Quantity. On delivery to the Buyer of that notice, the right granted under the forward commodity contract to settle by the other method on that DeliverySettlement Date terminates.
- (f) In the case of a forward commodity contract for ACCUsEligible ACCUs or KACCUsVoluntary NKACCUs- and a spot contract, the **“Number of Units to be Physically Delivered”** equals the Quantity and the **“Number of Units to be Cash Settled”** equals zero.
- (g) If Multiple Exercise is specified in the Confirmation to be applicable to a Transaction to which both Physical Settlement and Cash Settlement are applicable, then:
- (i) the Seller may on one or more Buyer Business Days during the Exercise Period nominate a Number of Units to be Physically Delivered and a Number of Units to be Cash Settled, but (except as set out below) on any such Buyer Business Day:
 - (A) may not, for each of Physical Settlement and Cash Settlement, nominate less than the Minimum Number of Units or more than the Maximum Number of Units and, if a number is specified as the “Integral Multiple” in the related Confirmation, the number of Units nominated for each of Physical Settlement and Cash Settlement must be equal to, or an integral multiple of, the number so specified; and
 - (B) may not nominate in aggregate a number of Units greater than the Quantity less the aggregate Number of Units to be Physically Delivered and Number of Units to be Cash Settled with respect to each previous Exercise Date (if any); and
 - (C) must specify:
 - (1) the Number of Units to be Physically Delivered; or
 - (2) the Number of Units to be Cash Settled; or

- (3) the Number of Units to be Physically Delivered and the Number of Units to be Cash Settled; and
- (ii) on the last Buyer Business Day of the Exercise Period, in addition to any Notice of Exercise given (or deemed given) by the Seller on that date, the Seller is deemed to have given a notice to the Buyer nominating for Cash Settlement a number of Units equal to the Quantity less the aggregate of:
- (A) the Number of Units to be Physically Delivered and **the** Number of Units to be Cash Settled with respect to each previous Exercise Date (if any); and
- (B) the Number of Units the subject of any Notice of Exercise given (or deemed given) by the Seller on that Exercise Date.
- (h) If Multiple Exercise is specified to be applicable to a Transaction to which only Physical Settlement (and not Cash Settlement) is applicable, then:
- (i) the Seller may on one or more Buyer Business Days during the Exercise Period nominate a Number of Units to be Physically Delivered, but (except as set out below) on any such Buyer Business Day:
- (A) may not nominate less than the Minimum Number of Units or more than the Maximum Number of Units and, if a number is specified as the "Integral Multiple" in the related Confirmation, the number of Units nominated must be equal to, or an integral multiple of, the number so specified; and
- (B) may not nominate in aggregate a number of Units greater than the Quantity less the aggregate Number of Units to be Physically Delivered with respect to each previous Exercise Date (if any); and
- (ii) on the last day of the Exercise Period, in addition to any Notice of Exercise given by the Seller on that date, the Seller is deemed to have given a notice to the Buyer nominating a Number of Units to be Physically Delivered equal to the Quantity less the aggregate of:
- (A) the Number of Units to be Physically Delivered with respect to each previous Exercise Date (if any); and
- (B) the Number of Units the subject of any Notice of Exercise given (or deemed given) by the Seller on that Exercise Date.
- (i) For the purposes of paragraphs 5(g) and 5(h):
- (i) "**Buyer Business Day**" means any Business Day in the city in which the Buyer is located for the purpose of receiving notices.
- (ii) "**Exercise Date**" means each Buyer Business Day during the Exercise Period on which a Notice of Exercise is given or deemed to be given.

- (iii) **“Exercise Period”** means the period specified in or pursuant to the related Confirmation.
- (iv) **“Maximum Number of Units”** means the number specified as such in the related Confirmation.
- (v) **“Minimum Number of Units”** means the number specified as such in the related Confirmation.
- (vi) **“Notice of Exercise”** means irrevocable notice given by the Seller to the Buyer (of its nomination of a number of Units for settlement) during the hours specified in the relevant Confirmation on a Buyer Business Day during the Exercise Period. If the Notice of Exercise is received on any day which is not a Buyer Business Day or on a Buyer Business Day after the hours so specified, the Notice of Exercise will be deemed to have been received on the next following Buyer Business Day.

(6) Provisions applicable to commodity options for Environmental Products

- (a) This paragraph 6 applies to any Transaction which is, or is described in its Confirmation as, a commodity option relating to Environmental Products. For the purposes of the 2005 ISDA Commodity Definitions, such a Transaction is also an Option and may be a Swaption.
- (b) For a Transaction that is, or is described in its Confirmation as, a swaption, the Commodity Option Seller grants the Commodity Option Buyer the right by Notice of Exercise to cause the Underlying Transaction to become effective. Physical Settlement as defined in the 2005 ISDA Commodity Definitions, applies. Paragraphs 6(c), (d), (e) and (f) of this Addendum do not apply to the Transaction.
- (c) For Transactions to which this paragraph 6(c) applies, the Commodity Option Seller grants the Commodity Option Buyer the right to cause the Commodity Option Seller to either, depending on whether the commodity option is a Call or a Put, purchase (and take delivery of) or sell (and deliver) a number of Units not exceeding the Quantity on the ~~DeliverySettlement~~ Date in return for the Fixed Amount on the Payment Date. In those circumstances, for the purposes of Transactions to which this paragraph 6(c) applies, the definition of:
 - (i) **“Call”** means an Option entitling, but not obliging, the Commodity Option Buyer to purchase from the Commodity Option Seller a number of Units not exceeding the Quantity in exchange for the Fixed Price per Unit; and
 - (ii) **“Put”** means an Option entitling, but not obliging, the Commodity Option Buyer to sell to the Commodity Option Seller a number of Units not exceeding the Quantity in exchange for the Fixed Price per Unit.
- (d) The number of Units for which the option has been exercised for a ~~DeliverySettlement~~ Date is determined as follows:
 - (i) in respect of a Transaction for which Multiple Exercise is specified to be applicable in the Confirmation, the number of Units

nominated or deemed to be nominated by the Commodity Option Buyer under paragraph 6(e); or

- (ii) otherwise, the lesser of the Quantity and the number of Units nominated by the Commodity Option Buyer in the Notice of Exercise.
- (e) If the Confirmation for a Transaction specifies that "Multiple Exercise" is applicable to the Transaction and the Transaction is, or is described in its Confirmation as, an American style of commodity option, the Commodity Option Buyer may exercise the option on one or more Commodity Option Seller Business Days during the Exercise Period by Notice of Exercise, but (except as set out below) on any such Business Day:
- (i) may not exercise for less than the Minimum Number of Units or more than the Maximum Number of Units and, if a number is specified as the "Integral Multiple" in the related Confirmation, the number of Units for which the option is exercised must be equal to, or an integral multiple of, the number so specified; and
 - (ii) may not exercise for a number of Units greater than the Quantity less the aggregate Number of Units to be Physically Delivered and Number of Units to be Cash Settled with respect to each previous Exercise Date; and
 - (iii) must specify the number of Units for which the option is being exercised in respect of the relevant DeliverySettlement Date.
- (f) Cash Settlement and Physical Settlement are applicable to Units in respect of which the option has been exercised other than ACCUsEligible ACCUs and KACCUsVoluntary NKACCUs, to which only Physical Settlement is applicable. The terms "Cash Settlement" and "Physical Settlement" have the meanings given to them in paragraph 5 except that ~~that~~ for the purposes of the definitions of Cash Settlement and Physical Settlement in paragraph 5, the "**Seller**" is the Commodity Option Seller (in the case of a Call) and the Commodity Option Buyer (in the case of a Put) and the "**Buyer**" is the other party. In addition, the following definitions apply:
- "Number of Units to be Cash Settled"** means for a DeliverySettlement Date the number of Units for which the option has been exercised less the Number of Units to be Physically Delivered on that DeliverySettlement Date.
- "Number of Units to be Physically Delivered"** means for a DeliverySettlement Date the number of Units nominated to be physically delivered by the Commodity Option Seller (in the case of a Call) or the Commodity Option Buyer (in the case of a Put) by notice not later than two Business Days before the DeliverySettlement Date or, if no such nomination is given, the number of Units for which the option has been exercised. On delivery of that notice, the right to settle by the other method on that DeliverySettlement Date for that number of Units terminates.

- (g) For the purposes of this paragraph 6:

“Commodity Option Seller Business Day” means any Business Day in the city in which the Commodity Option Seller is located for the purpose of receiving notices.

“~~Settlement~~ Delivery Date” means, for a Transaction and subject to paragraph 7:

- (i) where Multiple Exercise is not applicable, the date specified in the Confirmation except that if that date is not a Business Day, then the next Business Day after that date; and
- (ii) where Multiple Exercise is applicable, the first Business Day after the Exercise Date.

“Exercise Date” means each Commodity Option Seller Business Day during the Exercise Period on which a Notice of Exercise is given or deemed to be given.

“Expiration Time” means the latest time on the Expiration Date at which the Seller will accept a Notice of Exercise as specified in the Confirmation.

“Maximum Number of Units” means the number specified as such in the related Confirmation.

“Minimum Number of Units” means the number specified as such in the related Confirmation.

“Payment Date” for a Delivery Date means the date specified in the Confirmation; or if no date is specified in the Confirmation, then it means the Delivery Date.

“Quantity” means the quantity (expressed in Units) of the Commodity the subject of the Transaction specified in the related Confirmation.

(7) Settlement Disruption Events

- (a) Subject to paragraph 7(b), if a Settlement Disruption Event prevents delivery of the Environmental Products on the ~~Delivery~~ Settlement Date, then the ~~Settlement~~ Delivery Date will be the first succeeding Business Day on which delivery of the Environmental Products can take place.
- (b) If a Settlement Disruption Event prevents delivery of the Environmental Products on each of the Business Days up to the date five Business Days before the Surrender Date (**“Settlement Disruption Period”**), then:
 - (i) if both Physical Settlement and Cash Settlement are applicable to the Environmental Products Transaction on the original ~~Settlement~~ Delivery Date, it will be deemed that Cash Settlement applies to the original Number of Units to be Physically Delivered (and that number becomes, or is added to, the Number of Units to be Cash Settled, as the case may be) and the ~~Delivery~~ Settlement Date will be the first Business Day after the end of the Settlement Disruption Period and the Cash Settlement Price shall be the market price of the Commodity as agreed by the parties and failing agreement the

price determined by a Calculation Agent Determination, on the basis that:

- (A) the Calculation Agent for these purposes is an expert having an office in Australia selected by the parties (or, failing agreement within 2 Business Days, selected by the Environmental Products Committee of the Australian Financial Markets Association (**AFMA**) by way of a resolution of the Environmental Products Committee of AFMA passed by not less than 75% of its members in accordance with customary procedures of that Committee or if no such selection is made within five Business Days of request to the Environmental Products Committee, by a party selected in accordance with the Rules for Expert Determination published by the Australian Commercial Disputes Centre (or any successor body) (ACDC) and in which case the parties expressly agree to settle the dispute by expert determination administered by the ACDC and conducted in accordance with the ACDC Rules for Expert Determination operating at the time the dispute is referred to ACDC ~~(or any successor body)~~ and paragraphs (B) – (D) shall not apply; and
 - (B) that Calculation Agent is to act as an expert (and not as an arbitrator); and
 - (C) the costs and expenses of that Calculation Agent will be borne equally by the parties; and
 - (D) the determination of the expert is final and binding on the parties; and
- (ii) if the Commodity the subject of the Transaction is ACGUsEligible ACCUs or ~~KACGUsVoluntary NKACGUs~~, then the obligation for Physical Settlement of the Number of Units to be Physically Delivered will be automatically cancelled and replaced with an obligation for Cash Settlement (and the Number of Units to be Physically Delivered becomes the Number of Units to be Cash Settled) and the Settlement-Delivery Date will be the first Business Day after the end of the Settlement Disruption Period and the Cash Settlement Price shall be the market price of the Commodity as agreed by the parties and failing agreement the price determined by a Calculation Agent Determination made on the basis in paragraph 7(b)(i)(A); and
 - (iii) otherwise, the Settlement Disruption Event shall be an Additional Termination Event occurring on the Business Day following the end of the Settlement Disruption Period, the Transaction shall be the sole Affected Transaction and the party with the obligation to make delivery of the Environmental Products will be the sole Affected Party.
- (c) In this paragraph 7, **“Number of Units to be Cash Settled”** and **“Number of Units to be Physically Delivered”** have the meanings given in paragraph 5 or paragraph 6, as applicable.

(8) Physical Settlement

This paragraph 8 applies to all Environmental Products Transactions.

(a) If the Environmental Products Transaction requires the delivery of a:

(i) ESC, then the ESC must:

- (A) be created in respect of a qualifying energy saving activity that came to an end on or before the end of the Creation Period described in the Confirmation;
- (B) be created before the end of the Creation Period;
- (C) be duly registered under Division 9 of Part 9 of the NSW ESA prior to the ~~Settlement-Delivery~~ Date;
- (D) be created in accordance with the requirements of Division 7 of Part 9 of the NSW ESA.

(ii) GEC, then the GEC must:

- (A) be created during the Creation Period;
- (B) be duly registered under Division 1 of Part 4 of Chapter 5A of the QLD Act prior to the ~~DeliverySettlement~~ Date; and
- (C) be created in accordance with the requirements of the QLD Act.

(iii) LGC or STC, then it must:

- (A) be created before the end of the Creation Period described in the Confirmation;
- (B) be duly registered under Division 5 of Part 2 of the REC Act prior to the ~~Settlement-Delivery~~ Date;
- (C) not relate to electricity generated from any eligible renewable energy source described in the Confirmation as an Excluded Source; and
- (D) be created in accordance with the requirements of the REC Act.

(iv) VEEC, then the VEEC must:

- (A) be created before the end of the Creation Period described in the Confirmation;
- (B) be created within 6 months after the end of the calendar year in which the activity was undertaken;
- (C) not expire before the 30 April following the ~~DeliverySettlement~~ Date;

- (D) be duly registered under Division 4 of Part 3 of the VEET Act prior to the ~~Settlement~~ Delivery Date; and
 - (E) be created in accordance with the requirements of the VEET Act.
- (v) GREC, then the GREC must:
- (A) satisfy the requirements in paragraph 8(a)(iv) of this Addendum;
 - (B) be created by a generator accredited under the Program;
 - (C) be able to be utilised in accordance with the requirements of the Program; and
 - (D) be created in accordance with the requirements of the Program.
- (vi) Eligible ACCU or Voluntary NKACCU, then the Unit must:
- (A) be duly issued under Division 2 of Part 11 of the CFI Act and transferable under Division 3 of Part 11 of the CFI Act prior to the ~~Delivery~~Settlement Date; and
 - (B) ~~in the case of Eligible ACCUs, if "CEA Eligibility" is specified to be applicable in the Confirmation,~~ be an "eligible Australian carbon credit unit" within the meaning of that term in the Clean Energy Act ~~2011 (Cth)~~.¹
- (b) For the purposes of this Agreement, delivery of Environmental Products is only taken to have occurred when the party required to deliver the Environmental Products has performed or caused to be performed all steps required of a transferor under the Applicable Act to cause that Environmental Product to be transferred to the other party, including, without limitation, any mandatory notification of the transfer by the transferor under the Applicable Act. For this purpose the Applicable Act for an Environmental Product means the Relevant Act and (in the case of GRECs) the Program and (in the case of ~~ACCUs~~Eligible ACCUs and ~~KACCUs~~Voluntary NKACCUs) the Registry Act.
- (c) All expenses of the transfer of an Environmental Product (including stamp duty and registration fees) will be payable by the party that takes delivery of the Environmental Product.
- (d) Section 2(c) of this Agreement is amended by, in each instance:
- (i) adding the words "or deliverable" after "payable";
 - (ii) adding the words "or, in the case of delivery obligations, the same commodity" after "in the same currency";

¹ ~~Under the Clean Energy Act, "eligible emissions units" include "eligible Australian carbon credit units" which in turn includes KACCUs and some ACCUs. This provision allows the parties to specify in the Confirmation that the ACCUs or KACCUs to be delivered must also be eligible Australian carbon credit units.~~

- (iii) adding the words "or delivery" after "payment"; and
 - (iv) adding the words "or deliver" after "pay".
- (e) In addition to the representations contained in Section 3 of this Agreement, a party required to deliver an Environmental Product will be taken to have represented to the other party, at the time it transfers the Environmental Product to the other party pursuant to this Agreement, that the Environmental Product satisfies the requirements of paragraph (8)(a) of this Addendum and that it has full legal and beneficial title to that Environmental Product and it transfers the same free and clear of any security interest, claim, lien or encumbrance of any kind.
- (f) The definition of "Tax" in Section 14 of this Agreement is amended by adding the words "or delivery" after "of any payment".
- (g) Subject to the amendments in this Addendum, and to the extent that the context does not otherwise require, all other references (if any) in this Agreement to "payment", "payments", "pay", "paid" and "payable" are taken to include references to "delivery", "deliveries", "deliver", "delivered" and "deliverable", respectively.
- (h) Each party agrees with the other that, so long as either party has or may have any obligation under a Transaction, it will satisfy the following requirements ("**Requirements under the Scheme**"):
- (i) it will ensure that it has at least one trading account in the registry in which the holding and transfer of the relevant Environmental Products is recorded and that the trading account (alone or together with other trading accounts) is able to be used to record the holding and transfer of the Units to be delivered under the Transaction;
 - (ii) it will conduct its affairs so as not to give any person having authority to do so, reason to block, suspend, refuse, reject or cancel the transfer (whether in whole or in part) of Units to be delivered under the Transaction.
- (9) Additional provisions for Transactions relating to ACCU~~s~~Eligible ACCUs and KACCU~~s~~Voluntary NKACCU~~s~~
- (a) This paragraph 9 applies to all Transactions for ACCU~~s~~Eligible ACCUs or KACCU~~s~~Voluntary NKACCU~~s~~.
 - (b) If the Seller fails to deliver the Number of Units to be Physically Delivered on the DeliverySettlement Date, such failure shall not constitute an Event of Default (as defined in the Agreement) in respect of the Seller, but if the failure to deliver occurs other than as a result of the failure of the Buyer to comply with the Requirements under the Scheme, the existence of an Illegality or the existence of a Settlement Disruption Event, the Settlement-Delivery Date and the Payment Date will be postponed and the Buyer may, by notice to the Seller, require the Seller to remedy such failure.

- (c) If a notice is given under paragraph (9)(b) and the Seller delivers the Number of Units to be Physically Delivered on or before the first Business Day after such notice is given then:
- (i) the Buyer shall pay to the Seller on the Business Day following the date of actual delivery (the "**New Payment Date**") an amount equal to the Fixed ~~Amount-Price~~ multiplied by the Number of Units to be Physically Delivered; and
 - (ii) the Seller shall pay to the Buyer on the New Payment Date interest at the Default Rate on an amount equal to the Number of Units to be Physically Delivered multiplied by an amount equal to the Fixed ~~Amount-Price~~ for the period from (and including) the ~~Settlement Delivery~~ Date to (but excluding) the date of actual delivery.
- (d) If a notice is given under paragraph (9)(b) and the failure is not remedied on or before the first Business Day after such notice is given (the "**Final Delivery Date**") then the Buyer may, by written notice to the Seller, terminate the parties' obligations with respect to Physical Settlement of the relevant Transaction and if the Buyer does so, the Seller shall pay to the Buyer the Buyer's Replacement Cost (if a positive number), adjusted to take into account any amount (not including any option premium) previously paid by the Buyer to the Seller under the Transaction, such payment to be made at the times determined under the definition of Buyer's Replacement Cost.
- (e) If the failure to deliver occurs as a result of the failure of the Buyer to comply with the Requirements under the Scheme, the ~~DeliverySettlement Date and the Payment Date~~ will be postponed and the Seller may, by notice to the Buyer, require the Buyer so to comply. If the Buyer complies on or before the first Business Day after such notice is given:
- (i) the Seller shall on the Business Day following the date the Buyer complies with the Requirements under the Scheme, deliver to the Buyer the Number of Units to be Physically Delivered and the Buyer shall pay to the Seller on the date of delivery an amount equal to the Fixed Price multiplied by the Number of Units to be Physically Delivered; and
 - (ii) the Buyer shall pay to the Seller on the date of delivery, interest at the Default Rate in an amount equal to the Number of Units to be Physically Delivered multiplied by the Fixed Price for the period from (and including) the ~~Settlement-Delivery~~ Date to (but excluding) the date of payment.
- (f) If a notice is given under paragraph 9(e) and the Buyer fails to comply on or before the first Business Day after such notice is given (the "**Final Compliance Date**") the Seller may, by written notice to the Buyer, terminate the parties' obligations with respect to Physical Settlement of the relevant Transaction and if the Seller does so, the Buyer shall pay to the Seller the Seller's Replacement Cost (if a positive number) on the first Business Day after the Final Compliance Date, adjusted to take into account any amount (not including any option premium) previously paid by the Buyer to the Seller in respect of the relevant Transaction.
- (g) If, on the ~~Settlement-Delivery~~ Date, the Seller delivers to the Buyer fewer Units than the Number of Units to be Physically Delivered (the difference

being the "**Unit Shortfall**"), the Buyer's obligation to pay pursuant to Physical Settlement shall be reduced by an amount equal to the Unit Shortfall multiplied by the Fixed Price and this paragraph 9 will apply in respect of the Unit Shortfall (with references to Number of Units to be Physically Delivered being read as references to the Unit Shortfall).

(h) Except to the extent included in the Buyer's Replacement Cost or the Seller's Replacement Cost neither party is liable to the other, whether in contract, tort (including negligence and breach of duty) or otherwise, for any business interruption or loss of use, profits, contracts, production or revenue or for any consequential or indirect loss or damage of any kind however arising.

(i) Definitions:

"**Buy-in Period**" means the period from (but excluding) the Final Delivery Date to (and including)² the Reconciliation Deadline on or immediately following the ~~Settlement-Delivery~~ Date;

"**Buyer's Replacement Cost**" means, in respect of a failure of the Seller to deliver a number of Units (that number being the "**BRC Shortfall**"):

(i) except for a Transaction to which paragraph (ii) of this definition applies, an amount equal to:³

$$[(SPP - FP) * BRC Shortfall] + IBA$$

where:

SPP is the price (per Unit) (the "**Spot Purchase Price**") that the Buyer, acting in a commercially reasonable manner, does or would in the determination of the Calculation Agent, pay in an arm's length transaction concluded on the Final Delivery Date for an equivalent number of Units to be delivered on the Final Delivery Date or, if later, the Business Day on which Units would be delivered in accordance with prevailing market practice under a spot transaction concluded on the Final Delivery Date;

FP is the Fixed Price as set out in the Confirmation for the relevant Transaction;

IBA is interest at the Default Rate for the period from (and including) the ~~Settlement-Delivery~~ Date to (but excluding) the date of termination under paragraph 9(d) on an amount equal to the product of the BRC Shortfall and an amount equal to the excess, if any, of the Spot Purchase Price over the Fixed Price; and

² ~~Including the Reconciliation Deadline is consistent with AFMA's documentation under the ISDA Master Agreement for Emissions Allowance Transactions (as updated for the Clean Energy Act) (formerly Part [6], and to be restyled as Part [7]).~~

³ ~~This calculation does not include an amount in respect of costs equivalent to paragraph (i)(c) below. This is consistent with AFMA's documentation under the ISDA Master Agreement for Emissions Allowance Transactions (as updated for the Clean Energy Act).~~

(ii) where “Excess Emissions Penalty” is specified to be applicable in the Confirmation for the relevant Transaction⁴ and, if an EEP Risk Period is specified in the relevant Confirmation, if the **Settlement Delivery** Date falls within that EEP Risk Period then, an amount equal to the sum of:

(A) if in one or more arm’s length transactions the Buyer is able, using its reasonable endeavours to purchase a number of Eligible Emissions Units to be delivered during the Buy-In Period (up to the amount of the BRC Shortfall) (the date of each such purchase being a “**Buy-in Date**”) an amount equal to:

$$[(RPP - FP) * NP] + IBB]$$

where:

RPP is, for each such purchase, the price (per Eligible Emissions Unit) at which the Buyer is able so to purchase the Eligible Emissions Units;

FP is the Fixed Price as set out in the Confirmation for the relevant Transaction;

NP is the number of Eligible Emissions Units to which such purchase relates;

IBB is interest at the Default Rate for the period from (and including) the **Settlement-Delivery** Date to (but excluding) the date of termination under paragraph 9(d)⁵ on an amount equal to $[(RPP - FP) * NP]$,

the amount for each such purchase to be paid to the Buyer on the first succeeding Business Day after the Buy-in Date for that purchase; and

(B) in respect of a number of Units equal to the BRC Shortfall minus the total number of Eligible Emissions Units purchased as provided for in paragraph (ii)(A) of this definition (the “**CPM Shortfall**”) an amount equal to:

$$[(EEP - FP) * CPS] + IBC]$$

EEP is the EEP Amount;

FP is the Fixed Price as set out in the Confirmation for the relevant Transaction;

⁴ ~~These provisions have been included for transactions for Eligible ACCUs and KACCUs, which are also eligible emissions units under the scheme established by the Clean Energy Act. Parties wishing to buy Eligible ACCUs or Voluntary NKACCUs for compliance with obligations under other schemes should consider changes to the definitions of “EEP Amount”, “Eligible Emissions Unit” and “Reconciliation Deadline”.~~

⁵ ~~The reference to the termination date is consistent with AFMA’s Form of documentation under the ISDA Master Agreement for Emissions Allowance Transactions (as updated for the Clean Energy Act).~~

CPS is the CPM Shortfall;

IBC is interest at the Default Rate for the period from (and including) the ~~Settlement-Delivery~~ Date to (but excluding) the last day of the Buy-In Period on an amount equal to $[(EEP - FP) * CPS]$,

the amount to be paid on the first succeeding Business Day after the last day of the Buy-in Period; and

- (C) such reasonable costs and expenses which the Buyer incurs as a direct result of the Seller's failure to deliver the Shortfall to the extent that those costs and expenses are not reflected in paragraphs (ii)(A) or (B) of this definition, the amount to be paid on the first succeeding Business Day after demand.

"EEP Amount" means an amount (expressed as an amount per Unit) that the Buyer determines, acting in good faith and using commercially reasonable procedures, to be the total losses and costs which result from the Seller's failure to deliver Units in an amount equal to the CPM Shortfall to the extent that those losses and costs relate to:

- (i) any unit shortfall charge payable under the Clean Energy Act ~~2011 (Cth)~~; and/or⁶
- (ii) if "EEP Equivalent" is specified to be applicable in the Confirmation for the relevant Transaction, any amount which the Buyer must pay to a third party in respect of any such charge payable to any third party (including to a person authorised to collect such charge under the Clean Energy Act ~~2011 (Cth)~~) by that third party as a result of the Seller's failure to deliver the CMP Shortfall;

"Eligible Emissions Unit" has the meaning given to "eligible emissions unit" in the Clean Energy Act ~~2011 (Cth)~~;

"Reconciliation Deadline" means 1 February in each financial year from and including 1 July 2013 (being the deadline for surrender of Eligible Emissions Units under the Clean Energy Act ~~2011 (Cth)~~ for the financial year preceding the financial year in which that day falls).⁷

"Seller" in this paragraph 9 means, in relation to a Transaction, the party with the obligation to deliver Units under the Transaction, being:

- (i) the Seller (in the case of a spot or forward commodity contract);
- (ii) the Commodity Option Seller (in the case of a Call Option); and
- (iii) the Commodity Option Buyer (in the case of a Put Option),

⁶ ~~AFMA's Form of documentation under the ISDA Master Agreement for Emissions Allowance Transactions (as updated for the Clean Energy Act) includes provision for the reimbursement to the Seller of any shortfall charge subsequently remitted to the Buyer by the Clean Energy Regulator following the Reconciliation Deadline (paragraph (c)(ii)(iv)). The Clean Energy Act grants the Regulator power to remit part of a unit shortfall charge in certain circumstances (see section 134A).~~

⁷ ~~During the first three financial years of the scheme established under the Clean Energy Act, there is also an interim reconciliation deadline of 15 June in the relevant financial year. Parties could specify 15 June as the alternative Reconciliation Deadline in the Confirmation.~~

and “**Buyer**” means the other party.

“**Seller’s Replacement Cost**” means in respect of a failure of the Buyer to accept delivery of a number of Units (the “**SRC Shortfall**”) an amount equal to:

$$[(FP - SSP) * SRC Shortfall] + IS$$

FP is the Fixed Price as set out in the Confirmation for the relevant Transaction;

SSP is an amount equal to the price (per Unit) (the “**Spot Sale Price**”) the Seller, acting in a commercially reasonable manner, does or would in the determination of the Calculation Agent, receive in an arm’s length transaction concluded on the Final Compliance Date for an equivalent number of Units to be delivered on the Final Compliance Date or, if later, the Business Day on which Units would be delivered in accordance with prevailing market practice under a spot transaction concluded on the Final Compliance Date;

IS is interest at the Default Rate for the period from (and including) the ~~Settlement~~Delivery Date to (but excluding) the date of termination under paragraph 9(f) on an amount equal to the product of the SRC Shortfall and an amount equal to the excess, if any, of the Fixed Price over the Spot Sale Price.

- (j) For the purposes of paragraph 9(i), the provisions of paragraph 7(b)(i) apply to the selection of the Calculation Agent and the conduct and effect of its determination.
