

## PART 31 - ENVIRONMENTAL PRODUCTS TRANSACTIONS

### INTRODUCTION

This Part 31 has been prepared by Johnson Winter & Slattery under instructions from the AFMA Environmental Products Committee ("Committee"), member firms of which are elected every two years by AFMA Financial Markets members directly involved in energy markets. The Committee typically has representatives from generators, retailers, financial institutions and brokers.

### Environmental Products

[31.01] As at ~~December~~June 2006 the following types of environmental products are in existence in Australia:

- **Greenhouse Gas Abatement Certificates** or **GACs** being certificates created under Division 5 Part 8A of the *Electricity Supply Act 1995 (NSW)*;
- **Gas Electricity Certificates** or **GECs** being certificates created under Division 1 of Part 4 of Chapter 5A of the *Electricity Act 1994 (QLD)*; ~~and~~
- **Renewable Energy Certificates** or **RECs** being certificates created under Division 4, Part 2 of the *Renewable Energy (Electricity) Act 2000 (Cwlth)*; ~~and~~;
- **Green Power Rights** being rights to claim eligible Green Power generation from a Green Power generator during a defined period under the National Green Power Accreditation Program ("**Program**") established by various government agencies collectively known as the "National Green Power Accreditation Steering Group"

(referred to collectively in this Part 31 as "Environmental Products" with the first three being referred to collectively as Statutory Environmental Products).

Statutory Environmental Products are created pursuant to legislation and are registered on a specifically created database. GACs are created with reference to eligible activities resulting in a reduction or abatement in greenhouse gases. GECs are created with reference to the production of electricity from natural gas, methane and other eligible fuels. RECs are created with reference to the generation of electricity from eligible renewable energy sources.

Each Statutory Environmental Product scheme is established by legislation (as indicated above) and each scheme:

- establishes the ability of qualifying entities to create the relevant Environmental Products; and

- imposes a charge or penalty on liable entities, such as electricity retailers, to the extent that they do not purchase and surrender to the scheme administrator the required number of relevant Environmental Products for a particular year.

Each Statutory Environmental Products scheme has a scheme administrator and an electronic register which records the ownership of the Environmental Products. The Environmental Products can be transferred in accordance with the scheme rules.

Liable entities will generally avoid paying the penalty or shortfall charge by purchasing Statutory Environmental Products created by accredited Environmental Product creators.

### **Green Power Rights**

The Program is a voluntary program under which retailers of electricity who wish to make use of the Green Power logo must purchase Green Power Rights in a settlement period (being a calendar year) equal to their sales to customers of accredited Green Power Products. The Program is currently administered by the NSW Department of Energy, Utilities & Sustainability. The Program requires both Green Power retailers and generators to provide annual reports to enable the Program manager to track the use of Green Power Rights during the period.

A retailer can carry forward up to a 5% excess of unused New Green Power Rights into the next settlement period. Any excess of unused New Green Power Rights can be sold to other retailers.

A shortage of up to 5% of New Green Power Rights may be made up in the following settlement period provided the retailer has purchased New Green Power Rights attributable for the shortfall. A shortfall of more than 5% or a failure to purchase New Green Power Rights attributable to the shortfall will result in the retailer being placed on probation and given 2 months to rectify the shortfall via credits/rebates to affected Green Power customers. Failure to take this action could result in the retailer's accreditation under the Program being withdrawn. Shortfalls and carry-over rights will be publicly reported each year in the Program's annual audit report. The NSW Renewable Energy Target Explanatory Paper published in November 2006 states that electricity retailers will be required to offer at least 10 per cent Green Power to all new residential customers.

### **New Products - Victorian Renewable Energy Certificates**

On 19 September 2006 the Victorian Renewable Energy Act 2006 received royal assent. It implements a mandatory scheme for Victorian Renewable Energy Certificates ("VRECs"). This scheme mirrors the Commonwealth scheme for RECs and imposes requirements on electricity retailers to purchase VRECs attributable to electricity consumption in Victoria from renewable power stations situated in Victoria. The scheme commences on 1 January 2007 and the first year's target is zero percent. This Part 31 will be updated shortly to include reference to VRECs.

### **New Products – New South Wales Renewable Energy Certificates**

On 9 November 2006 the NSW Premier Morris Iemma announced that NSW would introduce a scheme for NSW Renewable Energy Certificates ("NRECs"). The indications are that this scheme will mirror the Victorian Renewable Energy Certificate scheme for VRECs and will impose requirements on electricity retailers to purchase NRECs attributable to electricity consumption in NSW from renewable power stations connected to the National Electricity Market. The NSW Government is seeking to align the NSW Scheme for NRECs with the Victorian scheme for VRECs. This Part 31 will be updated to include reference to NRECs once the legislation is passed and legislation is expected to be introduced in the first session of Parliament in 2007.

### **Contractual arrangements**

Contracts for the purchase of Environmental Products could be on a spot or forward basis.

This Part 31 (prepared by Johnson Winter & Slattery) relates specifically to documenting Environmental Products transactions under the terms of the 2002 ISDA Master Agreement published by International Swaps and Derivatives Association, Inc. where the parties want to specify the governing law as the law in force in one of the Australian states or territories. 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 Committee. An explanatory note commenting on the treatment of the forward contract for Statutory Environmental Products as "derivatives" under the Corporations Act 2001 (Cwth) and under applicable accounting standards (AASB 139/IAS 39) is available at the "Environment Products" section of the OTC Guide alongside this Part 31.

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The Committee has also published an AFMA endorsed short form contract for spot trading small volumes of Environmental Products and this is available on AFMA's web site under the Environmental Products section. This section also contains an explanatory note commenting on the treatment of the short form contract for Statutory Environmental Products as "derivatives" under the *Corporations Act 2001 (Cwth)* and under applicable accounting standards (AASB 139/IAS 39).

#### [31.02] **What are Environmental Products?**

Whilst the Statutory Environmental Products are called "certificates" in their establishing legislation, this is a misnomer because in fact a certificate of ownership is not created. They are all uncertificated entitlements made up of various rights and obligations contained in the legislation pursuant to which they are created. As such Statutory Environmental Products are not tangible things but rather an entitlement to the benefits that accrue to the registered owner under the scheme legislation, being primarily that the scheme administrator will accept the surrender of the Statutory Environmental Product as a credit against the liability otherwise imposed to pay a shortfall charge or penalty.

These rights are enforceable by suit by the registered owner of the Statutory Environmental Product. The right of enforcement is a statutory chose in action and as such Statutory Environmental Products are a form of intangible property. In some

respects the nature of the Statutory Environmental Products are therefore analogous to the statutory rights of copyright and registered trade marks.

Green Power Rights are rights established for the purpose of participation in the Program and form part of the rules surrounding the entitlement to use the Green Power logos. The rights are therefore akin to a licence to use a trade mark.

[31.03] This Part 31 contains the following parts:

[31.01]- [31.07] Introduction, important notes, assumptions, qualifications, conclusion

[31.08] Commentary on documenting Environmental Products transactions

[31.09] – [31.10] Recommended clauses for Part 5 of the Schedule to the ISDA Master Agreement

[31.11] – [31.12] Recommended pro forma clauses for the fixed forward confirmation for Environmental Products

[31.13] – [31.14] December~~June~~ 2006 Australian Environmental Products Addendum ("Addendum")

## IMPORTANT NOTES

[31.04] This Part 31 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 for completing the schedule to the ISDA Master Agreement (Part 5);
- (d) various possible additional clauses for your ISDA Master Agreement (Part 18);
- (e) descriptions of types of forward commodity contracts, options and swaptions [~~Part 20.10,11~~], commentary on how to use ISDA documents, commentary on whether to use a separate ISDA Master Agreement for certain categories of transaction [~~Part 20.12,13~~], notes on 2005 Commodity Definitions [~~20.16;17~~]; and
- (f) material on netting (Part 23).

## ASSUMPTIONS

[31.05] The same assumptions as are set out at [1.06] of this guide apply to this Part 31.

## QUALIFICATIONS

[31.06] **It is necessary for users of this Part 31 to determine in each case the suitability or otherwise of the ISDA Master Agreement to the particular circumstances applicable to that case. This Part 31 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 31 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 31, AFMA, AFMA Services, ISDA and Johnson Winter & Slattery do not accept responsibility for any losses suffered by contracting in the manner suggested in this Part 31 or arising from any error or omission in this Part 31.**

## CONCLUSION

[31.07] Johnson Winter & Slattery has 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 Environmental Products 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 in ~~December~~June 2006.

### **Johnson Winter & Slattery**

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## COMMENTARY ON DOCUMENTING ENVIRONMENTAL PRODUCTS TRANSACTIONS

[31.08] To document Environmental Products 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 ~~[31 10]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 the 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 the recommendation for a change to the definition of “Close-out Amount” in the 2002 ISDA Master Agreement ~~;~~ ~~and~~

~~attach the Addendum.~~

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

[31.09] ~~[Part-31.10]~~ sets out a series of clauses and sub-clauses which the Committee recommends be included in Part 5 of the Schedule to a 2002 ISDA Master Agreement.

### **The Committee strongly recommends that parties adopt the 2002 ISDA Master Agreement rather than the 1992 ISDA Master Agreement.**

**Commentary** – Set out below is a commentary on the text of clauses set out in [31.10] recommended for inclusion in the ISDA Schedule. Note: If you are also entering into electricity transactions you should check that a particular clause has not already been incorporated as part of the preparation for entry into the electricity transactions.

- 1 Clause 1(a) - The Addendum is incorporated in order to include the definitions and settlement methodology used in the Schedule and Confirmation which draws on the definitions and settlement methodology used in the Addendum. Note that the Addendum also expressly incorporates the 2000 ISDA Definitions and the 2005 ISDA Commodity Definitions into this Transaction. In the event of an inconsistency in the meaning of a defined term, the order of precedence is the Confirmation, the Addendum, the 2005 ISDA Commodity Derivatives Definitions and then the 2000 ISDA Definitions.
- 2 Clause 1(b) - To be a Business Day, commercial banks must be open for settlement of payments in each of Sydney, Melbourne and Brisbane – see section 1.3 of the 2005 ISDA Commodity Definitions.
- 3 Clause 1(c) – If Multiple Exercise is applicable clause (8) of the Addendum specifies the terms for exercise and the Exercise Period must be set out in the Confirmation. A specified party can then elect a number of Units to be delivered or cash settled on a particular date. If Multiple Exercise is not applicable, a Settlement Trigger Date will be specified in the Confirmation and settlement will occur on the next Settlement Date to arise following the Settlement Trigger Date.

The Settlement Date under this clause is the date for settlement under the National Rules (as defined in the Addendum) which follows the Settlement Trigger Date specified in the Confirmation unless a Settlement Disruption Event prevents settlement occurring. A Settlement Disruption Event is defined in clause (4) of the Addendum as:

*“an event beyond the control of the parties as a result of which the ~~Statutory Environmental Product Products~~ cannot be transferred, or a transfer of the ~~Statutory Environmental Product Products~~ notified, in accordance with the Relevant Act.*

In other words, if the REC Registry, GAC Registry or GEC Registry is out of action for more than 5 Business Days the Seller will be required to Cash Settle. A Settlement Disruption Event does not apply to Green Power Rights as there is no Registry recording transfers of Green Power Rights.

The Committee recommends the fallback position for Statutory Environmental Products to be Cash Settlement rather than Physical Settlement so that the Seller is not in default under the Agreement if it fails to hold Statutory Environmental Products by two Business Days before the Settlement Date. The selection of the method of settlement need not be made earlier than two Business Days before the Settlement Date. In the case of Green Power Rights the Committee recommends Physical Settlement as being applicable on the basis that there is no readily available Cash Settlement Price for Green Power Rights.

- 4 Clause 1(d) – Where a party may elect which settlement method will apply, this provision allows the parties to pre-agree that all forward contracts and options for Statutory Environmental Products are either physically settled or cash settled. This removes the need for including these references in each Confirmation. ~~The If a party does not elect which settlement method will apply, the~~ Confirmation can override the provision by stating: “Physical Settlement: applicable Cash Settlement: not applicable ”.Cash Settlement: Applicable” or “Physical Settlement: Applicable”. Because a spot contract is usually used to close out physically settled forward contracts, physical settlement is usually appropriate. If the parties wish to vary this and agree to the spot contract ~~authorising~~authorises cash settlement the Confirmation can override the standard provision by stating: “Physical Settlement and Cash Settlement are applicable”.

In the case of Green Power Rights the Committee recommends that only Physical Settlement is applicable as there is no readily available cash settlement price. If the Green Power Rights are not transferred in accordance with the definition of Physical Settlement in the Addendum then clause (10) in the Addendum specifies that the failure will not constitute an Event of Default nor a Termination Event but instead liquidated damages will be payable. This means that the failure to transfer Green Power Rights will not trigger a closing out of all current transactions between the parties.

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Clause (6) of the Addendum sets out the provisions which are deemed to apply when Cash Settlement is applicable in relation to Environmental Products.

These are that on the Settlement Date:

- (a) if the Fixed Price is lower than the Cash Settlement Price the Seller must pay the Buyer the difference; or
- (b) if the Fixed Price is higher than the Cash Settlement Price the Buyer must pay the Seller the difference;



in each case multiplied by the Quantity of Environmental Products which have not been delivered.

Clause (8) of the Addendum sets out the provisions which are deemed to apply when Physical Settlement is applicable in relation to Environmental Products. Broadly, these are that the Environmental Products must be created within the Creation Period described in the Confirmation, and in accordance with the relevant legislation or Program in the case of Green Power Rights, be registered and not be created with reference to an Excluded Source. The Seller must also have performed all actions required to transfer the Environmental Products and the Buyer must have paid any transfer fees.

- 5 Clause 1(e) – Whilst this Schedule is intended primarily for Physical Settlement, where Cash Settlement is also applicable the Seller has the election, exercisable at any time up to two Business Days prior to the Settlement Date, to opt for Cash Settlement of part or all of the Quantity of Statutory Environmental Products. If the Seller elects Cash Settlement, the Cash Settlement Price is the Tax Adjusted Legislative Charge, (which is the shortfall rate or charge payable under the relevant legislation, adjusted by the corporate tax rate for non-deductibility) multiplied by 1.2. This multiplication is included to provide a disincentive to the Seller to cash settle. This was considered desirable by the Committee as GACs and GECs have been trading around the Tax Adjusted Legislative Charge.

The GAC greenhouse penalty under both the NSW legislation and the ACT legislation of \$10.50, as at 30 June 2004, will be escalated by CPI (being the All Groups Consumer Price Index for Sydney) on 1 July each year, rounded to the nearest 50 cents. As at 30 June 2006 the GAC greenhouse penalty had been escalated to \$11.50. The GEC shortfall charge, \$11 for the year 2005, is escalated by CPI (being the All Groups Consumer Price Index for Brisbane) on 1 January each year and rounded up to the nearest 5 cents. As at 1 January 2006 the GEC shortfall charge was \$11.00. The renewable energy shortfall charge is not currently escalated by CPI.

The corporate tax rate at 1 ~~December~~<sup>June</sup> 2006 was 0.30. Therefore the Tax Adjusted Legislative Charge as at 1 ~~December~~<sup>June</sup> 2006 was A\$~~16.43~~<sup>15.00</sup> for GACs, A\$15.71 for GECs and A\$57.14 for RECs.

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Where both Cash Settlement and Physical Settlement are applicable to a Transaction, if the Seller fails to make an election by two Business Days prior to the Settlement Date, the Seller is deemed to have elected for Cash Settlement. The Seller will nominate which settlement method will apply and the number of Statutory Environmental Products to be settled by each method. The Committee recommends the position in case of non-election to be Cash Settlement rather than Physical Settlement so that the Seller is not in default under the Agreement if it fails to hold the relevant Statutory Environmental Products on the Settlement Date.

- 6 Clause 1(f) - Section 9.1 of the 2005 Commodity Definitions rounds amounts to the nearest 5 Australian cents. If you want to apply a different rounding (such as to the nearest Australian cent) then this clause should be included.

7 Clause 1(g) - As ~~these~~ Transactions in Statutory Environmental Products are deemed to be for Cash Settlement unless the Seller notifies otherwise (by at least two Business Days prior to settlement), then the Seller's liability for GST is unlikely to arise until it serves the notice nominating how many Environmental Products it proposes to deliver by Physical Settlement. In the case of Green Power Rights the Seller's liability for GST will arise on the issuance of a valid tax invoice.

8 Clause 1(h) – This provision is included to reflect the position which would apply on repeal or termination of an Environment Product scheme.

If a Statutory Environmental Product scheme is repealed the contract for the forward sale of the relevant Environmental Products shall cease to have any practical effect. This follows as the Environmental Products will no longer be registrable under the relevant legislation so Physical Settlement will no longer be possible and the Cash Settlement option will produce a payable amount of zero because the legislative provision relating to the shortfall charge or penalty charge will also be repealed.

In the case of Green Power Rights, the Green Power rights will no longer be able to be utilised in accordance with the Program so Physical Settlement will no longer be possible and liquidated damages will produce a payable amount of zero because the value of the rights would be reduced to zero.

[31.10] **Recommended clauses:**

Set out below are the clauses which the Working Group recommends be inserted into Part 5 of the ISDA Schedule in order to document transactions in Environmental Products:

“(1)(a) The following provisions apply to any transaction which is an Environmental Products Transaction (as defined in ~~December~~June 2006 Australian Environmental Products Addendum). The ~~December~~June 2006 Australian Environmental Products Addendum or any replacement published by the Australian Financial Markets Association current at the time the Transaction is entered into is deemed to be incorporated into this Transaction.

(b) The places to apply for the purpose of the definition of Business Days are Sydney, Melbourne and Brisbane.

(c) The Settlement Date for an Environmental Products 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 Environmental Products Transaction upon which any market participant (as defined in the National Rules) would be obliged to make a payment under the National Rules if a statement issued under the National Rules showed that that party owed a net amount, unless, in the case of an Environmental Products Transaction for which Physical Delivery is applicable on that Settlement Date, a Settlement Disruption

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Event prevents delivery of the relevant Environmental Products on that day.

The Settlement Date for each Exercise Date under an Environmental Products 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 Rules) would be obliged to make a payment under the National Rules if a statement issued under the National Rules showed that that party owed a net amount, unless, in the case of an Environmental Products Transaction for which Physical Delivery is applicable on that Settlement Date, a Settlement Disruption Event prevents delivery of Environmental Products on that day.

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

- (1) if both Physical Settlement and Cash Settlement are applicable to the Environmental Products 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
  - (2) otherwise, subject to Section 2(a)(iii) of this Agreement, the party with the obligation to make delivery of the Environmental Products 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.
- (d) Physical Settlement and Cash Settlement are applicable to any forward ~~commodity~~ contract or ~~commodity~~ option for Statutory Environmental Products. Physical ~~Settlement~~~~settlement~~ is applicable to any spot ~~commodity~~ contract for Statutory Environmental Products and to any forward contract, option or spot contract for Green Power Rights.
- (e) If both Physical Settlement and Cash Settlement are applicable to a forward commodity contract, then the Seller must notify the Buyer not less than 2 Business Days before the 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 of that notice, the right granted under the forward commodity contract to settle by the other method on that Settlement Date terminates. If both Physical Settlement and Cash Settlement are to apply on the Settlement Date, then the Seller 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 fails to give such a notice, the Seller will be deemed to specify Cash Settlement to apply on that Settlement Date.

- (f) Section 9 of the 2005 ISDA Commodity Derivative Definitions does not apply to this Transaction. For the purposes of any calculations referred to in those Definitions (unless otherwise specified), all percentages and quantities used in or resulting from such calculations, and all Australian Dollar (as defined in the 2000 ISDA Definitions) denominated amounts resulting from such calculations (including, without limitation, Fixed Amounts, and Cash Settlement Amounts), will be rounded to the nearest cent.
- (g) If any party:
- (i) is liable to pay goods and services tax (“GST”) on a supply made by it under this Transaction;
  - (ii) certifies to the recipient that it has not priced the supply to include GST; and
  - (iii) issues a valid tax invoice to the recipient within 28 days of the supplier’s liability for GST on the supply arising,

then the recipient agrees to pay to the supplier an additional amount equal to the consideration payable for the supply multiplied by the prevailing GST rate.

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.

- (h) If a scheme establishing an Environmental Product is repealed or terminated all obligations under Transactions for the relevant Environmental Products, which are required to be performed after the effective date of cessation of the scheme, shall cease on that date. The relevant Transactions shall automatically terminate on that date as though the obligations to be performed after that date had been performed in full such that neither party shall have a claim against the other arising from the repeal or termination of the scheme.

**RECOMMENDED PRO-FORMA CONFIRMATION FOR THE FIXED FORWARD SALE FOR ENVIRONMENTAL PRODUCTS**

**[31.11]** **Commentary** – Set out below is a commentary on the pro-forma ISDA Confirmation set out in [31.12] for Environmental Products.

## RECOMMENDED CLAUSES FOR THE FIXED FORWARD CONFIRMATION FOR ENVIRONMENTAL PRODUCTS

~~[31.11] Commentary – Set out below is a commentary on the text of clauses set out in [31.12] recommended for inclusion in the ISDA Confirmation for Environmental Products.~~

- 1 Clause 1(a) – Commodity – GACs, GECs, ~~and~~ RECs are defined in clause (4) of the Addendum with reference to the legislative scheme under which they were established. Green Power Rights, both Existing and New are defined in clause (4) of the Addendum with reference to the Program. The reason for separately defining New and Existing Green Power Rights is that the prices for the two products are very different. As of 1 July 2006 all Green Power Product sales to new customers are to be sourced from New Green Power Rights and from 31 December 2008 all sales to existing customers are to be sourced from New Green Power Rights.
  
- 2 Clause 1(b)- Creation Period - The NSW ESA requires the surrender of GACs created in relation to a greenhouse gas abatement activity that took place before the end of the year to which the greenhouse gas benchmark statement relates (section 97CC of the NSW ESA). We have therefore specified the end of the Creation Period as being 31 December of the year preceeding the Settlement Date for GACs.

The REC Act requires the surrender of RECs created before the end of the calendar year to which the acquisition statement relates (section 45 of the REC Act). We have therefore specified the end of the Creation Period as being 31 December of the year ~~preceeding~~preceeding the Settlement Date for RECs.

In the case of GECs, section 135DS of the Electricity Act 1994 (QLD) specifies that GECs expire at the end of the second year following the calendar year in which the GEC is created. However, as GECs must be surrendered by the last business day in April each year the crucial end date will be the Settlement Date, rather than 31 December of the second year following the calendar year in which the GEC is created. It is important therefore to specify both the commencing date and the ending date of the Creation Period. In the case of GECs required for acquittal in April 2007 the commencement of the period would be 1 January 2005 and the end date would be the Settlement Date. In the case of GECs required for acquittal in April 2008 the commencement of the period would be 1 January 2006 and the end date would be the Settlement Date. GECs must also be created within 12 months of the month in which the electricity was generated in order for the GEC to be valid. This requirement is dealt with by the provision of the warranty in clause (8) of the Addendum.

In the case of Green Power Rights the Program requires the transfer of Green Power Rights created in relation to accredited electricity generation that took place during the Settlement Period (being a calendar year) ending

immediately before the annual 3 month "reconciliation period". We have therefore specified the Creation Period as being the calendar year preceding the Settlement Date.

- 3 Clause 1(c) - An Excluded Source is any source from which the Environmental Products must *not* be created. For example, "wood waste" in the case of RECs might be inserted here.
- 4 Clause 1(e) - Insert the date on which the Transaction is agreed.
- 5 Clause 1(h) - The price is quoted GST-exclusive, because there is a GST gross-up clause.
- 6 Clause 1(i) – The Committee recommends adopting a date which is:
  - (a) 1 February in the year of settlement (eg 1 February 2007) for GACs, the surrender date under the NSW ESA is 1 March, giving the Buyer approximately four weeks from 1 February to finalise its GAC purchases; and
  - (b) 1 April in the year of settlement (eg 1 April 2007) for GECs, the surrender date under the QLD Act is 30 April, giving the Buyer approximately four weeks from 1 April to finalise its GEC purchases; ~~and~~
  - (c) 15 January in the year of settlement (eg 15 January 2007) for REC Transactions. It gives the Buyer approximately four weeks to finalise its REC portfolio purchases prior to 14 February, which is the surrender date required by the REC Act; ~~and~~.
  - (d) 1 March in the year of settlement (eg 1 February 2007) for Green Power Rights, the transfer date under the Program is 3 months after the end of the calendar year, giving the Buyer approximately four weeks from 1 March to finalise its Green Power Rights purchases
- 7 Clause 1(~~j~~) - The Tax Adjusted Legislative Charge is defined in clause (4) of the Addendum. It is the rate or charge payable under the relevant legislation for any shortfall in the number of Environmental Products surrendered by a liable entity, adjusted by the corporate tax rate for non-deductibility (at 1 ~~December~~~~June~~ 2006 this equated to A\$~~16.43~~~~15.00~~ for GACs, A\$15.71 for GECs and A\$57.14 for RECs). This amount is then multiplied by 1.2 to provide a disincentive to the Seller to cash settle. This was considered desirable by the Committee as GACs and GECs have been trading around the Tax Adjusted Legislative Charge. If the parties require settlement at a market-based rate then the Cash Settlement Price will need to be amended to an alternative commodity reference price, specifying an alternative price source and reference price, and considering appropriate disruption events and pricing fall-backs. As indicated in clause 5 of [31.09] a Cash Settlement Price is not relevant to Green Power Rights as these are to be settled by Physical Settlement.

[31.12] [ISDA ~~Pro-Forma Confirmation~~ **Confirmation** for Environmental Products, using AFMA ~~December~~ **June 2006 Australian Environmental Products Addendum**]

*-[Name and address of counterparty]*

*[Date]*

*[Reference number]*

**Fixed forward purchase of Environmental Products (as indicated below) for physical and cash settlement – single exercise**

The purpose of this letter is to confirm the terms under which the Seller agrees to sell Environmental Products (as indicated in clause 4(a) below) to the Buyer. This is a fixed forward commodity contract for ~~Environmental Products~~ **GACs, GECs or RECs** entered into under the ISDA Master Agreement between the Seller and the Buyer on the Trade Date specified below (“Transaction”).

~~4~~—The details of the particular Transaction to which this Confirmation relates are as follows:

(a) Commodity:  GACs

GECs

RECs

Existing Green Power Rights

New Green Power Rights

(b) Creation Period: In the case of:

- GACs, any time up to 31 December in the calendar year preceding the Settlement Date;
- GECs, the period commencing [~~\*\*1 January 2006~~2005\*\*] and ending on the Settlement Date;~~;~~
- RECs, ~~-~~any time up to 31 December in the calendar year preceding the Settlement Date; and
- Green Power Right, the [~~\*\*2006\*\*2007\*\*2008\*\*~~] calendar year.

(c) Excluded Source: [description of any excluded source]

(d) Quantity: [number] of units of Commodity

(e) Trade Date: [date]

(f) Seller: [~~\*\*Party's name\*\*~~]

(g) Buyer: [~~\*\*Party's name\*\*~~]



(h) Fixed Price: A\$[#] per unit, exclusive of GST.

(i) Settlement Trigger Date: [date]

(j) Cash Settlement Price: -(Tax Adjusted Legislative Charge multiplied by 1.2) or as otherwise agreed

Please confirm that the forgoing correctly sets forth the terms of our agreement by executing this Confirmation and faxing the copy to us on (insert fax number).

Yours faithfully, \_\_\_\_\_ Confirmed as of the date first written

By: [Seller's name] \_\_\_\_\_ By: [Buyer's name]

Name:..... \_\_\_\_\_ Name:.....

Title: ..... \_\_\_\_\_ Title:.....

| **DECEMBER**

## JUNE 2006 AUSTRALIAN ENVIRONMENTAL PRODUCTS ADDENDUM

[31.13] **Commentary** – Set out below is a commentary on the Addendum the text of which is set out in ~~[Part-31.14]~~.

(a) **Paragraph (1).** This states that by incorporating the Addendum in their ISDA Master Agreement (see ~~[Part-31.09]~~) the parties agree that every Environmental Products Transaction between them entered into after incorporation is governed by the Addendum and ISDA Master Agreement unless expressly otherwise agreed in writing.

(b) **Paragraph (2).** Paragraph (a) contains an acknowledgment of the various methods available for confirming Environmental Products 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. This is designed to remove the necessity for inserting, and recognises that it is impractical to insert, these words 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.

Paragraph (b) makes it expressly clear that references to "Transactions" in the ISDA Master Agreement include references to Transactions.

(d) **Paragraph (4).** This paragraph sets out various definitions relating to Environmental Products Transactions, including:

(i) the definition of Environmental Products and the definitions for such products;

(ii) the definitions for the "Number of Units to be Cash Settled" and the "Number of Units to be Physically Delivered" for use with the settlement process set out in the Schedule (see Part 31); and

(iii) ~~the definitions for such products;~~

~~(iv)~~ a definition of the "Tax Adjusted Legislative Charge" to enable this to be used as the Cash Settlement Price in your Confirmations.

(e) **Paragraph (6).** This paragraph sets out various definitions relating to forward commodity contracts and spot commodity

contracts including a description of Cash Settlement and Physical Settlement.

- (f) **Paragraph (7).** This paragraph sets out various definitions relating to forward commodity options to supplement the procedure set out in Article 8 of the 2005 ISDA Commodity Definitions.
- (g) **Paragraph (8).** This paragraph contains additional provisions relevant where an Environmental Products Transaction is to be physically settled, including warranties of ownership
- (h) **Paragraph (9).** This paragraph contains various additional provisions relevant for settlement by Multiple Exercise.
- (i) **Paragraph (10).** This paragraph specifies that a failure to physically settle transactions for Green Power Rights will not constitute an Event of Default nor a Termination Event but instead liquidated damages will be payable. This means that the failure to transfer Green Power Rights will not trigger the closing out of all current transactions between the parties.

[31.14] **DECEMBER JUNE 2006 AUSTRALIAN ENVIRONMENTAL PRODUCTS ADDENDUM**

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

**-(1) Application**

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

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

**(2) Confirmations**

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

Letter

Facsimile

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

- (c) The parties acknowledge that some Confirmations may describe some items by a term other than the defined term in this Addendum, the 2000 ISDA Definitions or the 2005 ISDA Commodity 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 2005 ISDA Commodity Definitions, then that term is to be deemed to be that defined term.

(3) **Definitions**

- (a) The definitions and provisions contained in the 2000 ISDA Definitions, the 2005 ISDA Commodity 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 2005 ISDA Commodity Definitions, the 2005 ISDA Commodity Definitions will govern.
- (b) Each Environmental Products Transaction is a “Transaction” for the purpose of the ISDA Master Agreement in which this Addendum is incorporated.
- (c) In this Addendum references to the 2000 ISDA Definitions and the 2005 ISDA Commodity 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 Environmental Products Transaction.

“**Corporate Tax Rate**” is the rate (expressed as a decimal fraction) applicable to a company under the *Income Tax Rates Act 1986 (Cwth)* on the Settlement Date.

“**Environmental Products**” means GACs, GECs ~~and~~ RECs, Existing Green Power Rights and New Green Power Rights.

“Existing Green Power Rights” means a right to claim eligible Green Power generation from an “existing” Green Power generator in accordance with the Program.

“**GAC**” means a certificate created and registered under Division 5 Part 8A of the NSW ESA and transferable under Division 6 of Part 8A of the NSW ESA.

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

“Green Power” has the meaning apparent from the Program.

"Green Power Rights" include Existing Green Power Rights and New Green Power Rights and one Green Power Right is treated as being created for each megawatt hour of electricity to which the Green Power Right relates.

"New Green Power Rights" means a right to claim eligible Green Power generation from a "new" Green Power generator in accordance with the Program.

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

"National Rules" means the National Electricity Rules as published from time to time by the Australian Energy Markets Commission.

"National Electricity Law" means the schedule to the National Electricity (South Australia) Act 1996 (SA).

-**"Number of Units to be Cash Settled"** means:

- (a) in respect of an Environmental Products Transaction for which both Physical Settlement and Cash Settlement apply on a Settlement Date:
  - (i) if it is an Environmental Products 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 an Environmental Products 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 an Environmental Products Transaction for which both Physical Settlement and Cash Settlement apply on a Settlement Date:

- (i) if it is an Environmental Products 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 an Environmental Products Transaction for which Multiple Exercise is not specified to be applicable and for which Physical Settlement only applies on the Settlement Date, the Quantity.

**"Program"** means the National Green Power Accreditation Program ("Program") in force from time to time established by various government agencies collectively known as the "National Green Power Accreditation Steering Group";

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

**"REC"** means a certificate created under Division 4 Part 2 of the REC Act registered under Division 5, Part 2 of the REC Act and transferable under Division 6, Part 2 of the REC Act.

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

**"Reconciliation Period"** means the period of 3 months following each calendar year.

**"Relevant Act"** means in the case of GACs the NSW ESA, in the case of GECs the QLD Act and in the case of RECs the REC Act.

**"Settlement Disruption Event"** in relation to a Statutory Environmental Product, means an event beyond the control of the parties as a result of which the Statutory Environmental Product cannot be transferred, or a transfer of the Statutory Environmental Product notified, in accordance with the Relevant Act.

**"Statutory Environmental Product"** means GACs, GECs and RECs

**"Tax Adjusted Legislative Charge"** means:



- (a) in the case of GACs the rate of the greenhouse penalty determined under section 97CA of the NSW ESA and clause 73C of the Electricity Supply (General) Regulation 2001 (NSW);
- (b) in the case of GECs the shortfall charge determined under section 135FA of the QLD Act; and
- (c) in the case of RECs the rate of charge as specified under the *Renewable Energy (Electricity) (Charge) Act 2000* (Cwlth),

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

**(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 as specified in the Confirmation.

**(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)

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“**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:

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

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 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 Environmental Products**

The following definitions apply to any transaction which is, or is described in its confirmation as, a commodity option relating to Environmental Products and for which there is no “Physical Settlement” procedure specified in Article 8 of the 2005 ISDA Commodity Definitions. Such a Transaction is also an “Option” for the purposes of the 2005 ISDA Commodity Definitions.

“**Fixed Amount**” means, unless the parties otherwise specify in the Confirmation, the amount calculated in accordance with the following formula:

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

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 2005 ISDA Commodity Definitions, the definition of:

- (a) “**Call**” means 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**” means 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 an Environmental Products Transaction, the following provisions apply:

- (a) If the Environmental Products Transaction requires the delivery of a:
  - (i) REC, then the REC must:
    - (A) be created before the end of the Creation Period described in the Confirmation;
    - (B) be duly registered under Division 5 Part 2 of the REC Act prior to the Settlement Date;
    - (C) not relate to electricity generated from any eligible renewable energy source described in the Confirmation as an Excluded Source; and
    - (D) be created in accordance with the requirements of the REC Act.
  - (ii) GAC, then the GAC must:
    - (A) be created in respect of a qualifying abatement activity that came to an end on or before the end of the Creation Period described in the Confirmation;
    - (B) be created before the end of the Creation Period;
    - (C) be duly registered under Division 5 Part 8A of the NSW ESA prior to the Settlement Date;
    - (D) despite paragraph 8(a)(ii)(A), not relate to an abatement activity described in the Confirmation as an Excluded Source; and

- (E) be created in accordance with the requirements of Division 5 Part 8A of the NSW ESA.
- (iii) GEC, then the GEC must:
  - (A) be created during the Creation Period;
  - (B) be duly registered under Division 1 of Part 4 of Chapter 5A of the QLD Act prior to the Settlement Date; and
  - (C) be created in accordance with the requirements of the QLD Act.
- (iv) Green Power Right, then the Green Power Right must:
  - (A) be created during the Creation Period;
  - (B) be able to be utilised in accordance with the requirements of the Program; and
  - (B) be created in accordance with the requirements of the Program.
- (b) For the purposes of this Agreement, delivery of Environmental Products is only taken to have occurred when the party required to deliver the Environmental Products has performed or caused to be performed all steps required of a transferor under the Relevant Act in the case of Statutory Environmental Products and the Program in the case of Green Power Rights to cause that Environmental Product to be transferred to the other party, including, without limitation, any mandatory notification of the transfer by the transferor under the Relevant Act.
- (c) All expenses of the transfer of an Environmental Product (including stamp duty and registration fees) will be payable by the party that takes delivery of the Environmental Product.
- (d) Section 2(c) of this Agreement is amended by, in each instance:
  - (i) adding the words “or deliverable” after “payable”;
  - (ii) adding the words “or, in the case of delivery obligations, the same commodity” after “in the same currency”;
  - (iii) adding the words “or delivery” after “payment”; and
  - (iv) adding the words “or deliver” after “pay”.
- (e) In addition to the representations contained in Section 3 of this Agreement, a party required to deliver an Environmental Product will be taken to have represented to the other party, at the time it

transfers the Environmental Product to the other party pursuant to this Agreement, that the Environmental Product satisfies the requirements of paragraph (8)(a) of this Addendum and that it has full legal and beneficial title to that Environmental Product and it transfers the same free and clear of any security interest, claim, lien or encumbrance of any kind.

- (f) The definition of “Tax” in Section 14 of this Agreement is amended by adding the words “or delivery” after “of any payment”.
- (g) Subject to the amendments in this Addendum, and to the extent that the context does not otherwise require, all other references (if any) in this Agreement to “payment”, “payments”, “pay”, “paid” and “payable” are taken to include references to “delivery”, “deliveries”, “deliver”, “delivered” and “deliverable”, respectively.

**(9) Multiple Exercise**

When “Multiple Exercise” is specified to be applicable to an Environmental Products Transaction, the following provisions apply:

- (a) If the Environmental Products Transaction is, or is described in its Confirmation as, an American style of commodity option, the 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 Environmental Products Transaction is, or is described in its Confirmation as, a forward commodity contract:
- (i) the Seller may on one or more Buyer Business Days during the Exercise Period nominate a Number of Units to be Physically Delivered and a Number of Units to be Cash Settled, but (except as set out below) on any such Buyer Business Day:
- (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, the 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:

- (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 the Seller to the 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.

**(10) Additional provisions for Transactions relating to Green Power Rights**

The following provisions apply to any Transaction relating to Green Power Rights:

- (a) the ISDA Master Agreement is taken to be amended as follows:
- (i) the words "or Deliver" in the heading of Section 5(a)(i), "or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4)" in the second line of Section 5(a)(i) and "or the first Local Delivery Day in the case of any such delivery", "in the case of any such payment" and ", in each case," in the third and fourth lines of Section 5(a)(i) are deleted;
- (ii) the words "or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4)" in the second line of Section 5(a)(ii)(1) are deleted and the words "or to deliver or receive Green Power Rights, the exclusive remedy for which is provided in clause (10) of the December 2006 Australian Environmental Products Addendum published by the Australian Financial Markets Association Inc." are added after the words "under Section 4(a)(i), 4(a)(iii) or 4(d)" at the end of the bracketed section of Section 5(a)(ii)(1); and
- (iii) the words "(including any delivery due on the last delivery or exchange date of) a Specified Transaction or" in clause (3) of Section 5(a)(v) are deleted.
- (b) If the Seller does not deliver the Quantity on the Settlement Date the Seller shall pay to the Buyer liquidated damages equal to the amounts set out below multiplied by 1.2:
- (i) in the case where the relevant Green Power Rights are available for purchase before the end of the Reconciliation Period, the amount reasonably established by the Buyer as being the amount which will be payable by the Buyer in order to purchase the shortfall in the Quantity of the relevant Green Power Rights before the end of the Reconciliation Period; or
- (ii) in the case where New Green Power Rights are not available for purchase before the end of the Reconciliation Period:
- (A) the amount reasonably established by the Buyer as being the amount which will be payable by



the Buyer in order to purchase the number of Existing Green Power Rights which equals the shortfall in the Quantity of New Green Power Rights before the end of the Reconciliation Period;

(B) the amount reasonably established by the Buyer as being the amount which will be payable by the Buyer in order to purchase the shortfall in the Quantity of the relevant New Green Power Rights within the following year to make up the shortfall; and

(C) the amount payable by the Buyer under the Program in credits/rebates to affected Green Power customers.

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