

PART 20 - ELECTRICITY (ENERGY AND REC) TRANSACTIONS

INTRODUCTION

New South Wales, Victoria, Queensland, Victoria and ACT - Electricity Markets

[20.01] As at ~~March 2001~~, July 2003, the primary physical electricity markets in New South Wales, Victoria, Queensland, South Australia and the Australian Capital Territory were spot markets. The spot price is calculated every half hour based on bids by the generators, and reflects the current value of electricity in that period. The spot price is published by the National Electricity Market Management Company (NEMMCO). The bidding and price determination procedures are set out in a Code of Conduct, known as the National Electricity Code.

There are, as yet, no spot markets in the other States of Australia or the Northern Territory.

Most electricity contracts between spot market participants are through private contracts between buyers and sellers at agreed prices. These contracts are normally purely financial in nature, and lead only to difference payments being made. In addition, spot market participants settle through NEMMCO based on the actual electricity flows in the spot market.

Renewable Energy Certificates

[20.02] In 2000, as part of its commitment to the reduction of greenhouse emissions, the Commonwealth introduced the Renewable Energy (Electricity) Act 2000 (“**REC Act**”). The REC Act took effect from 1 April 2001.

The REC Act introduced two concepts:

- a new form of property, called a renewable energy certificate (“**REC**”), which is created each time a registered generator generates one MWh of electricity above its 1997 baseline from an accredited power station; and
- a new tax, called the renewable energy shortfall charge, which is payable by liable entities such as electricity retailers to the extent that they do not purchase and acquit (surrender) the required number of RECs for any year.

A register of RECs is established under the REC Act. It is administered by the Renewable Energy Regulator.

RECs may be transferred under the REC Act at any time after their creation. Transfers must be electronically notified to the Regulator.

A liable entity will generally avoid the need to pay the renewable energy shortfall charge by purchasing the required number of RECs on the open market from registered generators or other entities holding RECs which they are prepared to sell. This could be on a spot or forward basis.

[20.03] This part 20 (prepared by Mallesons Stephen Jaques in June 1997 (by way of an update of the original version prepared in March 1996 relating to the New South Wales State Electricity Market) and subsequently updated in July 1998, March ~~2001~~ and 2001, April 2002 and July

2003) is a part of AFMA Guide to OTC Documents. This part relates to a specific application, to the electricity market and the REC market, of the existing part 19 (and the 1993 ISDA Commodity Derivatives Definitions) dealing generally with commodity transactions.

Part 20 follows an identical format to part 19. It has been prepared at the request of and following discussions with a working group representing some generators, distributors and financial institutions participating in the electricity hedge market.

It deals with documenting swap transactions under the terms of the 2002 ISDA Master Agreement published by International Swaps and Derivatives Association, Inc. when the commodity is electricity or RECs and the parties want to specify the governing law as the law in force in one of the Australian states or territories. However, such parties should take into account that some of the comments in this part and the market conventions set out in this part reflect discussions with and the views of the AFMA electricity/energy and REC working groups, which groups comprise physical electricity market participants in New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory and financial markets participants.

[20.04] In 1993 ISDA published the 1993 ISDA Commodity Derivatives Definitions. The 1993 ISDA Commodity Derivatives Definitions are designed to document cash settled commodity swaps, options, caps, collars, floors and swaptions. In 2000 ISDA published the 2000 Supplement to the 1993 ISDA Commodity Derivatives Definitions. The 2000 Supplement introduced a number of additional prices for energy, metals and paper markets. In addition, it replaced Section 7 of the 1993 ISDA Commodity Derivatives Definitions. This Part 20 assumes that participants are using 1993 ISDA Commodity Derivatives Definitions **without** the 2000 Supplement. Care should be taken if that is not the case.

In conjunction with preparing the original version of this part 20 (then a part 19A), Mallesons Stephen Jaques prepared the original “March 1996 NSW State Electricity Market Addendum No. 1 - Electricity Transactions”. That Addendum was designed to set out standard terms to apply to each hedge that may be entered into between participants based on the then separate New South Wales pool price. The original part 19A was designed to be used only for documenting cash settled forward electricity commodity transactions.

In conjunction with preparing this updated version of this part 20, Mallesons Stephen Jaques has amended that addendum (now the “June 1997 Australian Addendum No 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions”) so that it applies to the full range of transactions that may be documented under the 1993 ISDA Commodity Derivatives Definitions. An important feature of Addendum No. 13 is that it now contemplates physical delivery of RECs.

From 1 January 2002 AFMA ceased recommending that Australian Addenda be used to document various forms of risk management products using the ISDA Master Agreement (see [1.04]). That change did not apply to electricity and REC transactions, and AFMA continues to recommend the use of “June 1997 Australian Addendum No 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions” for electricity and REC products.

****You can use this part 20 for documenting cash settled electricity commodity transactions (or contract settled swaptions), including inter-regional swaps, and physically settled and/or cash settled REC commodity transactions.****

There are various types of transactions for which this part 20 is not intended to be used. They include:

(a) spot contracts for electricity;

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- (b) forward contracts and spot contracts for the various metals and energy commodities referred to in the 1993 ISDA Commodity Derivatives Definitions (as to which see part 19 of this Guide);
 - (c) options for those metals and energy commodities; and
 - (d) options to vary the terms of a new transaction, which option is given at the time the new transaction is entered into.

[20.05] This part 20 contains the following parts:

- [20.01] - [20.10] Introduction, important notes, assumptions, qualification, conclusion.
- [20.11] Types of Transactions
- [20.12] How to use this part 20
- [20.13] - [20.16] Preliminary issues
- [20.17] Notes on the 1993 ISDA Commodity Derivatives Definitions
- [20.18] How to document electricity and REC transactions
- [20.19] Recommended clauses for Part 5 of the Schedule to the ISDA Master Agreement
- [20.20] Notes on June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions
- [20.21] - [20.33] Guide for completing Confirmations for electricity and REC commodity transactions (including sample Confirmations)
- [20.34] June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions

IMPORTANT NOTES

[20.06] This part 20 must be used in conjunction with other parts of this Guide. In particular, refer to other parts of this Guide for:

- (a) a glossary of terms (part 2);
- (b) a general legal commentary (part 3);
- (c) a guide ~~to~~for completing the schedule to the ISDA Master Agreement (part 5);
- (d) material on netting (part ~~23~~17);
- (e) various possible additional clauses for your ISDA Master Agreement (part 18);~~;~~
- (f) ~~copies of the ISDA Master Agreement and various other documents published by ISDA (Volume 2).~~

ASSUMPTIONS

[20.07] The same assumptions as are set out at [1.06] of this guide apply to this part 20.

In particular, Mallesons Stephen Jaques has not considered the question of the enforceability of the ISDA Master Agreement against the various State owned participants in the National Electricity Market and the spot REC market. Participants should be especially aware of the credit issues inherent in entering into hedging arrangements and also consider the issues raised by the non-availability of that arise as a consequence of there being no netting as against the obligations of physical electricity market participants under the National Electricity Code.

[20.08] It is assumed that the National Electricity Code is not amended after 1 March 2001 in a manner that may affect any of our suggested provisions relating to prices and market disruption in the electricity market.

It is also assumed that the REC Act is not amended after 1 ~~April 2002~~ July 2003 in a manner that may affect any of our suggested provisions relating to prices and transfer of RECs.

In this part 20, a reference to the “National ~~Electricity Code~~ Code” is a reference to ~~that code~~ the National Electricity Code in its form as at 1 March 2001 and a reference to the “REC Act” is a reference to that Act in its form as at 1 ~~April 2002~~ July 2003.

The meaning of words printed *like this* in this part 20 is the same as in the National Electricity Code. NEM means the National Electricity Market.

The dispute resolution procedure set out in the National ~~Electricity Code~~ will not apply of its own force to electricity and REC hedging agreements. It should be noted that AFMA is developing its own alternative dispute resolution conventions to be applicable as between market participants if they so wish.

QUALIFICATION

[20.09] ****It is necessary for users of this part 20 to determine in each case the suitability or otherwise of the ISDA Master Agreement to the particular circumstances applicable to that case. This part 20 is not intended to constitute a legal opinion on which users may rely in implementing actual transactions. Nor is it intended as a substitute for legal advice when documenting proposed transactions. In this regard, it is strongly recommended that intending users seek prior independent professional advice in respect of the legal, taxation and stamp duty implications arising from the use of the ISDA Master Agreement.**

This part 20 is intended as an aid in understanding issues which arise under Australian laws when the ISDA Master Agreement is used.

Accordingly, while every care has been taken in preparing this part 20, AFMA, ISDA and Mallesons Stephen Jaques do not accept responsibility for any losses suffered by contracting in the manner suggested in this part 20 or arising from any error or omission in this part 20.**

CONCLUSION

[20.10] Mallesons Stephen Jaques have concluded that if a small number of additional provisions are inserted in the ISDA Master Agreement, then, subject to the other comments in this guide, an agreement in the terms of the ISDA Master Agreement relating to electricity or REC transactions is enforceable under the laws of the Australian Jurisdictions.

These conclusions are based on the laws of the Australian Jurisdictions which are in force on
~~18 April 2002~~ 1 July 2003.

MALLESONS STEPHEN JAQUES
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

TEL : (02) 9296 2000
FAX : (02) 9296 3999
DX : 113 SYDNEY
REF : Martin James

TYPES OF TRANSACTIONS

[20.11] In this part 20 we provide guidance on documenting forward commodity contracts, options and swaptions where the commodity is electricity or RECs.

Here are some descriptions of these types of contract:

Forward commodity contract

A forward commodity contract is an agreement between two parties to purchase and sell a commodity on a day after the date the contract is entered into, for a price which is either determined on the date the contract is entered into or determined by reference to a method agreed on the date the contract is entered into. This type of contract sometimes may be referred to as a commodity swap.

Spot commodity contract

A spot commodity contract is an agreement between two parties to purchase and sell a commodity (such as a REC) on a day two business days after the date the contract is entered into, for a price which is determined on the date the contract is entered into.

Spot deferred contract

A spot deferred contract is an agreement between two parties to purchase and sell a commodity (such as a REC) on a business day to be elected by the Seller (which election is made by giving the Buyer at least two business days' notice). The price is determined by a method agreed between the parties.

Physically settled commodity contract

A commodity contract is physically settled if the seller delivers the quantity of the commodity the subject of the contract to the buyer in exchange for the purchase price.

Cash settled forward commodity contract

A contract is cash settled if its terms require the parties to cash settle the difference between the contracted price for the quantity of the commodity the subject of the forward contract and the market (or floating) price of that quantity of the commodity determined applicable to the delivery date.

A cash settled forward commodity contract is analogous to one period in a typical interest rate swap transaction, where the settlement amount due on a payment date is the difference between the fixed rate (contract price) and the floating rate indicator (market price) applied to a notional principal amount.

Often a forward contract may be stated to be a cash settled forward contract, but gives one or both parties the right to nominate that it be settled by physical delivery. Alternatively, it may be stated to be a physically settled forward contract, but gives one or both parties the right to nominate that it be settled by cash settlement.

A spot contract is usually expressed to be for physical delivery because of its inherent nature. Spot contracts are often used to close out physically settled forward contracts. In that circumstance, the delivery obligations for the quantity of commodity under the two contracts cancel out, resulting in no physical delivery of the commodity being required by either party. The remaining adjustment is the cash settlement to be made between the price agreed under the forward contract and the price agreed under the spot contract.

REC forward commodity contracts

In the REC forward contract market, the working group recommends that both physical settlement and cash settlement be applicable on each Settlement Date. This is to avoid a default scenario arising under the ISDA Master Agreement simply because the Seller has not been able to either create the requisite quantity of RECs in accordance with the REC Act or acquire RECs in the spot market prior to the Settlement Date.

The cash settlement price in this situation could be either a fixed dollar amount agreed on the trade date by the parties or a function of (such as a spread above) the rate of charge which determines the renewable energy shortfall charge from time to time (currently \$40/MWh). Both of these approaches are accommodated by the June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and RECs) Transactions.

Price cap, floor and collar transactions

A price cap electricity commodity contract is a transaction in which one party pays a single or periodic fixed amount and the other party pays periodic amounts based on the excess, if any, of a specified floating price over a specified cap price.

A price floor electricity commodity contract is a transaction in which one party pays a single or periodic fixed amount and the other party pays periodic amounts based on the excess, if any, of a specified floor price over a specified floating price.

A price collar transaction is a combination of a price cap and a price floor where one party is the floating price payer on the cap and the other party is the floating price payer on the floor.

The purchaser of a cap or floor is designated as the Fixed Price Payer and must pay an option fee or premium (NB. the payment of an option fee or premium does not convert a cap or floor into a commodity option under Section 8.1 of the 1993 ISDA Commodity Derivatives Definitions (see [20.17](h)). There are various ways in which the fee or premium might be payable. One method used is instalments. Another is by way of a single lump sum.

If the lump sum method is agreed, then once the Fixed Amount has been paid the purchaser has no further payment obligations. This contrasts with the position in a swap transaction where both parties usually have contingent payment obligations throughout the term of the transaction.

Commodity option

A commodity option gives the buyer the right (but not the obligation) to buy (call option) or sell (put option) a commodity at a specified price, on or before a specified future date. A commodity option is cash settled if its terms require the seller to cash settle the difference between the specified price and the market (or floating) price of the relevant quantity of commodity (ie in the case of a call option, the excess of the market price over the specified price, and in the case of a put option, the excess of the specified price over the market price).

Swaption

A swaption is an option to enter into a new commodity swap for either contract settlement (sometimes also called physical settlement or physical delivery) or cash settlement. Contract settlement means that the underlying commodity swap becomes effective. A cash settled swaption is one where a cash settlement amount is paid upon the option being exercised rather than the underlying commodity swap becoming effective.

NB: With swaptions, physical settlement of the option component does not imply the delivery of the underlying commodity, in this case electricity or RECs.

Inter-regional swap

An inter-regional swap is an agreement relating to electricity under which the parties cash settle the difference between two different floating prices. This could be the difference between the *spot price* at two different *regional reference nodes*.

HOW TO USE PART 20

[20.12] **Have you used ISDA documents before?** If you are not familiar with the ISDA documents, we recommend that you:

- (a) read the User's Guide and the ISDA Master Agreement;
- (b) read parts 3 and 5 and [20.01] - [20.10] of this part 20;
- (c) read the 1993 ISDA Commodity Derivatives Definitions;
- (d) read June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and RECs) Transactions (see [~~20.33~~20.34] of this part 20); and
- (e) read the balance of this part 20.

If you are familiar with the ISDA documents, we recommend that you start by reading this part 20 and refer to other parts of this guide as necessary.

This part 20 is prepared on the assumption that you use the 1993 ISDA Commodity Derivatives Definitions and the ~~1992~~2002 ISDA Master Agreement. (**Care!** You must use the 1992 or 2002 ISDA Master Agreement rather than the 1987 ISDA Master Agreement because only the 1992 ~~version~~ and 2002 versions contains references to physical delivery of commodities.)

If there are interest rate components used in a forward contract, you may also need to refer to the 2000 ISDA Definitions.

[U1.01] - [U1.08] (See Update 1 of this guide) explain a number of important changes effected in this guide on 1 January 2002. We recommend that you carefully read these items. **Take particular care in relation to the comments at [U1.04] (ISDA Definitions booklets).**

PRELIMINARY ISSUES

[20.13] **Do you want a separate ISDA Master Agreement?** Participants have the choice of using one ISDA Master Agreement for all Transactions including electricity and REC transactions or using a separate ISDA Master Agreement for electricity and REC transactions.

We generally consider that using one agreement is preferable for the following reasons:

- (a) using one agreement for all Transactions simplifies documentation and reduces the number of agreements required;
- (b) it gives the parties the option of specifying net payments for corresponding payment dates for all Transactions giving them the ability to reduce the settlement risk with the counterparty; and

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- (c) as all Transactions would then be regulated by the same agreement, the amount payable on early termination will be payable by reference to aggregate net exposures under all Transactions and therefore would not exclude amounts payable in connection with electricity and REC transactions.

However, even where separate Master Agreements are used in respect of different kinds of Transactions, it is possible for the parties to provide that a single net amount will be payable between the parties should an Early Termination Event occur. Suggested wording to achieve this is contained in [18.22] of this Guide.

- [20.14] **Gaming and wagering and contracts of insurance.** See our comments in [3.16] of this Guide. The same issues arise in relation to electricity and REC transactions and our conclusion in relation to electricity and REC transactions is the same.
- [20.15] **Regulation.** See [6.04A] for commentary on the regulation of derivatives in Australia.
- [20.16] **Tax consequences.** This part 20 has not been prepared with a view to parties being able to achieve any particular income tax or GST consequence in entering into Transactions. Accordingly, parties must separately consider the tax consequences of following the recommendations in this part 20.

NOTES ON THE 1993 ISDA COMMODITY DERIVATIVES DEFINITIONS

- [20.17] The 1993 ISDA Commodity Derivatives Definitions are a set of definitions and mechanical provisions issued by ISDA in April 1993 to assist in documenting various types of commodities transactions. The 1993 ISDA Commodity Derivatives Definitions are made relevant to electricity and REC transactions as electricity and RECs are treated as a commodity in the hedge market (see [20.19]). Here is a brief summary of the contents of the definitions.

(a) **General**

As stated previously, the Definitions are designed for documenting cash settled commodity swaps, options, caps, collars, floors and swaptions. They are not designed for physically settled transactions. AFMA and Mallesons Stephen Jaques have developed wording, contained in Australian Addendum No. 13, which enables participants to document physically settled REC commodity transactions under an ISDA Master Agreement using, where appropriate, the 1993 ISDA Commodity Derivative Transactions. That wording has not been extended to electricity commodity transactions.

(b) **Article 1 - Certain general definitions**

This article defines “Transaction”, “Confirmation”, “Business Day”, “Commodity Business Day”, “Business Day Convention”, “Commodity Business Day Convention” and various Currencies.

(c) **Article 2 - Parties**

This article defines “Fixed Price Payer” and “Floating Price Payer”. These concepts are relevant to swaps (including electricity and REC swaps) but not to forward contracts, spot contracts or options.

(d) **Article 3 - Term and Dates**

This article defines “Term”, “Effective Date”, “Period End Date”, “Settlement Date”/“Payment Date”, “Termination Date” and “Trade Date”.

The definitions of “Settlement Date”/“Payment Date” and “Termination Date” provide that these dates are subject to adjustment in accordance with the Following Business Day Convention unless otherwise specified.

(e) **Article 4 - Certain definitions relating to payments**

This article provides definitions appropriate to commodity transaction payment amounts and the calculation period over which those payments will be calculated, together with the concept of a Calculation Agent (which may or may not be one of the parties to the agreement).

(f) **Articles 5 and 6 - Fixed Amounts and Floating Amounts**

For an ordinary swap transaction, these articles set out the formula used to determine the value of these amounts. This is not relevant to a forward contract (unless it is characterised as a swap), spot contract or an option.

(g) **Article 7 - Calculation of Prices for Commodity Reference Prices**

Section 7.1 lists reference prices commonly used in determining the floating rate price (or market price) for various types of commodities. The prices cover energy (diesel oil, fuel oil, gas oil, gasoline, heating oil, jet fuel, kerosene, natural gas, oil) and metals (aluminium, copper, gold, lead, nickel, platinum, silver, tin and zinc). The article also sets out how these prices are to be obtained from their various sources, being by using reference dealers, quotation by a particular exchange or from a particular price source. Electricity is not covered, and thus the parties need to document their own method for determining the floating price for electricity (see [20.19], the sample Confirmations at [20.24] to [20.31] and June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions)

Section 7.2 defines various price sources, exchanges and principal trading markets.

Section 7.3 provides a mechanism for correcting payments made when published prices relied on to calculate payment amounts are subsequently corrected.

Section 7.4 provides definitions related to market disruption events, with a wide range of types of disruption which may be selected as being appropriate to a particular commodity. Section 7.4(d) provides that certain events are deemed to be market disruption events unless the parties expressly state otherwise in their Confirmations (see [20.19] footnotes 3 to 6, and 13 and 14, for discussion as to market disruption events in relation to the electricity and REC markets respectively).

Section 7.5 provides for various disruption fallbacks, being price determining mechanisms agreed to be used if a market disruption event occurs. Section 7.5(d)(i) provides that certain disruption fallbacks are deemed to apply unless the parties expressly state otherwise in their Confirmations (see [20.19] (footnotes 7 and 8, and 15 and 16, for discussion as to disruption fallbacks in relation to the electricity and REC markets respectively).

Section 7.6 contains two definitions relevant to market disruption events.

(h) **Article 8 - Commodity Options**

Section 8.1 defines an Option and a Swaption.

Section 8.2 defines “Buyer” and “Seller”. They are only relevant in the context of Options. These definitions do not apply to non-option contracts involving physical delivery.

Section 8.3 defines “American”, “Asian”, “Call”, “Cash Settlement”, “Cash Settlement Amount”, “European”, “Put” and “Strike Price” for the purpose of options.

Section 8.4 is only relevant for swaptions and defines “Cash Settlement”, “Physical Settlement”, “Contract Settlement” and “Underlying Transaction”. Again, this definition of “Physical Settlement” does not apply to non-option contracts involving physical delivery.

Section 8.5 defines various terms relating to exercising options - “Exercise Period”, “Exercise Date”, “Notice of Exercise”, “Written Confirmation”, “Automatic Exercise”, “Expiration Date” and “Seller Business Day”.

Section 8.6 defines various terms relating to premiums.

Sections 8.7 and 8.8 explain how the Cash Settlement Amount is calculated.

(i) **Article 9 - Rounding**

This provides for a convention in connection with rounding amounts and calculations.

HOW TO DOCUMENT ELECTRICITY AND REC TRANSACTIONS

[20.18] To document electricity and REC transactions under Australian law using the ISDA Master Agreement you should:

- ensure that you have executed an ISDA Master Agreement with your counterparty. Recommendations for completing the schedule to an ISDA Master Agreement are set out in part 5 and at [20.19]. [20.19] contains a recommended clause for inserting in part 5 of the schedule to an ISDA Master Agreement allowing parties to pre-agree on a number of issues which otherwise would need to be covered in each Confirmation. Pre-agreeing on these issues results in much simpler Confirmations. In addition, you should consider our commentary in [3.17] on the decision of the Supreme Court of New South Wales in **Enron Australia Pty Limited (In Liquidation) v Integral Energy Australia (2002) NSWSC 753** and our recommendation for a change to the definition of “Close-out Amount” in the 2002 ISDA Master Agreement; and
- attach “June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions” ~~(and other addenda referred to in this Guide that are appropriate)~~ to your ISDA Master Agreement.

RECOMMENDED CLAUSES FOR PART 5 OF THE SCHEDULE TO THE ISDA MASTER AGREEMENT

[20.19] In this [20.19] we set out a series of clauses and sub-clauses which could be included in Part 5 of the Schedule to ~~an~~ 2002 ISDA Master Agreement. There is one clause ([20.19] footnotes 1 to ~~4~~12) relating to electricity transactions, one clause ([20.19] footnotes ~~13~~13 to ~~18~~20) relating to REC transactions and one clause ([20.19] footnotes ~~19~~21 to ~~29~~31) relating to all transactions covered by June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions.

For participants using a 1992 ISDA Master Agreement these same clauses and sub-clauses may be used. In this event, we suggest that the suggested clauses in [20.19A] be considered.

The working group strongly recommends that parties adopt the 2002 ISDA Master Agreement rather than the 1992 ISDA Master Agreement.

For each clause and sub-clause we set out the suggested text and some explanatory notes. The introductory wording should be included whenever any of the other sub-clauses are used. You need not include all the sub-clauses. It is intended that you will tailor the following sub-clauses to your own requirements. For your guidance we have incorporated in the footnotes the recommendations of the relevant working group on some of the suggested sub-clauses.

“(#)¹ The following provisions apply to any transaction relating to electricity which is a Commodity Transaction (as defined in June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions):

¹The introductory wording limits the applicability of the sub-clauses to electricity Commodity Transactions.

(#) ²	When a Calculation Period for a Commodity Transaction is a period shorter than one day, the term “Pricing Date” for that Calculation Period means that Calculation Period.
Alternative 1 (#) ³	Section 7.4(d)(i) of the 1993 ISDA Commodity Derivatives Definitions applies to each Commodity Transaction.

²This sub-clause allows you to agree that the Pricing Date for a particular half-hour Calculation Period is that Calculation Period. The Floating Price will then be the *spot price* published for that half hour. This sub-clause is to accommodate the 1993 ISDA Commodity Derivatives Definitions, which do not contemplate Reference Prices published for Calculation Periods less than one day. The working group recommends that this sub-clause be included.

This agreement could be overridden for a particular transaction by specific reference to another convention in that transaction’s Confirmation.

³This sub-clause relates to Market Disruption Events. You should carefully read the whole of Section 7.4 of the 1993 ISDA Commodity Derivatives Definitions.

The purpose of this sub-clause is to enable you to pre-agree with your counterparty the Market Disruption Events which will apply to your transactions. **Alternative 1** provides for you to adopt the deemed Market Disruption Events in Section 7.4(d)(i) (with or without adding Additional Market Disruption Events). **Alternative 2** provides for you to specify which of the Market Disruption Events will apply.

A discussion generally on Section 7.4 is set out below, followed by some specific comments in relation to electricity transactions.

General:

The **first paragraph** of the suggested **Alternative 1** is technically unnecessary if you agree to Section 7.4(d)(i) applying but we recommend that you include it because it will focus the parties' minds on whether Section 7.4(d)(i) should apply. Section 7.4(d)(i) deems some Market Disruption Events to apply unless the parties otherwise specify. These are “Price Source Disruption”, “Trading Suspension”, “Disappearance of Commodity Reference Price”, “Material Change in Formula” and “Material Change in Content”. Therefore, those are the Market Disruption Events which will apply if you do not specify otherwise.

The **second paragraph** of the suggested **Alternative 1** provides for you to specify “Additional Market Disruption Events”. **Care!** Section 7.4(d)(iii) provides that both “Additional Market Disruption Events” and Market Disruption Events deemed to apply under Section 7.4(d)(i) apply to Commodity Transactions.

In the second paragraph we have listed the Market Disruption Events defined in Section 7.4(c) which are not deemed to apply under Section 7.4(d)(i) and we have provided a final “other” category. This is where you could define your own market disruption event (such as the provision at [20.19] footnote 4).

If there are to be no Additional Market Disruption Events, you need not include the second paragraph.

Section 7.4(d)(ii) provides that if one or more Market Disruption Events are specified, then only those specified apply. Accordingly, it would be possible to replace the whole of the suggested clause with the suggested **Alternative 2**.

Final general comment. We stress that Market Disruption Events should be individually considered. There is no market standard that parties can insist on. Also, the agreement in this sub-clause could be overridden for a particular transaction by specific reference in that transaction's Confirmation to the Market Disruption Events to apply to it.

Electricity Swaps:

In relation to electricity swaps, there are a number of specific points that must be considered.

Of the Market Disruption Events in Section 7.4(c), a number of them potentially are applicable, namely “Price Source Disruption”, “Trading Suspension”, “Tax Disruption” (although note that this arguably may not expressly include all Taxes within the meaning of that term in the remaining State electricity market Vesting Contracts), “Material Change in Formula” and “Trading Limitation”.

Care! The *spot price* may be zero or negative in some *trading intervals*. These circumstances are not covered by any of the standard Market Disruption Events in Section 7.4. Reference should be made to the National Electricity Code

[The following are Additional Market Disruption Events:

- [(a) De Minimis Trading]
- [(b) Tax Disruption]
- [(c) Trading Limitation]
- [(d) other - specify].]

Alternative 2 (#)³ The Market Disruption Events which apply to a Commodity Transaction are:

- [(a) []]
- [(b) [] etc]⁴

(#)⁵ ~~Despite Section 1(b), the~~ The term “Material Change in Formula” does not apply to a change in VoLL or in the market floor price (as those terms are defined in the National Code).

(#)⁶ Section 7.4(c)(vii) of the 1993 ISDA Commodity Derivatives Definitions is varied by inserting the following after the word “sales,”:

for a full understanding of the circumstances where this could occur. The working group recommends that the occurrence of administered price circumstances under the National Electricity Code **not** be a Market Disruption Event.

Final comment. The working group recommend that **Alternative 2** be adopted and that the Market Disruption Events be “Price Source Disruption”, “Material Change in Formula”, “Tax Disruption” and the Additional Market Disruption Event at [20.19] footnote 4.

⁴A change in the regions to which a floating price is applicable or the reference nodes as at which the prices are published may have an effect on the floating price and arguably is not covered by the term “Material Change in Formula” in the 1993 ISDA Commodity Derivatives Definitions. The consequence may be no more than a requirement to specify the new reference node as at which the Floating Price is determined, or could require that the Fixed Amount or the Floating Amount be changed. If you want to ensure that such changes are expressly included, insert the following Additional Market Disruption Event:

“Where a Specified Price for that Commodity Transaction is a spot price (as defined in the National Code) at a regional reference node (as defined in the National Code), the occurrence after the Trade Date of the Commodity Transaction of a change in the location of that regional reference node or a change in the boundaries or the number of regional reference nodes of the region (as defined in the National Code) in which that regional reference node is located.”

⁵A change in *VoLL* or the *market floor price* may have an effect on a transaction (as a Material Change in Formula) unless it is expressly excluded as a Market Disruption Event. If you want to exclude these events you should include this paragraph. The working group recommends that this paragraph be included.

Care! A change of either of these types may have an effect on the cash flows under a Transaction as it will permit the Commodity Reference Price to potentially be lower or higher than contemplated by the parties at the Trade Date. If you want to protect yourself against such a risk you may consider entering into a second, matching, price cap, price floor or price collar Transaction (see the sample Confirmations at [20.25], [20.26] and [20.27]) to achieve the desired net result. Alternatively, you could agree as a term of the Transaction itself that the Commodity Reference Price for a Calculation Period will be *VoLL* at the Trade Date (should it otherwise exceed that amount) or the *market floor price* at the Trade Date (should it otherwise be less than that amount).

⁶The term “Tax Disruption” may or may not cover the imposition of a carbon tax. It depends on how that impost is formulated. If you want to provide for some forms of carbon tax you could include this paragraph. The effect of including these words is that a carbon tax imposed at the point of determination of a Floating Price which directly affects that Floating Price will be covered. You should satisfy yourself that appropriate circumstances are covered. The working group recommends that this paragraph be included.

“carbon tax (which term includes any tax, charge, assessment or levy relating to the emission of carbon or carbon compounds into the atmosphere and any tax, charge, assessment or levy relating to any substance characterised as a greenhouse gas or greenhouse precursor gas),”.

Alternative 1 (#)⁷ Section 7.5(d)(i) of the 1993 ISDA Commodity Derivatives Definitions applies to each Commodity Transaction. For the purpose of determining a Fallback Reference Price, the alternate Commodity Reference Price is [].

Alternative 2 (#)⁷ The Disruption Fallbacks which apply to each Commodity Transaction for each Calculation Period are:

[(a) Fallback Reference Price, in which case the alternate Commodity Reference Price is []]

[(b) Negotiated Fallback]

[(c) No Fault Termination]⁸

Note: This language will not cover all methods of imposing a ‘carbon tax’ on the physical electricity market participants, such as by imposing a requirement for certain generators to install additional cleaning equipment or for retailers to acquire and acquit RECs.

⁷This sub-clause relates to Disruption Fallbacks. You should carefully read the whole of Section 7.5 of the 1993 ISDA Commodity Derivatives Definitions.

The purpose of this sub-clause is to enable you to pre-agree the Disruption Fallbacks which will apply to your transactions. Disruption Fallbacks provide an alternative basis for determining a Relevant Price if a Market Disruption Event or an Additional Market Disruption Event occurs or exists on a day that is a Pricing Date for a transaction.

Alternative 1 provides for you to adopt the three Disruption Fallbacks referred to in Section 7.5(d)(i).

Care! Fallback Reference Price can only operate if you specify an alternate Commodity Reference Price. This is dealt with in the second sentence of Alternative 1. In circumstances where there is **no spot price** there may not be a method of fixing the price (other than possibly by reference to historic prices) that could be specified as an alternate Commodity Reference Price.

Alternative 2 provides for you to specify the Disruption Fallbacks which will apply. Section 7.5 does not contain the concept of “Additional” Disruption Fallbacks - cf Section 7.4. Therefore, when this alternative is used, all Disruption Fallbacks should be listed in the order in which they are to apply.

Again, if you include Fallback Reference Price, ensure that you define an alternate Commodity Reference Price if that is possible.

Final comment. We stress that Disruption Fallbacks should be individually considered. There is no market standard that parties can insist on, although the working group considers that generally No Fault Termination ought not be the primary preferred option. Also, the agreement in this sub-clause could be overridden for a particular transaction by specific reference in that transaction's Confirmation to the disruption fallbacks to apply to it.

In particular, you should carefully consider the interaction between the National Electricity Code and the ISDA Master Agreement.

⁸You may for electricity transactions prefer to contemplate that different Disruption Fallbacks apply for different Market Disruption Events. For example, for electricity transactions where there is unlikely in the short to medium term to be any readily acceptable Fallback Reference Price, you may prefer to nominate Negotiated Fallback followed by Calculation Agent Determination for Price Source Disruption and Material Change in Formula and followed by No Fault Termination for Tax Disruption. This means that the transaction will continue in some form when Price Source Disruption or Material Change in Formula occurs whereas it may (if negotiations are unsuccessful) terminate for Tax Disruption.

[(d) Postponement]

[(e) Calculation Agent Determination]⁸

[(f) Other - specify]

(#)⁹ For each Calculation Period, the Settlement Date is the day upon which the party that is obliged to pay a Floating Amount or a Cash Settlement Amount calculated by reference to a Floating Price determined under the National Code (or, if there are two such parties, Party [A/B]), if it were a market participant (as defined in the National Code) under the National Code, would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed an amount in respect of electricity bought by it in that Calculation Period.

(#)¹⁰ If the Confirmation for a commodity option specifies that both Contract Settlement and Cash Settlement are applicable to the commodity option

If Calculation Agent Determination is to be adopted you must consider whether the Calculation Agent generally nominated in relation to Commodity Transactions ought determine the Relevant Price or whether a third party ought make the determination. If you want a third party to make the determination you will need to agree the identity of the Calculation Agent for this purpose in the schedule (or agree a method of selecting the Calculation Agent).

The working group recommends that the following sub-clause be inserted in respect of Disruption Fallbacks:

“The Disruption Fallbacks which apply to each Commodity Transaction for each Calculation Period are:

- (a) Negotiated Fallback;
- (b) Calculation Agent Determination~~, on the basis that:~~
 - (i) ~~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 chief executive officer for the time being of Australian Financial Markets Association (or any successor body) at the request of one of the parties); and~~
 - (ii) ~~that Calculation Agent is to act as an expert (and not as an arbitrator) and must take into account the views of three other experts selected in the same manner as the Calculation Agent was selected; and~~
 - (iii) ~~the costs and expenses of that Calculation Agent will be borne equally by the parties;~~
- (c) No Fault Termination.”

If this clause is inserted it is envisaged that, should Negotiated Fallback not deliver a result, the Calculation Agent Determination will deliver a result. No Fault Termination has been included for prudence and to permit parties to easily exclude Calculation Agent Determination for a particular Transaction if they wish by including appropriate wording in the Confirmation. The Calculation Agent under this provision is ~~not~~ the general Calculation Agent for the Transactions (see [20.19] footnote ~~2729~~).

If you agree that Disruption Fallbacks for electricity and REC Transactions should be the same, which the working groups do not recommend, then the sub-clause should be included in the general provisions under [20.19] footnote ~~2021~~ and not included in the specific provisions under [20.19] footnotes 1 and ~~42.13~~.

⁹This sub-clause allows you to pre-agree that Settlement Dates for Calculation Periods will correspond with the dates for settlement under the National ~~Electricity~~ Code under which the Floating Price (or one of the Floating Prices) is determined.

¹⁰This sub-clause allows you to pre-agree what happens if one of the parties is allowed to elect either Contract Settlement or Cash Settlement for commodity swaptions. The sub-clause provides that the party may exercise only one of these rights and, when it does so, the other terminates.

and the Buyer of the commodity option elects to exercise the commodity option, then the Buyer must specify in the Notice of Exercise whether Contract Settlement or Cash Settlement applies. On delivery to the Seller of the Notice of Exercise specifying a method of settlement, the right granted under the commodity option to settle by the other method terminates. If the Buyer fails to specify a method of settlement in the notice, the Buyer will be deemed to specify [Contract Settlement][Cash Settlement].

(#)¹¹ The Floating Price to apply to any Commodity Transaction is [specify].

(#)¹² Goods and Services Tax - Commodity Reference Price Adjustment

(a) If the Spot Price for a Calculation Period is GST Inclusive, then the Commodity Reference Price for that Calculation Period is the Spot Price times the fraction

$$\frac{100}{100 + R}^2$$

where R is the GST rate prevailing at the time of that Calculation Period, expressed as a percentage.

(b) An amendment to the National Code to permit spot prices (as defined in the National Code) to be quoted on a GST Inclusive basis does not constitute a “Material Change in Formula” or a “Tax Disruption”.

(c) In this paragraph [#]:

GST Inclusive means, for a Spot Price, that the price is quoted without any discount for any GST payable for the supply to

Carefully note the last sentence which requires the parties to agree on a fall back. The issue of whether the fall back method is to be Contract Settlement or Cash Settlement is a matter for individual negotiations. In the electricity market the fall back is likely to be Contract Settlement so that the Underlying Transaction becomes effective.

¹¹This sub-clause allows the parties to pre-agree the Floating Price. It will not suit all parties to seek to agree this item for inclusion in part 5 of the schedule.

The agreement in this sub-clause could be overridden for a particular transaction by specifying a Floating Price for that transaction in its Confirmation.

The sample Confirmations in [20.24] to [20.30] set out a suggested method of determining the Floating Price (based on a *spot price* published by NEMMCO) that could instead be inserted here. If you did so, it would shorten the Confirmation but would not prevent you changing the method of calculation for particular transactions when appropriate.

¹²~~The introductory wording limits the applicability of the sub-clauses to REC Commodity Transactions.~~ Under the National Code, *spot prices* are published by NEMMCO on a GST exclusive basis, and GST is added during the spot market settlement process. Transactions are entered into on the assumption that the GST exclusive basis will continue to apply under the National Code. If you want to protect yourself against the risk that the National Code may be amended so that *spot prices* are published by NEMMCO on a GST inclusive basis (with a consequential increase in the *spot price*), you should include this paragraph.

Care! This paragraph does not protect against the risk that, during the period that the *spot price* is published exclusive of GST under the National Code, the GST rate changes after the Trade Date of a Transaction, and that therefore the rate applied to determine the amount added during the settlement process is greater or less than as at the Trade Date.

which the price relates. For example, if the rate is 10% and a price of \$11 is GST Inclusive, it means that the GST in respect of the supply is \$1 (as calculated by reference to the law existing at the date of this Agreement) and that no amount will be added to the Spot Price in accordance with the National Code on account of the GST payable by the supplier.

GST has the meaning in the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth).

(#)¹³ The following provisions apply to any transaction relating to RECs which is a Commodity Transaction (as defined in June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions):

Alternative 1 (#)¹³¹⁴ Section 7.4(d)(i) of the 1993 ISDA Commodity Derivatives Definitions applies to each Commodity Transaction.

¹³The introductory wording limits the applicability of the sub-clauses to REC Commodity Transactions.

¹³¹⁴This sub-clause relates to Market Disruption Events. You should carefully read the whole of Section 7.4 of the 1993 ISDA Commodity Derivatives Definitions.

The purpose of this sub-clause is to enable you to pre-agree with your counterparty the Market Disruption Events which will apply to your transactions. **Alternative 1** provides for you to adopt the deemed Market Disruption Events in Section 7.4(d)(i) (with or without adding Additional Market Disruption Events). **Alternative 2** provides for you to specify which of the Market Disruption Events will apply.

The **first paragraph** of the suggested **Alternative 1** is technically unnecessary if you agree to Section 7.4(d)(i) applying but we recommend that you include it because it will focus the parties' minds on whether Section 7.4(d)(i) should apply. Section 7.4(d)(i) deems some Market Disruption Events to apply unless the parties otherwise specify. These are "Price Source Disruption", "Trading Suspension", "Disappearance of Commodity Reference Price", "Material Change in Formula" and "Material Change in Content". Therefore, those are the Market Disruption Events which will apply if you do not specify otherwise.

The **second paragraph** of the suggested **Alternative 1** provides for you to specify "Additional Market Disruption Events". **Care!** Section 7.4(d)(iii) provides that both "Additional Market Disruption Events" and Market Disruption Events deemed to apply under Section 7.4(d)(i) apply to Commodity Transactions.

In the second paragraph we have listed the Market Disruption Events defined in Section 7.4(c) which are not deemed to apply under Section 7.4(d)(i) and we have provided a final "other" category. This is where you could define your own market disruption event.

If there are to be no Additional Market Disruption Events, you need not include the second paragraph.

Section 7.4(d)(ii) provides that if one or more Market Disruption Events are specified, then only those specified apply. Accordingly, it would be possible to replace the whole of the suggested clause with the suggested **Alternative 2**.

Final general comment. We stress that Market Disruption Events should be individually considered. There is no market standard that parties can insist on. Also, the agreement in this sub-clause could be overridden for a particular transaction by specific reference in that transaction's Confirmation to the Market Disruption Events to apply to it.

REC Transactions:

In relation to REC transactions, there are a number of specific points that must be considered.

First, Market Disruption Events must be distinguished from a Settlement Disruption Event (see [20.19] footnote ~~17~~-18).

[The following are Additional Market Disruption Events:

- [(a) De Minimis Trading]
- [(b) Tax Disruption]
- [(c) Trading Limitation]
- [(d) other - specify].]

Alternative 2 (#)⁴³¹⁴ The Market Disruption Events which apply to a Commodity Transaction are:

- [(a) []]
- [(b) [] etc]

(#)⁴⁴¹⁵ ~~Despite Section 1(b), an~~ An amendment to or the repeal of the REC Act or the Renewable Energy (Electricity) Charge Act 2000 (Cwlth), the making of a regulation or order under either Act or an amendment to any such regulation or order, including, without limitation;

- (a) an amendment to the definition of “1997 eligible renewable power baseline” in section 5(1) of the REC Act;
- (b) an amendment to the quantum of the “rate of charge” as specified in the Renewable Energy (Electricity) Charge Act 2000 (Cwlth);
- (c) a change to the method of determination of the “renewable energy certificate shortfall” as defined in the REC Act; or

Secondly, generally Market Disruption Events are designed to deal with circumstances where an event occurs that will or may impact upon a floating Relevant Price agreed between the parties. The Disruption Fallbacks (see [20.19 footnotes 4516 and 4617]) then set out alternative methods for determining the Relevant Price.

A Relevant Price is a price determined as provided in Section 7 of the 1993 ISDA Commodity Derivative Definitions. Unless a Commodity Transaction includes such a price, the Market Disruption Events would not in any event be relevant. In the REC market, an example of a Relevant Price would be the REC Spot Price (which is a function of the renewable energy shortfall charge). Of the Market Disruption Events in Section 7.4(c), all of them potentially are applicable except “*De Minimis* Trading”.

Final comment. The working group recommends that **Alternative 1** be adopted and that “Tax Disruption” and “Trading Limitation” be specified as Additional Market Disruption Events. If this recommendation is adopted, the following additional words should, for the avoidance of doubt, be inserted after “Trading Limitation”:

“For this purpose, the physical trading of RECs under the REC Act is taken to be conducted on an Exchange.”

⁴⁴¹⁵Certain changes to the REC Act or the Renewable Energy (Electricity) Charge Act 2000 (Cwlth) may have an effect on a transaction (as a Market Disruption Event) unless they are expressly excluded. If you want to exclude these events you should include this paragraph. The working group recommends that this paragraph be included, on the basis that whilst such events will likely impact the price at which trades after the event will be conducted, the occurrence of those events are already viewed as possible outcomes and therefore factored into the price agreed for transactions prior to the occurrence of the event.

Care! Change of these types may have an effect on the cash flows under a Transaction or the underlying market for physical RECs. If you want to protect yourself against such a risk you may consider modifying these exclusions or agreeing to provide for specific events expressly in your Commodity Transaction. For example, you could agree as a term of a Transaction that there will be an automatic change to the Fixed Price and the Cash Settlement Price if the rate of charge used in the REC Act (currently \$40/MWh) is changed after the Trade Date.

(d) a change to the “eligible renewable energy sources” under section 17 of the REC Act,

does not constitute a Market Disruption Event.

Alternative 1 (#)⁺⁵¹⁶ Section 7.5(d)(i) of the 1993 ISDA Commodity Derivatives Definitions applies to each Commodity Transaction. For the purpose of determining a Fallback Reference Price, the alternate Commodity Reference Price is [].

Alternative 2 (#)^{+5,+16,16,17} The Disruption Fallbacks which apply to each Commodity Transaction for each Calculation Period are:

[(a) Fallback Reference Price, in which case the alternate Commodity Reference Price is []]

[(b) Negotiated Fallback]

[(c) No Fault Termination]

⁺⁵¹⁶This sub-clause relates to Disruption Fallbacks. You should carefully read the whole of Section 7.5 of the 1993 ISDA Commodity Derivatives Definitions.

The purpose of this sub-clause is to enable you to pre-agree the Disruption Fallbacks which will apply to your transactions. Disruption Fallbacks provide an alternative basis for determining a Relevant Price if a Market Disruption Event or an Additional Market Disruption Event occurs or exists on a day that is a Pricing Date for a transaction.

Alternative 1 provides for you to adopt the three Disruption Fallbacks referred to in Section 7.5(d)(i).

Care! Fallback Reference Price can only operate if you specify an alternate Commodity Reference Price. This is dealt with in the second sentence of Alternative 1.

Alternative 2 provides for you to specify the Disruption Fallbacks which will apply. Section 7.5 does not contain the concept of “Additional” Disruption Fallbacks - cf Section 7.4. Therefore, when this alternative is used, all Disruption Fallbacks should be listed in the order in which they are to apply.

Again, if you include Fallback Reference Price, ensure that you define an alternate Commodity Reference Price if that is possible.

Final comment. We stress that Disruption Fallbacks should be individually considered. There is no market standard that parties can insist on, although the working group considers that generally No Fault Termination ought not be the primary preferred option. Also, the agreement in this sub-clause could be overridden for a particular transaction by specific reference in that transaction's Confirmation to the disruption fallbacks to apply to it. You should carefully consider the circumstances in which a Market Disruption Event may arise and satisfy yourself that the consequences are adequately dealt with.

⁺⁶¹⁷The working group recommends that the following sub-clause be inserted in respect of Disruption Fallbacks:

“The Disruption Fallbacks which apply to each Commodity Transaction are:

- (a) Negotiated Fallback;
- (b) No Fault Termination.”

If this clause is inserted it is envisaged that, should Negotiated Fallback not deliver a result, No Fault Termination will deliver a result.

If you agree that Disruption Fallbacks for electricity and REC Transactions should be the same, which the working groups do not recommend, then the sub-clause should be included in the general provisions under [20.19] footnote ~~2021~~ and not included in the specific provisions under [20.19] footnotes 1 and ~~42-13~~.

[(d) Postponement]

[(e) Calculation Agent Determination]

[(f) Other - specify]

(#)¹⁷¹⁸ The Settlement Date for a Commodity Transaction for which Multiple Exercise is not applicable is the first day after the day specified as the Settlement Trigger Date in respect of that Commodity Transaction upon which any market participant (as defined in the National Code) would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed a net amount, unless, in the case of a Commodity Transaction for which Physical Delivery is applicable on that Settlement Date, a Settlement Disruption Event prevents delivery of RECs on that day.

The Settlement Date for each Exercise Date under a Commodity Transaction for which Multiple Exercise is applicable is the first day after the day being two Business Days after that Exercise Date upon which any market participant (as defined in the National Code) would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed a net amount unless, in the case of a Commodity Transaction for which Physical Delivery is applicable on that Settlement Date, a Settlement Disruption Event prevents delivery of RECs on that day.

If a Settlement Disruption Event does prevent delivery on a Settlement Date, then the Settlement Date will be the first succeeding day on which delivery of RECs can take place, unless a Settlement Disruption Event prevents delivery of RECs on each of the five Business Days immediately following the original Settlement Date. In that case:

- (a) if both Physical Settlement and Cash Settlement are applicable to the Commodity Transaction on the original Settlement 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 Settlement Date will be the first Business Day after the end of the five Business Day period; and
- (b) otherwise, subject to Section 2(a)(iii), the party with the obligation to make delivery of the RECs will be deemed on the first Business

¹⁷¹⁸This sub-clause allows you to pre-agree that Settlement Dates will correspond with the dates for settlement under the National Code. If this provision is incorporated it will be necessary, in the case of transactions for which Multiple Exercise is not applicable, to set out the Settlement Trigger Date in the confirmation. The Settlement Trigger Date allows parties to specify a date without needing to address whether it is a Business Day or indeed a day for settlement under the National Code, and then the Transaction automatically settles on the first subsequent date upon which the physical electricity market settles.

The working group recommends that this provision be incorporated and that, in the case of Transactions designed to settle at the end of each calendar year, 15 January of the year after the year in which the RECs are to be certified under the REC Act (the "Creation Date" - see [20.32] footnote 1) be specified as the Settlement Trigger Date.

If parties preferred, actual Settlement Dates could be inserted in the relevant Confirmation. This would over-ride these provisions in the Agreement.

Day after the end of the five Business Day period to have failed to make the delivery due on the original Settlement Date.

- (#)¹⁸¹⁹ Physical Settlement and Cash Settlement are applicable to any forward commodity contract or commodity option. Physical Settlement is applicable to any spot commodity contract.
- (#)¹⁹²⁰ If both Physical Settlement and Cash Settlement are applicable to a forward commodity contract, then the [Seller][Buyer] must notify the [Buyer][Seller] not less than two Business Days before each Settlement Date whether Physical Settlement applies, Cash Settlement applies or both Physical Settlement and Cash Settlement apply on that Settlement Date. On delivery to the [Buyer][Seller] of that notice, the right granted under the forward commodity contract to settle by the other methods on that Settlement Date terminates. If both Physical Settlement and Cash Settlement are to apply on a Settlement Date, then the [Seller][Buyer] must in the notice notify the Number of Units to be Physically Delivered and/or the Number of Units to be Cash Settled on that Settlement Date. If the [Seller][Buyer] fails to give such a notice, the [Seller][Buyer] will be deemed to specify [Physical Settlement][Cash Settlement] to apply on that Settlement Date.
- (#)²⁰²¹ The following provisions apply to any transaction which is a Commodity Transaction (as defined in June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions):
- (#)²¹²² When there is a single Pricing Date for a Calculation Period for a Commodity Transaction, it is subject to adjustment in accordance with the

¹⁸¹⁹This sub-clause allows you to pre-agree that all forward contracts and options are either physically settled or cash settled (ie, when a party may elect which settlement method will apply). It removes the need for including an item in each confirmation stating “Physical Settlement: Applicable, Cash Settlement: Applicable”. The working group recommends that REC forward contracts and options be structured in this way (see [20.11]).

The agreement in this sub-clause as to this could be overridden for a particular transaction by stating in the transaction’s confirmation:
“Cash Settlement: Applicable” or “Physical Settlement: Applicable” (when neither party may elect which settlement method is to apply).

This sub-clause also allows you to pre-agree that all spot contracts are physically settled. Again, the agreement in this sub-clause as to this could be overridden for a particular transaction in the transaction’s confirmation.

¹⁹²⁰This sub-clause allows you to pre-agree what happens if one of the parties is allowed to elect either Physical Settlement or Cash Settlement or both for forward commodity contracts for RECs. The sub-clause provides that the party may exercise only one of these rights and, when it does so, the others terminate. In the REC market the working group recommends that the election be included in all forward transactions and that the Seller be the party entitled to specify the method of settlement.

Carefully note the last sentence which requires the parties to agree on a fall back. The issue of whether the fall back method is to be Physical Settlement or Cash Settlement is a matter for individual negotiations. In the REC market the working group recommends that the fall back be Cash Settlement so that the Seller is not in default under the Agreement if it fails to hold the RECs the subject of the transaction on the Settlement Date (see the comments in [20.11]).

²⁰²¹The introductory wording limits the applicability of the sub-clauses to all Commodity Transactions within the meaning of Australian Addendum No. 13.

²¹²²See Section 1.4 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of Commodity Business Day, Section 1.5 for the meaning of Commodity Business Day Convention and Section 6.2(b) for the meaning of

[Following/Modified Following/Nearest/Preceding] Commodity Business Day Convention.

(#)²²²³ The Settlement Date for any Commodity Transaction is subject to adjustment in accordance with the [Following/Modified Following/Nearest/Preceding] Business Day Convention.

(#)²³²⁴ The Premium Payment Date for any Commodity Transaction is subject to adjustment in accordance with the [Following/Modified Following/Nearest/Preceding] Business Day Convention.

(#)²⁴ ~~The definition of “Reference Market makers” is replaced with:~~

~~“Reference Market makers” means four experts having an office in Australia selected by the chief executive officer for the time being of Australian Financial Markets Association (or any successor body) at the request of the party determining a Market Quotation.”~~

(#)²⁵ [Deleted]

(#)²⁵²⁶ The second line of paragraph (1) of the attached June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity

Pricing Date. This sub-clause allows you to agree on the convention to apply. This agreement could be overridden for a particular transaction by specific reference to another convention in that transaction's Confirmation.

Under the National ~~Electricity~~ Code, with a *spot price* set for each *trading interval*, a convention relating to the Pricing Date will generally only be relevant if you want to use an average of *spot prices* as a floating price.

²²²³ Under Section 3.4 of the 1993 ISDA Commodity Derivatives Definitions, the Settlement Date is subject to adjustment in accordance with the Following Business Day Convention, unless otherwise specified. Accordingly, you need not include this sub-clause if you are agreeable to using the “Following” convention. Under the National ~~Electricity~~ Code, the “Following” convention applies. If you agree to use a different convention, this sub-clause allows you to agree the convention to apply. This agreement could be overridden for a particular transaction by specific reference to another convention in that transaction's Confirmation.

²³²⁴ Under Section 8.6(c) of the 1993 Commodity Derivatives Definitions, the Premium Payment Date is subject to adjustment in accordance with the Following Business Day Convention, unless otherwise specified. Accordingly, you need not include this sub-clause if you are agreeable to using the “Following” convention. Under the National ~~Electricity~~ Code, the “Following” convention applies. If you agree to use a different convention, this sub-clause allows you to agree the convention to apply. This agreement could be overridden for a particular transaction by specific reference to another convention in that transaction's Confirmation.

Note: It would be possible to combine the wording of the text referred to in footnotes ~~2423~~ and ~~2224~~ if the same Business Day Convention is to apply to both the Settlement Date and the Premium Payment Date.

²⁴ ~~The definition of “Reference Market makers” in the ISDA Master Agreement is arguably not appropriate for an electricity or REC transaction as there may not be, for the time being at least, any “dealers”. This paragraph reflects the agreement reached by the working group as to a method of selecting an appropriate panel to calculate close out amounts.~~

²⁵ [Deleted]

²⁵²⁶ Only include this if you want Commodity Transactions entered into before you incorporate June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions into your ISDA Master Agreement also to be governed by June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions. See [20.20(a)] for further commentary on this.

(Energy and REC) Transactions is varied by adding “before or” after “entered into”.

- (#)²⁶²⁷ Automatic Exercise is [Applicable] [Inapplicable] to any commodity option.
- (#)²⁷²⁸ The places to apply for the purpose of the definition of Business Days are [].
- (#)²⁸²⁹ The Calculation Agent for Commodity Transactions is [].
[However, if [] becomes the sole Defaulting Party, then [] will become the Calculation Agent.]
- (#)²⁹³⁰ If, with respect to a Calculation Period for a Commodity Transaction, either party is obliged to pay a Floating Amount that is a negative number (such as by reason of a negative Commodity Reference Price or by operation of a Spread or other amount that is subtracted from the Commodity Reference Price), the Floating Amount for that party for that Calculation Period will be deemed to be zero, and the other party will pay to that party the absolute value of the negative Floating Amount so calculated, in addition to any other amounts otherwise owed by the other party for that Calculation Period with respect to that Commodity Transaction.
- (#)³⁰³¹ Section 9 of the 1993 ISDA Commodity Derivative Definitions does not apply. For 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 2000 ISDA Definitions) denominated amounts resulting from such calculations (including, without limitation, Fixed Amounts, Floating Amounts and Cash Settlement Amounts), will be rounded in the manner determined in good faith by the Calculation Agent having regard to the Calculation Agent’s usual practices.

²⁶²⁷This sub-clause allows the parties to pre-agree whether Automatic Exercise is applicable (see footnote 24 in [20.28] and footnote 14 in [20.29]).

The agreement in this sub-clause could be overridden for a particular transaction by specifying the alternative in the Confirmation for that transaction.

²⁷²⁸This sub-clause allows the parties to pre-agree places for the definition of Business Days. The sample Confirmations in [20.24] to [20.33] set out an alternative method of specifying this.

²⁸²⁹This sub-clause allows the parties to pre-agree the Calculation Agent. It need only be incorporated if you want a different party to act as Calculation Agent for electricity and REC transactions.

²⁹³⁰This sub-clause allows the parties to contemplate that a Floating Amount may be negative. See also [20.19] footnote 5.

³⁰³¹Section 9 of the 1993 ISDA Commodity Derivative Definitions contains conventions for rounding of percentages and amounts. Those conventions do not deal with Australian Dollar amounts, and do not satisfactorily contemplate multiple Calculation Periods and Pricing Dates for each Settlement Date (which are usual for electricity derivative transactions).

As there are a number of rounding conventions being used in the market (and in physical market transactions), this sub-clause allows the parties to agree that the Calculation Agent’s method of rounding (to be determined in good faith) will generally be applied. The parties are free to agree a different rounding convention for a particular Transaction by incorporating that convention in the relevant Confirmation. The working groups recommend that this paragraph be included.

[20.19A] In this [20.19A] we set out clauses which could be included in Part 5 of the Schedule to a 1992 ISDA Master Agreement, in addition to those referred to in [20.19].

For each clause we set out the suggested text and some explanatory notes. It is intended that you will tailor the following clauses to your own requirements. For your guidance we have incorporated in the footnotes the recommendations of the relevant working group.

(#)¹ The definition of “Market Quotation” is varied by inserting the following at the end of it:

“A quotation may be firm or indicative and is not required to be the market value of the Terminated Transaction or group of Terminated Transactions and the Reference Market-maker is not obliged to use mid-point quotations or mid-market valuations in determining the quotation.”

(#)² (1) The terms of Section 6(d)(i) of the Agreement are amended in their entirety as follows:

“(d) **Calculations; Payment Date.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations), (2) specifying (except where there are two Affected Parties) any Early Termination Amount payable and (3) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation or market data obtained in determining a Close-out Amount, the records of the

¹In [3.17] we have incorporated some commentary on the decision of the Supreme Court of New South Wales in **Enron Australia Pty Limited (In Liquidation) v Integral Energy Australia** (2002) NSWSC 753 and make a recommendation for a change to the definition of “Close-out Amount” in the 2002 ISDA Master Agreement. For the same reasons as set out in [3.17] we recommend that parties who do not adopt the recommendation in [20.19A] footnote 2 use this clause to insert additional language in the definition of “Market Quotation” in the 1992 ISDA Master Agreement so as to negate the approach adopted by the Supreme Court of New South Wales.

You should carefully consider whether this clause ought apply to all Transactions and not just Commodity Transactions within the meaning of Australian Addendum No. 13. If so, this provision should be incorporated in Part 5 of the Schedule, and not a sub-clause contained as part of [20.19] footnote 21.

This clause is not required if you agree to adopt the new definition of “Close-out Amount” - see [20.19A] footnote 2.

²This sub-clause allows the parties to modify certain provisions of the 1992 ISDA Master Agreement to reflect certain provisions of the 2002 ISDA Master Agreement relating to the use of the term “Close-out Amount” in lieu of “Market Quotation” and “Loss”. At [4.03] there is material on the major differences between the 1992 ISDA Master Agreement and the 2002 ISDA Master Agreement. The change to “Close-out Amount” is considered to be arguably the most significant change. At [3.17] there is a general explanation of that new measure of damages, and more material can be found on it in the Users Guide to the 2002 ISDA Master Agreement published by ISDA.

The working group recommends that this provision be incorporated by participants using the 1992 ISDA Master Agreement.

Care! This is a stand-alone provision to be incorporated in Part 5 of the Schedule, and not a sub-clause contained as part of [20.19] footnote 21.

party obtaining such quotation or market data will be conclusive evidence of the existence and accuracy of such quotation or market data.”

(2) The terms of Section 6(e) of the Agreement are amended in their entirety as follows:

“(e) **Payments on Early Termination.** If an Early Termination Date occurs, the amount, if any, payable in respect of that Early Termination Date (the “Early Termination Amount”) will be determined pursuant to this Section 6(e) and will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default, the Early Termination Amount will be an amount equal to (1) the sum of (A) the Termination Currency Equivalent of the Close-out Amount or Close-out Amounts (whether positive or negative) determined by the Non-defaulting Party for each Terminated Transaction or group of Terminated Transactions, as the case may be, and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (2) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If the Early Termination Amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of the Early Termination Amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) **One Affected Party.** If there is one Affected Party, the Early Termination Amount will be determined in accordance with Section 6(e)(i), except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.

(2) **Two Affected Parties.** If there are two Affected Parties, each party will determine an amount equal to the Termination Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an amount equal to (A) the sum of (I) one-half of the difference between the higher amount so determined (by party “X”) and the lower amount so determined (by party “Y”) and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is

a negative number, X will pay the absolute value of the Early Termination Amount to Y.

(iii) **Adjustment for Bankruptcy.** In circumstances where an Early Termination Date occurs because “Automatic Early Termination” applies in respect of a party, the Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate.** The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions.”

(3) The term “Termination Currency Equivalent” in Section 14 of the Agreement is hereby amended by replacing “Market Quotation or Loss (as the case may be)” with “Close-out Amount”.

(4) The following terms are added to Section 14 of the Agreement in the appropriate alphabetical position:

“**Close-out Amount**” means, with respect to each Terminated Transaction or each group of Terminated Transactions and a Determining Party, the amount of the losses or costs of the Determining Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Determining Party that are or would be realised under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Determining Party the economic equivalent of, (a) the material terms of that Terminated Transaction or group of Terminated Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of that Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in Section 2(a)(iii)) and (b) the option rights of the parties in respect of that Terminated Transaction or group of Terminated Transactions.

Any Close-out Amount will be determined by the Determining Party (or its agent), which will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. The Determining Party may determine a Close-out Amount for any group of Terminated Transactions or any individual Terminated Transaction but, in the aggregate, for not less than all Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

Unpaid Amounts in respect of a Terminated Transaction or group of Terminated Transactions and legal fees and out-of-pocket expenses referred to in Section 11 are to be excluded in all determinations of Close-out Amounts.

In determining a Close-out Amount, the Determining Party may consider any relevant information, including, without limitation, one or more of the following types of information:—

(i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;

(ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or

(iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party's Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

The Determining Party will consider, taking into account the standards and procedures described in this definition, quotations pursuant to clause (i) above or relevant market data pursuant to clause (ii) above unless the Determining Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in clause (i), (ii) or (iii) above, the Determining Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilised. Third parties supplying quotations pursuant to clause (i) above or market data pursuant to clause (ii) above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Without duplication of amounts calculated based on information described in clause (i), (ii) or (iii) above, or other relevant information, and when it is commercially reasonable to do so, the Determining Party may in addition consider in calculating a Close-out Amount any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to a Terminated Transaction or group of Terminated Transactions (or any gain resulting from any of them).

Commercially reasonable procedures used in determining a Close-out Amount may include the following:—

(1) application to relevant market data from third parties pursuant to clause (ii) above or information from internal sources pursuant to clause (iii) above of pricing or other valuation models that are, at the time of the determination of the Close-out Amount, used by the Determining Party in

the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the Terminated Transaction or group of Terminated Transactions; and

(2) application of different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.

A Close-out Amount is not required to be the market value of the Terminated Transaction or group of Terminated Transactions and the Determining Party is not obliged to use mid-point quotations or mid-market valuations in determining a Close-out Amount.”

““**Determining Party**” means the party determining a Close-out Amount.”

““**Early Termination Amount**” has the meaning specified in Section 6(e).”

““**Non-affected Party**” means, so long as there is only one Affected Party, the other party.”

(5) The following terms in Section 14 of the Agreement are deleted in their entirety: “Loss”, “Market Quotation”, “Reference Market-makers” and “Settlement Amount”.

If any of these terms are used in any Annex or Schedule to the Agreement or a Confirmation, the 1994 ISDA Equity Option Definitions, the 1996 ISDA Equity Derivatives Definitions, the 2002 ISDA Equity Derivatives Definitions, the 1997 ISDA Government Bond Option Definitions, the 1998 FX and Currency Option Definitions, the 1999 ISDA Credit Derivatives Definitions or any other ISDA document incorporated by reference or executed by the parties hereto, the terms will have the respective meanings ascribed to them in the standard form 1992 ISDA Master Agreement (Multicurrency-Cross Border).

(6) Part 1(f) of the Schedule is deleted in its entirety and the subsequent paragraphs are renumbered sequentially. In case the parties have used another designation for the paragraph of the Schedule specifying the selection of Market Quotation or Loss and First Method or Second Method, the reference herein to Part 1(f) of the Schedule shall be deemed a reference to that paragraph.”

NOTES ON JUNE 1997 AUSTRALIAN ADDENDUM NO. 13 (AS AMENDED IN APRIL 2002 AND JULY 2003) - ELECTRICITY (ENERGY AND REC) TRANSACTIONS

[20.20] Behind the sheet at [20.34] is a copy of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions.

Our commentary on paragraphs in this Addendum is as follows:

- (a) **Paragraph (1).** This states that by incorporating June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions in their ISDA Master Agreement the parties agree that every Commodity Transaction in relation to electricity or RECs between them is governed by the ISDA Master Agreement whether or not its Confirmation refers to the Master Agreement or June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions and whether or not the parties state in their Confirmation that the Commodity Transaction is governed by any other master agreement.

Paragraph (1) is drafted on an assumption that once two parties agree to add June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions to their ISDA Master Agreement, all such **future** Commodity Transactions between them are intended to be governed by the ISDA Master Agreement.

If you want Commodity Transactions entered into before you incorporate June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions into your ISDA Master Agreement also to be governed by June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions, then you should include the following provision in part 5 of the Schedule to your ISDA Master Agreement (see [20.19] footnote 24):

“() The second line of paragraph (1) of the attached June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions is varied by adding “before or” after “entered into.”

Paragraph (1) recognises that at an operational level, there may still be instances, after the changeover, when Confirmations for Commodity Transactions either do not refer to the ISDA Master Agreement or continue to state that the Commodity Transaction is governed by another master agreement. Paragraph (1) states that even in those circumstances the Commodity Transaction will be governed by the ISDA Master Agreement and not the other master agreement.

Multiple master agreements. If you have more than one Master Agreement with a particular counterparty each of which is intended to govern different types of transactions (eg you may have one for secured transactions and one for unsecured transactions), then you should amend paragraph (1) (by a clause in part 5 of the schedule) to reflect your intention.

One possible way of doing this is to replace the first word of paragraph (1) “By” with “Except in the case of Commodity Transactions which are identified in their Confirmation as being governed by a master agreement between us dated [], by”. It would then be **essential** to refer to the other master agreement in those Confirmations intended to be governed by the other master agreement.

-
- (b) **Paragraph (2).** Paragraph (a) contains an acknowledgment of the various methods available for confirming Commodity Transactions and deems each to be a Confirmation.

Paragraph (b) contains some of the wording which is in the opening part of the Confirmations recommended by ISDA (see Exhibit 1 to the 1993 ISDA Commodity Derivatives Definitions (p.29)). This is designed to remove the necessity for inserting, and recognises that it is impractical to insert, these words ~~on~~ in all types of Confirmations.

Paragraph (c) contains wording which recognises that standard terminology may not be used in all types of Confirmations.

- (c) **Paragraph (3).** Paragraph (a) contains more of the wording which is in the opening part of the Confirmations recommended by ISDA (see Exhibit 1 to the 1993 ISDA Commodity Derivatives Definitions (p.29)).

Paragraph (b) defines a Commodity Transaction. It is important that Confirmations describe the type of commodity transaction. The second sentence of this paragraph enables the parties to agree on another type of Commodity Transaction being governed by the Addendum (although great care is needed if this is proposed, to ensure that correct terminology is used).

Paragraph (c) makes it expressly clear that references to “Transactions” in the ISDA Master Agreement include references to Commodity Transactions.

- (d) **Paragraph (4).** This paragraph sets out various definitions relating to electricity and REC hedge contracts.

Paragraph (b) sets out the language to enable participants to simply state “Spot Price” (and regional reference node) in a Confirmation, thereby making Confirmations for electricity transactions shorter. Paragraph (b) also sets out the language to enable participants to construct a Floating Price for REC transactions based on the rate of charge used to calculate the avoidable renewable energy shortfall charge under the REC Act from time to time.

- (e) **Paragraph (5).** This paragraph sets out an additional definition relating to swaptions.

The definition “Expiration Time” has been included because there is not such a definition in the 1993 ISDA Commodity Derivatives Definitions. (This issue is dealt with differently in the 1993 ISDA Commodity Derivatives Definitions - see the item Exercise Period in Exhibit II-B (p. 34). The approach in June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions is to nominate an Expiration Time. Also, if the Option is a European Option, the Expiration Time might be inadvertently left out because it is contained in the definition of Exercise Period.)

- (f) **Paragraphs (6) and (7).** These paragraphs set out various definitions and additional provisions for forward/spot commodity contracts and options for RECs, respectively.

- (g) **Paragraph (8).** This paragraph contains various additional provisions relevant for when a Commodity Transaction relating to RECs is to be physically settled. Paragraph (a) sets out the requirement for the status of RECs the subject of the

Commodity Transaction. Paragraph (e) contains a warranty as to the status of and title to the RECs.

Parties should satisfy themselves that the allocation of risk as between them in relation to the status and delivery of RECs is acceptable and, if not, incorporate provisions in the Schedule to your ISDA Master Agreement making appropriate amendments to paragraph (8).

- (h) **Paragraph (9).** This paragraph contains various additional provisions relevant for when multiple exercise (either of an option or of a forward commodity contract) applies to a Commodity Transaction relating to RECs.

GUIDE FOR COMPLETING CONFIRMATIONS FOR ELECTRICITY TRANSACTIONS

[20.21] The following sample Confirmations are contained in this part 20:

- (a) a sample Confirmation for a fixed forward electricity commodity contract for cash settlement is at [20.24];
- (b) a sample Confirmation for a price cap electricity commodity contract for cash settlement is at [20.25];
- (c) a sample Confirmation for a price floor electricity commodity contract for cash settlement is at [20.26];
- (d) a sample Confirmation for a price collar electricity commodity contract for cash settlement is at [20.27];
- (e) a sample Confirmation for an electricity commodity option contract for cash settlement is at [20.28];
- (f) a sample Confirmation for a contract settled or cash settled electricity commodity swaption contract where the underlying transaction is a fixed forward electricity commodity contract is at [20.29];
- (g) a sample Confirmation for an inter-regional electricity swap for cash settlement is at [20.30];
- (h) a sample Confirmation for an Asian electricity option contract for cash settlement is at [20.31];
- (i) a sample Confirmation for a fixed forward REC commodity contract for physical settlement or cash settlement on a single exercise basis is at [20.32];
- (j) a sample Confirmation for a fixed forward REC commodity contract for physical settlement or cash settlement on a multiple exercise basis is at [20.33];.

The assumptions on which each is based are set out in the footnotes to it.

Format

[20.22] The sample Confirmations are in the form of a letter. If participants want to send Confirmations by telex, then the heading and closing should be replaced with the heading and closing for telexes set out in Exhibit I to the 1993 ISDA Commodity Derivatives Definitions on pages 29 and 30. This part 20 applies to Confirmations sent by letter or telex.

[20.23] The Confirmations assume that the participants have already entered into an ISDA Master Agreement. Participants should verify that there is an agreement in existence between the entity specified as Party A and the entity specified as Party B. An agreement between different companies in the same group will not create legal obligations between Party A and Party B.

Although not recommended, it is recognised that Transactions might be entered into before the parties have signed an ISDA Master Agreement. If that is the case, we recommend that you include the following text in the Confirmation: (This wording is recommended by ISDA in footnote 2 to Exhibit 1 of the 2000 ISDA Definitions (page 35) except that ISDA's recommended wording has been amended to refer to the 2002 rather than the 1992 ISDA

Master Agreement, to New South Wales as the governing law and Australian dollars as the Termination Currency and to incorporate Addendum No. 13):

~~“You and we agree~~This Confirmation evidences a complete and binding agreement between you and us as to the terms of the Transaction to which this Confirmation relates. In addition, you and we agree to use all reasonable efforts promptly to negotiate and sign a 1992 multicurrency — cross border, execute and deliver an agreement in the form of the 2002 version of the ISDA Master Agreement (as published by International Swaps and Derivatives Association, Inc.). Once an agreement based on that document is signed, this Confirmation is to the “ISDA Form”), with such modifications as you and we will in good faith agree. Upon execution by you and us of such an agreement, this Confirmation will supplement, form a part of, and be subject to that agreement ~~as amended and supplemented from time to time~~. All provisions contained in or incorporated by reference in that agreement upon its execution will govern this Confirmation except as expressly modified below.

~~Until the we execute and deliver that agreement is signed,~~ this Confirmation supplements, forms part of, and is subject to the terms contained in that document as if you and, together with all other documents referring to the ISDA Form (each a **“Confirmation”**) confirming transactions (each a **“Transaction”**) entered into between us (notwithstanding anything to the contrary in a Confirmation), shall supplement, form a part of, and be subject to an agreement in the form of the ISDA Form as if we had signed that document executed an agreement in such form (but without amendment any Schedule except that for:

- (a) ~~the Termination Currency is to be Australian dollars; and (b) — the Governing Law is to be election of the laws of the State of [New South Wales/Victoria/South Australia/Queensland] as the governing law and [Australian dollars] as the Termination Currency); and~~
- (eb) ~~the incorporation of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions as published in AFMA Guide to OTC Documents is deemed to be incorporated in the document; and)~~
- (d) ~~if you and we have previously entered into a Confirmation for another Transaction which included a clause to the same effect as this clause, then this Confirmation is to be taken to supplement, form part of and be subject to the deemed agreement entered into under that other Confirmation. This means that you and we intend that only one ISDA Master Agreement is to be deemed to have been entered into between us before we sign an ISDA Master Agreement.”~~

on the Trade Date of the first such Transaction between us. In the event of any inconsistency between the provisions of that agreement and this Confirmation, this Confirmation will prevail for the purposes of this Swap Transaction.”

You must appreciate that this is not a complete substitute for signing an ISDA Master Agreement because there are numerous variables in the ISDA Master Agreement which will not operate until an election has been made. These are easily identified by looking through the Schedule to the ISDA Master Agreement. Also, you may not get the benefit of any of the important provisions referred to in [20.19] unless they are dealt with in the Confirmation. You should negotiate and sign an ISDA Master Agreement as soon as possible after adopting this approach.

Also we recommend that legal advice be obtained if you want to rely only on wording to this effect (and not on a signed ISDA Master Agreement) in order to constitute a close-out netting contract for the purposes of the Payment Systems and Netting Act 1998 (Cwlth).

[20.24] **Sample Confirmation for fixed forward commodity contracts for cash settlement.** (Paragraph (4) of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions contains some definitions relevant to this type of contract.)

[Date]

Reference Number []

[Name and address of counterparty]

Fixed forward commodity contract

The purpose of this letter is to confirm the terms and conditions of the fixed forward commodity contract for electricity entered into between us on the Trade Date specified below (“**Transaction**”).

1. For the purpose of the particular Transaction to which this Confirmation relates, the term “**Pricing Date**” for a Calculation Period means that Calculation Period.¹
2. The terms of the particular Transaction to which this Confirmation relates are as follows:
Notional Quantity per Calculation Period:² The quantity set out in the attachment for that Calculation Period.

Trade Date:³

Effective Date:⁴

¹You need not include this paragraph if you have agreed the meaning of Pricing Date in part 5 of the Schedule (see [20.19] footnote 2).

²The quantity of electricity in MWh should be specified in the attachment for each period the subject of the swap. The parties may specify a different Notional Quantity for each party (this may require separate attachments for each party).

To assist parties participating in the physical electricity market to calculate the correct quantity, an additional column has been incorporated in the attachment relating to the capacity for a one hour period that is the subject of the swap. The Notional Quantity will then be one half of that amount. For example, for a 660MW generating unit to be fully hedged, the Notional Quantity for a Calculation Period will generally be 330MWh.

You may provide for different Notional Quantities for different types of day (eg Mondays, weekdays (other than Mondays and public holidays), Saturdays, Sundays and public holidays) by incorporating different columns of Notional Quantities for each type of day. See [20.24] footnote 6.

³The date the parties enter into the contract.

⁴The first day of the Term of the Transaction. This is the day on which the first *trading interval* of 30 minutes occurs that is to comprise a Calculation Period. Whilst a *trading day* commences at 0400 EST, it is not necessary to specify that a swap commences at that time. For most swaps, the first *trading interval* covered by it is likely to commence at 0000 EST.

A Term can extend for more than one day.

Termination Date:⁵

Calculation Period(s):⁶

Each period of 30 minutes set out in the third column of the attachment.

[Settlement Date(s):]⁷

⁵The last day of the Term of the Transaction. For a one day swap commencing at midnight, this is the same date as the Effective Date. For a one day swap that corresponds to a *trading day* (ie it commences at 0400 EST and finishes at 0400 EST the next day), the Termination Date will be the day after the Effective Date.

⁶For each day of a swap there are 48 Calculation Periods. If less than 48 periods in a day are the subject of the swap, a quantity and price should be completed in the attachment only for the relevant periods, and the balance of them should be left blank **both** as to quantity and as to price. Alternatively, those periods could have “Nil” specified for them in each column. With appropriate treatment of the calculation of Floating Prices, Calculation Periods could be specified as being other than 30 minutes.

You may cover more than one day simply by extending the attachment. You may provide for different types of days (and different months) by incorporating different parts in the attachment for each such day and by substituting the following next to “Calculation Period(s):”

“Each period of 30 minutes set out in the third column of the attachment that occurs during a [month and a] type of day specified in the relevant part of the attachment.”

⁷Insert Settlement Date (ie the date when the net amount due must be actually paid). You need not include this item if you have agreed the meaning of Settlement Date in part 5 of the schedule (see [20.19] footnote 9).

Under Section 3.4 of the 1993 ISDA Commodity Derivatives Definitions, the Settlement Date is subject to adjustment in accordance with the Following Business Day Convention unless otherwise specified. You can specify a different Business Day Convention to apply by specifying it at this item of “Settlement Date” or in part 5 of the schedule to your ISDA Master Agreement. See [20.19] (footnote 2223) for wording relating to adjusting the Settlement Date in accordance with a Business Day Convention by including a clause in part 5 of the schedule.

A Settlement Date may be more than one day. For example, when the Transaction relates to more than one *trading day* the parties may want each Settlement Date a specified period after each *trading day*.

Another alternative is that you may agree (particularly if either party is a participant in the physical electricity market) that the Settlement Date should correspond to the dates for settlement under the National Code from time to time. To do this:

- in Part 5 of the Schedule to the ISDA Master Agreement add the following paragraph (this is the same clause that is recommended at [20.19] footnote 9):

“For each Calculation Period, the Settlement Date is the day upon which the party that is obliged to pay a Floating Amount or a Cash Settlement Amount calculated by reference to a Floating Price determined under the National Code (or, if there are two such parties, Party [A/B]), if it were a market participant (as defined in the National Code) under the National Code, would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed an amount in respect of electricity bought by it in that Calculation Period.”

or

- in the Confirmation insert the following next to “Settlement Date(s):”

“For each Calculation Period, the day upon which the party that is obliged to pay a Floating Amount calculated by reference to a Floating Price determined under the National Code, if it were a market participant (as defined in the National Code) under the National Code, would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed an amount in respect of electricity bought by it in that Calculation Period.”

[Business Days:]⁸

Fixed Amount Details:

Fixed Price Payer:⁹ Party []

Fixed Price:¹⁰ For each Calculation Period, the price set out in the attachment for that period.

Floating Amount Details:

Floating Price Payer:¹¹ Party []

[Commodity Reference Price:¹²

Commodity: Electricity

Unit: MWh

Price Source: NEMMCO]

⁸See section 1.3 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. Specify the places where commercial banks need to be settling payments ie “[name places eg Sydney, Melbourne]”.

You need not include this item if you have agreed the meaning of Business Days in part 5 of the schedule (see footnote 2728 in [20.19]).

⁹Insert correct party description.

¹⁰See Section 5.2 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. It is the price for each MWh agreed on the Trade Date.

You may cover different types of day (eg Mondays, weekdays (other than Mondays and public holidays), Saturdays, Sundays and public holidays) by incorporating different columns of Fixed Prices for each type of day, and by substituting the following next to “Fixed Price:”

“For each Calculation Period set out in the third column of the attachment that occurs during a type of day specified in a column of the attachment, the price specified in the column for that type of day for that Calculation Period.”

¹¹Insert correct party description.

¹²This is the machinery to calculate the price per unit of Commodity prevailing on the Pricing Date. It is often otherwise referred to in the financial markets as “reference price”.

As there are no Floating Prices for electricity expressly defined in Article 7 of the 1993 Commodity Derivatives Definitions, the Floating Price or Floating Amount can be determined in a number of other ways. Some examples are:

- you could create a Floating Price by specifying a Commodity, a Unit, a Price Source and a Specified Price;
- you could create a Floating Price by using the definition of Spot Price in paragraph (4)(b) of the June 1997 Australian Addendum No. 13 (as amended in ~~January~~ April 2002 and July 2003) - Electricity (Energy and REC) Transactions;
- one party may advise the other party of the price.

You need not include an item for Floating Price if you have pre-agreed it by setting it out in part 5 of the schedule (see footnote 11 of [20.19]).

Specified Price: The spot price as at the (#)¹³ regional reference node as determined under the National Code]¹⁴

[Commodity Reference Price:¹² Spot Price

Regional Reference Node:¹³]¹⁵

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¹⁷[Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation enclosed for that purpose and returning it to us.

Yours sincerely
[name of party preparing Confirmation]
By:
Name:
Title:

¹³ Insert location of regional reference node.

¹⁴Delete all the components of the Commodity Reference Price if you use the definition of Spot Price in paragraph (4)(b) of the June 1997 Australian Addendum No. 13 (as amended in ~~January~~ April 2002 and July 2003) - Electricity (Energy and REC) Transactions.

¹⁵Delete if you create a Floating Price by specifying a Commodity, a Unit, a Price Source and a Specified Price.

¹⁶**Care!** This Confirmation has been prepared on the following assumptions:

(a) **Market Disruption Events, Additional Market Disruption Events, Disruption Fallbacks.** All these issues have been pre-agreed and dealt with in part 5 of the schedule. See [20.19] (footnotes 3 to 8 ~~and 13 to 16~~). If this is not the case, you must cover these issues in your Confirmation. ***This is very important***

(b) **GST.** This issue, if a concern to the parties, has been pre-agreed and dealt with in part 5 of the schedule. See [20.19] (footnote 12). If this is not the case, the issue could be dealt with by including the paragraph in footnote 12 in the Confirmation.

(c) **Calculation Agent.** You may have specified in part 5 of the schedule which party is the Calculation Agent (see [20.19] footnote ~~28~~29). If not insert an item:

“Calculation Agent:”

(~~d~~) **Payments to Party A, Payments to ~~party~~ Party B.** You do not insert particulars of the account into which payments to Party A or Party B are to be made. If this approach is adopted you must ensure that these particulars are identified by some other means eg in standard settlement instructions or settlement instructions issued immediately before settlement. If you want to insert in the Confirmation particulars for payments to Party A or Party B, insert items:

“Account Details:”

“Payments to Party A:”

“Payments to Party B:”

(~~e~~) **Multibranch Parties.** Neither party is a Multibranch party. If a party intends to make and receive payments under different Transactions through different branch offices, it should be specified in the Schedule to the ISDA Master Agreement as a Multibranch party. If a party is a Multibranch party, an item relating to Offices should be included in the Confirmation in which the relevant branch is identified.

¹⁷We have included two forms of closing. The first is for when the counterparty will be asked to return the Confirmation with their agreement to the terms endorsed on it. The second is for when the counterparty will send their own Confirmation or a Confirmation note referring to the other party's Confirmation. It is optional which approach you adopt.

Confirmed as of the date first written:
[name of other party]

By:
Name:
Title:]

¹⁷[Please confirm that the foregoing correctly sets forth the terms of our agreement by sending us a Confirmation substantially the same as this Confirmation or by sending us a Confirmation in the following terms:

“We acknowledge receipt of your Confirmation dated [date] with respect to the transaction with reference no []. We confirm that the Confirmation correctly sets forth the terms of our agreement.

Yours sincerely
[name of party preparing reply]
By:
Name:
Title:”]

Attachment

Date	Calculation Period (Number)	Calculation Period (Eastern Standard Time)	Capacity (MW)	Notional Quantity (MWh)	Fixed Price (\$/MWh)
#	1	0000 - 0030			
	2	0030 - 0100			
	3	0100 - 0130			
	4	0130 - 0200			
	5	0200 - 0230			
	6	0230 - 0300			
	7	0300 - 0330			
	8	0330 - 0400			
	9	0400 - 0430			
	10	0430 - 0500			
	11	0500 - 0530			
	12	0530 - 0600			
	13	0600 - 0630			
	14	0630 - 0700			
	15	0700 - 0730			
	16	0730 - 0800			
	17	0800 - 0830			
	18	0830 - 0900			
	19	0900 - 0930			
	20	0930 - 1000			
	21	1000 - 1030			
	22	1030 - 1100			
	23	1100 - 1130			
	24	1130 - 1200			
	25	1200 - 1230			
	26	1230 - 1300			
	27	1300 - 1330			
	28	1330 - 1400			
	29	1400 - 1430			
	30	1430 - 1500			
	31	1500 - 1530			
	32	1530 - 1600			
	33	1600 - 1630			
	34	1630 - 1700			
	35	1700 - 1730			
	36	1730 - 1800			
	37	1800 - 1830			
	38	1830 - 1900			
	39	1900 - 1930			
	40	1930 - 2000			
	41	2000 - 2030			
	42	2030 - 2100			
	43	2100 - 2130			
	44	2130 - 2200			
	45	2200 - 2230			
	46	2230 - 2300			
	47	2300 - 2330			
	48	2330 - 2400			

[20.25] **Sample Confirmation for price cap electricity commodity contracts for cash settlement.** (Paragraph (4) of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions contains some definitions relevant to this type of contract.)

[Date]

Reference Number []

[Name and address of counterparty]

Commodity price cap contract - cash-settled

The purpose of this letter is to confirm the terms and conditions of the forward commodity contract for electricity entered into between us on the Trade Date specified below (“**Transaction**”).

1. For the purpose of the particular Transaction to which this Confirmation relates, the term “**Pricing Date**” for a Calculation Period means that Calculation Period.¹

2. The terms of the particular Transaction to which this Confirmation relates are as follows:

Notional Quantity per Calculation Period:² The quantity set out in the attachment for that Calculation Period.

Trade Date:³

Effective Date:⁴

¹You need not include this paragraph if you have agreed the meaning of Pricing Date in part 5 of the Schedule (see [20.19] footnote 2).

²The quantity of electricity in MWh should be specified in the attachment for each period the subject of the swap. The parties may specify a different Notional Quantity for each party (this may require separate attachments for each party).

To assist parties participating in the physical electricity market to calculate the correct quantity, an additional column has been incorporated in the attachment relating to the capacity for a one hour period that is the subject of the swap. The Notional Quantity will then be one half of that amount. For example, for a 660MW generating unit to be fully hedged, the Notional Quantity for a Calculation Period will generally be 330MWh.

You may provide for different Notional Quantities for different types of day (eg Mondays, weekdays (other than Mondays and public holidays), Saturdays, Sundays and public holidays) by incorporating different columns of Notional Quantities for each type of day. See [20.25] footnote 6.

³The date the parties enter into the contract.

⁴The first day of the Term of the Transaction. This is the day on which the first *trading interval* of 30 minutes occurs that is to comprise a Calculation Period. Whilst a *trading day* commences at 0400 EST, it is not necessary to specify that a swap commences at that time. For most swaps, the first *trading interval* covered by it is likely to commence at 0000 EST.

A Term can extend for more than one day.

Termination Date:⁵

Calculation Period(s):⁶

Each period of 30 minutes set out in the third column of the attachment.

[Settlement Date(s):]⁷

⁵The last day of the Term of the Transaction. For a one day swap commencing at midnight, this is the same date as the Effective Date. For a one day swap that corresponds to a *trading day* (ie it commences at 0400 EST and finishes at 0400 EST the next day), the Termination Date will be the day after the Effective Date.

⁶For each day of a swap there are 48 Calculation Periods. If less than 48 periods in a day are the subject of the swap, a quantity and price should be completed in the attachment only for the relevant periods, and the balance of them should be left blank **both** as to quantity and as to price. Alternatively, those periods could have “Nil” specified for them in each column. With appropriate treatment of the calculation of Floating Prices, Calculation Periods could be specified as being other than 30 minutes.

You may cover more than one day simply by extending the attachment. You may provide for different types of days (and different months) by incorporating different parts in the attachment for each such day and by substituting the following next to “Calculation Period(s):”

“Each period of 30 minutes set out in the third column of the attachment that occurs during a [month and a] type of day specified in the relevant part of the attachment.”

⁷Insert Settlement Date (ie the date when the net amount due must be actually paid). You need not include this item if you have agreed the meaning of Settlement Date in part 5 of the schedule (see [20.19] footnote 9).

Under Section 3.4 of the 1993 ISDA Commodity Derivatives Definitions, the Settlement Date is subject to adjustment in accordance with the Following Business Day Convention unless otherwise specified. You can specify a different Business Day Convention to apply by specifying it at this item of “Settlement Date” or in part 5 of the schedule to your ISDA Master Agreement. See [20.19] (footnote 2223) for wording relating to adjusting the Settlement Date in accordance with a Business Day Convention by including a clause in part 5 of the schedule.

A Settlement Date may be more than one day. For example, when the Transaction relates to more than one *trading day* the parties may want each Settlement Date a specified period after each *trading day*.

Another alternative is that you may agree (particularly if either party is a participant in the physical electricity market) that the Settlement Date should correspond to the dates for settlement under the National Code from time to time. To do this:

- in Part 5 of the Schedule to the ISDA Master Agreement add the following paragraph (this is the same clause that is recommended at [20.19] footnote 9):

“For each Calculation Period, the Settlement Date is the day upon which the party that is obliged to pay a Floating Amount or a Cash Settlement Amount calculated by reference to a Floating Price determined under the National Code (or, if there are two such parties, Party [A/B]), if it were a market participant (as defined in the National Code) under the National Code, would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed an amount in respect of electricity bought by it in that Calculation Period.”

or

- in the Confirmation insert the following next to “Settlement Date(s):”

“For each Calculation Period, the day upon which the party that is obliged to pay a Floating Amount calculated by reference to a Floating Price determined under the National Code, if it were a market participant (as defined in the National Code) under the National Code, would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed an amount in respect of electricity bought by it in that Calculation Period.”

[Business Days:]⁸

Fixed Amount Details:

Fixed Price Payer:⁹ Party []

[Fixed Price:]¹⁰ For each Calculation Period, the fixed price set out in the attachment for that period.]

[Fixed Price Payer Payment Date(s):]¹⁰ [subject to adjustment in accordance with the Following/ Modified Following/ Nearest/ Preceding] Business Day Convention]

[Fixed Amount:]¹⁰

Floating Amount Details:

Floating Price Payer:¹¹ Party []

Cap Price:¹² For each Calculation Period, the cap price set out in the attachment for that period.

⁸See section 1.3 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. Specify the places where commercial banks need to be settling payments ie “[name places eg Sydney, Melbourne]”.

You need not include this item if you have agreed the meaning of Business Days in part 5 of the schedule (see footnote 2728 in [20.19]).

⁹Insert correct party description.

¹⁰ See Section 5 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of these terms. This is part of the calculation of the fee or premium agreed to be paid by the purchaser for the price cap. That fee may be a lump sum or may be paid by instalments (such as for each Calculation Period).

If a lump sum is to be paid, you need include only the Fixed Amount and the Fixed Price Payer Payment Date(s). Under Section 3.4 of the 1993 ISDA Commodity Derivatives Definitions, the Fixed Price Payer Payment Date is subject to adjustment in accordance with the Following Business Day Convention unless otherwise specified. You can specify a different Business Day Convention to apply by including the appropriate bracketed language next to Fixed Price Payment Date(s). With a lump sum it will not be necessary to specify the Fixed Price, and the column for Fixed Price in the attachment should be deleted or left blank.

If the fee or premium is to be paid by instalments on each Settlement Date calculated by reference to each Calculation Period, the Fixed Price is the price for each MWh agreed on the Trade Date. It will not be necessary to specify a Fixed Price Payer Payment Date(s) or a Fixed Amount.

You may cover different types of day (eg Mondays, weekdays (other than Mondays and public holidays), Saturdays, Sundays and public holidays) by incorporating different columns of Fixed Prices for each type of day, and by substituting the following next to “Fixed Price:”

“For each Calculation Period set out in the third column of the attachment that occurs during a type of day specified in a column of the attachment, the fixed price specified in the column for that type of day for that Calculation Period.”

¹¹Insert correct party description.

¹²See Section 6.2 of the 1993 ISDA Commodity Derivatives Definitions. It is the cap on the Floating Price for each MWh agreed on the Trade Date.

You may provide different cap prices for different types of days (such as where you provide for different Fixed Prices for different types of days (and different months)) by incorporating different columns of cap prices in the attachment

[Commodity Reference Price:¹³

Commodity:	Electricity
Unit:	MWh
Price Source:	NEMMCO]
Specified Price:	The spot price as at the (#) ¹⁴ regional reference node as determined under the National Code] ¹⁵

[Commodity Reference Price:¹³

Spot Price

Regional Reference Node:¹⁴]¹⁶

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for each such day. Alternatively, you could specify the same figure as the cap price for all Calculation Periods and omit the relevant column from the attachment.

¹³This is the machinery to calculate the price per unit of Commodity prevailing on the Pricing Date. It is often otherwise referred to in the financial markets as “reference price”.

As there are no Floating Prices for electricity expressly defined in Article 7 of the 1993 Commodity Derivatives Definitions, the Floating Price or Floating Amount can be determined in a number of other ways. Some examples are:

- you could create a Floating Price by specifying a Commodity, a Unit, a Price Source and a Specified Price;
- you could create a Floating Price by using the definition of Spot Price in paragraph (4)(b) of the June 1997 Australian Addendum No. 13 (as amended in ~~January~~ April 2002 and July 2003) - Electricity (Energy and REC) Transactions;
- one party may advise the other party of the price.

You need not include an item for Floating Price if you have pre-agreed it by setting it out in part 5 of the schedule (see footnote 11 of [20.19]).

¹⁴ Insert location of regional reference node.

¹⁵Delete all the components of the Commodity Reference Price if you use the definition of Spot Price in paragraph 4(b) of the June 1997 Australian Addendum No. 13 (as amended in ~~January~~ April 2002 and July 2003) - Electricity (Energy and REC) Transactions.

¹⁶Delete if you create a Floating Price by specifying a Commodity, a Unit, a Price Source and a Specified Price.

¹⁷**Care!** This Confirmation has been prepared on the following assumptions:

- Market Disruption Events, Additional Market Disruption Events, Disruption Fallbacks.** All these issues have been pre-agreed and dealt with in part 5 of the schedule. See [20.19] (footnotes 3 to 8 ~~and 13 to 16~~). If this is not the case, you must cover these issues in your Confirmation. ***This is very important***
- GST.** This issue, if a concern to the parties, has been pre-agreed and dealt with in part 5 of the schedule. See [20.19] (footnote 12). If this is not the case, the issue could be dealt with by including the paragraph in footnote 12 in the Confirmation.
- Calculation Agent.** You may have specified in part 5 of the schedule which party is the Calculation Agent (see [20.19] footnote ~~28~~29). If not insert an item:

“Calculation Agent:”

¹⁸[Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation enclosed for that purpose and returning it to us.

Yours sincerely
[name of party preparing Confirmation]
By:
Name:
Title:

Confirmed as of the date first written:
[name of other party]

By:
Name:
Title:]

¹⁸[Please confirm that the foregoing correctly sets forth the terms of our agreement by sending us a Confirmation substantially the same as this Confirmation or by sending us a Confirmation in the following terms:

“We acknowledge receipt of your Confirmation dated [date] with respect to the transaction with reference no []. We confirm that the Confirmation correctly sets forth the terms of our agreement.

Yours sincerely
[name of party preparing reply]
By:
Name:
Title:”]

(e~~d~~) **Payments to Party A, Payments to partyParty B.** You do not insert particulars of the account into which payments to Party A or Party B are to be made. If this approach is adopted you must ensure that these particulars are identified by some other means eg in standard settlement instructions or settlement instructions issued immediately before settlement. If you want to insert in the Confirmation particulars for payments to Party A or Party B, insert items:

“Account Details:”
“Payments to Party A:”
“Payments to Party B:”

(e~~d~~) **Multibranch Parties.** Neither party is a Multibranch party. If a party intends to make and receive payments under different Transactions through different branch offices, it should be specified in the Schedule to the ISDA Master Agreement as a Multibranch party. If a party is a Multibranch party, an item relating to Offices should be included in the Confirmation in which the relevant branch is identified.

¹⁸We have included two forms of closing. The first is for when the counterparty will be asked to return the Confirmation with their agreement to the terms endorsed on it. The second is for when the counterparty will send their own Confirmation or a Confirmation note referring to the other party's Confirmation. It is optional which approach you adopt.

Attachment

Date	Calculation Period (Number)	Calculation Period (Eastern Standard Time)	Capacity (MW)	Notional Quantity (MWh)	Fixed Price¹⁰ (A\$/MWh)	Cap Price (A\$/MWh)
#	1	0000 - 0030				
	2	0030 - 0100				
	3	0100 - 0130				
	4	0130 - 0200				
	5	0200 - 0230				
	6	0230 - 0300				
	7	0300 - 0330				
	8	0330 - 0400				
	9	0400 - 0430				
	10	0430 - 0500				
	11	0500 - 0530				
	12	0530 - 0600				
	13	0600 - 0630				
	14	0630 - 0700				
	15	0700 - 0730				
	16	0730 - 0800				
	17	0800 - 0830				
	18	0830 - 0900				
	19	0900 - 0930				
	20	0930 - 1000				
	21	1000 - 1030				
	22	1030 - 1100				
	23	1100 - 1130				
	24	1130 - 1200				
	25	1200 - 1230				
	26	1230 - 1300				
	27	1300 - 1330				
	28	1330 - 1400				
	29	1400 - 1430				
	30	1430 - 1500				
	31	1500 - 1530				
	32	1530 - 1600				
	33	1600 - 1630				
	34	1630 - 1700				
	35	1700 - 1730				
	36	1730 - 1800				
	37	1800 - 1830				
	38	1830 - 1900				
	39	1900 - 1930				
	40	1930 - 2000				
	41	2000 - 2030				
	42	2030 - 2100				
	43	2100 - 2130				
	44	2130 - 2200				
	45	2200 - 2230				
	46	2230 - 2300				
	47	2300 - 2330				
	48	2330 - 2400				

[20.26] **Sample Confirmation for price floor electricity commodity contracts for cash settlement.** (Paragraph (4) of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions contains some definitions relevant to this type of contract.)

[Date]

Reference Number []

[Name and address of counterparty]

Commodity price floor contract - cash-settled

The purpose of this letter is to confirm the terms and conditions of the forward commodity contract for electricity entered into between us on the Trade Date specified below (“**Transaction**”).

1. For the purpose of the particular Transaction to which this Confirmation relates, the term “**Pricing Date**” for a Calculation Period means that Calculation Period.¹

2. The terms of the particular Transaction to which this Confirmation relates are as follows:

Notional Quantity per Calculation Period:² The quantity set out in the attachment for that Calculation Period.

Trade Date:³

Effective Date:⁴

¹You need not include this paragraph if you have agreed the meaning of Pricing Date in part 5 of the Schedule (see [20.19] footnote 2).

²The quantity of electricity in MWh should be specified in the attachment for each period the subject of the swap. The parties may specify a different Notional Quantity for each party (this may require separate attachments for each party).

To assist parties participating in the physical electricity market to calculate the correct quantity, an additional column has been incorporated in the attachment relating to the capacity for a one hour period that is the subject of the swap. The Notional Quantity will then be one half of that amount. For example, for a 660MW generating unit to be fully hedged, the Notional Quantity for a Calculation Period will generally be 330MWh.

You may provide for different Notional Quantities for different types of day (eg Mondays, weekdays (other than Mondays and public holidays), Saturdays, Sundays and public holidays) by incorporating different columns of Notional Quantities for each type of day. See [20.26] footnote 6.

³The date the parties enter into the contract.

⁴The first day of the Term of the Transaction. This is the day on which the first *trading interval* of 30 minutes occurs that is to comprise a Calculation Period. Whilst a *trading day* commences at 0400 EST, it is not necessary to specify that a swap commences at that time. For most swaps, the first *trading interval* covered by it is likely to commence at 0000 EST.

A Term can extend for more than one day.

Termination Date:⁵

Calculation Period(s):⁶

Each period of 30 minutes set out in the third column of the attachment.

[Settlement Date(s):]⁷

⁵The last day of the Term of the Transaction. For a one day swap commencing at midnight, this is the same date as the Effective Date. For a one day swap that corresponds to a *trading day* (ie it commences at 0400 EST and finishes at 0400 EST the next day), the Termination Date will be the day after the Effective Date.

⁶For each day of a swap there are 48 Calculation Periods. If less than 48 periods in a day are the subject of the swap, a quantity and price should be completed in the attachment only for the relevant periods, and the balance of them should be left blank **both** as to quantity and as to price. Alternatively, those periods could have “Nil” specified for them in each column. With appropriate treatment of the calculation of Floating Prices, Calculation Periods could be specified as being other than 30 minutes.

You may cover more than one day simply by extending the attachment. You may provide for different types of days (and different months) by incorporating different parts in the attachment for each such day and by substituting the following next to “Calculation Period(s):”

“Each period of 30 minutes set out in the third column of the attachment that occurs during a [month and a] type of day specified in the relevant part of the attachment.”

⁷Insert Settlement Date (ie the date when the net amount due must be actually paid). You need not include this item if you have agreed the meaning of Settlement Date in part 5 of the schedule (see [20.19] footnote 9).

Under Section 3.4 of the 1993 ISDA Commodity Derivatives Definitions, the Settlement Date is subject to adjustment in accordance with the Following Business Day Convention unless otherwise specified. You can specify a different Business Day Convention to apply by specifying it at this item of “Settlement Date” or in part 5 of the schedule to your ISDA Master Agreement. See [20.19] (footnote 2223) for wording relating to adjusting the Settlement Date in accordance with a Business Day Convention by including a clause in part 5 of the schedule.

A Settlement Date may be more than one day. For example, when the Transaction relates to more than one *trading day* the parties may want each Settlement Date a specified period after each *trading day*.

Another alternative is that you may agree (particularly if either party is a participant in the physical electricity market) that the Settlement Date should correspond to the dates for settlement under the National Code from time to time. To do this:

- in Part 5 of the Schedule to the ISDA Master Agreement add the following paragraph (this is the same clause that is recommended at [20.19] footnote 9):

“For each Calculation Period, the Settlement Date is the day upon which the party that is obliged to pay a Floating Amount or a Cash Settlement Amount calculated by reference to a Floating Price determined under the National Code (or, if there are two such parties, Party [A/B]), if it were a market participant (as defined in the National Code) under the National Code, would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed an amount in respect of electricity bought by it in that Calculation Period.”

or

- in the Confirmation insert the following next to “Settlement Date(s):”

“For each Calculation Period, the day upon which the party that is obliged to pay a Floating Amount calculated by reference to a Floating Price determined under the National Code, if it were a market participant (as defined in the National Code) under the National Code, would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed an amount in respect of electricity bought by it in that Calculation Period.”

[Business Days:]⁸

Fixed Amount Details:

Fixed Price Payer:⁹ Party []

[Fixed Price:]¹⁰ For each Calculation Period, the fixed price set out in the attachment for that period.]

[Fixed Price Payer Payment Date(s):]¹⁰ [subject to adjustment in accordance with the Following/ Modified Following/ Nearest/ Preceding] Business Day Convention]

[Fixed Amount:]¹⁰

Floating Amount Details:

Floating Price Payer:¹¹ Party []

Floor Price:¹² For each Calculation Period, the floor price set out in the attachment for that period.

⁸See section 1.3 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. Specify the places where commercial banks need to be settling payments ie “[name places eg Sydney, Melbourne]”.

You need not include this item if you have agreed the meaning of Business Days in part 5 of the schedule (see footnote 2728 in [20.19]).

⁹Insert correct party description.

¹⁰See Section 5 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of these terms. This is part of the calculation of the fee or premium agreed to be paid by the purchaser for the price floor. That fee may be a lump sum or may be paid by instalments (such as for each Calculation Period).

If a lump sum is to be paid, you need include only the Fixed Amount and the Fixed Price Payer Payment Date(s). Under Section 3.4 of the 1993 ISDA Commodity Derivatives Definitions, the Fixed Price Payer Payment Date is subject to adjustment in accordance with the Following Business Day Convention unless otherwise specified. You can specify a different Business Day Convention to apply by including the appropriate bracketed language next to Fixed Price Payer Payment Date(s). With a lump sum it will not be necessary to specify the Fixed Price, and the column for Fixed Price in the attachment should be deleted or left blank.

If the fee or premium is to be paid by instalments on each Settlement Date calculated by reference to each Calculation Period, the Fixed Price is the price for each MWh agreed on the Trade Date. It will not be necessary to specify a Fixed Price Payer Payment Date(s) or a Fixed Amount.

You may cover different types of day (eg Mondays, weekdays (other than Mondays and public holidays), Saturdays, Sundays and public holidays) by incorporating different columns of Fixed Prices for each type of day, and by substituting the following next to “Fixed Price:”

“For each Calculation Period set out in the third column of the attachment that occurs during a type of day specified in a column of the attachment, the fixed price specified in the column for that type of day for that Calculation Period.”

¹¹Insert correct party description.

¹²See Section 6.2 of the 1993 ISDA Commodity Derivatives Definitions. It is the floor price on the Floating Price for each MWh agreed on the Trade Date.

You may provide different floor prices for different types of days (such as where you provide for different Fixed Prices for different types of days (and different months)) by incorporating different columns of floor prices in the attachment

[Commodity Reference Price:¹³

Commodity: Electricity

Unit: MWh

Price Source: NEMMCO

Specified Price: The spot price as at the (#)¹⁴ regional reference node as determined under the National Code]¹⁵

[Commodity Reference Price:¹³

Spot Price

Regional Reference Node:¹⁴]¹⁶

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for each such day. Alternatively, you could specify the same figure as the floor price for all Calculation Periods and omit the relevant column from the attachment.

¹³This is the machinery to calculate the price per unit of Commodity prevailing on the Pricing Date. It is often otherwise referred to in the financial markets as “reference price”.

As there are no Floating Prices for electricity expressly defined in Article 7 of the 1993 Commodity Derivatives Definitions, the Floating Price or Floating Amount can be determined in a number of other ways. Some examples are:

- you could create a Floating Price by specifying a Commodity, a Unit, a Price Source and a Specified Price;
- you could create a Floating Price by using the definition of Spot Price in paragraph (4)(b) of the June 1997 Australian Addendum No. 13 (as amended in ~~January~~ April 2002 and July 2003) - Electricity (Energy and REC) Transactions;
- one party may advise the other party of the price.

You need not include an item for Floating Price if you have pre-agreed it by setting it out in part 5 of the schedule (see footnote 11 of [20.19]).

¹⁴ Insert location of regional reference node.

¹⁵Delete all the components of the Commodity Reference Price if you use the definition of Spot Price in paragraph (4)(b) of the June 1997 Australian Addendum No. 13 (as amended in ~~January~~ April 2002 and July 2003) - Electricity (Energy and REC) Transactions.

¹⁶Delete if you create a Floating Price by specifying a Commodity, a Unit, a Price Source and a Specified Price.

¹⁷**Care!** This Confirmation has been prepared on the following assumptions:

- (a) **Market Disruption Events, Additional Market Disruption Events, Disruption Fallbacks.** All these issues have been pre-agreed and dealt with in part 5 of the schedule. See [20.19] (footnotes 3 to 8 ~~and 13 to 16~~). If this is not the case, you must cover these issues in your Confirmation. ***This is very important***
- (b) GST. This issue, if a concern to the parties, has been pre-agreed and dealt with in part 5 of the schedule. See [20.19] (footnote 12). If this is not the case, the issue could be dealt with by including the paragraph in footnote 12 in the Confirmation.
- (c) Calculation Agent. You may have specified in part 5 of the schedule which party is the Calculation Agent (see [20.19] footnote ~~28~~29). If not insert an item:

“Calculation Agent:”

¹⁸[Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation enclosed for that purpose and returning it to us.

Yours sincerely
[name of party preparing Confirmation]
By:
Name:
Title:

Confirmed as of the date first written:
[name of other party]

By:
Name:
Title:]

¹⁸[Please confirm that the foregoing correctly sets forth the terms of our agreement by sending us a Confirmation substantially the same as this Confirmation or by sending us a Confirmation in the following terms:

“We acknowledge receipt of your Confirmation dated [date] with respect to the transaction with reference no []. We confirm that the Confirmation correctly sets forth the terms of our agreement.

Yours sincerely
[name of party preparing reply]
By:
Name:
Title:”]

(e~~d~~) **Payments to Party A, Payments to partyParty B.** You do not insert particulars of the account into which payments to Party A or Party B are to be made. If this approach is adopted you must ensure that these particulars are identified by some other means eg in standard settlement instructions or settlement instructions issued immediately before settlement. If you want to insert in the Confirmation particulars for payments to Party A or Party B, insert items:

“Account Details:”
“Payments to Party A:”
“Payments to Party B:”

(e~~e~~) **Multibranch Parties.** Neither party is a Multibranch party. If a party intends to make and receive payments under different Transactions through different branch offices, it should be specified in the Schedule to the ISDA Master Agreement as a Multibranch party. If a party is a Multibranch party, an item relating to Offices should be included in the Confirmation in which the relevant branch is identified.

¹⁸We have included two forms of closing. The first is for when the counterparty will be asked to return the Confirmation with their agreement to the terms endorsed on it. The second is for when the counterparty will send their own Confirmation or a Confirmation note referring to the other party's Confirmation. It is optional which approach you adopt.

Attachment

Date	Calculation Period (Number)	Calculation Period (Eastern Standard Time)	Capacity (MW)	Notional Quantity (MWh)	Fixed Price¹⁰ (A\$/MWh)	Floor Price (A\$/MWh)
#	1	0000 - 0030				
	2	0030 - 0100				
	3	0100 - 0130				
	4	0130 - 0200				
	5	0200 - 0230				
	6	0230 - 0300				
	7	0300 - 0330				
	8	0330 - 0400				
	9	0400 - 0430				
	10	0430 - 0500				
	11	0500 - 0530				
	12	0530 - 0600				
	13	0600 - 0630				
	14	0630 - 0700				
	15	0700 - 0730				
	16	0730 - 0800				
	17	0800 - 0830				
	18	0830 - 0900				
	19	0900 - 0930				
	20	0930 - 1000				
	21	1000 - 1030				
	22	1030 - 1100				
	23	1100 - 1130				
	24	1130 - 1200				
	25	1200 - 1230				
	26	1230 - 1300				
	27	1300 - 1330				
	28	1330 - 1400				
	29	1400 - 1430				
	30	1430 - 1500				
	31	1500 - 1530				
	32	1530 - 1600				
	33	1600 - 1630				
	34	1630 - 1700				
	35	1700 - 1730				
	36	1730 - 1800				
	37	1800 - 1830				
	38	1830 - 1900				
	39	1900 - 1930				
	40	1930 - 2000				
	41	2000 - 2030				
	42	2030 - 2100				
	43	2100 - 2130				
	44	2130 - 2200				
	45	2200 - 2230				
	46	2230 - 2300				
	47	2300 - 2330				
	48	2330 - 2400				

[20.27] **Sample Confirmation for price collar electricity commodity contracts for cash settlement.** (Paragraph (4) of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions contains some definitions relevant to this type of contract.)

[Date]

Reference Number []

[Name and address of counterparty]

Commodity price collar contract - cash-settled

The purpose of this letter is to confirm the terms and conditions of the forward commodity contract for electricity entered into between us on the Trade Date specified below (“**Transaction**”).

1. For the purpose of the particular Transaction to which this Confirmation relates, the term “**Pricing Date**” for a Calculation Period means that Calculation Period.¹
2. The terms of the particular Transaction to which this Confirmation relates are as follows:

Notional Quantity per Calculation Period: ²	The quantity set out in the attachment for that Calculation Period.
Trade Date: ³	
Effective Date: ⁴	

¹You need not include this paragraph if you have agreed the meaning of Pricing Date in part 5 of the Schedule (see [20.19] footnote 2).

²The quantity of electricity in MWh should be specified in the attachment for each period the subject of the swap. The parties may specify a different Notional Quantity for each party (this may require separate attachments for each party).

To assist parties participating in the physical electricity market to calculate the correct quantity, an additional column has been incorporated in the attachment relating to the capacity for a one hour period that is the subject of the swap. The Notional Quantity will then be one half of that amount. For example, for a 660MW generating unit to be fully hedged, the Notional Quantity for a Calculation Period will generally be 330MWh.

You may provide for different Notional Quantities for different types of day (eg Mondays, weekdays (other than Mondays and public holidays), Saturdays, Sundays and public holidays) by incorporating different columns of Notional Quantities for each type of day. See [20.27] footnote 6.

³The date the parties enter into the contract.

⁴The first day of the Term of the Transaction. This is the day on which the first *trading interval* of 30 minutes occurs that is to comprise a Calculation Period. Whilst a *trading day* commences at 0400 EST, it is not necessary to specify that a swap commences at that time. For most swaps, the first *trading interval* covered by it is likely to commence at 0000 EST.

A Term can extend for more than one day.

Termination Date:⁵

Calculation Period(s):⁶

Each period of 30 minutes set out in the third column of the attachment.

[Settlement Date(s):]⁷

⁵The last day of the Term of the Transaction. For a one day swap commencing at midnight, this is the same date as the Effective Date. For a one day swap that corresponds to a *trading day* (ie it commences at 0400 EST and finishes at 0400 EST the next day), the Termination Date will be the day after the Effective Date.

⁶For each day of a swap there are 48 Calculation Periods. If less than 48 periods in a day are the subject of the swap, a quantity and price should be completed in the attachment only for the relevant periods, and the balance of them should be left blank **both** as to quantity and as to price. Alternatively, those periods could have “Nil” specified for them in each column. With appropriate treatment of the calculation of Floating Prices, Calculation Periods could be specified as being other than 30 minutes.

You may cover more than one day simply by extending the attachment. You may provide for different types of days (and different months) by incorporating different parts in the attachment for each such day and by substituting the following next to “Calculation Period(s):”

“Each period of 30 minutes set out in the third column of the attachment that occurs during a [month and a] type of day specified in the relevant part of the attachment.”

⁷Insert Settlement Date (ie the date when the net amount due must be actually paid). You need not include this item if you have agreed the meaning of Settlement Date in part 5 of the schedule (see [20.19] footnote 9).

Under Section 3.4 of the 1993 ISDA Commodity Derivatives Definitions, the Settlement Date is subject to adjustment in accordance with the Following Business Day Convention unless otherwise specified. You can specify a different Business Day Convention to apply by specifying it at this item of “Settlement Date” or in part 5 of the schedule to your ISDA Master Agreement. See [20.19] (footnote 2223) for wording relating to adjusting the Settlement Date in accordance with a Business Day Convention by including a clause in part 5 of the schedule.

A Settlement Date may be more than one day. For example, when the Transaction relates to more than one *trading day* the parties may want each Settlement Date a specified period after each *trading day*.

Another alternative is that you may agree (particularly if either party is a participant in the physical electricity market) that the Settlement Date should correspond to the dates for settlement under the National Code from time to time. To do this:

- in Part 5 of the Schedule to the ISDA Master Agreement add the following paragraph (this is the same clause that is recommended at [20.19] footnote 9):

“For each Calculation Period, the Settlement Date is the day upon which the party that is obliged to pay a Floating Amount or a Cash Settlement Amount calculated by reference to a Floating Price determined under the National Code (or, if there are two such parties, Party [A/B]), if it were a market participant (as defined in the National Code) under the National Code, would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed an amount in respect of electricity bought by it in that Calculation Period.”

or

- in the Confirmation insert the following next to “Settlement Date(s):”

“For each Calculation Period, the day upon which the party that is obliged to pay a Floating Amount calculated by reference to a Floating Price determined under the National Code (or, if there are two such parties, Party [A/B]), if it were a market participant (as defined in the National Code) under the National Code, would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed an amount in respect of electricity bought by it in that Calculation Period.”

[Business Days:]⁸

Floating Amount Details for Floor Price:

Floating Price Payer:⁹

Party []

Floor Price:¹⁰

For each Calculation Period, the floor price set out in the attachment for that period.

[Commodity Reference Price:¹¹

Commodity:

Electricity

Unit:

MWh

Price Source:

NEMMCO

Specified Price:

The spot price as at the (#)¹² regional reference node as determined under the National Code]¹³

[Commodity Reference Price:¹¹

Spot Price

⁸See section 1.3 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. Specify the places where commercial banks need to be settling payments ie “[name places eg Sydney, Melbourne]”.

You need not include this item if you have agreed the meaning of Business Days in part 5 of the schedule (see footnote ~~2728~~ in [20.19]).

⁹Insert correct party description.

¹⁰See Section 6.2 of the 1993 ISDA Commodity Derivatives Definitions. It is the floor price on the Floating Price for each MWh agreed on the Trade Date.

You may provide different floor prices for different types of days by incorporating different columns of floor prices in the attachment for each such day. Alternatively, you could specify the same figure as the floor price for all Calculation Periods and omit the relevant column from the attachment.

¹¹This is the machinery to calculate the price per unit of Commodity prevailing on the Pricing Date. It is often otherwise referred to in the financial markets as “reference price”.

As there are no Floating Prices for electricity expressly defined in Article 7 of the 1993 Commodity Derivatives Definitions, the Floating Price or Floating Amount can be determined in a number of other ways. Some examples are:

- you could create a Floating Price by specifying a Commodity, a Unit, a Price Source and a Specified Price;
- you could create a Floating Price by using the definition of Spot Price in paragraph (4)(b) of the June 1997 Australian Addendum No. 13 (as amended in ~~January~~ April 2002 and July 2003) - Electricity (Energy and REC) Transactions;
- one party may advise the other party of the price.

You need not include an item for Floating Price if you have pre-agreed it by setting it out in part 5 of the schedule (see footnote 11 of [20.19]).

¹² Insert location of regional reference node.

¹³Delete all the components of the Commodity Reference Price if you use the definition of Spot Price in paragraph (4)(b) of the June 1997 Australian Addendum No. 13 (as amended in ~~January~~ April 2002 and July 2003) - Electricity (Energy and REC) Transactions.

Regional Reference Node:^{12]}¹⁴

Floating Amount Details for Cap Price:

Floating Price Payer:¹⁵

Party []

Cap Price:¹⁶

For each Calculation Period, the cap price set out in the attachment for that period.

[Commodity Reference Price: ¹¹

Commodity:

Electricity

Unit:

MWh

Price Source:

NEMMCO

Specified Price:

The spot price as at the (#)¹² regional reference node as determined under the National Code]¹³

[Commodity Reference Price:¹¹

Spot Price

Regional Reference Node: ^{12]}¹⁴

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¹⁴Delete if you create a Floating Price by specifying a Commodity, a Unit, a Price Source and a Specified Price.

¹⁵Insert correct party description.

¹⁶See Section 6.2 of the 1993 ISDA Commodity Derivatives Definitions. It is the cap on the Floating Price for each MWh agreed on the Trade Date.

You may provide different cap prices for different types of days by incorporating different columns of cap prices in the attachment for each such day. Alternatively, you could specify the same figure as the cap price for all Calculation Periods and omit the relevant column from the attachment.

¹⁷**Care!** This Confirmation has been prepared on the following assumptions:

(a) **Market Disruption Events, Additional Market Disruption Events, Disruption Fallbacks.** All these issues have been pre-agreed and dealt with in part 5 of the schedule. See [20.19] (footnotes 3 to 8 ~~and 13 to 16~~). If this is not the case, you must cover these issues in your Confirmation. ***This is very important***

(b) **GST.** This issue, if a concern to the parties, has been pre-agreed and dealt with in part 5 of the schedule. See [20.19] (footnote 12). If this is not the case, the issue could be dealt with by including the paragraph in footnote 12 in the Confirmation.

(c) **Calculation Agent.** You may have specified in part 5 of the schedule which party is the Calculation Agent (see [20.19] footnote ~~28~~29). If not insert an item:

“Calculation Agent:”

(ed) **Payments to Party A, Payments to party Party B.** You do not insert particulars of the account into which payments to Party A or Party B are to be made. If this approach is adopted you must ensure that these particulars are identified by some other means eg in standard settlement instructions or settlement instructions issued immediately before settlement. If you want to insert in the Confirmation particulars for payments to Party A or Party B, insert items:

“Account Details:”

¹⁸[Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation enclosed for that purpose and returning it to us.

Yours sincerely
[name of party preparing Confirmation]
By:
Name:
Title:

Confirmed as of the date first written:
[name of other party]

By:
Name:
Title:]

¹⁸[Please confirm that the foregoing correctly sets forth the terms of our agreement by sending us a Confirmation substantially the same as this Confirmation or by sending us a Confirmation in the following terms:

“We acknowledge receipt of your Confirmation dated [date] with respect to the transaction with reference no []. We confirm that the Confirmation correctly sets forth the terms of our agreement.

Yours sincerely
[name of party preparing reply]
By:
Name:
Title:”]

“Payments to Party A.”
“Payments to Party B.”

(~~d~~e) **Multibranch Parties.** Neither party is a Multibranch party. If a party intends to make and receive payments under different Transactions through different branch offices, it should be specified in the Schedule to the ISDA Master Agreement as a Multibranch party. If a party is a Multibranch party, an item relating to Offices should be included in the Confirmation in which the relevant branch is identified.

¹⁸We have included two forms of closing. The first is for when the counterparty will be asked to return the Confirmation with their agreement to the terms endorsed on it. The second is for when the counterparty will send their own Confirmation or a Confirmation note referring to the other party's Confirmation. It is optional which approach you adopt.

Attachment

Date	Calculation Period (Number)	Calculation Period (Eastern Standard Time)	Capacity (MW)	Notional Quantity (MWh)	Floor Price (A\$/MWh)	Cap Price (A\$/MWh)
#	1	0000 - 0030				
	2	0030 - 0100				
	3	0100 - 0130				
	4	0130 - 0200				
	5	0200 - 0230				
	6	0230 - 0300				
	7	0300 - 0330				
	8	0330 - 0400				
	9	0400 - 0430				
	10	0430 - 0500				
	11	0500 - 0530				
	12	0530 - 0600				
	13	0600 - 0630				
	14	0630 - 0700				
	15	0700 - 0730				
	16	0730 - 0800				
	17	0800 - 0830				
	18	0830 - 0900				
	19	0900 - 0930				
	20	0930 - 1000				
	21	1000 - 1030				
	22	1030 - 1100				
	23	1100 - 1130				
	24	1130 - 1200				
	25	1200 - 1230				
	26	1230 - 1300				
	27	1300 - 1330				
	28	1330 - 1400				
	29	1400 - 1430				
	30	1430 - 1500				
	31	1500 - 1530				
	32	1530 - 1600				
	33	1600 - 1630				
	34	1630 - 1700				
	35	1700 - 1730				
	36	1730 - 1800				
	37	1800 - 1830				
	38	1830 - 1900				
	39	1900 - 1930				
	40	1930 - 2000				
	41	2000 - 2030				
	42	2030 - 2100				
	43	2100 - 2130				
	44	2130 - 2200				
	45	2200 - 2230				
	46	2230 - 2300				
	47	2300 - 2330				
	48	2330 - 2400				

[20.28] **Sample Confirmation for electricity commodity option contract for cash settlement.** (Paragraphs (4) and (5) of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions contains some definitions relevant to this type of contract.)

[Date]

Reference Number []

[Name and address of counterparty]

Commodity option - cash settled

The purpose of this letter is to confirm the terms and conditions of the cash settled commodity option for electricity entered into between us on the Trade Date specified below (“**Transaction**”).

1. For the purpose of the particular Transaction to which this Confirmation relates, the term “**Pricing Date**” for a Calculation Period means that Calculation Period.¹
2. The terms of the particular Transaction to which this Confirmation relates are as follows:

General terms:

Notional Quantity per Calculation Period: ²	The quantity set out in the attachment for that Calculation Period.
--	---

Trade Date:³

Option Style: ⁴	[European/American]
----------------------------	---------------------

¹You need not include this paragraph if you have agreed the meaning of Pricing Date in part 5 of the Schedule (see [20.19] footnote 2).

²The quantity of electricity in MWh should be specified in the attachment for each period the subject of the underlying swap. The parties may specify a different Notional Quantity for each party (this may require separate attachments for each party).

To assist parties participating in the physical electricity market to calculate the correct quantity, an additional column has been incorporated in the attachment relating to the capacity for a one hour period that is the subject of the swap. The Notional Quantity will then be one half of that amount. For example, for a 660MW generating unit to be fully hedged, the Notional Quantity for a Calculation Period will generally be 330MWh.

You may provide for different Notional Quantities for different types of day (eg Mondays, weekdays (other than Mondays and public holidays), Saturdays, Sundays and public holidays) by incorporating different columns of Notional Quantities for each type of day. See [20.28] footnote 11.

³The date the parties enter into the contract.

⁴Insert either “American” or “European”. See Section 8.3 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of these terms.

Option Type: ⁵	[Put/Call]
Seller: ⁶	[Party A/B]
Buyer: ⁷	[Party A/B]
Total Premium: ⁸	
Premium Payment Date: ⁹	
Cash Settlement:	Applicable
[Cash Settlement Amount:] ¹⁰	
Calculation Period(s): ¹¹	Each period of 30 minutes set out in the third column of the attachment.

⁵See Section 8.3 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of these terms.

⁶Insert correct party description.

⁷Insert correct party description.

⁸See Section 8.6(a) of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term.

An alternative to specifying the Total Premium is to specify a “Premium per Unit” - see Section 8.6(b) of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. For Options it is unlikely that this alternative will be adopted unless all Calculation Periods have the same Notional Quantity.

⁹See Section 8.6(c) of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. Insert the date for payment of the premium.

The Australian convention in other commodity markets is for the premium to be payable within 2 Business Days after the Trade Date unless otherwise agrees at the time the Commodity Swaption is dealt.

Under Section 8.6(c) of the 1993 ISDA Commodity Derivatives Definitions, the Premium Payment Date is subject to adjustment in accordance with the Following Business Day Convention unless otherwise specified. You can specify a different Business Day Convention to apply by specifying it at this item of “Premium Payment Date” or in part 5 of the schedule to your ISDA Master Agreement. See [20.19] (footnote ~~23~~24) for wording relating to adjusting the Premium Payment Date in accordance with a Business Day Convention by including a clause in part 5 of the schedule.

¹⁰See Sections 8.7 and 8.8 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. If this definition is acceptable, you need not insert an item “Cash Settlement Amount” in the Confirmation. If it is not, the method of calculation should be inserted in the Confirmation.

¹¹For each day of a swap there are 48 Calculation Periods. If less than 48 periods in a day are the subject of the swap, a quantity and price should be completed in the attachment only for the relevant periods, and the balance of them should be left blank **both** as to quantity and as to price. Alternatively, those periods could have “Nil” specified for them in each column. With appropriate treatment of the calculation of Floating Prices, Calculation Periods could be specified as being other than 30 minutes.

You may cover more than one day simply by extending the attachment. You may provide for different types of days (and different months) by incorporating different parts in the attachment for each such day and by substituting the following next to “Calculation Period(s):”

“Each period of 30 minutes set out in the third column of the attachment that occurs during a [month and a] type of day specified in the relevant part of the attachment.”

[Settlement Date(s):]¹²

Strike Price per Unit:¹³

For each Calculation Period, the strike price set out in the attachment for that period.

¹²Insert Settlement Date (ie the date when the net amount due must be actually paid). You need not include this item if you have agreed the meaning of Settlement Date in part 5 of the schedule (see [20.19] footnote 9).

Under Section 3.4 of the 1993 ISDA Commodity Derivatives Definitions, the Settlement Date is subject to adjustment in accordance with the Following Business Day Convention unless otherwise specified. You can specify a different Business Day Convention to apply by specifying it at this item of “Settlement Date” or in part 5 of the schedule to your ISDA Master Agreement. See [20.19] (footnote ~~2223~~) for wording relating to adjusting the Settlement Date in accordance with a Business Day Convention by including a clause in part 5 of the schedule.

A Settlement Date may be more than one day. For example, when the Transaction relates to more than one *trading day* the parties may want each Settlement Date a specified period after each *trading day*.

Another alternative is that you may agree (particularly if either party is a participant in the physical electricity market) that the Settlement Date should correspond to the dates for settlement under the National Code from time to time. To do this:

- in Part 5 of the Schedule to the ISDA Master Agreement add the following paragraph (this is the same clause that is recommended at [20.19] footnote 9):

“For each Calculation Period, the Settlement Date is the day upon which the party that is obliged to pay a Floating Amount or a Cash Settlement Amount calculated by reference to a Floating Price determined under the National Code (or, if there are two such parties, Party [A/B]), if it were a market participant (as defined in the National Code) under the National Code, would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed an amount in respect of electricity bought by it in that Calculation Period.”

or

- in the Confirmation insert the following next to “Settlement Date(s):”

“For each Calculation Period, the day upon which the party that is obliged to pay a Floating Amount or a Cash Settlement Amount calculated by reference to a Floating Price determined under the National Code (or, if there are two such parties, Party [A/B]), if it were a market participant (as defined in the National Code) under the National Code, would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed an amount in respect of electricity bought by it in that Calculation Period.”

¹³See Section 5.2 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. It is the strike price for each MWh agreed on the Trade Date.

You may cover different types of day (eg Mondays, weekdays (other than Mondays and public holidays), Saturdays, Sundays and public holidays) by incorporating different columns of Strike Prices for each type of day.

[Commodity Reference Price:¹⁴

Commodity: Electricity
Unit: MWh
Price Source: NEMMCO
Specified Price: The spot price as at the (#)¹⁵ regional reference node as determined under the National Code]¹⁶

[Commodity Reference Price:¹⁴ Spot Price

Regional Reference Node:¹⁵]¹⁷

Procedure for Exercise:

[Exercise Period:] [From and including to and including]¹⁸

Expiration Time:¹⁹

Expiration Date:²⁰

¹⁴This is the machinery to calculate the price per unit of Commodity prevailing on the Pricing Date. It is often otherwise referred to in the financial markets as “reference price”.

As there are no Floating Prices for electricity expressly defined in Article 7 of the 1993 Commodity Derivatives Definitions, the Floating Price or Floating Amount can be determined in a number of other ways. Some examples are:

- you could create a Floating Price by specifying a Commodity, a Unit, a Price Source and a Specified Price;
- you could create a Floating Price by using the definition of Spot Price in paragraph (4)(b) of the June 1997 Australian Addendum No. 13 (as amended in ~~January~~ April 2002 and July 2003) - Electricity (Energy and REC) Transactions;
- one party may advise the other party of the price.

You need not include an item for Floating Price if you have pre-agreed it by setting it out in part 5 of the schedule (see footnote 11 of [20.19]).

¹⁵ Insert location of regional reference node.

¹⁶ Delete all the components of the Commodity Reference Price if you use the definition of Spot Price in paragraph 4(b) of the June 1997 Australian Addendum No. 13 (as amended in ~~January~~ April 2002 and July 2003) - Electricity (Energy and REC) Transactions.

¹⁷ Delete if you create a Floating Price by Specifying a Commodity, a Unit, a Price Source and a Specified Price.

¹⁸ Include this if it is an American style option. It need not be included in the case of a European style option.

¹⁹ This term has not been defined in the 1993 ISDA Commodity Derivatives Definitions. A definition has been inserted in paragraph (5) of June 1997 Australian Addendum No 13 (as amended in ~~January~~ April 2002 and July 2003) - Electricity (energy and REC) Transactions. See commentary at [20.20(e)].

Insert the latest time on the Expiration Date at which the Seller will accept a Notice of Exercise.

Automatic Exercise:²¹

[Applicable/Inapplicable]

Written Confirmation:²²

[Applicable/Inapplicable]

Seller's telephone, telex or
facsimile number for purpose
of giving notice of exercise:²³

[Business Days:]²⁴

25

²⁰See Section 8.5(g) of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. Note how this date can be adjusted if the date specified is not a Commodity Business Day.

Specify the option exercise date or the last day of the option exercise period.

²¹See Section 8.5(e) of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term.

You need not include an item for Automatic Exercise if you have pre-agreed it by a clause in part 5 of the schedule (see footnote ~~26~~27 of [20.19]).

²²See Section 8.5(d) of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term.

If "Written Confirmation" is applicable, then the Buyer must confirm a Notice of Exercise in writing.

Australian market practice in the commodity markets is not to require written confirmation of the exercise of an option. However, it is market practice to confirm in writing the amount of a Cash Settlement Amount.

²³Specify the Seller's telephone, telex or facsimile number for the purpose of giving Notice of Exercise. See Section 8.5 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of Notice of Exercise. These details could be omitted if they are included in standard settlement instructions.

²⁴See section 1.3 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. Specify the places where commercial banks need to be settling payments ie "[name places eg Sydney, Melbourne]".

You need not include this item if you have agreed the meaning of Business Days in part 5 of the schedule (see footnote ~~27~~28 in [20.19]).

²⁵**Care!** This Confirmation has been prepared on the following assumptions:

(a) **Market Disruption Events, Additional Market Disruption Events, Disruption Fallbacks.** All these issues have been pre-agreed and dealt with in part 5 of the schedule. See [20.19] (footnotes 3 to 8 ~~and 13 to 16~~). If this is not the case, you must cover these issues in your Confirmation. ***This is very important***

(b) **GST.** This issue, if a concern to the parties, has been pre-agreed and dealt with in part 5 of the schedule. See [20.19] (footnote 12). If this is not the case, the issue could be dealt with by including the paragraph in footnote 12 in the Confirmation.

(c) **Calculation Agent.** You may have specified in part 5 of the schedule which party is the Calculation Agent (see [20.19] footnote ~~28~~29). If not insert an item:

"Calculation Agent:"

(ed) **Payments to Seller, Payments to Buyer.** You do not insert particulars of the account into which payments to the Seller or the Buyer are to be made. If this approach is adopted you must ensure that these particulars are identified by some other means eg in standard settlement instructions or settlement instructions issued immediately before settlement. If you want to insert in the Confirmation particulars for payments to the Seller or Buyer, insert items:

"Account Details:"

²⁶[Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation enclosed for that purpose and returning it to us.

Yours sincerely
[name of party preparing Confirmation]
By:
Name:
Title:

Confirmed as of the date first written:
[name of other party]

By:
Name:
Title:]

²⁶[Please confirm that the foregoing correctly sets forth the terms of our agreement by sending us a Confirmation substantially the same as this Confirmation or by sending us a Confirmation in the following terms:

“We acknowledge receipt of your Confirmation dated [date] with respect to the transaction with reference no []. We confirm that the Confirmation correctly sets forth the terms of our agreement.

Yours sincerely
[name of party preparing reply]
By:
Name:
Title:”]

“Payments to Party A.”
“Payments to Party B.”

(~~d~~) **Multibranch Parties.** Neither party is a Multibranch party. If a party intends to make and receive payments under different Transactions through different branch offices, it should be specified in the Schedule to the ISDA Master Agreement as a Multibranch party. If a party is a Multibranch party, an item relating to Offices should be included in the Confirmation in which the relevant branch is identified.

²⁶We have included two forms of closing. The first is for when the counterparty will be asked to return the Confirmation with their agreement to the terms endorsed on it. The second is for when the counterparty will send their own Confirmation or a Confirmation note referring to the other party's Confirmation. It is optional which approach you adopt.

Attachment

Date	Calculation Period (Number)	Calculation Period (Eastern Standard Time)	Capacity (MW)	Notional Quantity (MWh)	Strike Price (A\$/MWh)
#	1	0000 - 0030			
	2	0030 - 0100			
	3	0100 - 0130			
	4	0130 - 0200			
	5	0200 - 0230			
	6	0230 - 0300			
	7	0300 - 0330			
	8	0330 - 0400			
	9	0400 - 0430			
	10	0430 - 0500			
	11	0500 - 0530			
	12	0530 - 0600			
	13	0600 - 0630			
	14	0630 - 0700			
	15	0700 - 0730			
	16	0730 - 0800			
	17	0800 - 0830			
	18	0830 - 0900			
	19	0900 - 0930			
	20	0930 - 1000			
	21	1000 - 1030			
	22	1030 - 1100			
	23	1100 - 1130			
	24	1130 - 1200			
	25	1200 - 1230			
	26	1230 - 1300			
	27	1300 - 1330			
	28	1330 - 1400			
	29	1400 - 1430			
	30	1430 - 1500			
	31	1500 - 1530			
	32	1530 - 1600			
	33	1600 - 1630			
	34	1630 - 1700			
	35	1700 - 1730			
	36	1730 - 1800			
	37	1800 - 1830			
	38	1830 - 1900			
	39	1900 - 1930			
	40	1930 - 2000			
	41	2000 - 2030			
	42	2030 - 2100			
	43	2100 - 2130			
	44	2130 - 2200			
	45	2200 - 2230			
	46	2230 - 2300			
	47	2300 - 2330			
	48	2330 - 2400			

[20.29] **Sample Confirmation for contract settled or cash settled electricity commodity swaption contract for a fixed forward electricity commodity contract.** (Paragraphs (4) and (5) of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions contains some definitions relevant to this type of contract.)

[Date]

Reference Number []

[Name and address of counterparty]

Swaption - fixed forward commodity contract

The purpose of this letter is to confirm the terms and conditions of the forward commodity contract for electricity entered into between us on the Trade Date specified below (“**Transaction**”).

1. For the purpose of the particular Transaction to which this Confirmation relates, the term “**Pricing Date**” for a Calculation Period means that Calculation Period.¹
2. (a) The Transaction to which this option relates is an Option, the terms of which are as follows:

Trade Date: ²	
Option Style: ³	[European/American]
Option Type:	Swaption
Seller: ⁴	[Party A/B]
Buyer: ⁵	[Party A/B]

¹You need not include this paragraph if you have agreed the meaning of Pricing Date in part 5 of the Schedule (see [20.19] footnote 2).

²The date the parties enter into the contract.

³Insert either “American” or “European”. See Section 8.3 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of these terms.

⁴Insert correct party description.

⁵Insert correct party description.

Total Premium:⁶

Premium Payment Date:⁷

[Contract Settlement:]

[Applicable/Inapplicable]⁸

[Cash Settlement Terms:]

⁶See Section 8.6(a) of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term.

An alternative to specifying the Total Premium is to specify a “Premium per Unit” - see Section 8.6(b) of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. For Swaptions for floating forward electricity commodity transactions it is unlikely that this alternative will be adopted unless all Calculation Periods have the same quantity.

⁷See Section 8.6(c) of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. Insert the date for payment of the premium.

The Australian convention in other commodity markets is for the premium to be payable within 2 Business Days after the Trade Date unless otherwise ~~agrees~~agreed at the time the Commodity Swaption is dealt.

Under Section 8.6(c) of the 1993 ISDA Commodity Derivatives Definitions, the Premium Payment Date is subject to adjustment in accordance with the Following Business Day Convention unless otherwise specified. You can specify a different Business Day Convention to apply by specifying it at this item of “Premium Payment Date” or in part 5 of the schedule to your ISDA Master Agreement. See [20.19] (footnote ~~23~~24) for wording relating to adjusting the Premium Payment Date in accordance with a Business Day Convention by including a clause in part 5 of the schedule.

⁸See Section 8.4 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of these terms. This Confirmation has been prepared on the assumption that ~~that~~ transactions could be either cash settled or contract settled and that the parties will make the appropriate selection.

Another alternative is that you may agree that one of the parties can elect either Contract Settlement or Cash Settlement. If so, then you should provide that both Contract Settlement and Cash Settlement are “Applicable” and specify either in Part 5 of the Schedule to the ISDA Master Agreement or in the Confirmation that the relevant party may only exercise one of these rights and, when it does so, the other right terminates. To do this:

- in Part 5 of the Schedule to the ISDA Master Agreement add the following paragraph (this is the same clause that is recommended at [20.19] footnote 10):

“If the Confirmation for a commodity option specifies that both Contract Settlement and Cash Settlement are applicable to the commodity option and the Buyer of the commodity option elects to exercise the commodity option, then the Buyer must specify in the Notice of Exercise whether Contract Settlement or Cash Settlement applies. On delivery to the Seller of the Notice of Exercise specifying a method of settlement, the right granted under the commodity option to settle by the other method terminates. If the Buyer fails to specify a method of settlement in the notice, the Buyer will be deemed to specify [Contract Settlement][Cash Settlement].”*

or

- in the Confirmation add the following paragraph:

“[#] **Settlement**

Both Contract Settlement and Cash Settlement are applicable to this commodity option. If the Buyer elects to exercise the commodity option, then it must specify in the Notice of Exercise whether Contract Settlement or Cash Settlement applies. On delivery to the Seller of a Notice of Exercise specifying a method of settlement, the right granted under the commodity option to settle by the other method terminates. If the Buyer fails to specify a method of settlement in the notice, the Buyer will be deemed to have specified [Contract Settlement] [Cash Settlement].”*

- * The issue of whether the fall back method is to be Contract Settlement or Cash Settlement, and which party has the right to make the election is a matter for individual negotiations. In the electricity markets the fall back is likely to be Contract Settlement so that the Underlying Transaction becomes effective.

[Cash Settlement:]	[Applicable/Inapplicable] ⁸
[Settlement Date:]	[# Business Days following the Exercise Date] ⁹
[Cash Settlement Amount:]	[Specify means for determination] ¹⁰

Procedure for Exercise:

[Exercise Period:]	[From and including	to and including
	including]
Expiration Time: ¹²		
Expiration Date: ¹³		
Automatic Exercise: ¹⁴	[Applicable/Inapplicable]	

⁹Insert Settlement Date when the swaption is to be cash settled (ie the date when the Cash Settlement Amount must be actually paid).

Under Section 3.4 of the 1993 ISDA Commodity Derivatives Definitions, the Settlement Date is subject to adjustment in accordance with the Following Business Day Convention unless otherwise specified. You can specify a different Business Day Convention to apply by specifying it at this item of “Settlement Date” or in part 5 of the schedule to your ISDA Master Agreement. See [20.19] (footnote ~~22~~²³) for wording relating to adjusting the Settlement Date in accordance with a Business Day Convention by including a clause in part 5 of the schedule.

This Settlement Date could be aligned with settlement dates under the National Code, by adopting similar wording to [20.19] footnote 9.

¹⁰See Sections 8.7 and 8.8 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of these terms. In the cash of swaptions, the Cash Settlement Amount is required to be determined by a method specified in or pursuant to the relevant agreement or Confirmation.

¹¹Include this if it is an American style option. It need not be included in the case of a European style option.

¹²This term has not been defined in the 1993 ISDA Commodity Derivatives Definitions. A definition has been inserted in paragraph (5) of June 1997 Australian Addendum No 13 (as amended in ~~January~~ April 2002 and July 2003) - Electricity (Energy and REC) Transactions. See commentary at [20.20(e)].

Insert the latest time on the Expiration Date at which the Seller will accept a Notice of Exercise.

¹³See Section 8.5(g) of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. Note how this date can be adjusted if the date specified is not a Commodity Business Day.

Specify the option exercise date or the last day of the option exercise period.

¹⁴See Section 8.5(e) of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term.

You need not include an item for Automatic Exercise if you have pre-agreed it by a clause in part 5 of the schedule (see footnote ~~26~~²⁷ of [20.19]).

Written Confirmation:¹⁵ [Applicable/Inapplicable]

Seller's telephone, telex or
facsimile number for purpose
of giving notice of exercise:¹⁶

(b) The terms of the Underlying Transaction to which the Option relates are as follows:

Notional Quantity per Calculation Period:¹⁷ The quantity set out in the
attachment for that Calculation
Period.

Effective Date:¹⁸

Termination Date:¹⁹

¹⁵See Section 8.5(d) of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term.

If "Written Confirmation" is applicable, then the Buyer must confirm a Notice of Exercise in writing.

Australian market practice in the commodity markets is not to require written confirmation of the exercise of an option. However, it is market practice to confirm in writing the amount of a Cash Settlement Amount.

¹⁶Specify the Seller's telephone, telex or facsimile number for the purpose of giving Notice of Exercise. See Section 8.5 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of Notice of Exercise. These details could be omitted if they are included in standard settlement instructions.

¹⁷The quantity of electricity in MWh should be specified in the attachment for each period the subject of the underlying swap. The parties may specify a different Notional Quantity for each party (this may require separate attachments for each party).

To assist parties participating in the physical electricity market to calculate the correct quantity, an additional column has been incorporated in the attachment relating to the capacity for a one hour period that is the subject of the swap. The Notional Quantity will then be one half of that amount. For example, for a 660MW generating unit to be fully hedged, the Notional Quantity for a Calculation Period will generally be 330MWh.

You may provide for different Notional Quantities for different types of day (eg Mondays, weekdays (other than Mondays and public holidays), Saturdays, Sundays and public holidays) by incorporating different columns of Notional Quantities for each type of day. See [20.29] footnote 20.

¹⁸The first day of the Term of the Transaction. This is the day on which the first *trading interval* of 30 minutes occurs that is to comprise a Calculation Period. Whilst a *trading day* commences at 0400 EST, it is not necessary to specify that a swap commences at that time. For most swaps, the first *trading interval* covered by it is likely to commence at 0000 EST. A Term can extend for more than one day.

The parties could if they wished specify the Effective Date as a date a specified period after exercise of the Option. This would generally only occur with an American style Option.

¹⁹The last day of the Term of the Underlying Transaction. For a one day swap commencing at midnight, this is the same date as the Effective Date. For a one day swap that corresponds to a *trading day* (ie it commences at 0400 EST and finishes at 0400 EST the next day), the Termination Date will be the day after the Effective Date.

Calculation Period(s):²⁰

Each period of 30 minutes set out in the third column of the attachment.

[Settlement Date(s):]²¹

Fixed Amount Details:

Fixed Price Payer:²²

Party []

²⁰For each day of a swap there are 48 Calculation Periods. If less than 48 periods in a day are the subject of the swap, a quantity and price should be completed in the attachment only for the relevant periods, and the balance of them should be left blank **both** as to quantity and as to price. Alternatively, those periods could have “Nil” specified for them in each column. With appropriate treatment of the calculation of Floating Prices, Calculation Periods could be specified as being other than 30 minutes.

You may cover more than one day simply by extending the attachment. You may provide for different types of days (and different months) by incorporating different parts in the attachment for each such day and by substituting the following next to “Calculation Period(s):”

“Each period of 30 minutes set out in the third column of the attachment that occurs during a [month and a] type of day specified in the relevant part of the attachment.”

²¹Insert Settlement Date (ie the date when the net amount due must be actually paid). You need not include this item if you have agreed the meaning of Settlement Date in part 5 of the schedule (see [20.19] footnote 9).

Under Section 3.4 of the 1993 ISDA Commodity Derivatives Definitions, the Settlement Date is subject to adjustment in accordance with the Following Business Day Convention unless otherwise specified. You can specify a different Business Day Convention to apply by specifying it at this item of “Settlement Date” or in part 5 of the schedule to your ISDA Master Agreement. See [20.19] (footnote 2223) for wording relating to adjusting the Settlement Date in accordance with a Business Day Convention by including a clause in part 5 of the schedule.

A Settlement Date may be more than one day. For example, when the Transaction relates to more than one *trading day* the parties may want each Settlement Date a specified period after each *trading day*.

Another alternative is that you may agree (particularly if either party is a participant in the physical electricity market) that the Settlement Date should correspond to the dates for settlement under the National Code from time to time. To do this:

- in Part 5 of the Schedule to the ISDA Master Agreement add the following paragraph (this is the same clause that is recommended at [20.19] footnote 9):

“For each Calculation Period, the Settlement Date is the day upon which the party that is obliged to pay a Floating Amount or a Cash Settlement Amount calculated by reference to a Floating Price determined under the National Code (or, if there are two such parties, Party [A/B]), if it were a market participant (as defined in the National Code) under the National Code, would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed an amount in respect of electricity bought by it in that Calculation Period.”

or

- in the Confirmation insert the following next to “Settlement Date(s):”

“For each Calculation Period, the day upon which the party that is obliged to pay a Floating Amount or a Cash Settlement Amount calculated by reference to a Floating Price determined under the National Code (or, if there are two such parties, Party [A/B]), if it were a market participant (as defined in the National Code) under the National Code, would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed an amount in respect of electricity bought by it in that Calculation Period.”

²²Insert correct party description.

Fixed Price:²³

For each Calculation Period, the price set out in the attachment for that period.

Floating Amount Details:

Floating Price Payer:²⁴

Party []

[Commodity Reference Price:²⁵

Commodity:

Electricity

Unit:

MWh

²³See Section 5.2 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. It is the price for each MWh agreed on the Trade Date.

You may cover different types of day (eg Mondays, weekdays (other than Mondays and public holidays), Saturdays, Sundays and public holidays) by incorporating different columns of Fixed Prices for each type of day, and by substituting the following next to “Fixed Price:”

“For each Calculation Period set out in the third column of the schedule that occurs during a type of day specified in a column of the schedule, the price specified in the column for that type of day for that Calculation Period.”

²⁴Insert correct party description.

²⁵This is the machinery to calculate the price per unit of Commodity prevailing on the Pricing Date. It is often otherwise referred to in the financial markets as “reference price”.

As there are no Floating Prices for electricity expressly defined in Article 7 of the 1993 Commodity Derivatives Definitions, the Floating Price or Floating Amount can be determined in a number of other ways. Some examples are:

- you could create a Floating Price by specifying a Commodity, a Unit, a Price Source or an Exchange and, if relevant, a currency;
- you could create a Floating Price by using the definition of Spot Price in paragraph (4)(b) of the June 1997 Australian Addendum No. 13 (as amended in ~~January~~ April 2002 and July 2003) - Electricity (Energy and REC) Transactions;
- one party may advise the other party of the price.

You need not include an item for Floating Price if you have pre-agreed it by setting it out in part 5 of the schedule (see footnote 11 of [20.19]).

Price Source: NEMMCO

Specified Price: The spot price as at the (#)²⁶
regional reference node as
determined under the National
Code]²⁷

[Commodity Reference Price:²⁵ Spot Price

Regional Reference Node:²⁶]²⁸

[Business Days:]²⁹

30

³¹[Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation enclosed for that purpose and returning it to us.

²⁶ Insert location of regional reference node.

²⁷Delete all the components of the Commodity Reference Price if you use the definition of Spot Price in paragraph 4(b) of the June 1997 Australian Addendum No. 13 (as amended in ~~January~~April 2002 and July 2003) - Electricity (Energy and REC) Transactions.

²⁸Delete if you create a Floating Price by Specifying a Commodity, a Unit, a Price Source and a Specified Price.

²⁹See section 1.3 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. Specify the places where commercial banks need to be settling payments ie “[name places eg Sydney, Melbourne]”.

You need not include this item if you have agreed the meaning of Business Days in part 5 of the schedule (see footnote ~~27~~28 in [20.19]).

³⁰**Care!** This Confirmation has been prepared on the following assumptions:

- (a) **Market Disruption Events, Additional Market Disruption Events, Disruption Fallbacks.** All these issues have been pre-agreed and dealt with in part 5 of the schedule. See [20.19] (footnotes 3 to 8 ~~and 13 to 16~~). If this is not the case, you must cover these issues in your Confirmation. ***This is very important***
- (b) **GST.** This issue, if a concern to the parties, has been pre-agreed and dealt with in part 5 of the schedule. See [20.19] (footnote 12). If this is not the case, the issue could be dealt with by including the paragraph in footnote 12 in the Confirmation.
- (c) **Calculation Agent.** You may have specified in part 5 of the schedule which party is the Calculation Agent (see [20.19] footnote ~~28~~29). If not insert an item:

“Calculation Agent:”

- (~~d~~) **Payments to Seller, Payments to Buyer.** You do not insert particulars of the account into which payments to the Seller or the Buyer are to be made. If this approach is adopted you must ensure that these particulars are identified by some other means eg in standard settlement instructions or settlement instructions issued immediately before settlement. If you want to insert in the Confirmation particulars for payments to the Seller or Buyer, insert items:

“Account Details:”

“Payments to Party A:”

“Payments to Party B:”

- (~~d~~e) **Multibranch Parties.** Neither party is a Multibranch party. If a party intends to make and receive payments under different Transactions through different branch offices, it should be specified in the Schedule to the ISDA Master Agreement as a Multibranch party. If a party is a Multibranch party, an item relating to Offices should be included in the Confirmation in which the relevant branch is identified.

Yours sincerely
[name of party preparing Confirmation]
By:
Name:
Title:

Confirmed as of the date first written:
[name of other party]

By:
Name:
Title:]

³¹[Please confirm that the foregoing correctly sets forth the terms of our agreement by sending us a Confirmation substantially the same as this Confirmation or by sending us a Confirmation in the following terms:

“We acknowledge receipt of your Confirmation dated [date] with respect to the transaction with reference no []. We confirm that the Confirmation correctly sets forth the terms of our agreement.

Yours sincerely
[name of party preparing reply]
By:
Name:
Title:”]

³¹We have included two forms of closing. The first is for when the counterparty will be asked to return the Confirmation with their agreement to the terms endorsed on it. The second is for when the counterparty will send their own Confirmation or a Confirmation note referring to the other party's Confirmation. It is optional which approach you adopt.

Attachment

Date	Calculation Period (Number)	Calculation Period (Eastern Standard Time)	Capacity (MW)	Notional Quantity (MWh)	Fixed Price (AS/MWh)
#	1	0000 - 0030			
	2	0030 - 0100			
	3	0100 - 0130			
	4	0130 - 0200			
	5	0200 - 0230			
	6	0230 - 0300			
	7	0300 - 0330			
	8	0330 - 0400			
	9	0400 - 0430			
	10	0430 - 0500			
	11	0500 - 0530			
	12	0530 - 0600			
	13	0600 - 0630			
	14	0630 - 0700			
	15	0700 - 0730			
	16	0730 - 0800			
	17	0800 - 0830			
	18	0830 - 0900			
	19	0900 - 0930			
	20	0930 - 1000			
	21	1000 - 1030			
	22	1030 - 1100			
	23	1100 - 1130			
	24	1130 - 1200			
	25	1200 - 1230			
	26	1230 - 1300			
	27	1300 - 1330			
	28	1330 - 1400			
	29	1400 - 1430			
	30	1430 - 1500			
	31	1500 - 1530			
	32	1530 - 1600			
	33	1600 - 1630			
	34	1630 - 1700			
	35	1700 - 1730			
	36	1730 - 1800			
	37	1800 - 1830			
	38	1830 - 1900			
	39	1900 - 1930			
	40	1930 - 2000			
	41	2000 - 2030			
	42	2030 - 2100			
	43	2100 - 2130			
	44	2130 - 2200			
	45	2200 - 2230			
	46	2230 - 2300			
	47	2300 - 2330			
	48	2330 - 2400			

[20.30] **Sample Confirmation for inter-regional swap electricity commodity contracts for cash settlement.** (Paragraph (4) of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions contains some definitions relevant to this type of contract.)

[Date]

Reference Number []

[Name and address of counterparty]

Commodity contract - inter-regional swap - cash-settled

The purpose of this letter is to confirm the terms and conditions of the forward commodity contract for electricity entered into between us on the Trade Date specified below (“**Transaction**”).

1. For the purpose of the particular Transaction to which this Confirmation relates, the term “**Pricing Date**” for a Calculation Period means that Calculation Period.¹
2. The terms of the particular Transaction to which this Confirmation relates are as follows:

Notional Quantity per Calculation Period: ²	The quantity set out in the attachment for that Calculation Period.
Trade Date: ³	
Effective Date: ⁴	

¹You need not include this paragraph if you have agreed the meaning of Pricing Date in part 5 of the Schedule (see [20.19] footnote 2).

²The quantity of electricity in MWh should be specified in the attachment for each period the subject of the swap. The parties may specify a different Notional Quantity for each party (this may require separate attachments for each party).

To assist parties participating in the physical electricity market to calculate the correct quantity, an additional column has been incorporated in the attachment relating to the capacity for a one hour period that is the subject of the swap. The Notional Quantity will then be one half of that amount. For example, for a 660MW generating unit to be fully hedged, the Notional Quantity for a Calculation Period will generally be 330MWh.

You may provide for different Notional Quantities for different types of day (eg Mondays, weekdays (other than Mondays and public holidays), Saturdays, Sundays and public holidays) by incorporating different columns of Notional Quantities for each type of day. See [20.30] footnote 6.

³The date the parties enter into the contract.

⁴The first day of the Term of the Transaction. This is the day on which the first *trading interval* of 30 minutes occurs that is to comprise a Calculation Period. Whilst a *trading day* commences at 0400 EST, it is not necessary to specify that a swap commences at that time. For most swaps, the first *trading interval* covered by it is likely to commence at 0000 EST.

A Term can extend for more than one day.

Termination Date:⁵

Calculation Period(s):⁶

Each period of 30 minutes set out in the third column of the attachment.

[Settlement Date(s):]⁷

⁵The last day of the Term of the Transaction. For a one day swap commencing at midnight, this is the same date as the Effective Date. For a one day swap that corresponds to a *trading day* (ie it commences at 0400 EST and finishes at 0400 EST the next day), the Termination Date will be the day after the Effective Date.

⁶For each day of a swap there are 48 Calculation Periods. If less than 48 periods in a day are the subject of the swap, a quantity and price should be completed in the attachment only for the relevant periods, and the balance of them should be left blank **both** as to quantity and as to price. Alternatively, those periods could have “Nil” specified for them in each column. With appropriate treatment of the calculation of Floating Prices, Calculation Periods could be specified as being other than 30 minutes.

You may cover more than one day simply by extending the attachment. You may provide for different types of days (and different months) by incorporating different parts in the attachment for each such day and by substituting the following next to “Calculation Period(s):”

“Each period of 30 minutes set out in the third column of the attachment that occurs during a [month and a] type of day specified in the relevant part of the attachment.”

⁷Insert Settlement Date (ie the date when the net amount due must be actually paid). You need not include this item if you have agreed the meaning of Settlement Date in part 5 of the schedule (see [20.19] footnote 9).

Under Section 3.4 of the 1993 ISDA Commodity Derivatives Definitions, the Settlement Date is subject to adjustment in accordance with the Following Business Day Convention unless otherwise specified. You can specify a different Business Day Convention to apply by specifying it at this item of “Settlement Date” or in part 5 of the schedule to your ISDA Master Agreement. See [20.19] (footnote 2223) for wording relating to adjusting the Settlement Date in accordance with a Business Day Convention by including a clause in part 5 of the schedule.

A Settlement Date may be more than one day. For example, when the Transaction relates to more than one *trading day* the parties may want each Settlement Date a specified period after each *trading day*.

Another alternative is that you may agree (particularly if either party is a participant in the physical electricity market) that the Settlement Date should correspond to the dates for settlement under the National Code from time to time. To do this:

- in Part 5 of the Schedule to the ISDA Master Agreement add the following paragraph (this is the same clause that is recommended at [20.19] footnote 9):

“For each Calculation Period, the Settlement Date is the day upon which the party that is obliged to pay a Floating Amount or a Cash Settlement Amount calculated by reference to a Floating Price determined under the National Code (or, if there are two such parties, Party [A/B]), if it were a market participant (as defined in the National Code) under the National Code, would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed an amount in respect of electricity bought by it in that Calculation Period.”

or

- in the Confirmation insert the following next to “Settlement Date(s):”

“For each Calculation Period, the day upon which the party that is obliged to pay a Floating Amount by calculated by reference to a Floating Price determined under the National Code (or, if there are two such parties, Party [A/B]), if it were a market participant (as defined in the National Code) under the National Code, would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed an amount in respect of electricity bought by it in that Calculation Period.”

[Business Days:]⁸

Floating Amount Details for Party A:

Floating Price Payer: Party A

[Commodity Reference Price:]⁹

Commodity: Electricity

Unit: MWh

Price Source: NEMMCO

Specified Price: The spot price as at the (#)¹⁰ regional reference node as determined under the National Code]¹¹

[Commodity Reference Price:]⁹ Spot Price

Regional Reference Node: ¹⁰]¹²

Floating Amount Details for Party B:

Floating Price Payer: Party B

[Commodity Reference Price:]⁸

⁸See section 1.3 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. Specify the places where commercial banks need to be settling payments ie “[name places eg Sydney, Melbourne]”.

You need not include this item if you have agreed the meaning of Business Days in part 5 of the schedule (see footnote ~~2728~~ in [20.19]).

⁹This is the machinery to calculate the price per unit of Commodity prevailing on the Pricing Date. It is often otherwise referred to in the financial markets as “reference price”.

As there are no Floating Prices for electricity expressly defined in Article 7 of the 1993 Commodity Derivatives Definitions, the Floating Price or Floating Amount can be determined in a number of other ways. Some examples are:

- you could create a Floating Price by specifying a Commodity, a Unit, a Price Source or an Exchange and, if relevant, a currency;
- you could create a Floating Price by using the definition of Spot Price in paragraph (4)(b) of the June 1997 Australian Addendum No. 13 (as amended in ~~January~~ April 2002 and July 2003) - Electricity (Energy and REC) Transactions;
- one party may advise the other party of the price.

You need not include an item for Floating Price if you have pre-agreed it by setting it out in part 5 of the schedule (see footnote 11 of [20.19]).

¹⁰ Insert location of regional reference node.

¹¹Delete all the components of the Commodity Reference Price if you use the definition of Spot Price in paragraph (4)(b) of the June 1997 Australian Addendum No. 13 (as amended in ~~January~~ April 2002 and July 2003) - Electricity (Energy and REC) Transactions.

¹²Delete if you create a Floating Price by specifying a Commodity, a Unit, a Price Source and a Specified Price.

Commodity:	Electricity
Unit:	MWh
Price Source:	NEMMCO
Specified Price:	The spot price as at the (#) ¹⁰ regional reference node as determined under the National Code] ¹²
[Commodity Reference Price: ⁹	Spot Price
Regional Reference Node: ¹⁰] ¹²	
[Spread: ¹³	For each Calculation Period, [plus/minus] the amount set out in the attachment for that period]

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¹⁵[Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation enclosed for that purpose and returning it to us.

¹³See section 6.2(f) of the 2000 ISDA Definitions for the meaning of this term. Specify whether the amount is to be deducted from or added to the Floating Price. If there is no Spread, either delete the item or insert “None”. Alternatively, you could specify the same figure as the spread for all Calculation Periods and omit the relevant column from the attachment.

The Spread could be nominated as referable to the Floating Price for Party A if you wish.

¹⁴**Care!** This Confirmation has been prepared on the following assumptions:

- (a) **Market Disruption Events, Additional Market Disruption Events, Disruption Fallbacks.** All these issues have been pre-agreed and dealt with in part 5 of the schedule. See [20.19] (footnotes 3 to 8 ~~and 13 to 16~~). If this is not the case, you must cover these issues in your Confirmation. ***This is very important***
- (b) **GST.** This issue, if a concern to the parties, has been pre-agreed and dealt with in part 5 of the schedule. See [20.19] (footnote 12). If this is not the case, the issue could be dealt with by including the paragraph in footnote 12 in the Confirmation.
- (c) **Calculation Agent.** You may have specified in part 5 of the schedule which party is the Calculation Agent (see [20.19] footnote ~~28~~29). If not insert an item:

“Calculation Agent:”

- (ed) **Payments to Party A, Payments to party Party B.** You do not insert particulars of the account into which payments to Party A or Party B are to be made. If this approach is adopted you must ensure that these particulars are identified by some other means eg in standard settlement instructions or settlement instructions issued immediately before settlement. If you want to insert in the Confirmation particulars for payments to Party A or Party B, insert items:

“Account Details:”

“Payments to Party A:”

“Payments to Party B:”

- (de) **Multibranch Parties.** Neither party is a Multibranch party. If a party intends to make and receive payments under different Transactions through different branch offices, it should be specified in the Schedule to the ISDA Master Agreement as a Multibranch party. If a party is a Multibranch party, an item relating to Offices should be included in the Confirmation in which the relevant branch is identified.

Yours sincerely
[name of party preparing Confirmation]
By:
Name:
Title:

Confirmed as of the date first written:
[name of other party]

By:
Name:
Title:]

¹⁵[Please confirm that the foregoing correctly sets forth the terms of our agreement by sending us a Confirmation substantially the same as this Confirmation or by sending us a Confirmation in the following terms:

“We acknowledge receipt of your Confirmation dated [date] with respect to the transaction with reference no []. We confirm that the Confirmation correctly sets forth the terms of our agreement.

Yours sincerely
[name of party preparing reply]
By:
Name:
Title:”]

¹⁵We have included two forms of closing. The first is for when the counterparty will be asked to return the Confirmation with their agreement to the terms endorsed on it. The second is for when the counterparty will send their own Confirmation or a Confirmation note referring to the other party's Confirmation. It is optional which approach you adopt.

Attachment

Date	Calculation Period (Number)	Calculation Period (Eastern Standard Time)	Capacity (MW)	Notional Quantity (MWh)	Spread (A\$)
#	1	0000 - 0030			
	2	0030 - 0100			
	3	0100 - 0130			
	4	0130 - 0200			
	5	0200 - 0230			
	6	0230 - 0300			
	7	0300 - 0330			
	8	0330 - 0400			
	9	0400 - 0430			
	10	0430 - 0500			
	11	0500 - 0530			
	12	0530 - 0600			
	13	0600 - 0630			
	14	0630 - 0700			
	15	0700 - 0730			
	16	0730 - 0800			
	17	0800 - 0830			
	18	0830 - 0900			
	19	0900 - 0930			
	20	0930 - 1000			
	21	1000 - 1030			
	22	1030 - 1100			
	23	1100 - 1130			
	24	1130 - 1200			
	25	1200 - 1230			
	26	1230 - 1300			
	27	1300 - 1330			
	28	1330 - 1400			
	29	1400 - 1430			
	30	1430 - 1500			
	31	1500 - 1530			
	32	1530 - 1600			
	33	1600 - 1630			
	34	1630 - 1700			
	35	1700 - 1730			
	36	1730 - 1800			
	37	1800 - 1830			
	38	1830 - 1900			
	39	1900 - 1930			
	40	1930 - 2000			
	41	2000 - 2030			
	42	2030 - 2100			
	43	2100 - 2130			
	44	2130 - 2200			
	45	2200 - 2230			
	46	2230 - 2300			
	47	2300 - 2330			
	48	2330 - 2400			

[20.31] **Sample Confirmation for Asian electricity commodity average price option contract for cash settlement.** (Paragraphs (4) and (5) of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions contains some definitions relevant to this type of contract.)

[Date]

Reference Number []

[Name and address of counterparty]

Commodity option - cash settled

The purpose of this letter is to confirm the terms and conditions of the cash settled commodity average price option for electricity entered into between us on the Trade Date specified below (“**Transaction**”).

1. For the purposes of the particular Transaction to which this Confirmation relates, the term “**Pricing Date**” for a Calculation Period means that Calculation Period¹.
2. The terms of the particular Transaction to which this Confirmation relates are as follows:

General terms:

Notional Quantity ² :	MWh.
Trade Date: ³	
Option Style:	Asian
Option Type: ⁴	[Put/Call]
Seller: ⁵	[Party A/B]
Buyer: ⁶	[Party A/B]
Total Premium: ⁷	

¹You need not include this paragraph if you have agreed the meaning of Pricing Date in Part 5 of the Schedule (see [20.19] footnote 2).

² The quantity of electricity in MWh for the Averaging Period (if only one) or for each Averaging Period (if multiple Averaging Periods)(and not each Calculation Period in it) should be specified.

³The date the parties enter into the contract.

⁴See Section 8.3 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of these terms.

⁵Insert correct party description.

⁶Insert correct party description.

⁷See Section 8.6(a) of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term.

Premium Payment Date: ⁸	The first day after the day being 2 Local Business Days after the Trade Date upon which a market participant (as defined in the National Code) would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed a net amount.
Cash Settlement:	Applicable
[Cash Settlement Amount:] ⁹	
Strike Price Differential:	The price, expressed as a price per Unit, equal to the excess, if a positive number, of [the Strike Price over the unweighted arithmetic mean of the Relevant Price for each Pricing Date that occurs [during the Peak Period/the Off-Peak Period] ¹⁰ during the Averaging Period] ¹¹ [the unweighted arithmetic mean of the Relevant Price for each Pricing Date that occurs [during the Peak Period/the Off-Peak Period] ¹⁰ during the Averaging Period over the Strike Price] ¹² .
[Peak Period/Off-Peak Period:] ¹³	
Averaging Period(s):	[The period from and including [insert time] hours Eastern Standard Time on [insert date] to and including [insert time] hours Eastern Standard Time on [insert date]] ¹⁴ [Each

This pro-forma confirmation assumes that only one Premium will be paid, at the commencement of the transaction. In the case of multiple period options, consideration should be given to whether a Premium should be payable for each Averaging Period.

An alternative to specifying the Total Premium is to specify a “Premium per Unit” - see Section 8.6(b) of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. In the case of a transaction with multiple Averaging Periods, beware using this formulation as it will result in a premium determined by reference to only one of those periods.

⁸See Section 8.6(c) of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term.

⁹See Sections 8.7 and 8.8 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. If this definition is acceptable, you need not insert an item “Cash Settlement Amount” in the Confirmation. If it is not, the method of calculation should be inserted in the Confirmation.

¹⁰ Insert whether the transaction is based on a Peak Period or an Off-Peak Period. If the transaction is based on an average price across the entire day, the words should be omitted.

¹¹ Insert these words if the option is a Put Option.

¹² Insert these words if the option is a Call Option.

¹³ Insert the agreed specification for Peak Period or Off-Peak Period, if relevant.

¹⁴ Complete the details for the single period for the option, or set out the specifications for multiple periods. The multiple period example is based on successive weekly periods, with the payment (if any) for a period settling on the same date as the physical market would settle for the last trading interval in the relevant period.

successive period of 7 days commencing at [insert time] hours Eastern Standard Time on a [insert day of week] and ending at [insert time] hours on a [insert day of week], with the first such period commencing on [insert date] and the last such period ending on [insert date]¹⁴.

Settlement Dates:

In respect of an Averaging Period, the day upon which a market participant (as defined in the National Code) would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed an amount in respect of electricity bought by it in the last trading interval (as defined in the National Code) that occurs in that Averaging Period.

Strike Price per Unit:¹⁵

\$/#.

Commodity Reference Price:

The Spot Price

Regional Reference Node:¹⁶

Procedure for Exercise:

Expiration Date:¹⁷

Automatic Exercise:¹⁸

[Applicable/Inapplicable]

Written Confirmation:¹⁹

[Applicable/Inapplicable]

¹⁵See Section 5.2 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. It is the strike price for each MWh in the Averaging Period agreed on the Trade Date.

¹⁶Insert location of regional reference node.

¹⁷See Section 8.5(g) of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. Note how this date can be adjusted if the date specified is not a Commodity Business Day.

Specify the option exercise date or the last day of the option exercise period. In the event of multiple Averaging Periods, the date should be specified for each such Averaging Period, such as “For an Averaging Period, the last day of that Averaging Period”.

¹⁸See Section 8.5(e) of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term.

You need not include an item for Automatic Exercise if you have pre-agreed it by a clause in part 5 of the schedule (see footnote ~~26~~27 of [20.19]).

It is recommended that Automatic Exercise be applicable for average price options.

¹⁹See Section 8.5(d) of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term.

If “Written Confirmation” is applicable, then the Buyer must confirm a Notice of Exercise in writing.

Australian market practice in the commodity markets is not to require written confirmation of the exercise of an option. However, it is market practice to confirm in writing the amount of a Cash Settlement Amount.

Seller's telephone, telex or
facsimile number for purpose
of giving notice of exercise.²⁰

[Business Days:]²¹

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²⁰Specify the Seller's telephone, telex or facsimile number for the purpose of giving Notice of Exercise. See Section 8.5 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of Notice of Exercise. These details could be omitted if they are included in standard settlement instructions.

²¹See section 1.3 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. Specify the places where commercial banks need to be settling payments ie "[name places eg Sydney, Melbourne]".

You need not include this item if you have agreed the meaning of Business Days in part 5 of the schedule (see footnote ~~2728~~ in [20.19]).

²²**Care!** This Confirmation has been prepared on the following assumptions:

- (a) **Market Disruption Events, Additional Market Disruption Events, Disruption Fallbacks.** All these issues have been pre-agreed and dealt with in part 5 of the schedule. See [20.19] (footnotes 3 to 8 ~~and 13 to 16~~). If this is not the case, you must cover these issues in your Confirmation. ***This is very important***
- (b) **GST.** This issue, if a concern to the parties, has been pre-agreed and dealt with in part 5 of the schedule. See [20.19] (footnote 12). If this is not the case, the issue could be dealt with by including the paragraph in footnote 12 in the Confirmation.
- (c) **Calculation Agent.** You may have specified in part 5 of the schedule which party is the Calculation Agent (see [20.19] footnote ~~2829~~). If not insert an item:

“Calculation Agent:”

- (ed) **Payments to Seller, Payments to Buyer.** You do not insert particulars of the account into which payments to the Seller or the Buyer are to be made. If this approach is adopted you must ensure that these particulars are identified by some other means eg in standard settlement instructions or settlement instructions issued immediately before settlement. If you want to insert in the Confirmation particulars for payments to the Seller or Buyer, insert items:

“Account Details:”

“Payments to Party A:”

“Payments to Party B:”

- (de) **Multibranch Parties.** Neither party is a Multibranch party. If a party intends to make and receive payments under different Transactions through different branch offices, it should be specified in the Schedule to the ISDA Master Agreement as a Multibranch party. If a party is a Multibranch party, an item relating to Offices should be included in the Confirmation in which the relevant branch is identified.

²³[Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation enclosed for that purpose and returning it to us.

Yours sincerely
[name of party preparing Confirmation]
By:
Name:
Title:

Confirmed as of the date first written:
[name of other party]

By:
Name:
Title:]

²³[Please confirm that the foregoing correctly sets forth the terms of our agreement by sending us a Confirmation substantially the same as this Confirmation or by sending us a Confirmation in the following terms:

“We acknowledge receipt of your Confirmation dated [date] with respect to the transaction with reference no []. We confirm that the Confirmation correctly sets forth the terms of our agreement.

Yours sincerely
[name of party preparing reply]
By:
Name:
Title:”]

²³We have included two forms of closing. The first is for when the counterparty will be asked to return the Confirmation with their agreement to the terms endorsed on it. The second is for when the counterparty will send their own Confirmation or a Confirmation note referring to the other party's Confirmation. It is optional which approach you adopt.

[20.32] **Sample Confirmation for fixed forward or spot commodity contracts for RECs for physical settlement and/or cash settlement - single exercise.**
(Paragraphs (4) to (8) of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions contains some definitions and other provisions relevant to this type of contract.)

[Date]

Reference Number []

[Name and address of counterparty]

Fixed forward commodity contract

The purpose of this letter is to confirm the terms and conditions of the [fixed forward][spot] commodity contract for RECs entered into between us on the Trade Date specified below (“**Transaction**”).

1. The terms of the particular Transaction to which this Confirmation relates are as follows:

Commodity:	RECs
Creation Date:	31 December # ¹
[Excluded Source]: ²	
Quantity: ³	
Trade Date: ⁴	
Seller: ⁵	[Party A/B]
Buyer: ⁶	[Party A/B]
Fixed Price: ⁷	

¹Insert the year in or prior to which the RECs are to have been created.

²Insert if there is any eligible renewable energy source for which a REC which may not be delivered, and describe that excluded source (eg, “wood waste”)

³The quantity of RECs.

⁴The date the parties enter into the contract.

⁵Insert correct party description.

⁶Insert correct party description.

⁷See Section 5.2 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. It is the price for each REC agreed on the Trade Date. See also [20.32] footnote 14 for a GST clause to be used if the Buyer is to gross up for GST.

AFMA has published trading conventions as to price. These may be found on its website (www.afma.com.au).

[Physical Settlement:	Applicable] ^{8,9}
[Cash Settlement:	Applicable] ^{8,9,10}

⁸See paragraph (6) of June 1997 Australian Addendum No. 13 (as amended in April 2002 and April 2003) - Electricity (Energy and REC) Transactions for the meaning of this term. If the transaction is not to be physically settled, this item may be omitted.

If the transaction is a spot commodity contract to be physically settled only and you have included the text referred to in footnote ~~18~~19 of [20.19] in Part 5 of your Schedule (ie, you have elected for Physical Settlement to be applicable - see the definition of Physical Settlement in paragraph (6) of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions), this item may be omitted.

If the transaction is a forward commodity contract where both physical settlement and cash settlement are applicable and you have included the text referred to in footnote ~~18~~19 of [20.19] in Part 5 of your Schedule (ie, you have elected for Physical Settlement and Cash Settlement to be applicable - see the definitions of Physical Settlement and Cash Settlement in paragraph (6) of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions), this item may be omitted

⁹If you agree that one of the parties is entitled to elect either Physical Settlement or Cash Settlement or both, then you should provide that both Physical Settlement and Cash Settlement are “Applicable” and specify either in Part 5 of the Schedule or in the Confirmation that the relevant party may only exercise one of those rights and, when it does so, the other rights terminate. To do this:

- in Part 5 of the Schedule to the ISDA Master Agreement add the following paragraph (this is the same clause that is recommended at [20.19] footnote ~~19~~20):

“If both Physical Settlement and Cash Settlement are applicable to a forward commodity contract, then the [Seller][Buyer] must notify the [Buyer][Seller] not less than two Business Days before each Settlement Date whether Physical Settlement applies, Cash Settlement applies or both Physical Settlement and Cash Settlement apply on that Settlement Date. On delivery to the [Buyer][Seller] of that notice, the right granted under the forward commodity contract to settle by the other methods on that Settlement Date terminates. If both Physical Settlement and Cash Settlement are to apply on a Settlement Date, then the [Seller][Buyer] must in the notice notify the Number of Units to be Physically Delivered and/or the Number of Units to be Cash Settled on that Settlement Date. If the [Seller][Buyer] fails to give such a notice, the [Seller][Buyer] will be deemed to specify [Physical Settlement][Cash Settlement] to apply on that Settlement Date.”

or

- in the Confirmation add the following paragraph:”

“(#) Settlement

Both Physical Settlement and Cash Settlement are applicable to this Transaction. The [Seller][Buyer] must notify the [Buyer][Seller] not less than two Business Days before each Settlement Date whether Physical Settlement applies, Cash Settlement applies or both Physical Settlement and Cash Settlement apply on that Settlement Date. On delivery to the [Buyer][Seller] of that notice, the right granted under this Transaction to settle by the other methods on that Settlement Date terminates. If both Physical Settlement and Cash Settlement are to apply on a Settlement Date, then the [Seller][Buyer] must in the notice notify the Number of Units to be Physically Delivered and/or the Number of Units to be Cash Settled on that Settlement Date. If the [Seller][Buyer] fails to give such a notice, the [Seller][Buyer] will be deemed to specify [Physical Settlement][Cash Settlement] to apply on that Settlement Date.”

The issue of which party has the right to make the election and whether the fallback is Physical Settlement or Cash Settlement is a matter for individual negotiation. In the REC market, the working group recommends that the election be included in all transactions, that the Seller be the party entitled to specify the method of settlement and that Cash Settlement be the fallback.

[Cash Settlement Amount:]¹¹

[Cash Settlement Price:]¹²

[Settlement Date:]¹³

¹⁰See paragraph (6) of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions for the meaning of this term. If the transaction is not to be cash settled, this item may be omitted.

¹¹See paragraph (6) of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions for the meaning of this term. If that Addendum is incorporated in your ISDA Master Agreement, and the definition of Cash Settlement Amount is appropriate for your transaction, this item may be omitted. If it is not, the method of calculation should be inserted in the Confirmation.

¹²See paragraph (6) of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions for the meaning of this term. This is the price agreed on the Trade Date as the basis for payment of a Cash Settlement Amount. It could, for example, be a fixed dollar amount or a floating amount (such as a spread above the REC Spot Price on the Settlement Date).

¹³Insert Settlement Date (ie the date when the RECs must be actually delivered or, where appropriate, the Cash Settlement Amount paid). You need not include this item if you have agreed the meaning of Settlement Date in part 5 of the schedule (see [20.19] footnote ~~4718~~).

Under Section 3.4 of the 1993 ISDA Commodity Derivatives Definitions, the Settlement Date is subject to adjustment in accordance with the Following Business Day Convention unless otherwise specified. You can specify a different Business Day Convention to apply by specifying it at this item of "Settlement Date" or in part 5 of the schedule to your ISDA Master Agreement. See [20.19] (footnote ~~2223~~) for wording relating to adjusting the Settlement Date in accordance with a Business Day Convention by including a clause in part 5 of the schedule.

An alternative is that you may agree (particularly if either party is a participant in the physical electricity market) that the Settlement Date should correspond to the dates for settlement under the National ~~Electricity~~ Code from time to time. To do this:

- in Part 5 of the Schedule to the ISDA Master Agreement add the following paragraph (this is the same clause that is recommended at [20.19] footnote ~~4718~~) and omit "Settlement Date:" insert the Settlement Trigger Date in the Confirmation (see [20.19] footnote ~~4718~~ for an explanation of the Settlement Trigger Date and a suggestion as to the date to be nominated):

"The Settlement Date for a Commodity Transaction for which Multiple Exercise is not applicable is the first day after the day specified as the Settlement Trigger Date in respect of that Commodity Transaction upon which any market participant (as defined in the National Code) would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed a net amount, unless, in the case of a Commodity Transaction for which Physical Delivery is applicable on that Settlement Date, a Settlement Disruption Event prevents delivery of RECs on that day.

The Settlement Date for each Exercise Date under a Commodity Transaction for which Multiple Exercise is applicable is the first day after the day being two Business Days after that Exercise Date upon which any market participant (as defined in the National Code) would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed a net amount, unless, in the case of a Commodity Transaction for which Physical Delivery is applicable on that Settlement Date, a Settlement Disruption Event prevents delivery of RECs on that day.

If a Settlement Disruption Event does prevent delivery on a Settlement Date, then the Settlement Date will be the first succeeding day on which delivery of RECs can take place, unless a Settlement Disruption Event prevents delivery of RECs on each of the five Business Days immediately following the original Settlement Date. In that case:

- (a) if both Physical Settlement and Cash Settlement are applicable to the Commodity Transaction on the original Settlement Date, it will be deemed that Cash Settlement

[Settlement Trigger Date:]¹³

2. If any party:¹⁴
- (a) is liable to pay goods and services tax (“GST”) on a supply made by it under this Transaction;
 - (b) certifies to the recipient that it has not priced the supply to include GST, and
 - (c) 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.

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.

[Business Days:]¹⁵

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 Settlement Date will be the first Business Day after the end of the five Business Day period; and

- (b) otherwise, subject to Section 2(a)(iii), the party with the obligation to make delivery of the RECs will be deemed on the first Business Day after the end of the five Business Day period to have failed to make the delivery due on the original Settlement Date.”

or

- in the Confirmation insert the following next to “Settlement Date:” and omit “Settlement Trigger Date:” (see [20.19] footnote ~~47~~18 for a suggestion as to the date to be nominated):

“The Settlement Date is the first day after # upon which any market participant (as defined in the National Code) would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed a net amount[, unless a Settlement Disruption Event prevents delivery of RECs on that day. If a Settlement Disruption Event does prevent delivery on the Settlement Date, then the Settlement Date will be the first succeeding day on which delivery of RECs can take place, unless a Settlement Disruption Event prevents delivery of RECs on each of the five Business Days immediately following the original Settlement Date. In that case, [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 Settlement Date will be the first Business Day after the end of the five Business Day period]**[subject to Section 2(a)(iii), the Seller will be deemed on the first Business Day after the end of the five Business Day period to have failed to make the delivery due on the original Settlement Date]**.”

* The words in square brackets should be included only if Physical Settlement is applicable (with or without Cash Settlement).

** The first alternative should be included if both Physical Settlement and Cash Settlement are applicable. The second alternative should be included if Physical Settlement only is applicable.

¹⁴Include this GST gross-up clause if the price has been struck on the GST exclusive basis and it is agreed that the recipient of the supply is to pay additional consideration for the GST.

¹⁷[Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation enclosed for that purpose and returning it to us.

Yours sincerely
 [name of party preparing Confirmation]
 By:
 Name:
 Title:

Confirmed as of the date first written:
 [name of other party]

By:
 Name:
 Title:]

¹⁷[Please confirm that the foregoing correctly sets forth the terms of our agreement by sending us a Confirmation substantially the same as this Confirmation or by sending us a Confirmation in the following terms:

“We acknowledge receipt of your Confirmation dated [date] with respect to the transaction with reference no []. We confirm that the Confirmation correctly sets forth the terms of our agreement.

Yours sincerely

¹⁵See section 1.3 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. Specify the places where commercial banks need to be settling payments ie “[name places eg Sydney, Melbourne]”.

You need not include this item if you have agreed the meaning of Business Days in part 5 of the schedule (see footnote ~~2728~~ in [20.19]).

¹⁶**Care!** This Confirmation has been prepared on the following assumptions:

- (a) **Market Disruption Events, Additional Market Disruption Events, Disruption Fallbacks.** All these issues have been pre-agreed and dealt with in part 5 of the schedule. See [20.19] (footnotes ~~314 to 8 and 13 to 1617~~). If this is not the case, you must cover these issues in your Confirmation. ***This is very important***
- (b) **Calculation Agent.** You have specified in part 5 of the schedule which party is the Calculation Agent (see [20.19] footnote ~~2829~~). If not insert an item:
 “Calculation Agent:”
- (c) **Settlement instructions.** Delivery and settlement instructions are not included. If this approach is adopted you must ensure that these particulars are identified by some other means eg in standard settlement instructions or settlement instructions issued immediately before settlement.
- (d) **Multibranch Parties.** Neither party is a Multibranch party. If a party intends to make and receive payments under different Transactions through different branch offices, it should be specified in the Schedule to the ISDA Master Agreement as a Multibranch party. If a party is a Multibranch party, an item relating to Offices should be included in the Confirmation in which the relevant branch is identified.

¹⁷We have included two forms of closing. The first is for when the counterparty will be asked to return the Confirmation with their agreement to the terms endorsed on it. The second is for when the counterparty will send their own Confirmation or a Confirmation note referring to the other party's Confirmation. It is optional which approach you adopt.

[name of party preparing reply]

By:

Name:

Title:”]

[20.33] **Sample Confirmation for fixed forward commodity contracts for RECs for physical settlement and/or cash settlement - multiple exercise.** (Paragraphs (4) to (9) of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions contains some definitions and other provisions relevant to this type of contract.)

[Date]

Reference Number []

[Name and address of counterparty]

Fixed forward commodity contract

The purpose of this letter is to confirm the terms and conditions of the fixed forward commodity contract for RECs entered into between us on the Trade Date specified below (“**Transaction**”).

1. The terms of the particular Transaction to which this Confirmation relates are as follows:

Commodity:	RECs
Creation Date:	31 December # ¹
[Excluded Source:] ²	
Quantity: ³	
Trade Date: ⁴	
Seller: ⁵	[Party A/B]
Buyer: ⁶	[Party A/B]
Fixed Price: ⁷	

¹Insert the year in or prior to which the RECs are to have been created.

²Insert if there is any eligible renewable energy source for which a REC which may not be delivered, and describe that excluded source (eg, “wood waste”)

³The quantity of RECs.

⁴The date the parties enter into the contract.

⁵Insert correct party description.

⁶Insert correct party description.

⁷See Section 5.2 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. It is the price for each REC agreed on the Trade Date. See also [20.3320.33] footnote 19 for a GST clause to be used if the Buyer is to gross up for GST.

AFMA has published trading conventions as to price. These may be found on its website (www.afma.com.au).

[Cash Settlement: Applicable]^{13,14,15}

[Cash Settlement Amount:]¹⁶

[Cash Settlement Price:]¹⁷

[Settlement Date(s):]¹⁸

“If both Physical Settlement and Cash Settlement are applicable to a forward commodity contract, then the [Seller][Buyer] must notify the [Buyer][Seller] not less than two Business Days before each Settlement Date whether Physical Settlement applies, Cash Settlement applies or both Physical Settlement and Cash Settlement apply on that Settlement Date. On delivery to the [Buyer][Seller] of that notice, the right granted under the forward commodity contract to settle by the other methods on that Settlement Date terminates. If both Physical Settlement and Cash Settlement are to apply on a Settlement Date, then the [Seller][Buyer] must in the notice notify the Number of Units to be Physically Delivered and/or the Number of Units to be Cash Settled on that Settlement Date. If the [Seller][Buyer] fails to give such a notice, the [Seller][Buyer] will be deemed to specify [Physical Settlement][Cash Settlement] to apply on that Settlement Date.”

or

- in the Confirmation add the following paragraph:”

“(#) **Settlement**

Both Physical Settlement and Cash Settlement are applicable to this Transaction. The [Seller][Buyer] must notify the [Buyer][Seller] not less than two Business Days before each Settlement Date whether Physical Settlement applies, Cash Settlement applies or both Physical Settlement and Cash Settlement apply on that Settlement Date. On delivery to the [Buyer][Seller] of that notice, the right granted under this Transaction to settle by the other methods on that Settlement Date terminates. If both Physical Settlement and Cash Settlement are to apply on a Settlement Date, then the [Seller][Buyer] must in the notice notify the Number of Units to be Physically Delivered and/or the Number of Units to be Cash Settled on that Settlement Date. If the [Seller][Buyer] fails to give such a notice, the [Seller][Buyer] will be deemed to specify [Physical Settlement][Cash Settlement] to apply on that Settlement Date.”

The issue of which party has the right to make the election and whether the fallback is Physical Settlement or Cash Settlement is a matter for individual negotiation. In the REC market, the working group recommends that the election be included in all transactions, that the Seller be the party entitled to specify the method of settlement and that Cash Settlement be the fallback.

¹⁵See paragraph (6) of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions for the meaning of this term. If the transaction is not to be cash settled, this item may be omitted.

¹⁶See paragraph (6) of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions for the meaning of this term. If that Addendum is incorporated in your ISDA Master Agreement, and the definition of Cash Settlement Amount is appropriate for your transaction, this item may be omitted. If it is not, the method of calculation should be inserted in the Confirmation.

¹⁷See paragraph (6) of June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) - Electricity (Energy and REC) Transactions for the meaning of this term. This is the price agreed on the Trade Date as the basis for payment of a Cash Settlement Amount. It could, for example, be a fixed dollar amount or a floating amount (such as a spread above the REC Spot Price on the Settlement Date).

¹⁸Insert Settlement Date (ie the date when the RECs must be actually delivered or, where appropriate, the Cash Settlement Amount paid). You need not include this item if you have agreed the meaning of Settlement Date in part 5 of the schedule (see [20.19] footnote ~~47~~18).

Under Section 3.4 of the 1993 ISDA Commodity Derivatives Definitions, the Settlement Date is subject to adjustment in accordance with the Following Business Day Convention unless otherwise specified. You can specify a different

Business Day Convention to apply by specifying it at this item of “Settlement Date” or in part 5 of the schedule to your ISDA Master Agreement. See [20.19] (footnote ~~2223~~) for wording relating to adjusting the Settlement Date in accordance with a Business Day Convention by including a clause in part 5 of the schedule.

An alternative is that you may agree (particularly if either party is a participant in the physical electricity market) that the Settlement Date should correspond to the dates for settlement under the National ~~Electricity~~ Code from time to time. To do this:

- in Part 5 of the Schedule to the ISDA Master Agreement add the following paragraph (this is the same clause that is recommended at [20.19] footnote ~~4718~~) and omit “Settlement Date.”:

“The Settlement Date for a Commodity Transaction for which Multiple Exercise is not applicable is the first day after the day specified as the Settlement Trigger Date in respect of that Commodity Transaction upon which any market participant (as defined in the National Code) would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed a net amount, unless, in the case of a Commodity Transaction for which Physical Delivery is applicable on that Settlement Date, a Settlement Disruption Event prevents delivery of RECs on that day.

The Settlement Date for each Exercise Date under a Commodity Transaction for which Multiple Exercise is applicable is the first day after the day being two Business Days after that Exercise Date upon which any market participant (as defined in the National Code) would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed a net amount, unless, in the case of a Commodity Transaction for which Physical Delivery is applicable on that Settlement Date, a Settlement Disruption Event prevents delivery of RECs on that day.

If a Settlement Disruption Event does prevent delivery on a Settlement Date, then the Settlement Date will be the first succeeding day on which delivery of RECs can take place, unless a Settlement Disruption Event prevents delivery of RECs on each of the five Business Days immediately following the original Settlement Date. In that case:

- (a) if both Physical Settlement and Cash Settlement are applicable to the Commodity Transaction on the original Settlement 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 Settlement Date will be the first Business Day after the end of the five Business Day period; and
- (b) otherwise, subject to Section 2(a)(iii), the party with the obligation to make delivery of the RECs will be deemed on the first Business Day after the end of the five Business Day period to have failed to make the delivery due on the original Settlement Date.”

or

- in the Confirmation insert the following next to “Settlement Date(s):”

“The Settlement Date for each Exercise Date is the first day after the day being two Business Days after that Exercise Date upon which any market participant (as defined in the National Code) would be obliged to make a payment under the National Code if a statement issued under the National Code showed that that party owed a net amount[, unless a Settlement Disruption Event prevents delivery of RECs on that day. If a Settlement Disruption Event does prevent delivery on the Settlement Date, then the Settlement Date will be the first succeeding day on which delivery of RECs can take place, unless a Settlement Disruption Event prevents delivery of RECs on each of the five Business Days immediately following the original Settlement Date. In that case, [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 Settlement Date will be the first Business Day after the end of the five Business Day period]**[subject to Section 2(a)(iii), the Seller will be deemed on the first Business Day after the end of the five Business Day period to have failed to make the delivery due on the original Settlement Date]**].”

-
2. If any party:¹⁹
- (a) is liable to pay goods and services tax (“GST”) on a supply made by it under this Transaction;
 - (b) certifies to the recipient that it has not priced the supply to include GST, and
 - (c) 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.

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.

[Business Days:]²⁰

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²²[Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation enclosed for that purpose and returning it to us.

* The words in square brackets should be included only if Physical Settlement is applicable (with or without Cash Settlement).

** The first alternative should be included if both Physical Settlement and Cash Settlement are applicable. The second alternative should be included if Physical Settlement only is applicable.”

¹⁹Include this GST gross-up clause if the price has been struck on the GST exclusive basis and it is agreed that the recipient of the supply is to pay additional consideration for the GST.

²⁰See section 1.3 of the 1993 ISDA Commodity Derivatives Definitions for the meaning of this term. Specify the places where commercial banks need to be settling payments ie “[name places eg Sydney, Melbourne]”.

You need not include this item if you have agreed the meaning of Business Days in part 5 of the schedule (see footnote ~~27~~28 in [20.19]).

²¹**Care!** This Confirmation has been prepared on the following assumptions:

- (a) **Market Disruption Events, Additional Market Disruption Events, Disruption Fallbacks.** All these issues have been pre-agreed and dealt with in part 5 of the schedule. See [20.19] (footnotes ~~3~~14 to ~~8~~and 13 to 1617). If this is not the case, you must cover these issues in your Confirmation. ***This is very important***
- (b) **Calculation Agent.** You have specified in part 5 of the schedule which party is the Calculation Agent (see [20.19] footnote ~~28~~29). If not insert an item:
“Calculation Agent:”
- (c) **Settlement instructions.** Delivery and settlement instructions are not included. If this approach is adopted you must ensure that these particulars are identified by some other means eg in standard settlement instructions or settlement instructions issued immediately before settlement.
- (d) **Multibranch Parties.** Neither party is a Multibranch party. If a party intends to make and receive payments under different Transactions through different branch offices, it should be specified in the Schedule to the ISDA Master Agreement as a Multibranch party. If a party is a Multibranch party, an item relating to Offices should be included in the Confirmation in which the relevant branch is identified.

Yours sincerely
[name of party preparing Confirmation]
By:
Name:
Title:

Confirmed as of the date first written:
[name of other party]

By:
Name:
Title:]

²²[Please confirm that the foregoing correctly sets forth the terms of our agreement by sending us a Confirmation substantially the same as this Confirmation or by sending us a Confirmation in the following terms:

“We acknowledge receipt of your Confirmation dated [date] with respect to the transaction with reference no []. We confirm that the Confirmation correctly sets forth the terms of our agreement.

Yours sincerely
[name of party preparing reply]
By:
Name:
Title:”]

²²We have included two forms of closing. The first is for when the counterparty will be asked to return the Confirmation with their agreement to the terms endorsed on it. The second is for when the counterparty will send their own Confirmation or a Confirmation note referring to the other party's Confirmation. It is optional which approach you adopt.

**[20.34] June 1997 Australian Addendum No. 13 (as amended in April 2002 and July 2003) -
Electricity (Energy and REC) Transactions**

JUNE 1997
AUSTRALIAN ADDENDUM NO. 13 (as amended in April
2002 and July 2003) -
ELECTRICITY (ENERGY AND REC) TRANSACTIONS

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 Commodity Transaction between them entered into after that time where the commodity is electricity or RECs is a Transaction governed by the terms of this Addendum and the ISDA Master Agreement in which it is incorporated.

This applies whether or not the parties:

- (a) refer to the ISDA Master Agreement or this Addendum; or
- (b) state that a Commodity Transaction is governed by the terms of any other master agreement

when entering into or confirming the Commodity Transaction.

If a Commodity Transaction is a Transaction governed by the terms of this Addendum and the ISDA Master Agreement in which it is incorporated, then the terms of any other master agreement do not apply to it even if the parties state that the Commodity Transaction is governed by the terms of any other master agreement when entering into or confirming the Commodity Transaction.

(2) Confirmations

- (a) The parties acknowledge that Commodity Transactions governed by the terms of this Addendum and the ISDA Master Agreement in which it is incorporated may be confirmed by various methods including, without limitation, the following:

- Telex
- Letter
- Reuters direct dealing system
- Telerate trading service
- 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 2000 ISDA Definitions or the 1993 ISDA Commodity Derivatives Definitions. For example:

“Settlement 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 2000 ISDA Definitions or the 1993 ISDA Commodity Derivatives Definitions, then that term is to be deemed to be that defined term.

(3) Definitions

- (a) The definitions and provisions contained in the 2000 ISDA Definitions, the 1993 ISDA Commodity Derivatives Definitions and in this Addendum are incorporated into each Confirmation. If there is an 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 2000 ISDA Definitions and the definitions and provisions contained in the 1993 ISDA Commodity Derivatives Definitions, the 1993 ISDA Commodity Derivatives Definitions will govern.
- (b) In this Addendum “Commodity Transaction” means any transaction relating to electricity or RECs which is or is described in its confirmation as a forward commodity transaction, a spot commodity transaction or a commodity option whether or not the Settlement Date is fixed and any other type of transaction relating to electricity or RECs falling within the meaning of “Transaction” in the 1993 ISDA Commodity Derivatives Definitions. “Commodity Transaction” also means any other type of transaction which parties agree to be a Commodity Transaction relating to electricity or RECs.
- (c) Each Commodity Transaction is a “Transaction” for the purpose of the ISDA Master Agreement in which this Addendum is incorporated.
- (d) In this Addendum references to the 2000 ISDA Definitions and the 1993 ISDA Commodity Derivatives Definitions are references to those publications as published by the International Swaps and Derivatives Association, Inc.

(4) Certain definitions and other provisions

- (a) The following definitions apply to this Addendum and to any Commodity Transaction.

“**MW**” means megawatt.

“**MWh**” means a megawatt hour.

“**National Code**” means the code of conduct called the “National Electricity Code”, administered and enforced by National Electricity Code Administrator Limited (ACN 073 942 775), and operating under section 6 of the National Electricity Law, as amended from time to time.

“**National Electricity Law**” means the schedule to the National Electricity (South Australia) Act 1996 (SA).

“**NEMMCO**” means National Electricity Market Management Company Limited (ACN 072 010 327).

“**Number of Units to be Cash Settled**” means:

- (a) in respect of a Commodity Transaction for which both Physical Settlement and Cash Settlement apply on a Settlement Date:

-
- (i) if it is a Commodity Transaction for which Multiple Exercise is specified to be applicable, the number of Units nominated or deemed to be nominated to be cash settled on the applicable Exercise Date by the Buyer (in the case of a commodity option) or the Seller (in the case of a forward commodity contract);
 - (ii) otherwise, the number of Units nominated to be cash settled by the Buyer (in the case of a commodity option) or the Seller (in the case of a forward commodity contract) by notice not less than two Business Days before the Settlement Date or, if none is so specified, the Quantity less the Number of Units to be Physically Delivered on that Settlement Date; and
- (b) in respect of a Commodity Transaction for which Multiple Exercise is not specified to be applicable and for which Cash Settlement only applies on the Settlement Date, the Quantity.

“Number of Units to be Physically Delivered” means:

- (a) in respect of a Commodity Transaction for which both Physical Settlement and Cash Settlement apply on a Settlement Date:
 - (i) if it is a Commodity Transaction for which Multiple Exercise is specified to be applicable, the number of Units nominated or deemed to be nominated to be physically delivered on the applicable Exercise Date by the Buyer (in the case of a commodity option) or the Seller (in the case of a forward commodity contract);
 - (ii) otherwise, the number of Units nominated to be physically delivered by the Buyer (in the case of a commodity option) or the Seller (in the case of a forward commodity contract) by notice not less than two Business Days before the Settlement Date; and
- (b) in respect of a Commodity Transaction for which Multiple Exercise is not specified to be applicable and for which Physical Settlement only applies on the Settlement Date, the Quantity.

“REC” means a certificate created under Division 4 Part 2 of the REC Act.

“REC Act” means the Renewable Energy (Electricity) Act 2000 (Cwlth).

“Settlement Disruption Event” in relation to a REC, means an event beyond the control of the parties as a result of which the REC cannot be transferred, or a transfer of the REC notified, in accordance with the REC Act.

- (b) For the purpose of determining a Commodity Reference Price under Section 7.1(c)(ii)(B) of the 1993 ISDA Commodity Derivatives Definitions:

“Spot Price” means:

Commodity:	Electricity
Unit:	MWh
Price Source:	NEMMCO

Specified Price: The spot price at the regional reference node specified in the Confirmation, as determined under the National Code

“REC Spot Price” means:

Commodity: REC

Unit: One certificate under the REC Act relating to 1 MWh

Price Source: Renewable Energy (Electricity) Charge Act 2000 (Cwlth)

Specified Price: The rate of charge as specified under the Renewable Energy (Electricity) Charge Act 2000 (Cwlth)

(5) Certain definitions relating to commodity options

The following definition applies to any Commodity Transaction which is, or is described in its confirmation as, a commodity option.

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

(6) Certain definitions and other provisions relating to forward commodity contracts and spot commodity contracts

(a) The following definitions apply to any transaction which is, or is described in its confirmation as, a forward commodity contract or a spot commodity contract (whether or not the Settlement Date is fixed).

“Buyer” means the party specified as buyer in the Confirmation.

If **“Cash Settlement”** is specified to be applicable to a Settlement Date, it means that:

(a) the Buyer must pay the Cash Settlement Amount to the Seller on the Settlement Date, if the Fixed Price exceeds the Cash Settlement Price; or

(b) the Seller must pay the Cash Settlement Amount to the Buyer on the Settlement Date, if the Cash Settlement Price exceeds the Fixed Price.

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

Number of Units to be Cash Settled x (Fixed Price - Cash Settlement Price)

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

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

Number of Units to be Physically Delivered x Fixed Price

If “**Physical Settlement**” is specified to be applicable to a Settlement Date, it means the Seller must deliver the Number of Units to be Physically Delivered to the Buyer, and the Buyer must pay the Fixed Amount to the Seller, on the Settlement 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.

- (b) When a Commodity Transaction is, or is described in its Confirmation as, a floating forward transaction, then the Settlement 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 Day’s notice).

(7) Certain definitions relating to commodity options for RECs

The following definitions apply to any transaction which is, or is described in its confirmation as, a commodity option relating to RECs and for which there is no “Physical Settlement” procedure specified in Article 8 of the 1993 ISDA Commodity Derivative Definitions. Such as Transaction is also an “Option” for the purposes of the 1993 ISDA Commodity Derivative Definitions.

“**Fixed Amount**” means, unless the parties otherwise specify in the Confirmation, the amount calculated in accordance with the following formula:

Number of Units to be Physically Delivered x Strike Price per Unit

If “**Physical Settlement**” is specified to be applicable, it means that the Seller grants the Buyer the right to cause the Seller to either, depending on whether the commodity option is a Put or a Call, purchase (and take delivery of) or sell (and deliver) the Number of Units to be Physically Delivered on the Settlement Date in return for the Fixed Amount. In those circumstances, for the purposes of Section 8.3 of the 1993 ISDA Commodity Derivative Definitions, the definition of:

- (a) “**Call**” is taken to mean an Option entitling, but not obliging, the Buyer to purchase from the Seller the Number of Units to be Physically Delivered in exchange for the Fixed Amount, on the Settlement Date; and
- (b) “**Put**” is taken to mean an Option entitling, but not obliging, the Buyer to sell to the Seller the Number of Units to be Physically Delivered in exchange for the Fixed Amount, on the Settlement Date.

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

(8) Physical Settlement

When “Physical Settlement” is specified to be applicable to a Commodity Transaction relating to RECs, the following provisions apply:

- (a) If the Commodity Transaction requires the delivery of a REC, then the REC must:
- (i) be created on or prior to the date described in the Confirmation as the Creation Date;

-
- (ii) be duly registered under Division 5 Part 2 of the REC Act prior to the Settlement Date; and
 - (iii) not relate to electricity generated from any eligible renewable energy source described in the Confirmation as an Excluded Source.
 - (b) For the purposes of this Agreement, delivery of a REC is only taken to have occurred when the party required to deliver the REC has performed or caused to be performed all steps required of a transferor under the REC Act to cause that REC to be transferred to the other party, including, without limitation, any mandatory notification of the transfer by the transferor under the REC Act.
 - (c) All expenses of the transfer of a REC (including stamp duty and registration fees) will be payable by the party that takes delivery of the REC.
 - (d) Section 2(c) of this Agreement is amended by:
 - (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”;
 - (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 a REC will be taken to have represented to the other party, at the time it transfers the REC to the other party pursuant to this Agreement, that the REC satisfies the requirements of paragraph (8)(a) of this Addendum No. 13 and that it has full legal and beneficial title to that REC 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 No. 13, 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.

(9) Multiple Exercise

When “Multiple Exercise” is specified to be applicable to a Commodity Transaction relating to RECs, the following provisions apply:

- (a) If the Commodity Transaction is, or is described in its Confirmation as, an American style of commodity option, Buyer may exercise the option on one or more Seller Business Days during the Exercise Period, but (except as set out below) on any such Seller Business Day:
 - (i) may not, for each of Physical Settlement and Cash Settlement, as applicable on the related Settlement Date, 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 for

each of Physical Settlement and Cash Settlement 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, if both Physical Settlement and Cash Settlement are applicable on the related Settlement Date, 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.
- (b) If the Commodity Transaction is, or is described in its Confirmation as, a forward commodity contract:
- (i) 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:
 - (1) may not, for each of Physical Settlement and Cash Settlement, as applicable on the related Settlement Date, 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
 - (2) 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
 - (3) must, if both Physical Settlement and Cash Settlement are applicable on the related Settlement Date, specify:
 - (A) the number of Units to be physically delivered; or
 - (B) the number of Units to be cash settled; or
 - (C) the number of Units to be physically delivered and the number of Units to be cash settled.

On the last day of the Exercise Period, in addition to any Notice of Exercise given by the Seller on that date, Seller is deemed to have given a notice to the Buyer:

- (4) if Physical Settlement only is applicable to the related Settlement Date, nominating for physical delivery a number of Units equal to the Quantity less the aggregate of:

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- (A) the 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
 - (B) the Number of Units the subject of any Notice of Exercise given by the Seller on that Exercise Date; and
- (5) if Cash Settlement only or both Cash Settlement and Physical Settlement is applicable to the related Settlement Date, 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 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 by the Seller on that Exercise Date.
- (ii) “Buyer Business Day” means any day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in the city in which Buyer is located for the purpose of receiving notices.
- (iii) “Exercise Period” means the period specified in or pursuant to the related Confirmation.
- (iv) “Notice of Exercise” means irrevocable notice given by Seller to Buyer (of its nomination of a number of Units for delivery) 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 Buyer Business Day after the latest time so specified, the Notice of Exercise will be deemed to have been received on the next following Buyer Business Day, if any, in the Exercise Period.
- (c) “Exercise Date” means each Seller Business Day or Buyer Business Day during the Exercise Period on which a Notice of Exercise is given or deemed to be given.
- (d) “Minimum Number of Units” means the number specified as such in the related Confirmation.
- (e) “Maximum Number of Units” means the number specified as such in the related Confirmation.