



Version 4.0 2019

EMISSIONS TRADING MASTER AGREEMENT FOR THE EU ETS®

Version 4.0 2019

This Agreement has been developed by the International Emissions Trading Association (IETA) to facilitate trading under the EU emissions trading system. IETA encourages the use of this document by all interested parties.

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IETA: Climate Challenges, Market Solutions

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Foreword

The International Emissions Trading Association (“IETA”) was created in June 1999 to promote emissions trading at national and international levels, as an essential part of the business response to global climate change. Our members include leading multinational companies from across the carbon trading cycle: emitters, solution providers, brokers, financial services, verifiers and law firms. IETA works for the development of an active, global greenhouse gas market, in order to ensure that carbon becomes a global commodity and lower cost carbon reductions can be valued and captured wherever they occur. Cross-border trading, hedging and derivative instruments are an essential part of a global carbon market.

Since the Kyoto Protocol was completed, greenhouse gas compliance systems have generally developed at national and regional levels, but the desire to link these systems directly or indirectly is shared by Governments, economists and companies alike. For this to happen in a consistent way across national boundaries, the market needs to develop consistent and harmonised units of value and reliable legal instruments that reduce the risks and transaction costs of trading.

In recent years, substantial new systems have started or are emerging in California and other US States, in New Zealand, Mexico, Korea, China, Canadian Provinces and many other cities, states and regions across the world, along with a rapidly-growing voluntary sector. The need for rapid growth of these systems into a truly global market, liquid enough to promote an efficient private sector response to emissions reduction policies across the world, has never been greater.

From its inception, IETA has focussed on the creation of systems and instruments that will promote and ensure effective business participation. The first specialist carbon emissions trading contracts and agreements were produced by IETA and are still used by many market participants. This version 4.0 of IETA’s Emissions Trading Master Agreement (the “ETMA”), builds on that history and responds to today’s more complex needs in the EU ETS. It reflects input from market players across Europe.

The principal ways in which this version 4.0 of the ETMA modifies the previous version of this document, the International Emissions Trading Master Agreement (the “IETMA”), are that it re-focusses on reducing European emissions, and will incorporate enhanced design features which reflect the experience gained in the EU ETS and CDM markets to avoid some of the issues faced previously.

The intention of the new ETMA is to provide a document which reflects further market development going into Phase IV of the EU ETS, input from market players and a considerable effort in cooperating with the International Swaps and Derivatives Association (“ISDA”) and the European Federation of Energy Traders (“EFET”) to harmonise provisions between all master agreements used by participants in this market. We feel that the current version addresses many of the issues raised during the Phase IV legislative process and will help increase liquidity and protections for market participants.

Commented [IS1]: Dirk to review



Dirk Forrister, President & CEO, IETA

[Date to follow]

Questions or comments?

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EMISSIONS TRADING MASTER AGREEMENT

FOR THE EU ETS[®] v. 4.0 2019

DATED AS OF:

BETWEEN

.....

("Party A")

AND

.....

("Party B")



IETA "Emissions Trading Master Agreement for the
EU ETS"

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EMISSIONS TRADING MASTER AGREEMENT FOR THE EU ETS

Dated as of

Between

.....
("Party A")
and
.....
("Party B")

1. Subject of Agreement

- 1.1 This Emissions Trading Master Agreement (which includes its Schedules) (the "**Agreement**") governs all oral or written agreements between the Parties to enter into one or more Transactions.
- 1.2 Each Transaction (as defined in Schedule 1 (*Definitions*) below) is entered into in reliance on the fact that this Agreement (including, for the avoidance of doubt, all of its Schedules), all Confirmations and all other Transactions form a single agreement between the Parties (together, the "**Agreement**"), and the Parties acknowledge and agree that they would not otherwise enter into any Transaction.

2. Interpretation and Construction

- 2.1 **Definitions.** Unless otherwise defined, capitalized terms used in the body of the Agreement shall have the meanings assigned to them in Schedule 1 (*Definitions*).
- 2.2 **Interpretation.** The following interpretive provisions apply to this Agreement.
 - (a) Reference to any law or statute includes any amendment to, consolidation, re-enactment or replacement of such law or statute.
 - (b) Any reference to a "**Clause**" or "**Schedule**" is a reference to a Clause or schedule of this Agreement. Any reference to an "**Appendix**" is a reference to an appendix to this Agreement.
 - (c) Words in the singular are to be interpreted as including the plural, and vice versa, to the extent the context permits or requires.
 - (d) The terms "including" and "in particular" are used for illustration or emphasis only and not to limit the generality of any preceding words, whether or not non-limiting

- language (such as "without limitation", "but not limited to" and similar expressions) is used with reference to them.
- (e) If there is any conflict between the provisions of any Schedule 2 (*Elections*) and any provisions of this Agreement, the terms of Schedule 2 (*Elections*) shall prevail. If, in relation to any Transaction, there is any conflict between the Confirmation and any provisions of this Agreement (including Schedule 2 (*Elections*)), the terms of such Confirmation shall prevail for the purpose of the relevant Transaction.
 - (f) Any reference to "time" is to Central European Time.
 - (g) Unless otherwise specified, where anything is to be done under this Agreement with reference to a particular day or a period of days:
 - (i) by or not later than a Banking Day, or any period is said to run to a Banking Day, such thing may be done by or such period is to run to 17:00 hours on that Banking Day (as the case may be);
 - (ii) from or not earlier than a Banking Day, or any period is said to run from a Banking Day, such thing may be done or such period is to run from 09:00 hours on that Banking Day (as the case may be);
 - (iii) on a Banking Day, it is to be treated as having been done on the next following Banking Day if it is done after 17:00 hours on that Banking Day (as the case may be);
 - (iv) by or not later than a day or any period is to run to a day, such thing may be done or such period is to run up to the end of that day; and
 - (v) from or not earlier than a day or any period is to run from a day, such thing may be done or such period is to run from the start of that day.

References in this Clause 2.2(g) shall equally apply to a Delivery Banking Day, save that the relevant period in (i), (ii) and (iii) above shall run from 10:00 hours on that Delivery Banking Day to 16:00 hours on that Delivery Banking Day.

- (h) Unless otherwise specified, where a date specified in this Agreement to be a Delivery Date would otherwise fall on a day that is not a Delivery Banking Day, then such date will be deemed to be the next following day that is a Delivery Banking Day.

3. Confirmation Procedure

3.1 **Agreement of a Transaction.** The Parties intend that they shall be legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise).

3.2 Exchange of Confirmations.

- (a) Unless otherwise agreed, the Delivering Party (or in the context of an Option Transaction, the Seller) (hereafter in this Clause referred to as "X") shall send to the Receiving Party (or in the context of an Option Transaction, the Buyer)

(hereafter in this Clause referred to as "Y") by facsimile (or such other means, if any, as specified in any Confirmation materially in the forms set out in the Schedules, or in a form otherwise agreed between the Parties, recording the details of the Transaction within three (3) Banking Days of a Transaction having been entered into.

- (b) If Y is satisfied that the Confirmation accurately reflects the terms of the Transaction, Y shall countersign and return the Confirmation to X by facsimile (or such other means, if any, specified in Schedule 2 (*Elections*)) within three (3) Banking Days of receipt of the Confirmation from X.
- (c) If Y is not satisfied that the Confirmation accurately reflects the terms of the Transaction, Y shall inform X of any inaccuracies within three (3) Banking Days of receipt of the Confirmation. If X agrees that the Confirmation is inaccurate, X shall issue a new Confirmation, and the provisions of Clauses 3.2(a) and 3.2(b) will apply with all necessary changes.
- (d) If Y has not received a Confirmation from X within three (3) Banking Days of a Transaction having been entered into, Y shall send to X a Confirmation. Clauses 3.2(b) and 3.2(c) shall apply in relation to any such Confirmation by replacing all references to "Buyer" with "Seller" and all references to "Seller" with "Buyer".
- (e) Failure by either Party to send or return a Confirmation does not (i) affect the validity or enforceability of any Transaction, or (ii) constitute a material breach of this Agreement under Clause 14.2(c) (*Material Obligations*).

3.3 Evidence of a Transaction. The Parties consent to the recording of all telephone conversations between the Parties relating in whole or part to this Agreement. Each Party agrees to notify its employees of that consent and obtain their consent to that recording if required by law. Any resulting recordings and other evidence may be introduced to prove a Transaction between the Parties and to establish any matters pertinent to a Transaction. The priority of evidence of the terms of a Transaction contained in recordings made under this Clause 3.3 is as specified in Schedule 2 (*Elections*).

4. General Obligations, Representations and Warranties

4.1 Representations and Warranties. Each Party represents and warrants to the other Party (which representations and warranties shall be deemed to be repeated by each Party on each date on which a Transaction is entered into) that:

- (a) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation (and, if relevant under those laws, in good standing).
- (b) **Power.** It has the power:
 - (i) to execute this Agreement and any other documentation relating to this Agreement to which it is a party;
 - (ii) to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver (and it has at all times fully complied with the EU ETS Rules to the extent necessary to permit the Transfer contemplated by this Agreement); and

- (iii) to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party,

and has taken, or obtained, as the case may be, all approvals, consents, resolutions or other actions (which includes, if the Delivering Party, having taken all necessary steps to create or otherwise obtain the Allowances that are the subject of this Agreement) that are legally required in the relevant jurisdiction(s) to authorise such execution, delivery and performance.
- (c) **No Violation or Conflict.** The execution, delivery and performance referred to in Clause 4.1(b) (*Representations and Warranties*) do not violate or conflict with any law or statute applicable to it, including without limitation any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets, or any contractual restriction binding on or affecting it or any of its assets.
- (d) **Required Authorisations.** All Required Authorisations have been obtained and are in full force and effect, and all conditions of any Required Authorisations have been complied with.
- (e) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and to equitable principles of general application.
- (f) **No Event of Default.** No Event of Default, or event that with notice or lapse of time or both would constitute an Event of Default, has occurred with respect to it and no such event would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.
- (g) **No Litigation.** No litigation, arbitration or administrative suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it or, if applicable, any Credit Support Provider that would, if adversely determined, be likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or that Credit Support Document.
- (h) **No Reliance.** It is not relying upon any representations of the other Party other than those expressly set out in this Agreement or any Credit Support Document to which it is a party.
- (i) **Principal.** Unless otherwise specified in Schedule 2 (*Elections*), it has negotiated, entered into and executed this Agreement and any Credit Support Document to which it is a party as principal (and not as agent or in any other capacity, fiduciary or otherwise).
- (j) **Risk Assumption.** It has entered into this Agreement and any Credit Support Document to which it is a party after a full opportunity to review their terms and

- conditions, has a full understanding of those terms and conditions and of their risks, and is capable of assuming those risks.
- (k) **No Advice.** The other Party is not acting as a fiduciary or an advisor for it, nor has the other Party given to it any advice, representation, assurance or guarantee as to the expected performance, benefit or result of this Agreement.
- (l) **Accurate Information.** All applicable information (other than, for the avoidance of doubt, information provided according to Clause 4.3 (*Provision of Annual Reports*)) that is furnished in writing by or on behalf of it to the other Party and is identified as being subject to or connected to this Agreement is, as of the date it is furnished to the other Party, true, accurate and complete in every material respect.
- 4.2 **Holding Accounts and Registries.** Without prejudice to Clause 5.2 (*Sufficient Allowances*), each Party shall:
- (a) ensure that it has one or more Holding Accounts validly registered in a Registry in accordance with the EU ETS Rules; and
- (b) conduct its affairs, other than as addressed by Clause 13.1 (*Force Majeure*) or Clause 13.4 (*Suspension Event*), so as not to give the Relevant Authority cause to:
- (i) refuse, reject or cancel any Transfer (whether in whole or in part) requested to be made pursuant to this Agreement; or
- (ii) suspend or restrict either Party's right to request or effect any Transfer (including, without limitation, suspension or cancellation of any relevant Holding Account);
- (c) where it has specified one or more Holding Accounts or Registries in the Confirmation to a Transaction (including any additional accounts or Registries agreed by the Parties in accordance with Clause 6.5 (*Effecting Transfers*)), ensure that on a Delivery Date, it has or will have at least one Holding Account registered in each Registry it has so specified, a Party may also wish to specify Holding Accounts in Schedule 2 (*Elections*) and such Holding Accounts shall apply to the Confirmations for each Transaction unless otherwise specified; and
- (d) where it has specified a Holding Account, it has, in respect of such Holding Account, nominated all of the other Party's specified Holding Accounts in such Confirmation as 'trusted accounts' for the purposes of the Registries Regulation.
- 4.3 **Provision of Annual Reports.** If requested in writing by a Party, the other Party shall deliver for its last completed fiscal year, within one hundred and twenty (120) days following the end of that fiscal year, a copy of such Party's (or for such period that such Party's obligations are supported by a Credit Support Provider, its Credit Support Provider's) annual report containing audited consolidated financial statements for such fiscal year (where those are not freely available on the internet on the website of such Party or its Credit Support Provider (as the case may be)), together with the annual report made to shareholders, debt holders or other stakeholders. In all cases, the financial statements referred to in this Clause 4.3 are to be prepared in accordance with generally accepted accounting principles in the relevant jurisdiction.

5. Allowance Transfers

5.1 Primary Obligation.

- (a) In relation to a Transaction, the Delivering Party agrees to sell and Transfer and the Receiving Party agrees to purchase and accept the Period Traded Allowances in accordance with its terms, subject to and in accordance with the terms and conditions of this Agreement and the EU ETS Rules.
- (b) In respect of a Confirmation a Party shall specify the information listed in (i) to (v) below. If more than one Delivery Date is specified in a Confirmation and, in respect of each such Delivery Date:
 - (i) an Allowance Type;
 - (ii) an Allowance Price;
 - (iii) a PTA Quantity;
 - (iv) a Specified Period; and
 - (v) Payment Due Date,

are specified in that Confirmation or are otherwise capable of being determined with certainty from the terms of that Confirmation, then separate Transactions shall be deemed to subsist in respect of each Transfer relating to each such Delivery Date. The terms of each such deemed Transaction, other than in relation to the Delivery Date and items (i) – (v) listed above, will be the same, unless otherwise specified in the Confirmation.

- (c) The Delivering Party agrees to Transfer (or procure the Transfer of) the Period Traded Allowances from any Holding Account in any Registry to the relevant Receiving Party's Holding Account; provided, however, that if one or more Delivering Party's Holding Accounts are specified in the Confirmation to a Transaction, the Receiving Party agrees that the Delivering Party's obligation to Transfer Allowances under this Agreement shall be limited to an obligation to Transfer the Period Traded Allowances for the relevant Transaction from any of such Delivering Party's Holding Account(s) to the relevant Receiving Party's Holding Account.

Where more than one Receiving Party's Holding Account has been specified in the Confirmation to a Transaction, such Holding Accounts are set out in order of preference for such Transaction and the Delivering Party shall Transfer Period Traded Allowances from either, as the case may be:

- (i) any Holding Account; or
- (ii) any Delivering Party's Holding Account,

to the first listed Receiving Party's Holding Account, unless in respect of such Receiving Party's Holding Account, it is prevented from so doing by an event or circumstance that would be described under Clause 13 (*Force Majeure or Suspension Event*) or Clause 14.7 (*Illegality*) if the first listed Receiving Party's

Holding Account were the only Holding Account so listed. In such circumstances, the provisions of this paragraph will apply iteratively as though the next listed Receiving Party's Holding Account were the first listed.

- (d) A Transfer shall be considered to be completed for the purposes of this Agreement when the relevant Period Traded Allowances are received in the relevant Receiving Party's Holding Account, whereupon risk of loss related to the Period Traded Allowances or any portion of them transfers from the Delivering Party to the Receiving Party.

5.2 **Sufficient Allowances.** In relation to a Transaction and a PTA Quantity, the Delivering Party shall, subject to Clause 13 (*Force Majeure and Suspension Event*), ensure that there are sufficient transferable Allowances in the Holding Account from which the Transfer is to be effected to ensure that the Transfer Request will be accepted under the System at the time at which it is to be accepted in accordance with this Agreement.

5.3 **No Encumbrances.** The Delivering Party shall Transfer to the Receiving Party the Period Traded Allowances free and clear of all liens, security interests, claims and encumbrances or any interest in or to them by any person. A breach of the Delivering Party's obligations under this Clause 5.3 (the "**No Encumbrances Obligation**") will have the following consequences:

- (a) this Agreement and all other Transactions agreed by the Parties under this Agreement shall continue unaffected; and
- (b) without prejudice to any defences available to the Delivering Party (including, but not limited to, any defences of statutes of limitation or similar), following written notice of that breach from the Receiving Party to the Delivering Party (irrespective of how long after the relevant Delivery Date such notice is provided) and subject to Clause 5.3(d) below, the Receiving Party:
 - (i) shall determine the Encumbrance Loss arising from that breach (the "**Encumbrance Loss Amount**") either on the date such notice is deemed to be received or as soon as reasonably practicable thereafter; and
 - (ii) shall notify the Delivering Party of such Encumbrance Loss Amount due, including detailed support for its calculation.

The Receiving Party is not required to enter into replacement Transactions in order to determine such Encumbrance Loss Amount.

- (c) By no later than the third (3rd) Banking Day after the later of (i) receipt of a valid invoice in connection with such Encumbrance Loss Amount and (ii) receipt of the abovementioned notice of such Encumbrance Loss Amount, the Delivering Party shall pay the Encumbrance Loss Amount to the Receiving Party, which amount shall bear interest in accordance with Clause 9.5 (*Interest*). Upon payment of the Encumbrance Loss Amount by the Delivering Party, the Parties shall have no further obligations in respect of that Transaction and that breach. The Receiving Party acknowledges that its exclusive remedies in respect of such breach are those set out in this Clause 5.3.
- (d) Where a breach of the No Encumbrances Obligation is caused by the Transfer of an Affected Allowance, the Delivering Party shall be liable for the Encumbrance

Loss Amount if, at the date it first acquired, received or purchased such Affected Allowance it was not acting in good faith; otherwise, the Delivering Party shall only be liable for the Encumbrance Loss Amount if, and without prejudice to any other defences available to the Delivering Party (including, but not limited to, any defences of statutes of limitation or similar):

- (i) the Receiving Party, whether or not the holder of such Affected Allowance, who is subject to a claim of the Original Affected Party, has, in order to resist or avoid any Encumbrance Loss Amount from arising, used its best endeavours to defend such a claim in respect of that Affected Allowance (including, if available, by relying on Article 40 of the Registries Regulation or any equivalent legal principle under its applicable national law) and was unsuccessful (other than for reasons of its own lack of good faith); or
- (ii) the Receiving Party, whether or not the holder of such Affected Allowance, who acted in good faith in respect of its purchase of such Affected Allowance and who is subject to a claim of a third party (other than the Original Affected Party) in respect of that Affected Allowance, has used all reasonable endeavours to mitigate the Encumbrance Loss Amount.

6. Effecting Transfers

- 6.1 For the purposes of Clause 5.1(a) (*Primary Obligation*), the Delivering Party shall make a Transfer Request in accordance with the EU ETS Rules and allow sufficient time in order to ensure that the relevant Period Traded Allowances are Transferred to the relevant Receiving Party's Holding Account by the relevant Delivery Date and shall notify the Receiving Party that the Transfer Request has been submitted.
- 6.2 The Delivering Party shall ensure that each Transfer Request accurately reflects all the relevant details of the Transfers constituting the Transaction and complies with the information requirements under the System such that each Transfer Request can be accepted for the purposes of such Scheme.
- 6.3 Without prejudice to Clauses 6.1 and 6.2 (*Effecting Transfers*), the Parties agree to cooperate with each other in relation to each Transaction and to do such things as are necessary in accordance with and as required by the System in order to Transfer the relevant Period Traded Allowances to the Receiving Party's Holding Account by the relevant Delivery Date (and to refrain from doing such things as impedes or would reasonably be expected to impede such Transfer).
- 6.4 Each Party shall ensure that it complies with such other conditions and requirements as are necessary in order to make Transfer Requests and effect Transfers in accordance with the Scheme.
- 6.5 Each Party agrees with the other that, so long as either Party has any obligation under a Transaction where the Confirmation for that Transaction specifies particular Holding Accounts or particular Registries:
 - (a) the Receiving Party may, with respect to such Confirmation, and with the consent of the Delivering Party:

- (i) amend the order in which the Receiving Party's Holding Accounts or its specified Registries are listed; and/or
 - (ii) specify additional Receiving Party's Holding Account(s) or Registry(ies),
provided that the Receiving Party notifies the Delivering Party in writing of such amendment or addition no later than thirty (30) calendar days before a Delivery Date under that Transaction and the Delivering Party has provided its consent in writing to such amendment or addition no later than five (5) Delivery Banking Days after its receipt of such notice;
 - (b) the Delivering Party may, with respect to such Confirmation, specify additional Delivering Party's Holding Account(s) or Registry(ies) provided that the Delivering Party notifies the Receiving Party in writing of such addition no later than ten (10) Delivery Banking Days before a Delivery Date under that Transaction.
- 6.6 Each Party agrees with the other that where a Party has specified a Registry only in the Confirmation of the relevant Transaction (including any additional Registry agreed by the Parties in accordance with Clause 6.5 (*Effecting Transfers*)), then that Party is obliged to notify the other of the account name and number of a Holding Account for each specified Registry no later than thirty (30) calendar days before a Delivery Date under that Transaction.

7. Option Transactions

- 7.1 The Premium in respect of the purchase of an Option shall be paid by the Buyer to the Seller on the Payment Due Date in relation to the relevant Option Transaction. For the avoidance of doubt, all payments in relation to any Transaction deemed to be entered into pursuant to clause 8 (*Effect of Exercise*) will be made in accordance with the provisions of clause 9 (*Billing and Payment*) (to the extent that they do not relate to an Option Transaction). The Parties agree that any Option Transaction entered into between them shall be substantially in the form of Confirmation for Option Transactions set out in Schedule 3B (*Form of Confirmation for Option Transactions*).
- 7.2 Where the Buyer exercises an Option, it may do so by giving notice within the Exercise Period for the relevant Option Transaction:
- (a) in writing to the Seller in accordance with Clause 18.5 (*Notices*); or
 - (b) orally to a representative of the Seller on a recorded telephone line (but not by a message left on a voicemail or other messaging system).
- 7.3 Unless otherwise agreed by the Parties, a notice of exercise is effective in the case of an American Option, (a) if received by the Seller at or prior to 16:00 hours on any Banking Day in the Exercise Period other than the Expiration Date, or (b) if received by the Seller at or prior to the Expiration Time on the Expiration Date, or (c) if received by the Seller after 16:00 hours on any Banking Day other than the Expiration Date, as of 09:00 hours on the next following Banking Day (if any) in the Exercise Period or, in the alternative, on the Expiration Date.
- 7.4 The Buyer will, within three (3) Banking Days after exercising such Option by giving notice orally, confirm such exercise by written notice to the Seller in accordance with Clause 18.5 (*Notices*). Any failure by the Buyer to send such written notice and/or any failure by

the Seller to inform the Buyer of any inaccuracies in such written notice will not: (a) affect the validity or enforceability of the exercise of such Option or of the Option Transaction deemed to be entered into pursuant to Clause 8 (*Effect of Option Exercise*); or (b) be a material breach of obligations under this Agreement under Clause 14.2(c) (*Material Obligations*).

- 7.5 If the Parties agree in the relevant Confirmation that "**Automatic Exercise**" will apply in respect of an Option Transaction, then, unless the Seller is otherwise instructed by the Buyer at or prior to the Expiration Time in respect of an Option, that Option will have been deemed to have been exercised at the Expiration Time where the Positive Mark to Market Amount payable to the Buyer equals or exceeds the product of (a) ten per cent (10%) (or such other percentage as may have been agreed by the Parties) of the Strike Price and (b) the PTA Quantity.
- 7.6 For the purposes of this Clause 7, "**Positive Mark to Market Amount**" means:
- (a) in the case of a Call Option, the amount, if any, by which (x) the product of the PTA Quantity times the Reference Price exceeds (y) the product of the PTA Quantity times the Strike Price; and
 - (b) in the case of a Put Option, the amount, if any, by which (x) the product of the PTA Quantity and the Strike Price exceeds (y) the product of the PTA Quantity times the Reference Price.
- 7.7 Where the Option is not exercised or deemed to be exercised in accordance with this Clause 7 by the Buyer at or prior to the Expiration Time on the Expiration Date, it will expire unexercised (except that any outstanding Premium will remain payable by the Buyer in accordance with Clause 9 (*Billing and Payment*)).

8. Effect of Option Exercise

- 8.1 Upon the Buyer exercising an Option in accordance with Clause 7 (*Option Transactions*):
- (a) the relevant Option Transaction will be terminated to the extent it relates to the Option (but without prejudice to any claim that the Seller may have in respect of any unpaid Premium or other amount relating to such Option Transaction); and
 - (b) the Parties will be deemed to have entered into a Transaction evidenced by and on the terms set out in the part of the relevant Confirmation for such Option Transaction that relates to such Transaction.

9. Billing and Payment

- 9.1 **Payment Due Date.** Payment for each Transaction shall be due on the Payment Due Date. The Premium in respect of the purchase of an Option shall be paid by the Buyer to the Seller on the Premium Payment Date in relation to the relevant Option Transaction.
- 9.2 **Statement.**
- (a) Subject to Clause 9.2(b) (*Statement*), as soon as practicable after the Delivery Date or Trade Date for each Transaction, the Delivering Party shall send to the Receiving Party a written statement (the "**Statement**") showing for such Transaction (or the relevant part of it, as the case may be):

- (i) the PTA Quantity, Allowance Price, Contract Amount and, if an Option Transaction, the Premium;
- (ii) the number of Delivered Allowances and the dates of the relevant Transfers;
- (iii) (if applicable) the number of Physically Netted Allowances and full details of the Transaction(s) against which such Allowances were netted;
- (iv) any amount owing from one Party to the other, including any amount owing by reason of Clause 12 (*Transfer or Acceptance Failure*), 9.4 (*Disputed Payments*) or 14 (*Termination*), stating any part of that amount or any other amount that has already been paid or set off under Clause 9.6 (*Payment Netting*);
- (v) the net amount payable from one Party to the other after taking into account all the matters set out above (the "**Statement Amount**"); and
- (vi) VAT on the Contract Amount and, in the case of an Option Transaction, on any Premium, and any other amount payable under Clause 11 (*Taxes*).

Each Party shall provide to the other Party such further information as may reasonably be requested by the other Party to substantiate the information contained in any Statement issued pursuant to this Clause 9.2.

- (b) For the avoidance of doubt, where a Monthly Billing Cycle is adopted by the Parties, only one consolidated Statement needs to be issued for each calendar month as soon as practicable after the end of that calendar month in respect of all Transactions having a Payment Due Date falling within that calendar month. Each consolidated Statement will specify (i) each of the items listed in Clause 9.2(a)(i) - (vi) in respect of each individual Transaction to which it pertains and (ii) aggregate totals for each of those items in respect of all Transactions to which it pertains.
- (c) Where, in respect of a Transaction, the Delivered Allowance Volume exceeds the relevant PTA Quantity, as long as the Receiving Party has taken all steps reasonably within its power to Transfer the excess number of Allowances back to the Delivering Party's Holding Account, the Delivered Allowance Volume shall be deemed to be equal to the PTA Quantity for the purpose of calculating the Statement Amount.

9.3 **Payment Mechanics.**

- (a) By no later than the Payment Due Date, the Receiving Party or the Delivering Party, as the case may be, shall pay the Statement Amount to the other Party.
- (b) Payment shall be made in Euros by direct bank transfer or equivalent transfer of immediately available funds to the credit of the account specified by the Party to whom such payment is due.

9.4 **Disputed Payments.**

- (a) If a Party disputes in good faith any sum, either shown in the Statement, or payable in respect of an EEP Amount (or any other applicable penalties under the EU ETS Rules) under Clause 12.1(b)(ii) (*Failure to Transfer*), or of which it is notified in accordance with Clause 9.9 (*No Accurate Information Available*), as being payable by that Party, it shall give notice to the other Party of the amount in dispute and the reasons for the dispute and shall pay:
 - (i) if this Clause 9.4(a)(i) is specified as applying in Schedule 2 (*Elections*), the full amount invoiced by no later than the Payment Due Date; or
 - (ii) if this Clause 9.4(a)(ii) is specified as applying in Schedule 2 (*Elections*), the undisputed amount invoiced by no later than the Payment Due Date.
- (b) The Parties shall seek to settle the disputed amount as soon as reasonably possible. If they are unable to do so within a period of fourteen (14) days after the date a Party first notifies the other Party of such a dispute, either Party may, if so specified in Schedule 2 (*Elections*), require this matter to be referred to an Expert for determination in accordance with Clause 18.9 (*Expert Determination*).
- (c) Any adjustment payment required to be made in accordance with the resolution of a dispute shall be made, with interest payable in accordance with Clause 9.5 (*Interest*), within three (3) Banking Days of that resolution.
- (d) All Statements are conclusively presumed final and accurate unless objected to in writing, with adequate explanation and documentation, within two (2) years after the month the Statement was received, or should have been received, by the Receiving Party.

9.5 **Interest.**

- (a) If a Party fails to pay to the other Party any amount due by the Payment Due Date as set out in this Agreement (or otherwise determined by any dispute resolution process), interest shall be payable on that amount at an annual rate equal to the Base Rate as applicable from time to time plus three per cent (3%) compounded monthly from and including the Payment Due Date up to, but excluding the date that payment is actually made.
- (b) If, following the resolution of a dispute or otherwise to correct any mistaken overpayment or underpayment made in good faith, one Party is required to pay an amount to the other Party, interest shall be payable on that amount at an annual rate equal to the Base Rate specified in the relevant Confirmation as applicable from time to time plus one per cent (1%) compounded monthly from the date when the amount would have been paid or not paid (as applicable) if the dispute, overpayment or underpayment had not occurred up to, but excluding the date that payment is actually made.
- (c) If the rate in Clauses 9.5(a) or 9.5(b) (*Interest*) ceases temporarily or permanently to be published, then the Party owed money may substitute a rate published by a published interbank lending rate that it considers in good faith to be the equivalent of that rate.

9.6 **Payment Netting.** If on any date Statement Amounts in Euros would otherwise be payable by each Party to the other, whether under one or more Transactions, then, on

that date, each Party's obligation to pay any such Statement Amount will be automatically satisfied and discharged and, if the aggregate of the Statement Amounts that would otherwise have been payable by one Party exceeds the aggregate of the Statement Amounts that would otherwise have been payable by the other Party, replaced by an obligation upon the Party by whom the larger aggregate of the Statement Amounts would have been payable to pay to the other Party the excess of the larger aggregate of the Statement Amounts over the smaller aggregate of the Statement Amounts.

- 9.7 **Physical Netting of Deliveries.** Unless otherwise specified in Schedule 2 (*Elections*), if on any date Allowances of the same Allowance type and Specified Period would otherwise be Transferable by the Parties in respect of two or more Transactions which provide for Transfer between a Registry Pair or Transfer between an Account Pair, then on such date each Party's obligation to Transfer any such Allowances will be automatically satisfied and discharged and, if the aggregate number of Allowances that would otherwise have been Transferable by one Party exceeds the aggregate number of Allowances that would otherwise have been Transferable by the other Party, replaced by an obligation upon the Party from whom the larger aggregate number of Allowances would have been Transferable to Transfer to the other Party a number of Allowances (of the same Allowance type and Compliance Period) equal to the excess of the larger aggregate number of Allowances over the smaller aggregate number of Allowances.
- 9.8 **Failure to Issue Statement.** If the Delivering Party fails to issue a Statement in accordance with Clause 9.2 (*Statement*) or 9.3 (*Payment Mechanics*), then the Receiving Party may issue that Statement to the Delivering Party and, once issued, that Statement shall be treated as a Statement issued by the Delivering Party for the purposes of this Agreement. Failure to issue a Statement does not affect the rights and obligations of the Parties under this Agreement and is not a breach of a material obligation of this Agreement under Clause 14.2(c) (*Material Obligations*).
- 9.9 **No Accurate Information Available.** If any information required to prepare a Statement is not available at the time the Statement in question is prepared, then a Party may prepare the Statement in question based on its reasonable estimate of that information. If there is any change to the information used to prepare the Statement in question after it has been received or information that was estimated in order to prepare it becomes available, then, within two (2) years of the date the relevant Statement was received, either Party may, by notice to the other, require an adjustment payment to be made to reflect the changed or newly available information. The adjustment payment is to be made within three (3) Banking Days of receipt of the notice together with interest calculated in accordance with Clause 9.5(b) (*Interest*).

10. Euros

- 10.1 **Payment in Euros.** Each payment under this Agreement will be made in Euros. To the extent permitted by applicable law, any obligation to make payments under this Agreement in Euros will not be discharged or satisfied by any tender in any currency other than Euros, except to the extent such tender results in the actual receipt by the Party to which payment is owed, acting in good faith and using commercially reasonable procedures in converting the currency so tendered into Euros, of the full amount in Euros of all amounts payable in respect of this Agreement. If for any reason the amount in Euros so received falls short of the amount in Euros payable in respect of this Agreement, the Party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in Euros as may be necessary to compensate for the Shortfall. If for any reason the amount in Euros so received exceeds the amount

in Euros payable in respect of this Agreement, the Party receiving the payment will refund promptly the amount of such excess.

10.2 **Separate Indemnities.** To the extent permitted by applicable law, the indemnities in this Clause 10 constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the Party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

10.3 **Evidence of Loss.** For the purposes of this Clause 10, it will be sufficient for a Party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

11. Taxes

11.1 **Value Added Taxes.** All amounts referred to in this Agreement are exclusive of any applicable VAT chargeable on the supply or supplies for which such amounts form the whole or part of the consideration for VAT purposes. The VAT treatment of any Transfer under a Transaction shall be determined pursuant to the VAT law of the jurisdiction where a taxable transaction for VAT purposes is deemed to take place. If VAT is properly chargeable on any such supply or supplies, the Receiving Party shall pay to the Delivering Party an amount equal to the VAT, if any, chargeable in the Delivering Party's jurisdiction; provided, however, that:

- (a) such amount shall only be required to be paid once the Delivering Party provides the Receiving Party with a valid VAT invoice in relation to that amount; and
- (b) the Receiving Party shall be under no obligation to make any payment to the Delivering Party in respect of VAT which the Receiving Party must self-assess under the reverse charge rule or any similar system in the Receiving Party's jurisdiction.

Each Party shall to the extent permitted by law provide the other with any additional valid VAT invoices as required for the purposes of this Agreement and, to the extent required by law, shall correctly account for any VAT properly due in its jurisdiction.

11.2 **Other Taxes.** Subject to each Party's obligations relating to Value Added Taxes, each Party shall cause all royalties, taxes, duties and other sums (including any stamp duty, other documentary taxes, climate change levy or other environmental tax or levy) legally payable by that Party arising in connection with this Agreement to be paid. In the event that the Delivering Party is required by law to pay any tax which is properly for the account of the Receiving Party, the Receiving Party shall promptly indemnify or reimburse the Delivering Party in respect of such tax. In the event that the Receiving Party is required by law to pay any tax which is properly for the account of the Delivering Party, the Receiving Party may deduct the amount of any such tax from the sums due to the Delivering Party under this Agreement and the Delivering Party shall promptly indemnify or reimburse the Receiving Party in respect of any such tax not so deducted.

11.3 **Minimisation of Taxes.** Both Parties shall use reasonable efforts to administer this Agreement and to implement its provisions in accordance with the intent to minimise, where reasonable and possible, the accrual of tax payment obligations.

12. Transfer or Acceptance Failure

12.1 Failure to Transfer.

- (a) Where in accordance with Schedule 2 (*Elections*), the Excess Emissions Penalty does not apply.

Except to the extent:

- (i) caused by the Receiving Party's non-performance under this Agreement; or
- (ii) that the Delivering Party is relieved from complying with a relevant obligation under Clause 13.1 (*Force Majeure*);
- (iii) that the Delivering Party is relieved from complying with a relevant obligation under Clause 13.4 (*Suspension Event*); or
- (iv) that the Delivering Party is relieved from complying with a relevant obligation under Clause 14.7 (*Illegality*),

if the Delivering Party fails to make a Transfer of a PTA Quantity (whether in whole or in part) to the relevant Receiving Party's Holding Account on or before a Delivery Date for any reason or makes a Transfer Request in respect of a Holding Account other than the relevant Receiving Party's Holding Account (in either case in breach of Clauses 5 (*Allowance Transfers*) or 6 (*Effecting Transfers*) or both of them), then the Receiving Party may, by notice to the Delivering Party, require the Delivering Party to remedy such failure and:

- (i) if such failure is remedied by the Delivering Party on or before the Final Delivery Date, then (i) the Receiving Party shall pay to the Delivering Party the Contract Amount and (ii) the Delivering Party shall pay to the Receiving Party interest on an amount equal to the Allowance Price multiplied by the number of Period Traded Allowances not Transferred to such Receiving Party's Holding Account by the Delivery Date for the period from (and including) the Delivery Date to (but excluding) the actual date of Transfer to the Receiving Party at the rate specified in Clause 9.5(a) (*Interest*); but
- (ii) if such failure is not remedied by the Delivering Party on or before the Final Delivery Date, the Receiving Party may, by written notice to the Delivering Party, terminate that Transaction. In such a case, the Delivering Party shall pay to the Receiving Party the Receiving Party's Replacement Cost on or before the third (3rd) Banking Day following receipt of such written notice of termination from the Receiving Party,

in either case adjusted to take into account any amount previously paid by the Receiving Party to the Delivering Party in respect of that Transaction.

- (b) Where in accordance with Schedule 2 (*Elections*), the Excess Emissions Penalty does apply.

Except to the extent:

- (i) caused by the Receiving Party's non-performance under this Agreement; or
- (ii) that the Delivering Party is relieved from complying with a relevant obligation under Clause 13.1 (*Force Majeure*);
- (iii) that the Delivering Party is relieved from complying with a relevant obligation under Clause 13.4 (*Suspension Event*); or
- (iv) that the Delivering Party is relieved from complying with a relevant obligation under Clause 14.7 (*Illegality*),

if the Delivering Party fails to make a Transfer of a PTA Quantity (whether in whole or in part) to the relevant Receiving Party's Holding Account on or before a Delivery Date for any reason or makes a Transfer Request in respect of a Holding Account other than the relevant Receiving Party's Holding Account (in either case in breach of Clause 5 (*Allowance Transfers*) or 6 (*Effecting Transfers*) or both of them), then the Receiving Party may, by notice to the Delivering Party, require the Delivering Party to remedy such failure and:

- (i) if such failure is remedied on or before the Final Delivery Date, then (i) the Receiving Party shall pay to the Delivering Party the Contract Amount and (ii) the Delivering Party shall pay to the Receiving Party interest on an amount equal to the Allowance Price multiplied by the number of Period Traded Allowances not Transferred to such Receiving Party's Holding Account by the Delivery Date for the period from (and including) the Delivery Date to (but excluding) the actual date of Transfer to the Receiving Party at the rate specified in Clause 9.5 (*Interest*); but
 - (ii) if such failure is not remedied by the Delivering Party on or before the Final Delivery Date, the Receiving Party may, by written notice to the Delivering Party, terminate that Transaction. In such a case, the Delivering Party shall pay to the Receiving Party the Receiving Party's Replacement Cost on or before the third (3rd) Banking Day following the day on which the Receiving Party is able to effect a Buy-In (which may be a Buy-In, on any such date, of less than the entire number of Undelivered Allowances) if and to the extent that paragraph (A)(i) or A(ii)(1) of the Receiving Party's Replacement Cost applies, or on the third (3rd) Banking Day following the day on which the Receiving Party is or would be able to effect a purchase of Allowances in accordance with paragraph A(ii)(2) of Receiving Party's Replacement Cost, if and to the extent that paragraph applies, in either case adjusted to take into account any amount previously paid by the Receiving Party to the Delivering Party in respect of that Transaction.
- (c) Subject to Clause 12.1(d) (*Failure to Transfer*), if as a result of the Delivering Party's failure to make a Transfer (in whole or in part) the Receiving Party becomes liable to pay any EEP Amount, then the Receiving Party shall provide to the Delivering Party, upon its reasonable request, evidence to the reasonable satisfaction of the Delivering Party:
- (i) that the Receiving Party has incurred an EEP Amount consequent on the Delivering Party's failure to make a Transfer (in whole or in part);

- (ii) the extent to which the requirement for the Receiving Party to pay any EEP Amount results from the Delivering Party's failure to make such Transfer; and
 - (iii) that the Receiving Party could not have used Allowances to which it had legal and beneficial interest in any Holding Account(s) in any Registry in order to avoid or reduce its liability to pay any EEP Amount which it claims from the Delivering Party as part of the Receiving Party's Replacement Cost.
- (d) The Delivering Party's obligation to pay any EEP Amount under this Clause 12.1 (*Failure to Transfer*) is subject always to the Receiving Party's overriding obligation to use its reasonable endeavors to avoid becoming liable for such EEP Amount or, when liable, to mitigate the payment obligation in relation to such EEP Amount and to allocate any such EEP Amount pro rata between all counterparties of the Receiving Party that have failed to make any Transfer; provided, however, that where the Receiving Party confirms that it has been unable to avoid becoming liable for any EEP Amount, it shall be for the Delivering Party to show that this liability has arisen as a result of the Receiving Party failing to use its reasonable endeavors to do so.
- (e) The Delivering Party shall pay such determined EEP Amount to the Receiving Party within two (2) Banking Days against the Receiving Party's VAT invoice in respect thereof.

12.2 Failure to Accept.

Except to the extent:

- (i) caused by the Delivering Party's non-performance under this Master Agreement; or
- (ii) that the Receiving Party is relieved from complying with a relevant obligation under Clause 13.1 (*Force Majeure*);
- (iii) that the Delivering Party is relieved from complying with a relevant obligation under Clause 13.4 (*Suspension Event*); or
- (iv) that the Receiving Party is relieved from complying with a relevant obligation under Clause 14.7 (*Illegality*),

if the Receiving Party fails to accept a Transfer of a PTA Quantity (whether tendered in whole or in part) to the relevant Receiving Party's Holding Account by the Delivery Date for any reason or specifies an incorrect Holding Account other than the relevant Receiving Party's Holding Account (in either case in breach of Clauses 5 (*Allowance Transfers*) or 6 (*Effecting Transfers*) or both of them), then the Delivering Party may, by notice to the Receiving Party, require the Receiving Party to remedy such failure and:

- (i) if such failure is remedied by the Receiving Party on or before the Final Delivery Date, the Receiving Party shall pay to the Delivering Party interest on an amount equal to the Allowance Price multiplied by the number of Period Traded Allowances not Transferred to such Receiving

Party's Holding Account by the Delivery Date for the period from (and including) the Delivery Date to (but excluding) the actual date of Transfer to the Receiving Party at the rate specified in Clause 9.5(a) (*Interest*); but

- (ii) if such failure is not remedied by the Receiving Party on or before the Final Delivery Date, the Delivering Party may, by written notice to the Receiving Party, terminate that Transaction. In such a case, the Receiving Party shall pay to the Delivering Party the Delivering Party's Replacement Cost on or before the third (3rd) Banking Day following receipt of such written notice of termination from the Delivering Party,

in either case adjusted to take into account any amount previously paid by the Receiving Party to the Delivering Party in respect of that Transaction.

13. Force Majeure and Suspension Event

13.1 Force Majeure.

Upon the occurrence of a Force Majeure, either Party may notify the other Party in writing of the commencement of the Force Majeure. Where the notification is from the Party affected by the Force Majeure (the "**FM Affected Party**"), to the extent available to such Party, it should also provide details of the Force Majeure and a non-binding estimate of the extent and the expected duration of its inability to perform its obligations due to the Force Majeure.

The obligations of both Parties under this Agreement with respect to the Transaction(s) affected by the Force Majeure (the "**FM Affected Transactions**") will be suspended for the duration of the Force Majeure. During the continuation of the Force Majeure, the FM Affected Party shall use all reasonable endeavors to overcome the Force Majeure. Upon the Force Majeure being overcome or it ceasing to subsist, both Parties will, as soon as reasonably practicable thereafter, resume full performance of their obligations under this Agreement with respect to the FM Affected Transactions (including, for the avoidance of doubt, any suspended obligations).

Where a Force Majeure (a) continues for a period of nine (9) Delivery Banking Days or (b) continues up until three (3) Delivery Banking Days prior to any Validity Period Reconciliation Deadline (if sooner), either Party may, by written notice to the other Party, terminate all (but not less than all) FM Affected Transactions.

- 13.2 **Force Majeure Termination Payment.** If an FM Affected Transaction is terminated in accordance with Clause 13.1 (*Force Majeure and Suspension Event*), the Parties' corresponding Transfer and acceptance obligations shall be released and discharged and the Force Majeure termination payment to be made between the Parties (if any) shall be calculated in accordance with paragraph (a), (b) or (c) below, as selected by the Parties in Schedule 2 (*Elections*).

- (a) **No Termination Payment.** No Force Majeure termination payment shall be made between Parties; provided, however, that the obligation to pay any Unpaid Amounts shall survive the termination of the FM Affected Transaction.
- (b) **Two-way Market Quotation Termination Payment.** Both Parties shall go into the market and obtain three (3) mid-market quotations in the Termination Currency from third party dealers for a replacement Transaction for the same

amount of Period Traded Allowances (without taking into account the current credit-worthiness of the requesting Party or any existing Credit Support Document). Each Party will then calculate the average of the quotations it obtained and the amount payable shall be equal to (A) the sum of (I) one-half of the difference between the higher amount so determined (the Party determining the higher amount being "X") and the lower amount so determined (the Party determining the lower amount being "Y") and (II) any Unpaid Amounts owing to X less (B) any Unpaid Amounts owing to Y. If the resultant amount is a positive number, Y shall pay it to X; if it is a negative number, X shall pay the absolute value of such amount to Y. If three (3) mid-market quotations cannot be obtained, all quotations will be deemed to be zero.

- (c) **Two-way Loss Termination Payment.** Each Party will determine its Loss in respect of the FM Affected Transaction and an amount will be payable in the Termination Currency equal to one half of the difference between the Loss of the Party with the higher Loss ("X") and the Loss of the Party with the lower Loss ("Y"). If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of such amount to Y.

13.3 Where an event or circumstance that would otherwise constitute or give rise to an Event of Default also constitutes a Force Majeure or a Suspension Event, it is to be treated as Force Majeure or a Suspension Event and not as an Event of Default. Where an event or circumstance that would otherwise constitute a Force Majeure also constitutes a Suspension Event, it is to be treated as a Suspension Event and not as a Force Majeure.

13.4 **Suspension Event.**

- (a) Upon the occurrence of a Suspension Event, the Party affected by the Suspension Event shall, as soon as practicable by written notice, notify the other Party of the commencement of the Suspension Event. To the extent available to the Party affected by the Suspension Event, it shall also provide details of the Suspension Event including a non-binding estimate of the duration of its inability to perform its obligations due to the Suspension Event.
- (b) Where a Suspension Event occurs, the obligations of both Parties, which would otherwise be required to be performed with respect to the relevant Transaction, shall be suspended for the duration of the Suspension Event. Subject to paragraph (c) below, upon the Suspension Event ceasing to exist both Parties will resume full performance of their obligations under this Agreement in respect of the relevant Transaction (including for the avoidance of doubt any suspended obligations) as soon as possible but no later than the day that is ten (10) Delivery Banking Days thereafter or, if earlier, three (3) Delivery Banking Days prior to the End of Validity Period Reconciliation Deadline (such date being the "**Delayed Delivery Date**"). For the avoidance of doubt, where a Delivery Date is adjusted in accordance with this Clause 13.4(b), then the use of the term "Delivery Date" elsewhere in this Agreement shall be construed to be a reference to the Delayed Delivery Date.
- (c) In the event that Period Traded Allowances are Transferred to the Receiving Party on or before the Delayed Delivery Date following the occurrence of a Suspension Event as contemplated by sub-clause (a) above, the Receiving Party agrees to pay the Delivering Party the Contract Amount adjusted by the Cost of Carry

Amount. For the avoidance of doubt, any adjustment of the Contract Amount will be identified in the relevant Statement sent to the Receiving Party.

- (d) Where a Suspension Event continues to exist on the Long Stop Date, Clause 13.2(a) (*No Termination Payment*) shall apply and the suspended Transaction shall be deemed an FM Affected Transaction and terminated as an FM Affected Transaction on the Long Stop Date.

14. Termination

14.1 **Termination Rights.** If, at any time, an Event of Default (as defined below) has occurred and is continuing, the Non-Defaulting Party may designate a day as an early termination date (the "**Early Termination Date**") in respect of all outstanding Transactions between the Parties by giving not more than twenty (20) days' notice to the Defaulting Party. This notice must specify the relevant Event of Default. The Early Termination Date may not be earlier than the day the notice is effective. If, however, "**Automatic Early Termination**" is specified in Schedule 2 (*Elections*) as applying to a Party then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such Party or its Credit Support Provider (as applicable) of an Event of Default specified in Clause 14.2(d)(i), (iii), (v), (vi), (vii) (*Insolvency*), or to the extent analogous thereto, (viii), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such Party or its Credit Support Provider (as applicable) of an Event of Default specified in Clause 14.2(d)(iv) (*Insolvency*) or, to the extent analogous to it, (viii).

14.2 **Events of Default.** Subject to Clauses 13.1, 13.4, 14.2 and 14.7 (*Events of Default, Illegality, Force Majeure and Suspension Event*), an "**Event of Default**" means the occurrence at any time with respect to a Party or, if applicable, any Credit Support Provider of that Party (the "**Defaulting Party**"), of any of the following events:

- (a) **Non-payment.** The Party fails to pay any amount when due under this Agreement, and that failure is not remedied on or before the third (3rd) Banking Day after the Non-Defaulting Party gives the Defaulting Party notice of that failure.
- (b) **Representation or Warranty.** Any representation or warranty made, or deemed to have been made, by the Party or any Credit Support Provider of that Party in this Agreement or any Credit Support Document proves to have been false or materially misleading at the time it was made or was deemed to have been made.
- (c) **Material Obligations.** The Party fails to perform a material obligation under this Agreement (other than an obligation referred to in Clauses 14.2(a) (*Non-payment*) and 14.2(b) (*Representation or Warranty*) and 5.3 (*No Encumbrances*) and that failure is not remedied within five (5) Banking Days of the Non-Defaulting Party giving the Defaulting Party notice of that failure.
- (d) **Insolvency.** The Party or any Credit Support Provider of the Party:
 - (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
 - (ii) becomes insolvent or is unable to pay its debts generally as they fall due, fails generally to pay, or admits in writing its inability generally to pay its debts as they become due;

- (iii) makes a general assignment, arrangement, composition or other arrangement with or for the benefit of its creditors;
 - (iv) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, that proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not withdrawn, dismissed, discharged, stayed or restrained in each case within thirty (30) days of the institution or presentation of that proceeding or petition;
 - (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
 - (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
 - (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and that secured party maintains possession, or that process is not withdrawn, dismissed, discharged, stayed or restrained, in each case within fifteen (15) days of that event;
 - (viii) causes or is subject to any event with respect to it that, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in sub-paragraphs (i) to (vii) (inclusive) of this Clause 14.2(d); or
 - (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this Clause 14.2(d).
- (e) **Credit Support.**
- (i) The Party or any Credit Support Provider or Performance Assurance Provider of the Party fails to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document or Performance Assurance if that failure is not remedied within three (3) Banking Days of notification;
 - (ii) any Credit Support Document or Performance Assurance expires or terminates, is due to expire or terminate within thirty (30) days or such other period as is specified in Schedule 2 (*Elections*), or fails or ceases to be in full force and effect for the purpose of this Agreement (in each case other than in accordance with its terms) prior to the satisfaction of all obligations of the Party under each Transaction to which that Credit Support Document or Performance Assurance (as the case may be) relates without the written consent of the other Party and such expiration

- or termination is not remedied within three (3) Banking Days of notification;
or
- (iii) the Party or any Credit Support Provider or Performance Assurance Provider of that Party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, that Credit Support Document or Performance Assurance or otherwise fails to comply with or perform its obligations under or in respect of a Credit Support Document and that failure is continuing after any applicable grace or cure period.
- (f) **Cross Default.** Unless cross default is specified not to apply to the Party in Schedule 2 (*Elections*), there occurs or exists:
- (i) a default, event of default or other similar condition or event (however described) in respect of the Party or any Credit Support Provider of the Party under one or more agreements or instruments relating to Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the Cross Default Threshold that has resulted in that Indebtedness becoming due and payable under those agreements or instruments before it would otherwise have been due and payable; or
 - (ii) a default by that Party or that Credit Support Provider (individually or collectively) in making one or more payments on the due date for those purposes under those agreements or instruments in an aggregate amount of not less than the Cross Default Threshold (after giving effect to any applicable notice requirement or grace period).
- (g) **Default under Specified Transaction.** The Party or any Credit Support Provider of the Party:
- (i) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction;
 - (ii) defaults (A) in making any payment due on the last date for that payment under the Specified Transaction, or (B) in making any payment on early termination of a Specified Transaction, after giving effect to any applicable notice requirement or grace period or, in each case where there is no applicable notice requirement or grace period, where that default continues for at least three (3) Banking Days; or
 - (iii) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or that action is taken by any Entity appointed or empowered to act on its behalf).
- (h) **Material Adverse Change.** The Party fails, within three (3) Banking Days of receipt of the notice referred to below, to provide the other Party (the "**Requesting Party**") with, or increase the amount of, Performance Assurance when the Requesting Party believes in good faith that a Material Adverse Change has occurred or its exposure in respect of such Party under a continuing Material Adverse Change has increased and the Requesting Party serves written notice on that Party. For the purposes of this Event of Default, a "**Material Adverse**

Change" has occurred if any one or more of the following events has occurred and is continuing:

- (i) **Credit Rating.** If the Credit Rating (where available) of an Entity listed in paragraph (A), (B) or (C) below, each such Entity being a "**Relevant Entity**", is withdrawn or downgraded below the ratings specified in Schedule 2 (*Elections*):
 - (A) the Party in question (unless all that Party's financial obligations under this Agreement are fully guaranteed or assured under a Credit Support Document or there is a Control and Profit Transfer Agreement in place in respect of that Party); or
 - (B) that Party's Credit Support Provider (other than a bank); or
 - (C) that Party's Controlling Party.
- (ii) **Credit Rating of a Credit Support Provider that is a bank.** If the Credit Rating of a bank serving as the Party's Credit Support Provider is withdrawn or downgraded below Standard & Poor's Rating Group "A-" or Moody's Investor's Service Inc. or Fitch Ratings Ltd. equivalent rating.
- (iii) **Failure of a Control and Profit Transfer Agreement.** If any Control and Profit Transfer Agreement entered into by any Controlling Party of the Party expires (and is not renewed) or terminates in whole or in part or ceases to be in full force and effect for the purpose of this Agreement (in any case other than in accordance with its terms) prior to the satisfaction of all obligations of the Party under each Transaction.
- (iv) **Impaired Ability to Perform.** If in the reasonable and good faith opinion of the Requesting Party, the ability of the Relevant Entity to perform its obligations under this Agreement, any Credit Support Document or any Control and Profit Transfer Agreement, as the case may be, is materially impaired.
- (v) **Credit Event upon Merger.** If the Party or any Credit Support Provider of the Party or Controlling Party undergoes a change of control, consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, incorporates, reincorporates or reconstitutes into or as another Entity, or another Entity transfers all or substantially all its assets to, or reorganises, incorporates, reincorporates or reconstitutes into or as such Party or any Credit Support Provider of the Party or Controlling Party, and the creditworthiness of such Party, such Credit Support Provider or Controlling Party or the resulting surviving transferee or successor Entity is, in the reasonable and good faith opinion of the Requesting Party, materially weaker than that of the Party or such Credit Support Provider or Controlling Party, as the case may be, immediately prior to such action.
- (vi) **Decline in Tangible Net Worth.** If the Tangible Net Worth of any Relevant Entity falls below the amount specified in Schedule 2 (*Elections*).

- (vii) **Financial Covenants.** If a Party does not have a Credit Rating, any Relevant Entity fails to fulfil any of the following requirements as determined by reference to the most recent relevant financial statements:
 - (A) the ratio of (1) earnings before interest and taxes to (2) the sum of all interest and any amounts in the nature of interest charged to expense relating to Total Debt is for the Party or its Credit Support Provider in any fiscal year greater than the ratio specified in Schedule 2 (*Elections*);
 - (B) the ratio of (1) the amount of cash generated or employed by the Party or its Credit Support Provider in its operating activities to (2) Total Debt of the Party or its Credit Support Provider in any fiscal year is greater than the ratio specified in Schedule 2 (*Elections*); and
 - (C) the ratio of (1) Total Debt to (2) the sum of Total Debt and all paid up shareholder cash contributions to the share capital account or any other capital account of the Party or its Credit Support Provider ascribed for such purposes is less than the ratio specified in Schedule 2 (*Elections*).
 - (i) **Merger Without Assumption.** The Party or any Credit Support Provider of the Party or Controlling Party undergoes a change of control, consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, incorporates, reincorporates or reconstitutes into or as another Entity, or another Entity transfers all or substantially all its assets to, or reorganises, incorporates, reincorporates or reconstitutes into or as such Party or any Credit Support Provider of the Party or Controlling Party, and, at the time of such consolidation, amalgamation, merger, transfer, reorganisation, reincorporation or reconstitution,
 - (i) the resulting surviving transferee or successor Entity fails to assume all the obligations of that Party or such Credit Support Provider or Controlling Party under this Agreement or any Credit Support Document to which it or its predecessor was a Party; or
 - (ii) the benefits of any Credit Support Document cease or fail to extend (without the consent of the Requesting Party) to the performance by such resulting surviving transferee or successor Entity of its obligations under this Agreement.
 - (j) **Repudiation of Agreement.** The Party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, this Agreement, any Schedule, any Confirmation executed and delivered by that Party or any Transaction evidenced by such a Confirmation (or such action is taken by any person or Entity appointed or empowered to operate it or act on its behalf).
- 14.3 **Suspension following Event of Default.** Notwithstanding any other provision of this Agreement, after the occurrence of either an Event of Default or an event that, with the giving of notice or the passage of time or both, would constitute an Event of Default with respect to a Party, the other Party may, in addition to any other remedies that it may have

and subject to Clause 17 (*Liabilities*), for the period that the relevant event subsists or, if shorter, thirty (30) days, do any one or more of the following:

- (a) withhold or suspend payments under this Agreement; or
- (b) suspend its compliance with Clauses 5 (*Allowance Transfers*) and 6 (*Effecting Transfers*) or both of them.

14.4 **Survival of Obligations.** Any obligation of a Party that would have become due under a Transaction but for Clause 14.3 (*Suspension following Event of Default*) will, notwithstanding the occurrence of the last scheduled due date for performance by that Party under that Transaction, become due (together with interest in accordance with Clause 9.5 (*Interest*)) on the first to occur of (a) the date that the relevant event ceases to subsist, or (b) thirty (30) days following the occurrence of such event.

14.5 **Early Termination Date.** If notice designating an Early Termination Date is given under Clause 14.1 (*Termination Rights*), the Early Termination Date occurs on the date so designated even if the circumstances giving rise to the Event of Default are no longer continuing. Upon the effective designation of an Early Termination Date: (a) no further payments or compliance with Clauses 5 (*Allowance Transfers*) or 6 (*Effecting Transfers*) or both of them is required in respect of any Transaction, and (b) the amount, if any, payable in respect of an Early Termination Date is to be determined pursuant to Clause 14.6 (*Termination Payments*).

14.6 **Termination Payments.**

- (a) On, or as soon as reasonably practicable after, the Early Termination Date, the Non-Defaulting Party shall in good faith calculate the termination payment (the "**Termination Payment**"), which is an amount equal to:
 - (i) the Loss for all Transactions unless the Market Amount is specified as the Termination Payment method in Schedule 2 (*Elections*) (in which case it is the Market Amount); and
 - (ii) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-Defaulting Party,

less the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

- (b) The Non-Defaulting Party shall notify the Defaulting Party of the Termination Payment including detailed support for the Termination Payment calculation.
- (c) A Party is not required to enter into Replacement Transactions in order to determine the Termination Payment.
- (d) If the Termination Payment is a positive number, the Defaulting Party shall pay the Termination Payment to the Non-Defaulting Party within three (3) Banking Days of invoice or notification of the Termination Payment amount (the "**Termination Payment Date**"), which amount bears interest in accordance with Clause 9.5 (*Interest*).

- (e) If the Termination Payment is a negative number, the Non-Defaulting Party shall pay an amount equal to the absolute value of the Termination Payment to the Defaulting Party within thirty (30) Banking Days of the Termination Payment Date, which amount bears interest in accordance with Clause 9.5 (*Interest*).
- (f) The Non-Defaulting Party may, at its option, set off the Termination Payment against any other amounts owing (whether or not matured, contingent or invoiced) between the Parties under this Agreement or under any other agreements, instruments or undertakings between the Parties. The right of set-off is without prejudice and in addition to any other right of set-off, combination of accounts, lien, charge or other right to which any Party is at any time otherwise entitled (whether by operation of law, by contract or otherwise). If an amount is unascertained, the Non-Defaulting Party may reasonably estimate the amount to be set off. The Parties shall make any adjustment payment required within three (3) Banking Days of the amount becoming ascertained.
- (g) Disputed amounts under this Clause 14.6 are to be paid by the Defaulting Party subject to refund with interest calculated in accordance with Clause 9.5(b) (*Interest*) if the dispute is resolved in favour of the Defaulting Party.

14.7 **Illegality.** If, due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after that date, it becomes unlawful (other than as a result of a breach by the relevant Party of Clause 4.2 (*Holding Accounts and Registries*)) for a Party (the "**Affected Party**"):

- (a) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of that Transaction or to comply with any other material provision of this Agreement relating to that Transaction; or
- (b) to perform, or for any Credit Support Provider of that Party to perform, any contingent or other obligation that the Party (or that Credit Support Provider) has under any Credit Support Document relating to that Transaction (in either case, an "**Illegality**"),

then, unless the Parties otherwise agree in writing, either Party may elect to terminate that Transaction in accordance with Clauses 14.1 (*Termination Rights*), 14.5 (*Early Termination Date*) and 14.6 (*Termination Payments*), except that, for the purposes of Clause 14.1 (*Termination Rights*), either Party may designate an Early Termination Date and, for the purposes of Clause 14.6 (*Termination Payments*), (i) the Termination Payment shall be calculated in the Termination Currency on the basis of Loss and (ii) references to the Defaulting Party are to be read as references to the Affected Party, references to the Non-Defaulting Party are to be read as references to the Party that is not the Affected Party, and references to "all Transactions" are to be read as references to only those Transactions affected by the Illegality ("**Illegality Affected Transactions**"). However, if both Parties are Affected Parties, each Party will determine its Loss in respect of the affected Transaction and an amount will be payable in the Termination Currency equal to one half of the difference between the Loss of the Party with the higher Loss ("X") and the Loss of the Party with the lower Loss ("Y"). If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of such amount to Y.

- 14.8 **Event of Default, Illegality, Force Majeure and Suspension Event.** If an event or circumstance that would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it is to be treated as an Illegality and does not constitute an Event of Default. If an event or circumstance that would otherwise constitute or give rise to Force Majeure or to a Suspension Event (as the case may be) also constitutes an Illegality, it is to be treated as an Illegality and does not constitute Force Majeure or a Suspension Event.
- 14.9 **Change in Taxes.** If change in taxes is specified as applying in Schedule 2 (*Elections*) and, due to any action taken by a taxing authority or brought in a court of competent jurisdiction on or after the date on which a Transaction is entered into (regardless of whether that action is taken or brought with respect to a Party) or to a Change in Tax Law, a Party (the "**Affected Tax Party**") will, or there is a substantial likelihood that it will, on the next Payment Due Date either:
- (a) be required to pay an amount in respect of a Relevant Tax; or
 - (b) receive a payment from which an amount is required to be deducted or withheld for or on account of a Relevant Tax and no additional amount is required to be paid in respect of that Relevant Tax,

other, in either case, than in respect of interest payable under this Agreement (a "**Relevant Change in Tax**"), then the Affected Tax Party may give a notice electing to terminate, liquidate and accelerate any uncompleted portions of that Transaction in accordance with Clauses 14.1 (*Termination Rights*), 14.5 (*Early Termination Date*) and 14.6 (*Termination Payments*), except that, for the purposes of Clause 14.1 (*Termination Rights*), either Party may designate an Early Termination Date and, for the purposes of Clause 14.5 (*Early Termination Date*) and 14.6 (*Termination Payments*), references to the Defaulting Party are to be read as references to the Affected Tax Party, references to the Non-Defaulting Party are to be read as references to the Party that is not the Affected Tax Party, references to "all Transactions" are to be read as references to only those Transactions affected by the Relevant Change in Tax, and the notice given by the Affected Tax Party electing to terminate, liquidate and accelerate any uncompleted portions of the Transaction is deemed to be the notice to terminate, liquidate and accelerate to be given by the Non-Defaulting Party for the purposes of Clause 14.1 (*Termination Rights*). However, if both Parties are Affected Tax Parties, each Party shall determine its Termination Payment in respect of all Transactions and an amount will be payable in the Termination Currency equal to one half of the difference between the Termination Payment of the Party with the higher Termination Payment ("X") and the Termination Payment of the Party with the lower Termination Payment ("Y"). If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of such amount to Y.

15. Confidentiality

- 15.1 The Parties shall treat the terms of this Agreement and all information provided under or in connection with it, including the financial statements provided under Clause 4.3 (*Provision of Annual Reports*) (collectively, "**Confidential Information**") as confidential and may not either disclose Confidential Information or use it other than for *bona fide* purposes connected with this Agreement without the prior written consent of the other Party, except that consent is not required for disclosure to:

- (a) directors, employees or Affiliates of a Party, as long as they in turn are required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this Clause 15;
- (b) persons professionally engaged by a Party, as long as they in turn are required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this Clause 15;
- (c) the extent required by any government department or agency or regulatory authority having jurisdiction over that Party (including the Relevant Authority);
- (d) any bank, other financial institution or rating agency to the extent required in relation to the financing of a Party's business activities, as long as the bank or other financial institution or rating agency, as the case may be, is required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this Clause 15;
- (e) the extent required by any applicable laws, judicial process or the rules and regulations of any regulated market or recognised stock exchange;
- (f) any intending assignee of the rights and interests of a Party under this Agreement or under a Transaction or to a person intending to acquire an interest in a Party or that Party's Affiliate holding company as long as the intending assignee or acquirer in turn is required by that Party to treat the Confidential Information as confidential in favour of the other Party on terms substantially the same as those set out in this Clause 15;
- (g) the extent that the Confidential Information is in or lawfully comes into the public domain other than by breach of this Clause 15; or
- (h) price reporting agencies for the calculation of an index as long as the identity of the other Party is not revealed. It must also be a precondition of the disclosure agreement between a Party and the price reporting agency that only the price is released by the price reporting agency and not the identity of either Party.

15.2 This Clause 15 will continue to bind the Parties after the date of termination of this Agreement for a period of two (2) years.

16. Assignment

16.1 **Prohibition of Assignment.** Subject to Clause 16.2 (*Assignment of Termination Payments*), neither Party may assign or transfer to any person any of its rights or obligations in respect of this Agreement without the written consent of the other Party (which consent shall not be unreasonably withheld or delayed). For these purposes, it shall be unreasonable to withhold consent to an assignment or transfer of all, but not part only, of a Party's rights and obligations in the case of an assignee or transferee that (a) is demonstrably capable of fulfilling the obligations of the assignor or transferor under this Agreement; (b) has a financial standing no worse than that of the assignor or transferor at the date such person becomes a party to this Agreement and as of the date it entered into the relevant Transactions; (c) is demonstrably capable of continuing to provide security and/or performance assurance at least equal to that provided (or required to be provided) by the assignor or transferor; (d) has its registered office in the same jurisdiction as that of the assignor or transferor; and (e) only if reasonably requested by the other

Party, cooperates with and provides the necessary documentation to fulfill any know your customer or anti-money laundering requirements of the other Party.

- 16.2 **Assignment of Termination Payments.** A Party may assign all or any part of its interest in any Termination Payment payable to it under Clause 14.6 (*Termination Payments*) together with any amounts payable on or with respect to that interest pursuant to Clauses 9.5 (*Interest*) and 10 (*Euros*) without the consent of the other Party.

17. Liabilities

- 17.1 **No Consequential Loss.** Except to the extent included in any payment made in accordance with Clauses 5.3 (*No Encumbrances*), 12.1 (*Failure to Transfer*), 12.2 (*Failure to Accept*), 13.2 (*Force Majeure Termination Payment*), 14.6 (*Termination Payments*) or 14.7 (*Illegality*), neither Party is liable to the other, whether in contract, tort (including negligence and breach of duty) or otherwise at law, for any business interruption or loss of use, profits, contracts, production, or revenue or for any consequential or indirect loss or damage of any kind however arising.

- 17.2 **Breach of Warranty.** Neither Party shall be liable in respect of any breach of warranty under Clause 4 (*General Obligations, Representations and Warranties*) in relation to any Transaction for any greater sum than it would be liable for under Clause 14 (*Termination*) in relation to such Transaction for any breach of Clause 5 (*Allowance Transfers*) or 6 (*Effecting Transfers*).

- 17.3 **Unlimited Liability.** Notwithstanding anything to the contrary contained in this Agreement, the liability of a Party to the other Party for:

- (a) death or personal injury resulting from negligence of the Party liable, its employees, agents and contractors; or
- (b) fraud or fraudulent misrepresentation

is unlimited save that nothing in this Clause 17.3 confers a right or remedy upon the other Party to which that Party would not otherwise have been entitled.

- 17.4 **Reasonable Pre-estimate and Maximum Liability.** Each Party acknowledges that the payment obligations in Clauses 12.1 (*Failure to Transfer*), 13 (*Force Majeure and Suspension Event*) and 14 (*Termination*) are reasonable in the light of the anticipated harm and the difficulty of estimation or calculation of actual damages. Each Party waives the right to contest those payments as an unreasonable penalty. Each Party further acknowledges that the payment obligation in Clause 14 (*Termination*) shall constitute the maximum liability in the event of termination of this Agreement.

- 17.5 **Sole Remedy.** The rights to suspend, take action, terminate, liquidate and accelerate and to be paid a Termination Payment under Clause 14 (*Termination*), together with any interest arising thereunder are in full and final satisfaction of the rights of the Non-Defaulting Party if an Event of Default occurs in respect of the Defaulting Party.

18. Miscellaneous

- 18.1 **Waiver.** No waiver by either Party of any breach by the other of this Agreement operates unless expressly made in writing, and any such waiver is not to be construed as a waiver of any other breach.

- 18.2 **Variation.** No variation to the provisions of this Agreement is valid unless it is in writing and signed by each Party.
- 18.3 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes and extinguishes any representations previously given or made with respect to its subject matter other than those given or made in this Agreement, but nothing in this Clause 18.3 limits or excludes any liability for fraud in relation to those representations.
- 18.4 **Severability.** If any provision or part of a provision of this Agreement is found by a court, arbitrator or other authority of competent jurisdiction to be void or unenforceable, that provision or part of a provision is to be deemed deleted from this Agreement and the remaining provisions to continue in full force and effect. The Parties shall in this event seek to agree upon a valid and enforceable provision or part of a provision to replace the provision or part of a provision found to be void and unenforceable.
- 18.5 **Notices.** Any notice or other written communication to be given or made in respect of this Agreement by one Party to the other is to be given or made in writing to the other at the address or contact number or in accordance with the electronic messaging system or e-mail details provided pursuant to Schedule 2 (*Elections*). A written notice is deemed to have been received:
- (a) if delivered by hand, on the Banking Day of delivery or on the first (1st) Banking Day after the date of delivery if delivered on a day other than a Banking Day;
 - (b) if sent by registered mail, on the second (2nd) Banking Day after the date of posting or, if sent from one country to another, on the fifth (5th) Banking Day after the date of posting; or
 - (c) if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission if transmitted before 17:00 hours on a Banking Day or otherwise at 09:00 hours on the first Banking Day after transmission.
- 18.6 **Third Party Rights.** Subject to the rights that may accrue to any successor or permitted assignees of the Parties, no provision of this Agreement is to be construed as creating any rights enforceable by a third party, and all third party rights implied by law are, to the extent permissible by law, excluded from this Agreement.
- 18.7 **Applicable Law.** The Agreement is governed by and is to be construed in accordance with English law, unless otherwise specified in Schedule 2 (*Elections*). Subject to the express referral of any matter to the Expert under this Agreement and subject to Clause 18.8 (*Arbitration*) (if it applies), the Parties submit to the non-exclusive jurisdiction of the English courts, unless otherwise specified in Schedule 2 (*Elections*), for the purposes of any dispute under or in connection with this Agreement and any non-contractual obligations arising out of or in connection with it.
- 18.8 **Arbitration.** If this Clause 18.8 is specified as applying in Schedule 2 (*Elections*), save for those disputes that are expressed under this Agreement to be subject to expert determination in accordance with Clause 18.9 (*Expert Determination*), the Parties agree that any difference or dispute arising under, out of or in connection with this Agreement that the Parties are unable to settle between themselves is to be resolved by arbitration in accordance with the rules of arbitration, the number of arbitrators and at the place

specified in Schedule 2 (*Elections*). The language of arbitration is English. The appointing authority is the Secretary-General of the Permanent Court of Arbitration unless the rules chosen in Schedule 2 (*Elections*) specify otherwise. Unless indicated otherwise in Schedule 2 (*Elections*), the number of arbitrators is one.

18.9 Expert Determination.

- (a) If any matter specified in Schedule 2 (*Elections*) (pursuant to Clause 9.4(b) (*Disputed Payments*)) as subject to expert determination is referred to an independent expert (the "**Expert**"), the Expert is to be appointed by agreement between the Parties. If the Parties fail to agree upon that appointment within ten (10) Banking Days of a Party notifying the other Party of its decision to refer the matter to an Expert, the President of the International Emissions Trading Association may appoint the Expert on the application of either Party.

In the absence of the Parties agreeing to any amendments to this Agreement, if that failure to agree is referable to the Expert, the Expert is empowered to make amendments binding on the Parties consistent with any relevant requirements, purposes or restrictions concerning those amendments expressly provided for in this Agreement. The Parties agree that it is their intention that in the absence of their ability to agree to any required amendments to this Agreement, this Agreement should continue and not come to an end or be deemed to be void or voidable in accordance with the doctrine of frustration or any other legal theory. Accordingly, if the Expert is unable to decide upon any amendments based on the express or implied intentions of the Parties, the Expert is entitled to have regard to the way in which similar issues or amendments are addressed or are proposed to be addressed by other participants trading Allowances and to substitute the Expert's own view of what is reasonable in all the circumstances.

- (b) The Expert shall act as an expert and not as an arbitrator and shall give his or her determination in writing.
- (c) The determination of the Expert shall be final, conclusive and binding upon the Parties unless a Party notifies the other Party that it disputes the Expert's determination within twenty-one (21) days of receipt of that determination, in which case the dispute is to be referred either to the courts of law of the jurisdiction specified in accordance with Clause 18.7 (*Applicable Law*) or, if Clause 18.8 (*Arbitration*) applies, to arbitration in accordance with Clause 18.8 (*Arbitration*).
- (d) The Expert shall determine the procedure to be followed by the Expert for the purpose of making a determination, but the Parties shall use their respective reasonable endeavors to ensure that he or she makes his or her determination within twenty (20) Banking Days of being appointed.
- (e) Each of the Parties shall bear one half of the costs of the Expert unless the Expert determines otherwise.
- (f) Pending the determination of any amendments to this Agreement by the Parties or the Expert, the Parties shall continue to the extent possible to perform their obligations under this Agreement.

18.10

Party Preparing this Agreement. The Party (the "**Relevant Party**") who has prepared



copies of this Agreement for execution (as indicated in item 14.10 of Schedule 2 (*Elections*)) warrants and undertakes to the other Party that no changes have been made to the standard form Emissions Trading Master Agreement For The EU ETS (Version 4.0 2019) posted by the International Emission Trading Association on its website on [x 2019], except (a) the elections as set out in Part 1 of Schedule 2 (*Elections*) and (b) any revisions specifically agreed in Part 2 of Schedule 2 (*Elections*).

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18.11 **Counterparts.** This Agreement (including any Confirmations) may be executed in any number of counterparts and by different Parties in separate counterparts, any of which when so executed shall be deemed to be an original and all of which when taken together shall constitute the one and same Agreement.

IN WITNESS WHEREOF the Parties have duly executed and delivered this Agreement on the respective dates set out below with effect from the date set out on the first page of this document.

.....
(Name of Party)

.....
(Name of Party)

By:

By:

Name:
Title:
Date:

Name:
Title:
Date:

SCHEDULE 1 DEFINITIONS

The following words or phrases, where they appear in this Agreement, have the following respective meanings:

"Account Pair" means a pair of Holding Accounts identified by the Parties in the relevant Schedule or in a Confirmation with respect to which physical netting of deliveries pursuant to Clause 9.7 (*Physical Netting of Deliveries*) may be affected.

"Administrator Event" means the suspension of some or all of the processes of a Registry or the EUTL in accordance with the Registries Regulation by the National Administrator or the Central Administrator (as applicable) due to:

- (a) a security breach or following reasonable suspicion of a breach of security which threatens the integrity of the registries system (including any back up facilities); or
- (b) scheduled or emergency maintenance on the Registry; or
- (c) the failure to operate and maintain the Registry in accordance with the Registries Regulation or any other applicable law.

"Affected Allowance" means an Allowance which is or is alleged to have been the subject of an Unauthorised Transfer as confirmed by an Appropriate Source.

"Affected Party" has the meaning given to it in Clause 14.7 (*Illegality*).

"Affected Tax Party" has the meaning given to it in Clause 14.9 (*Change in Taxes*).

"Affiliate" means, with respect to any Entity, any other Entity that directly or indirectly through one or more intermediaries controls or is controlled by or is under common control with the Entity. The terms "controls", "controlled by" and "under common control with" mean the possession, directly or indirectly through one or more intermediaries, of more than fifty per cent (50%) of the outstanding voting stock of, or the power to direct or cause the direction of the management policies of, any Entity, whether through ownership of stock, as a general partner or trustee, by contract or otherwise.

"Aircraft Operator" means an "aircraft operator" as defined in the Directive.

"Allowance Price" means, for a particular PTA Quantity, Specified Period and Transaction, the amount agreed to be the price for that PTA Quantity (expressed in Euros per Allowance unless otherwise agreed), excluding applicable taxes.

"Allowance Type" means the type of Allowance specified in the Confirmation as that which the Parties wish to trade for the purposes of the relevant Transaction.

"Allowance" means any one or more of an AEUA or EUA.

"American Option" means a style of Option that may be exercised at any point during an Exercise Period that consists of more than one day.

"Appropriate Source" means any "competent authority", "registry administrator" and/or the Central Administrator (as those terms are defined in the Registries Regulation), or any other authority having power pursuant to the Directive and/or the Registries Regulation to block, suspend, refuse, reject, cancel or otherwise affect the Transfer (whether in whole or in part) of Allowances, any recognised law enforcement or tax authorities of a Member State, European Anti-fraud Office of the European Commission or Europol.

"Automatic Exercise" has the meaning given to it in Clause 7.5 (*Option Transactions*).

"**Aviation EU Allowance**" or "**AEUA**" means a unit of account that is an "allowance" as defined in the Directive and is issued pursuant to Chapter II thereof.

"**Banking Day**" means, in relation to a Transaction, any day (other than a Saturday or Sunday) on which commercial banks are open for general business in, if not otherwise specified in Schedule 2 (*Elections*) or the Confirmation to a Transaction, the places in which both Parties have their registered offices.

"**Base Rate**" is EURIBOR, unless otherwise specified by the Parties in the Confirmation.

"**Bermudan Option**" means a style of Option that may be exercised on certain days during an Exercise Period that consists of more than one day.

"**Buyer**" means the Party specified as such for the purposes of an Option Transaction in the relevant Confirmation.

"**Buy-In Period**" has the meaning given to it in paragraph (a)(i) of the definition of Receiving Party's Replacement Cost.

"**Buy-In**" means the purchase of Allowances by the Receiving Party in accordance with the procedures described in the definition of Receiving Party's Replacement Cost.

"**Call Option**" means an Option Transaction entitling (but not obliging) the Buyer upon exercise to purchase Allowances from the Seller at the Strike Price per Allowance.

"**Central Administrator**" means the Relevant Authority designated to maintain the EUTL pursuant to Article 20(1) of the Directive.

"**Central European Time**" means Central European Time and shall include Central European Winter Time and Central European Summer Time, as applicable.

"**Change in Tax Law**" means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) affecting the tax treatment accorded to the Transfer of Allowances that occurs on or after the date on which the relevant Transaction is entered into.

"**Confidential Information**" has the meaning given to it in Clause 15 (*Confidentiality*).

"**Confirmation**" means a completed written confirmation substantially in the form set out in Schedule 3A (*Form of Confirmation for Spot/Forward Transactions*) or 3B (*Form of Confirmation for Option Transactions*), as applicable or in a form otherwise agreed between the Parties.

"**Contract Amount**" means, for each Transaction, the amount (expressed in Euros unless otherwise agreed) calculated by multiplying the Allowance Price by the PTA Quantity for that Transaction.

"**Contract Value**" means, for any Undelivered Allowances, the amount (expressed in Euros unless otherwise agreed) calculated by multiplying the Allowance Price by the number of Undelivered Allowances.

"**Control and Profit Transfer Agreement**" means, unless otherwise specified in Schedule 2 (*Elections*), an agreement in form and substance satisfactory to one of the Parties executed by the other Party's Controlling Party with respect to the maintenance of control of that other Party by the Controlling Party and of the capitalization, the creditworthiness and the ability to perform obligations under this Agreement of the other Party.

"**Controlling Party**" means, where "Controlling Party" is specified in Schedule 2 (*Elections*) as applying to a Party, the Entity named as the Controlling Party with respect to that Party (being the Entity who is a party to a Control and Profit Transfer Agreement with that Party and where that Party is, in relation to

such Entity, its subsidiary over which such Entity has control).

"Cost of Carry Amount" means the amount calculated by applying the Cost of Carry Rate for the Cost of Carry Calculation Period to the Allowance Price multiplied by the number of Period Traded Allowances Transferred, divided by 360.

"Cost of Carry Calculation Period" means the number of calendar days from and including the original Payment Due Date to, but excluding, the Delayed Payment Due Date.

"Cost of Carry Rate" the "EUR-EONIA-OIS-COMPOUND" rate, "EONIA" being a reference rate equal to the overnight rate as calculated by the European Central Bank and appearing on Reuters Screen EONIA Page in respect of each day in the Cost of Carry Calculation Period.

"Credit Rating" means in respect of an Entity any of the following: (i) the long-term unsecured, unsubordinated (unsupported by third party credit enhancement) public debt rating; (ii) the debt issuer's credit rating; or (iii) the corporate credit rating given to that person, in each of cases (i) to (iii) by Standard & Poor's Rating Services (a division of the McGraw-Hill Companies Inc.) or Moody's Investors Services Inc. or Fitch, Inc. or any successor to the rating business of any of the foregoing.

"Credit Support Document" means, for a Party, any agreement or instrument that is specified as such in Schedule 2 (*Elections*) in relation to that Party.

"Credit Support Provider" has the meaning given to it in Schedule 2 (*Elections*).

"Cross default threshold" means, for a party, the amount specified in Schedule 2 (*Elections*) in the Termination Currency.

"Default Quantity" means, in respect of a Transaction, the quantity equal to the difference between:

- (a) the PTA Quantity; and
- (b) the quantity of Period Traded Allowances duly and timely Transferred or accepted, as relevant.

"Defaulting Party" has the meaning given to it in Clause 14.2 (*Events of Default*).

"Delayed Delivery Date" has the meaning given to it in Clause 13.4(a) (*Suspension Event*).

"Delayed Payment Due Date" has the meaning given to it in the definition of Payment Due Date.

"Delivered Allowance Volume" means the aggregate number of Delivered Allowances and Physically Netted Allowances.

"Delivered Allowances" means Period Traded Allowances actually Transferred by (or at the request of) the Delivering Party to the relevant Receiving Party's Holding Account.

"Delivering Party" means in respect of a Transaction that is (A) not an Option Transaction, the Seller; (B) an Option Transaction which is a Call Option, the Seller; or (C) an Option Transaction which is a Put Option, the Buyer.

"Delivering Party's Delivery Banking Day Location" means, in relation to a Transaction, the place specified as such in the Confirmation for the relevant Transaction, or, if a place is not so specified: (i) the place specified as such in Schedule 2 (*Elections*); or (ii) if no such place is specified, the place in which the Delivering Party's address for the purposes of receiving notices connected with the relevant Transaction is located; or (iii) if no such address is given, the place in which the Delivering Party has its registered office.

"Delivering Party's Holding Account" means the Holding Account(s), if any, specified by the Delivering

Party in the Confirmation to a Transaction (including any additional account specified by the Delivering Party in accordance with Clause 6.5 (*Effecting Transfers*)). Where the Delivering Party has specified a Registry only without specifying the Holding Account details in the Confirmation, "Delivering Party's Holding Account" includes any Holding Account notified by the Delivering Party to the Receiving Party under Clause 6.6 (*Effecting Transfers*).

"Delivering Party's Replacement Cost" means in respect of a failure to accept (or secure acceptance of) a Transfer of a number of Allowances pursuant to Clause 12.2 (*Failure to Accept*) the positive difference if any between (i) the Allowance Price multiplied by the Default Quantity, and (ii) the price the Delivering Party, acting in a commercially reasonable manner, does or would receive in an arm's length transaction for an equivalent quantity and Validity Period of Allowances to replace the Default Quantity; plus

- (a) interest on the amount calculated in accordance with paragraph (a) above for the period from (and including) the Delivery Date to (but excluding) the date of termination at the rate specified in Clause 9.5(a) (*Interest*); plus
- (b) the amount of such reasonable costs and expenses which the Delivering Party incurs in respect of the Default Quantity (including, without limitation, broker fees, commissions and legal fees).

"Delivery Banking Day" shall have the same meaning given to Banking Day unless otherwise specified in the Confirmation to a Transaction.

"Delivery Date" means, in relation to a Transaction, and subject to adjustment in accordance with Clause 13.4 (*Suspension Event*), the Delivery Banking Day agreed between the Parties as the delivery date (that is to say, the date by which the relevant Transfer is to be completed) at the time of entering into the Transaction.

"Directive" means Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emissions allowance trading and amending Council Directive 96/61/EC, and as may be amended from time to time, including by Directive (EU) 2018/410.

"Early Termination Date" has the meaning given to it in Clause 14.1 (*Termination Rights*).

"EEP Amount" means an amount (expressed as an amount per Allowance) that the Receiving Party determines, acting in good faith and using commercially reasonable procedures, to be its total losses and costs which result from the Delivering Party's failure to deliver the Shortfall to the extent that those losses and costs are not reflected elsewhere in the definition of Receiving Party's Replacement Cost and to the extent that they relate to:

- (a) any Excess Emissions Penalty which the Receiving Party must pay to a Relevant Authority in accordance with the terms of the Scheme; or
- (b) if this sub-paragraph (b) is specified in Schedule 2 (*Elections*) as applying, any amount which the Receiving Party must pay to a third party in respect of any such penalty payable to any other party (including a Relevant Authority) by that third party as a result of the Delivering Party's failure to deliver the Shortfall.

"EEP Status" means whether or not the Parties have elected in Schedule 2 (*Elections*) (or the Confirmation for the relevant Transaction) that Excess Emissions Penalty applies to the relevant Period Traded Allowances.

"Encumbrance Loss" means an amount reasonably determined by the Receiving Party in good faith to be its total losses and costs in connection with a Transaction including, but not limited to, any loss of bargain, cost of funding or, at the election of the Receiving Party but without duplication, loss or costs incurred as a result of its terminating, liquidating, obtaining or re-establishing any hedge or related trading position. Such amount includes losses and costs in respect of any payment already made under a Transaction prior to the delivery of the written notice by the Receiving Party and the Receiving Party's

legal fees and out-of-pocket expenses.

The Parties agree that in circumstances where there has been a breach of the No Encumbrances Obligation by the Delivering Party caused by the Transfer of an Affected Allowance, the Receiving Party will be entitled to include in such amount any losses arising out of or in connection with any claim, demand, action or proceeding brought against the Receiving Party by a third party consequent upon the Transfer by the Receiving Party of an Affected Allowance Transferred to it by the Delivering Party under a Transaction.

Notwithstanding anything herein to the contrary, none of the above amounts shall include Excess Emissions Penalty or any amount which the Receiving Party must pay to a third party in respect of any such penalty payable to any other party (or Relevant Authority) by that third party.

"**Entity**" means an individual, government or state or division of it, government or state agency, corporation, partnership or such other entity as the context may require.

"**EU Allowance**" or "**EUA**" means a unit of account that is an "allowance" as defined in the Directive and issued pursuant to Chapter III thereof.

"**EU ETS Rules**" means the rules and regulations, as amended from time to time, of participation in and operation of, the EU ETS as applicable in a Member State and certain non-Member States with whom a Participation Agreement has been signed.

"**EU ETS**" means the EU Emission Trading System established by the Directive.

"**EU**" means the European Union as it exists from time to time.

"**EURIBOR**" means, in relation to an amount owed under this Agreement on which interest is to accrue in Euros:

- (a) the interest rate for Euro deposits for a period of one month that appears on Reuters Page EURIBOR01 (or such other screen display or service as may replace it for the purpose of displaying the interest rates for Euro deposits offered in the euro-zone) as at 11:00 hours on the Payment Due Date, and where the amount or any part of it remains overdue one month after the Payment Due Date such interest rate as appears on such page for such deposits as at such time as at the day one month after the Payment Due Date and thereafter as at monthly intervals until the amount is no longer overdue; or
- (b) if no such interest rate appears on Reuters (or such replacement), the arithmetic mean (rounded upwards to 3 decimal places) of the rates per annum at which each of not less than two major banks in the Euro-zone interbank market quoted that they were offering (Euro deposits/deposits) in an amount comparable with that overdue amount to major banks in the Euro-zone interbank market for a period of one month as at 11:00 hours on the Payment Due Date or as at the day one month after the Payment Due Date or as at monthly intervals thereafter as the case may be.

"**Euro**" means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the Treaty establishing the European Community, as amended by the Treaty on European Union.

"**European Option**" means a style of Option that may be exercised only during an Exercise Period that consists of one day.

"**EUTL**" or "**European Union Transaction Log**" means the independent transaction log provided for in Article 20(1) of the Directive, the operation of which is further detailed in the Registries Regulation.

"**Event of Default**" has the meaning given to it in Clause 14.2 (*Events of Default*).

"**Excess Emissions Penalty**" has the meaning given to it in the Directive.

"**Exercise Period**" means: (A) in respect of an American Option, the period from and including 10:00 hours to and including 16:00 hours (or, in the case of the Expiration Date, to and including the Expiration Time) on all Banking Days from and including the Trade Date to and including the Expiration Date; (B) in respect of a Bermudan Option, the period from and including 09:00 hours to and including 16:00 hours on any Potential Exercise Day (or, in the case of the Expiration Date, to and including the Expiration Time); and (C) in respect of a European Option, the period from and including 09:00 hours on the Expiration Date to and including the relevant Expiration Time.

"**Expert**" has the meaning given to it in Clause 18.9(a) (*Expert Determination*).

"**Expiration Date**" means the date on which an Option expires, as specified in the Confirmation.

"**Expiration Time**" means the time on an Expiration Date at which the Option expires, as specified in the Confirmation.

"**Final Delivery Date**" means the date that is two (2) Delivery Banking Days after receipt of a notice given under Clause 12.1 (*Failure to Transfer*) or Clause 12.2 (*Failure to Accept*).

"**FM Affected Party**" has the meaning given to it in Clause 13.1 (*Force Majeure*).

"**FM Affected Transaction**" has the meaning given to it in Clause 13.1 (*Force Majeure*).

"**Fourth Validity Period**" means, in respect of EUAs and AEUAs, the period starting 1 January 2021 to 31 December 2030.

"**Force Majeure**" means the occurrence of any event or circumstance, beyond the control of the FM Affected Party, that is not a Suspension Event, and that could not, after using all reasonable efforts, be overcome and which makes it impossible for the FM Affected Party to either (a) deliver the Period Traded Allowances from any Holding Account in any Registry (or if one or more Delivering Party's Holding Accounts are specified, from such Delivering Party's Holding Account(s) or (b) accept the Period Traded Allowances into the Receiving Party's Holding Account(s), in accordance with the EU ETS. The inability of a Party to perform a relevant delivery or acceptance obligation as a result of it having insufficient Period Traded Allowances in the relevant Holding Account (whether caused by: the low or non-allocation of Allowances from a Member State, non-Member State or Central Administrator; the delay or failure of a Member State or Central Administrator to replace Allowances with Allowances for the subsequent Validity Period; or the failure of that Party to procure sufficient Allowances to meet its delivery obligations) shall not constitute a Force Majeure; provided, however, that this is not an exhaustive list of events which will not constitute a Force Majeure and is provided for the avoidance of doubt only.

"**GHG Reductions**" means the removal, limitation, reduction, avoidance, sequestration or mitigation of GHGs' emissions relative to the scenario that reasonably represents the anthropogenic emissions by sources or anthropogenic removal by sinks of GHG in the absence of such removal, limitation, reduction, avoidance, sequestration or mitigation.

"**GHG**" means any of the gases listed in Annex II of the Directive and such other gases as may be included in the Directive from time to time.

"**Holding Account**" means any digital record of a party or person in any relevant Registry as may be specified in the Confirmation to a Transaction, that will be used to record the issue (if applicable), holding, transfer, acquisition, surrender, cancellation, and replacement of Allowances.

"**Illegality Affected Transactions**" has the meaning given to it in Clause 14.7 (*Illegality*).

"**Illegality Affected Party**" has the meaning given to it in Clause 14.6 (*Termination Payments*).

"**Illegality**" has the meaning given to it in Clause 14.7 (*Illegality*).

"**Indebtedness**" means any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

"**Letter of Credit**" means an irrevocable standby letter of credit payable on demand in a form and substance satisfactory to the Requesting Party and issued or confirmed by a financial institution whose credit rating is at least Standard & Poor's Rating Services (a division of the McGraw-Hill Companies Inc.) "A-", Moody's Investors Services Inc. equivalent, or Fitch, Inc. equivalent.

"**Long Stop Date**" means, in respect of a Suspension Event that occurs with respect to a Transfer or acceptance obligation that would otherwise be required to be performed within the period:

- (a) from (and including) 1 May 2021 to (and including) 31 December 2022: 1 June 2024;
- (b) from (and including) 1 January 2023 to (and including) 31 December 2024: 1 June 2026;
- (c) from (and including) 1 January 2025 to (and including) 31 December 2026: 1 June 2028;
- (d) from (and including) 1 January 2027 to (and including) 31 December 2028: 1 June 2030; and
- (e) from (and including) 1 January 2029 to (and including) the twenty-fifth (25th) calendar day of the month in which the Validity Period Reconciliation Deadline is scheduled to occur: the twenty-fifth (25th) calendar day of the month in which the Validity Period Reconciliation Deadline is scheduled to occur.

"**Loss**" means:

- (a) for the purposes of Clause 13.2(c) (*Two-way Loss Termination Payment*), an amount that each Party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with the termination of the FM Affected Transaction(s) or any uncompleted portions of them, including any EEP Amount (if applicable, in which case Clauses 12.1(b)(ii) through 12.1(b)(iv) (*Failure to Transfer*) shall apply equally to the determination of such amount), any loss of bargain, cost of funding (based on the actual costs of such Party whether or not greater than market costs) or, without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or re-establishing any related trading position (or any gain resulting from any of them). Loss does not include legal fees or out-of-pocket expenses. Each Party may (but need not) determine its Loss by reference to quotations of average relevant rates or prices from two or more leading brokers in the Allowances trading market who are independent of the Parties; or
- (b) for the purposes of Clause 14.6 (*Termination Payments*), an amount that the Non-Defaulting Party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with the termination of all Transactions or any uncompleted portions of them, including any EEP Amount, if applicable, in which case Clauses 12.1(b)(ii) through 12.1(b)(iv) (*Failure to Transfer*) shall apply equally to the determination of such amount), any loss of bargain, cost of funding (based on the actual costs of the Non-Defaulting Party whether or not greater than market costs) or, at the election of the Non-Defaulting Party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or re-establishing any related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment required to have been made which has not been made or non-compliance with Clauses 5 (*Allowance Transfers*) or 6 (*Effecting Transfers*) (whether or not as a result of the suspension of the obligation to pay or comply with those sub-clauses under Clauses 14.3 (*Suspension following Event of Default*) or 14.5 (*Early Termination Date*)) on or before the Early Termination Date. Loss does not include the Non-Defaulting Party's legal fees or out-of-pocket expenses. The Non-Defaulting Party may (but need not) determine its Loss by reference to quotations of average relevant rates or prices from two or more leading brokers in the Allowances trading

market who are independent of the Parties; or

- (c) for the purposes of Clause 14.7 (*Illegality*):
- (i) if there is only one Illegality Affected Party, as per the definition for the purposes of Clause 14.6 (*Termination Payments*) as set forth above; or
 - (ii) if both Parties are Illegality Affected Parties, an amount that each Party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with the termination of the Illegality Affected Transaction(s) or any uncompleted portions of them, including any EEP Amount (if applicable, in which case Clauses 12.1(b)(ii) through 12.1(b)(iv) (*Failure to Transfer*) shall apply equally to the determination of such amount), any loss of bargain, cost of funding (based on the actual costs of such Party whether or not greater than market costs) or, without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or re-establishing any related trading position (or any gain resulting from any of them). Loss does not include legal fees or out-of-pocket expenses. Each Party may (but need not) determine its Loss by reference to quotations of average relevant rates or prices from two or more leading brokers in the Allowances trading market who are independent of the Parties.

"Market Amount" means the sum (whether positive or negative) of (i) the Market Quotation for the Transactions if a Market Quotation is determined and (ii) losses and costs (or gains) in respect of any payment required to have been made and not made or non-compliance with Clauses 5 (*Allowance Transfers*) or 6 (*Effecting Transfers*) on or before the Early Termination Date or as a result of suspension under Clause 14.3 (*Suspension following Event of Default*); or, for the purposes of Clause 14.6 (*Termination Payments*), the Non-Defaulting Party's Loss (whether positive or negative) for the Transactions if a Market Quotation cannot be determined or would not (in the reasonable belief of the Non-Defaulting Party) produce a commercially reasonable result.

"Market Quotation" means, with respect to the Non-Defaulting Party, an amount determined on the basis of the average of quotations from Reference Market Makers. Each quotation will be for an amount, if any, that would be paid to the Non-Defaulting Party (expressed as a negative number) or by the Non-Defaulting Party (expressed as a positive number) in consideration of an agreement between the Non-Defaulting Party and the quoting Reference Market Maker to enter into Replacement Transactions for the same amount of Period Traded Allowances having the same EEP Status. The quotation shall (i) take into account any existing Credit Support Document with respect to the obligations of the Non-Defaulting Party but (ii) disregard any losses, costs (or gains) in respect of any payment required to have been made and not made or non-compliance with Clauses 5 (*Allowance Transfers*) or 6 (*Effecting Transfers*) on or before the Early Termination Date.

"Agreement" has the meaning ascribed to it in Clause 1.2 (*Subject of Agreement*).

"Material Adverse Change" has the meaning given to it in Clause 14.2(h) (*Material Adverse Change*).

"Member State" means any one of the Member States of the European Union from time to time.

"Member State Registry" means the Registry established for each Member State pursuant to the Directive and the Registries Regulation.

"Monthly Billing Cycle" means that payments fall due in accordance with the first elective in item 9.1 of Part 1 of Schedule 2 (*Elections*).

"National Administrator" means the entity responsible for managing, on behalf of a Member State, a set of user accounts under the jurisdiction of a Member State in the Union Registry as designated in accordance with Article 8 of the Registries Regulation.

"No Encumbrances Obligation" has the meaning given to it in Clause 5.3 (*No Encumbrances*).

"Non-Defaulting Party" means the Party that is not the Defaulting Party.

"Operator" means an "operator" as defined in the Directive.

"Option Transaction" means a Transaction relating to an Option that is identified as an Option Transaction under this Agreement in the relevant Confirmation.

"Option" means a right but not an obligation to [enter into a Transaction/ buy or sell Allowances], which is granted to a Buyer by way of an Option Transaction in consideration of the payment of a Premium to the Seller, which Option may be an American Option, a Bermudan Option, or a European Option.

"Original Affected Party" means the person from whose Holding Account the Unauthorised Transfer of the relevant Affected Allowance occurred.

"Participation Agreement" means any argument, rule, procedure, instrument or other law or regulation which governs a non-Member State's participation in and the Transfer of Allowances between the EU ETS and any similar system of the non-Member State.

"Party" means one or other of the parties to this Agreement and "Parties" is to be construed accordingly.

"Payment Due Date" means either the date specified in the Confirmation or, if none is so specified, the relevant elective specified in Schedule 2 (*Elections*) and, if no election is made there, the fifth (5th) Banking Day after the later of (a) the Delivery Date and (b) the date on which the Statement is delivered to the Receiving Party in accordance with Clause 9.2 (*Statement*), subject to the provisions of Clause 12 (*Transfer or Acceptance Failure*) and Clause 13.4 (*Suspension Event*) in which case the Payment Due Date shall be measured accordingly from the Delayed Delivery Date (such Payment Due Date being the **"Delayed Payment Due Date"**).

"Performance Assurance Provider" means, as the context requires, any Entity that provides Performance Assurance on behalf of one of the Parties.

"Performance Assurance" means a Letter of Credit, cash or other security in form and amount reasonably satisfactory to the Requesting Party.

"Period Traded Allowance" means, in relation to a Transaction, an Allowance that is of the Specified Period specified in the relevant Confirmation.

"Physically Netted Allowances" means those Period Traded Allowances which were not actually Transferred to the relevant Receiving Party's Holding Account as a result of the operation of Clause 9.7 (*Physical Netting of Deliveries*).

"Positive Mark to Market Amount" has the meaning given to it in Clause 7.6 (*Option Transactions*).

"Potential Exercise Day" means, in respect of a Bermudan Option, each day that the Parties agree, as specified in the Confirmation, to be a day on which the Buyer may exercise the Option, each such date if not a Banking Day, the next following day that is a Banking Day, and the Expiration Date.

"Premium" means the price (if any) to be paid by the Buyer in respect of the Option Transaction, as specified in the Confirmation, exclusive of VAT and other applicable taxes.

"Premium Payment Date" means the date specified in the Confirmation to a Transaction or, if none is so specified, five (5) Banking Days after the Trade Date.

"PTA Quantity" means, in relation to a Transaction and a Specified Period, the number of Period Traded Allowances that the Parties have agreed to Transfer and accept for that Transaction as specified in the relevant Confirmation.

"Put Option" means an Option Transaction entitling (but not obliging) the Buyer upon exercise to sell Allowances to the Seller at the Strike Price per Allowance.

"Receiving Party" means in respect of a Transaction that is (a) not an Option Transaction, the Buyer; (b) an Option Transaction which is a Call Option, the Buyer; or (c) an Option Transaction which is a Put Option, the Seller.

"Receiving Party's Delivery Banking Day Location" means, in relation to a Transaction, the place specified as such in this Confirmation for the relevant Transaction, or, if a place is not so specified: (i) the place specified as such in Schedule 2 (*Elections*); or (ii) if no such place is specified, the place in which the Receiving Party's address for the purposes of receiving notices connected with the relevant Transaction is located; or (iii) if no such address is given, the place in which the Receiving Party has its registered office.

"Receiving Party's Holding Account" means the Holding Account(s) specified by the Receiving Party in the Confirmation to a Transaction (including any additional account agreed by the Parties in accordance with Clause 6.5 (*Effecting Transfers*)). Where the Receiving Party has specified a Registry only without specifying the Holding Account details in the Confirmation, "Receiving Party's Holding Account" includes any Holding Account notified by the Receiving Party to the Delivering Party under Clause 6.6 (*Effecting Transfers*).

"Receiving Party's Replacement Cost", in respect of a failure to Transfer a number of Allowances of a particular Allowance type and Specified Period pursuant to Clause 12.1 (*Failure to Transfer*) of the Agreement (being the **"Undelivered Allowances"**) has the meaning ascribed to it in the Agreement, except when the Excess Emissions Penalty is specified to apply in the relevant Schedule, in which case it means an amount (if positive) equal to the sum of:

- (a) either:
 - (i) if in one or more arm's length transactions the Receiving Party is able, using its reasonable endeavours, to purchase a number of Allowances of the same Allowance type and Specified Period as the Undelivered Allowances (**"Replacement Allowances"**), to be Transferred during the period from (but excluding) the Final Delivery Date to (and including) the Reconciliation Deadline on or immediately following the Delivery Date (the **"Buy-In Period"**), which in respect of each such individual purchase of Allowances, when aggregated with other such purchases, amounts to a purchase of a number of Allowances equal to the number of Undelivered Allowances:
 - (A) the price (per Allowance) at which the Receiving Party is able to purchase the relevant number of Replacement Allowances; less
 - (B) the Allowance Price agreed by the Parties in respect of the Undelivered Allowances; multiplied by
 - (C) the number of Replacement Allowances which the Receiving Party is able to purchase at the price indicated in (1); plus
 - (D) interest for the period from (and including) the Delivery Date to (but excluding) the date of termination calculated on an amount equal to the product of the number of Undelivered Allowances and an amount equal to the excess, if any, of the price determined pursuant to (1) over the Allowance Price agreed between the Parties in respect of the Undelivered Allowances at the rate specified in Clause 9.5(a) (*Interest*) of the Agreement; or
 - (ii) if in one or more arm's length transactions the Receiving Party, using its reasonable endeavours, is unable to purchase a number of Replacement Allowances equivalent to the Undelivered Allowances to be delivered during the Buy-In Period:

- (A) in respect of the number of Replacement Allowances for which the Receiving Party is able to effect a Buy-In during the Buy-In Period, an amount for such Allowances calculated in accordance with paragraph (i) above; and
- (B) in respect of the number of Replacement Allowances equal to the number of Undelivered Allowances minus the number of Replacement Allowances referred to in A(ii)(1) above (the "**Shortfall**"), the sum of:
 - (i) the price (per Allowance) at which the Receiving Party, using its reasonable endeavours and in an arm's length transaction, is or would be able to purchase as soon as reasonably possible after the Reconciliation Deadline a number of Replacement Allowances equal to the Shortfall; less
 - (ii) the Allowance Price agreed by the Parties in respect of the Undelivered Allowances; plus
 - (iii) the EEP Amount; multiplied by
 - (iv) the Shortfall; plus
 - (v) interest for the period from (and including) the Delivery Date to (but excluding) the date the Receiving Party is or would be able to purchase Replacement Allowances in accordance with paragraph A(ii)(2)(l) above on an amount equal to the product of the Shortfall and an amount equal to the excess, if any, of the price determined pursuant to paragraph A(ii)(2)(l) above over the Allowance Price agreed between the Parties in respect of the Undelivered Allowances at the rate specified in Clause 9.5(a) (*Interest*) of the Agreement; and
- (b) such reasonable costs and expenses which the Receiving Party incurs as a result of the Delivering Party's failure to Transfer the Shortfall (including, without limitation, broker fees, commissions and legal fees) to the extent that those costs and expenses are not reflected in paragraphs A(i) or A(ii) above.

Where the Receiving Party confirms that it has been unable to purchase Replacement Allowances during the Buy-In Period, it shall be for the Delivering Party to show that it has been as a result of the Receiving Party failing to use its reasonable endeavors to do so.

"Reconciliation Deadline" means 30 April of any calendar year in relation to the immediately preceding calendar year, or as otherwise specified in the EU ETS Rules.

"Reference Market Maker" means three (3) leading traders in the Allowances trading market for the relevant Allowance type selected by the Non-Defaulting Party in good faith which satisfy all the criteria that the Non-Defaulting Party applies generally at the time in deciding whether to offer or to make an extension of credit and which are independent of the Parties.

"Reference Price" means the price or formula agreed between the Parties as the reference price, as specified in the Confirmation, and if no such price or formula is specified, then the average of a quotation from each of three leading traders in the trading market for the relevant Allowances Type, as selected by the Buyer in good faith.

"Registries Regulation" means the EU Commission Regulation No. 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC and of the Council, Decisions No. 280/2004/EC and No. 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No. 920/2010 and No. 1193/2011, as may be amended from time to time, including by Commission Regulation (EU) 2018/208.

"Registry" means the registry established by a Member State, non-Member State (with which a Participation Agreement has been signed) or the EU pursuant to the Directive or the Registries Regulation, in order to ensure the accurate accounting of the issue, holding, transfer, acquisition, surrender, cancellation and replacement of Allowances. For the avoidance of doubt, references to a Registry shall include (i) the Union Registry and (ii) collectively the Holding Accounts and all other accounts within the Union Registry that are under the jurisdiction of a single National Administrator designated by a Member State. In the case of (ii), such Holding Accounts and other accounts will together be deemed, for the purposes of this Agreement, to be a Registry for that Member State.

"Registry Operation" means, other than by reason of the occurrence of an Administrator Event:

- (a) the continuing functioning of the Relevant Registry;
- (b) the continuing functioning of the EUTL; and/or
- (c) the continuing functioning of the link between each of the Relevant Registry and the EUTL.

"Registry Pair" means a pair of Registries identified by the Parties in Schedule 2 (*Elections*) or in a Confirmation with respect to which physical netting of deliveries pursuant to Clause 9.7 (*Physical Netting of Deliveries*) may be affected.

"Relevant Authority" means the body (or its affiliated agencies) established by a Member State or non-Member State from time to time to administer the EU ETS in its jurisdiction.

"Relevant Change in Tax" has the meaning given to it in Clause 14.9 (*Change in Taxes*).

"Relevant Entity" has the meaning given to it in Clause 14.2(h)(i) (*Credit Rating*).

"Relevant Registry" means a Registry through which either Party is obliged to perform a Transfer or acceptance obligation under and in accordance with a Transaction. Where a Party specifies more than one Holding Account for Transfer or acceptance purposes, the Relevant Registry shall be identified in accordance with Clause 5.1(c) (*Primary Obligation*).

"Relevant Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest or penalties) that is imposed by any government or other taxing authority directly in respect of any payment or transfer request under this Agreement other than stamp, registration, documentation or similar tax. Relevant Tax does not include, without limitation, income tax, taxes on emissions or the activities giving rise to emissions or taxes imposed generally on a Party's business.

"Replacement Allowances" has the meaning given to it in paragraph (A)(i) of the definition of Receiving Party's Replacement Cost.

"Replacement Transactions" means transactions that would have the effect of preserving for the Non-Defaulting Party the economic equivalent of any payment or compliance with Clauses 5 (*Allowance Transfers*) or 6 (*Effecting Transfers*) (whether the underlying obligation was absolute or contingent) that would, but for the occurrence of the relevant Early Termination Date, have been required after that date.

"Requesting Party" has the meaning given to it in Clause 14.2(h).

"Required Authorisations" means all governmental and other licences, authorisations, permits, consents, contracts and other approvals (if any) that are required to enable the Party to fulfil any of its obligations under this Agreement.

"Schedule" means a schedule to this Agreement.

"System" means the system of transferring Allowances between either or both of (a) persons within the EU and (b) persons in third countries, in either case as recognized in accordance with, and subject to,

the procedure of the Directive established in, and as implemented by the national laws of, each Member State and certain non-Member States.

"Seller" means the Party specified as such for the purposes of an Option Transaction in the relevant Confirmation.

"Shortfall" has the meaning given to it in paragraph (A)(ii)(2) of the definition of Receiving Party's Replacement Cost.

"Specified Period" means, in relation to a Transaction and a PTA Quantity, the relevant Validity Period of issue of Allowances as agreed between the Parties at the time of entering into the Transaction.

"Specified Transaction" means any transaction (including an agreement with respect to the transaction) existing at the date of this Agreement or after that date entered into between one Party (or any Credit Support Provider of that Party) and the other Party (or any Credit Support Provider of that other Party) that is a commodity forward or future, commodity option, commodity swap or other commodity transaction, including any contract for differences or transaction, or any other similar transaction relating to commodities, unless otherwise specified in Schedule 2 (*Elections*) in relation to a Party, insofar as the transaction relates to the commodity or commodities so specified in relation to that Party.

"Statement Amount" has the meaning given to it in Clause 9.2(a)(v) (*Statement*).

"Statement" has the meaning given to it in Clause 9.2(a) (*Statement*).

"Strike Price" means in respect of an Option Transaction the price per Allowance specified or otherwise as determined in or pursuant to the relevant Confirmation.

"Suspension Event" A Suspension Event occurs when, on any date, a Party to the Agreement is unable to perform its Transfer or acceptance obligations under and in accordance with a Transaction through a Relevant Registry as a result of the application of any of the following:

- (a) an absence of Registry Operation; or
- (b) the occurrence of an Administrator Event.

"Tangible Net Worth" means the sum of all paid up shareholder contributions to the share capital account or any other capital account ascribed for such purposes and any accumulated earnings less any accumulated retained losses and intangible assets including, but not limited to, goodwill.

"Termination Currency" means Euros.

"Termination Payment Date" has the meaning given to it in Clause 14.6(d) (*Termination Payments*).

"Termination Payment" has the meaning given to it in Clause 14.6(a) (*Termination Payments*).

"Total Debt" means, for a specified period, the sum of financial indebtedness for borrowed money (which includes debts payable to Affiliates as well as debt instruments to financial institutions).

"Trade Date" means the date a Transaction is agreed as specified in the Confirmation for the Transaction.

"Transaction" means an agreement between the Parties to undertake one or more transactions (including *inter alia*, transactions relating to forwards and options) involving Transfers of Allowances subject to the terms of this Agreement and which is identified as a Transaction under this Agreement in the relevant Confirmation.

"Transfer Request" means a request made in accordance with the System to effect a Transfer.

"**Transfer**" means (whether used as a verb or a noun) with respect to a Transaction, the transfer of Allowances from one Holding Account to another under and in accordance with and for the purposes of the Scheme, and "**Transferred**" and "**Transferable**" are to be construed accordingly.

"**Unauthorised Transfer**" means the transfer by debiting of any Allowance from an account holder's Holding Account and the crediting of a Holding Account of another person, which Transfer is not initiated by the relevant authorised representative or additional authorised representative (as referred to in the Registries Regulation) of the first account holder.

"**Undelivered Allowances**" has the meaning given to it in the definition of Receiving Party's Replacement Cost.

"**UNFCCC**" means the United Nations Framework Convention on Climate Change adopted in New York on May 9, 1992.

"**Union Registry**" means the Registry referred to as the 'Union registry' in Article 19(1) of the Directive.

"**Unpaid Amounts**" owing to any Party means:

- (a) any amount that became payable to that Party prior to the first day of the period for which the obligations of the Parties are suspended under Clause 13 (*Force Majeure and Suspension Event*) which remains unpaid; or
- (b) any amount that became payable to that Party on or prior to an Early Termination Date under Clause 14 (*Termination*) which remains unpaid.

"**Validity Period**" means with respect to EUAs and AEUAs, the period referred to in Article 13 of the Directive beginning 1 January 2021.

"**Validity Period Reconciliation Deadline**" means the final Reconciliation Deadline in the Validity Period specified in the Confirmation.

"**Value Added Tax**" or "**VAT**" means (a) any value added tax imposed by any Member State or non-Member State, or (b) any replacement or other tax levied by reference to value added to a transaction.