

CALIFORNIA EMISSIONS TRADING MASTER AGREEMENT®

VERSION 1.0 OCTOBER 2, 2013

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

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Introduction and Explanatory Notes

This Introduction and these Explanatory Notes concern the California Emissions Trading Master Agreement (“**CETMA**”) published by the International Emissions Trading Association (“**IETA**”), and do not constitute part of the CETMA or create any legal rights and obligations between the parties. The following notes provide background information about IETA and explain certain key concepts in the CETMA.

Introduction

IETA was founded in 1999 to promote both national and international greenhouse gas (“**GHG**”) emissions markets as an essential part of the business response to the threat of global climate change. IETA members include leading multinational companies from across the emissions trading cycle: regulated emitters, solution providers, brokers, financial services firms, verifiers and law firms. IETA works to develop active, liquid GHG emissions markets around the world in order to ensure that the lowest cost emissions reductions can be properly valued and captured wherever they occur. While a comprehensive global system of emissions trading under the UN Framework Convention on Climate Change or a successor regime has not yet emerged, a wide variety of multinational, national and subnational emissions trading programs have been proliferating over recent years. California’s cap-and-trade system, and its linked sister system in Quebec, represents only one of many relatively new initiatives to create strong market incentives for economy-wide emissions reductions.

With unique statutory and regulatory provisions, however, California’s program also creates unique risks and challenges for covered entities and other market participants. Drafted under IETA’s stewardship and with the valuable participation of a diverse group of commercial and legal experts, this CETMA incorporates the best thinking of many of the largest firms operating in the California carbon market today, together with many other entities whose long and varied experience operating in other emissions markets around the world informs the contours of the document. The end result is a template master trading agreement that clarifies and standardizes ambiguous regulatory concepts, provides certainty to counterparties while maintaining flexibility where needed, and enhances overall market liquidity by significantly lowering transaction costs for market participants.

Explanatory Notes

Scope. The CETMA is intended for use in secondary market trading of California Carbon Allowances and California Carbon Offsets. It is not designed for primary market transactions between offset project operators and buyers. It also excludes Early Action Offset Credits from its scope, since the conversion of such credits into compliance-grade ARB Offset Credits involves obligations by the offset project operator that do not lend themselves to the fungibility of offsets in the secondary market context.

Offset Invalidation Risk. California’s “buyer liability” approach for the potential invalidation of offsets creates unique risks for secondary market participants, many of which have already begun to trade “guaranteed” offset credits whereby sellers assume the risk of any future invalidation by regulators. In order to enhance market liquidity and promote standardization, the CETMA allocates the risk of offset invalidation to the seller, treating any invalidation of offsets already transferred to the buyer as a simple failure to deliver. The rationale behind this approach is straightforward; by allocating offset invalidation risk to the seller, the CETMA shifts the novel regulatory risk into a matter of counterparty credit risk, which is something market participants are accustomed to analyzing.

Program Events, Illegality and Change in Law. Distinct legal consequences flow from occurrences such as a Registry Failure or Program Abandonment (both defined as Program Events), an Illegality or a Change in Law. Building on past experience in jurisdictions such as the EU, the CETMA anticipates and deals with each of these occurrences in turn. The CETMA defines Registry Failure as “a disruption in the

ability of either Party to Deliver or Accept Product, as applicable,” that is caused by the relevant registry and not specific to, or within the control of, either Party. A Registry Failure is treated as a Force Majeure, with the obligations of the parties suspended indefinitely during its duration. A Program Abandonment, by contrast, may occur if a governmental authority has permanently discontinued the effective application of the cap-and-trade rules. In this case, the parties may terminate immediately. The CETMA also differentiates between an Illegality and a Change in Law, which deal with legal changes that, on the one hand, render performance unlawful or, on the other hand, render the buyer no longer obligated to comply with the program, make it impossible to use the transacted allowances or offsets to satisfy a compliance obligation, or otherwise alter the commercial terms of the agreement in certain specified ways. In the case of an Illegality, the parties may terminate; in the case of a Change in Law, the parties are subject to a good faith renegotiation obligation after which, if no agreement is reached, they may terminate.

Linkage. California’s cap-and-trade program is expected to be formally linked with Quebec’s as of January 1, 2014. The CETMA anticipates such linkage by using defined terms that are broad enough to cover both California and Quebec (e.g. “Relevant Authority” as opposed to “California Air Resources Board”). Because allowances in CITSS are not identified by serial number, it is impossible to discern, in the secondary market, whether a particular allowance originated in Quebec or California. The definition of “Allowance” was drafted with this challenge in mind, anticipating and allowing for complete fungibility between the two linked jurisdictions. Reflecting market dynamics, the CETMA remains largely a California-oriented document. However, Quebec entities or those interested in trading Quebec offsets should note that Quebec-specific regulatory provisions will be included in a “System Schedule” currently under development by IETA members. Potential future linkages with other jurisdictions will be dealt with as the need arises.

Transfer Mechanics and Deficiencies. In order to transfer ownership of compliance instruments in CITSS, entities must comply with the so-called “push-push-pull” requirements imposed under the cap-and-trade rules. A variety of procedural and timing requirements may yield transfer deficiencies whereby transfers are not completed as contemplated by the parties. The CETMA helps parties by specifically creating “Delivery” and “Acceptance” obligations that conform to the “push-push” and “pull” procedures in CITSS, and by linking the buyer’s payment obligation to the successful transfer of compliance instruments, not to the seller’s initiation of a transfer request. Furthermore, the CETMA allocates risks associated with penalties and losses resulting from transfer request deficiencies attributed to the buyer and seller, respectively.

The intent of the CETMA is to standardize, harmonize and clarify provisions used by market participants, and to promote efficiency and help increase liquidity in the secondary market for California Carbon Allowances and California Carbon Offsets. As entities familiarize themselves with its terms and start to use it to facilitate trading, it is IETA’s hope that the CETMA will represent a significant step forward in the maturation and strengthening of California’s leading GHG emissions market. IETA is grateful to the many member companies that devoted time to drafting and commenting on the CETMA.



Dirk Forrister
President and CEO, IETA

Questions or Comments?

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CALIFORNIA EMISSIONS TRADING MASTER AGREEMENT[®]

dated as of

[INSERT DATE]

by

.....
("Party A")

and

.....
("Party B")

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CALIFORNIA EMISSIONS TRADING MASTER AGREEMENT

This CALIFORNIA EMISSIONS TRADING MASTER AGREEMENT (“**Master Agreement**”) is made and entered into as of _____ (the “**Effective Date**”) by and between _____ with its principal offices at _____ and _____, each individually referred to as a “**Party**”, and jointly referred to as the “**Parties**”.

RECITALS

WHEREAS, the Parties desire to enter into one or more Transactions for the purchase and/or sale of GHG emission Allowances and/or Offsets in accordance with the terms and conditions of this Master Agreement;

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and for such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

ARTICLE 1 SUBJECT OF AGREEMENT

1.1 This Master Agreement (including any and all Schedules, Appendices, Parts, Exhibits and written supplements referred to herein) shall govern all oral or written agreements between the Parties to undertake one or more Transactions.

1.2 All Transactions are entered into in reliance on the mutual agreement of the Parties that the Master Agreement, any Schedule(s) and all Confirmations evidencing individual Transactions together form a single agreement, and the Parties acknowledge and agree that they would not otherwise enter into any Transactions.

ARTICLE 2 DEFINITIONS, INTERPRETATION AND TERM

2.1 Definitions. Capitalized terms shall have the meanings assigned to them in this Master Agreement, including in Schedule 1 and in the applicable Confirmation.

2.2 Interpretation. The following interpretive provisions apply to this Master Agreement.

- (a) Subject to sections 8.4 (*Illegality*) and 8.5 (*Change in Law*), reference to any law, statute or regulation includes any amendment or modification to, consolidation, reenactment or replacement of such law, statute or regulation.
- (b) References in the singular include the plural and vice versa, pronouns having masculine or feminine gender include the other, and words denoting persons include natural persons, partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities, whether or not having separate legal personality. Other grammatical forms of defined words or phrases have corresponding meanings.
- (c) “Include” or “including” means “including without limitation.”
- (d) In relation to a given Transaction, references to “this Agreement” or “the Agreement” shall refer to this Master Agreement, together with the terms of that Transaction, as evidenced by a relevant Confirmation.

- (e) If there is any conflict between the provisions of this Master Agreement, any Schedule, and/or any Confirmation for a Transaction, the following provisions shall prevail (in the following order): (i) the terms of the Confirmation for a Transaction; (ii) the terms of a relevant System Schedule; (iii) the terms of Schedule 2; (iv) the terms of Schedule 1; and (v) the remaining terms of this Master Agreement.
- (f) Any reference to “time” is to Pacific Time unless otherwise specified in Schedule 2 (*Elections*) or the Confirmation to a Transaction.
- (g) Where anything is to be done under this Master Agreement with reference to a particular Business Day or period of Business Days, a Business Day shall begin at 9:00 a.m. and run until 5:00 pm. An obligation to be performed on or by a given Business Day must be performed by 5:00 p.m. on that day or shall be treated as having been done on the next following Business Day.

2.3 Term. Without prejudice to Article 11 (*Events of Default and Termination*), this Master Agreement shall remain in force from the Effective Date until terminated by either Party upon not less than twenty (20) Business Days prior written notice, *provided, however*, that this Master Agreement shall remain in effect with respect to Transactions entered into prior to the effective date of termination of this Master Agreement until both Parties have fulfilled all of their obligations with respect to such Transactions hereunder.

ARTICLE 3 CONFIRMATION PROCEDURE

3.1 Agreement of a Transaction. Unless otherwise specified in Schedule 2 (*Elections*), 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 specified in Schedule 2 (*Elections*), within three (3) Business Days of a Transaction having been entered into, the Delivering Party shall send to the Receiving Party by facsimile or e-mail a Confirmation materially in the relevant form set out in Exhibit A with respect to Allowances or Exhibit B with respect to Offsets, or in a form otherwise agreed between the Parties, signed and dated, recording the details of the Transaction.
- (b) If the Receiving Party is satisfied that the Confirmation accurately reflects the terms of the Transaction, it shall countersign and return the Confirmation to the Delivering Party by facsimile or e-mail within three (3) Business Days of receipt of the Confirmation; or, the Receiving Party shall inform the Delivering Party in writing as to any objections or inaccuracies within three (3) Business Days of receipt of the Confirmation. If the objection is not resolved between the Parties, the Confirmation shall not be effective. If the Receiving Party fails to (i) countersign and return the Confirmation to the Delivering Party or (ii) inform the Delivering Party of any objections or inaccuracies within three (3) Business Days of receipt, the Confirmation shall be deemed to be accepted by the Receiving Party.
- (c) If the Receiving Party has not received a Confirmation within three (3) Business Days of a Transaction having been entered into, it may send a Confirmation to the Delivering Party. Clauses 3.2(a) and 3.2(b) (*Exchange of Confirmations*) shall apply *mutatis mutandis* in

relation to any such Confirmation except that all references to the Receiving Party shall refer to the Delivering Party and vice versa.

- (d) Failure by either Party to send, return or execute a Confirmation does not (i) affect the validity or enforceability of any Transaction, or (ii) constitute a failure to perform a material obligation under this Master Agreement as contemplated in clause 11.1(c) (*Material Obligations*).

3.3 Evidence of a Transaction.

- (a) Unless otherwise specified in Schedule 2 (*Elections*), each Party consents to the creation of a tape or electronic recording (“**Recording**”) of all telephone conversations between the Parties relating in whole or part to this Master Agreement, and agrees that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Master Agreement. Each Party waives any further notice of such Recording, and agrees to notify its officers and employees of such Recording and to obtain any necessary consent of such officers and employees. Any Recordings shall be the controlling evidence of the Parties’ agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties and the Parties’ agreement so evidenced shall be deemed for all purposes of this Master Agreement to be the Confirmation of such Transaction, subject to clause 3.3(b). Each Party agrees not to contest, or assert any defense to, the validity or enforceability of any Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the Parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.
- (b) Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall, except in the case of manifest error, prevail in the event of any conflict with the terms of a Recording or other evidence, whether written or oral.

ARTICLE 4 PRODUCT TRANSFERS

4.1 Primary Obligation.

- (a) In relation to a Transaction, the Delivering Party shall sell and Deliver (or cause the Delivery of), and the Receiving Party shall purchase and Accept (or cause the Acceptance of), the Quantity of the Product, and the Receiving Party shall pay the Delivering Party the Contract Amount with respect to the Transferred Product, subject to and in accordance with this Master Agreement and the relevant Program Rules.
- (b) Separate Transactions shall be deemed to exist under a single Confirmation when more than one Delivery Date is specified and, with respect to each such Delivery Date, the following terms are specified or are otherwise capable of being determined with certainty: (i) Product; (ii) Product Price; (iii) Quantity; (iv) Specified Period; and (v) Payment Due Date. The terms of each such deemed Transaction, other than in relation to the Delivery Date and items (i) – (v) listed above, shall be the same, unless otherwise specified in the Confirmation.

4.2 Delivery. For the purposes of clause 4.1(a) (*Primary Obligation*), on or before each Delivery Date the Delivering Party shall cause two (2) of its Account Representatives to submit and confirm a Transfer

Request in CITSS to Transfer the Quantity from Delivering Party's Holding Account to Receiving Party's Holding Account or take any other action as may be required from a transferor under the Program Rules to Transfer Product in CITSS (a "**Transfer Request Initiation**"). The Delivering Party shall execute such Transfer Request Initiation during a single day.

4.3 Acceptance. To Accept the Quantity in accordance with clause 4.1(a) (*Primary Obligation*), the Receiving Party shall cause one (1) of its Account Representatives to confirm in CITSS the Transfer Request Initiation or take any other action as may be required from a transferee under the Program Rules to Transfer Product in CITSS (a "**Transfer Request Confirmation**"). The Receiving Party shall execute a Transfer Request Confirmation on the earlier of (i) the first Business Day following the day of such Transfer Request Initiation or (ii) the third day after the day of such Transfer Request Initiation.

4.4 Transfer Request Deficiencies. Upon issuance of a TRD by the Relevant Authority with respect to a Transaction:

- (a) the Parties shall promptly confer and use commercially reasonable efforts to respond to any request made by the Relevant Authority and to cure the facts, conditions or circumstances alleged to form the basis of the TRD;
- (b) if a TRD Determination is issued and is attributed by the Relevant Authority to the Delivering Party, the Receiving Party may provide an invoice to the Delivering Party for the Receiving Party's Replacement Cost and the Delivering Party shall pay the invoice within three (3) Business Days of receipt;
- (c) if a TRD Determination is issued and is attributed by the Relevant Authority to the Receiving Party, the Delivering Party may provide an invoice to the Receiving Party for the Delivering Party's Replacement Cost and the Receiving Party shall pay the invoice within three (3) Business Days of receipt, *provided, however*, that if Receiving Party has made a payment for Product that was not Transferred, Delivering Party shall return such payment;
- (d) if the TRD Determination is not attributed by the Relevant Authority to either Party or is equally attributed to both Parties, the Parties shall re-initiate the process for Delivery and Acceptance. If Parties are unable to complete a Transfer after three attempts, the Transaction shall be terminated as an FM Affected Transaction and clause 8.2(a) (*No Termination Payment*) shall apply, except that the Delivering Party shall return to the Receiving Party any payment already made for any Product not Transferred;
- (e) if a TRD Determination is issued and is attributed primarily to one Party, such Party shall reimburse the other Party any fines and penalties imposed by a Governmental Authority in connection with such TRD Determination; and
- (f) a TRD or TRD Determination shall not be an Event of Default, but the failure of the Delivering Party or the Receiving Party to pay, when due, any amount referred to above is an Event of Default.

4.5 Transfer Further Assurances. Each Party shall provide to the other Party any reasonably requested information or documentation required to effect a Transfer, cooperate to cause a Transfer to occur, and comply with any and all applicable procedures and requirements of the Program Rules relating to the Transfer of Product.

ARTICLE 5 BILLING AND PAYMENT

5.1 Payment Due Date. Payment for each Transaction shall be due as elected in item 5.1 of Schedule 2 (*Elections*). If no election is made therein, payment shall be due within five (5) Business Days of receipt of an invoice (the “**Payment Due Date**”).

5.2 Invoices. On or after a Transfer, the Delivering Party shall deliver a written invoice to the Receiving Party in accordance with the applicable Confirmation showing the relevant details for each such Transfer, including:

- (a) the Quantity, Product Price and Contract Amount; and
- (b) the volume of Transferred Product and the date of the relevant Transfer.

The Delivering Party shall promptly submit any required documentation as reasonably requested by the Receiving Party in connection with any such invoice.

5.3 Monthly Billing Statement.

- (a) If the Parties elect a monthly billing cycle in item 5.3 of Schedule 2 (*Elections*), then upon or as soon as practicable, but not later than ten (10) Business Days after each month for Transactions in which Transfers occurred in the prior month, the Delivering Party shall send to the Receiving Party a written statement (the “**Statement**”) showing for each such Transaction:
 - (i) the Quantity, Product Price and Contract Amount;
 - (ii) the volume of Transferred Product and the dates of the relevant Transfers;
 - (iii) (if applicable) the volume of Physically Netted Product and full details of the Transaction(s) against which such Product was netted;
 - (iv) any amount owing from one Party to the other, including any amount owing by reason of Article 7 (*Failure to Deliver, Failure to Accept and Invalidation*) or section 5.5 (*Disputed Payments*), stating any part of that amount or any other amount that has already been paid or set off under section 5.7 (*Payment Netting*);
 - (v) the net amount payable from one Party to the other after taking into account the items provided above; and
 - (vi) Sales Tax on the Contract Amount, if any, and any other amount payable under Article 6 (*Taxes*).

Each Party shall promptly provide to the other Party further information as may reasonably be requested by the other Party to substantiate the information contained in any Statement issued pursuant to this section 5.3 (*Monthly Billing Statement*).

- (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, such to be issued as soon as practicable, but not later than ten (10) Business Days after the end of that calendar month with respect to all Transactions having a Payment Due Date falling within that calendar month. Each consolidated Statement shall specify (i) each of the items listed in paragraphs 5.3(a)(i) - (vi) with respect to each individual Transaction to

which it pertains and (ii) aggregate totals for each of those items with respect to all Transactions to which it pertains.

- (c) If the Delivering Party fails to issue a Statement in accordance with clauses 5.3(a) or 5.3(b), 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 Master Agreement. Failure to issue a Statement does not affect the rights and obligations of the Parties under this Master Agreement and does not constitute a failure to perform a material obligation under this Master Agreement as contemplated in clause 11.1(c).

5.4 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 amount owing to the other Party.
- (b) Payment shall be made in US Dollars unless an alternative currency is specified in a relevant System Schedule.
- (c) Payment shall be made 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.

5.5 Disputed Payments.

- (a) If a Party disputes, in good faith, any sum invoiced as payable by that Party under this Master Agreement, it shall give notice to the other Party of the amount in dispute and the reasons for the dispute and shall pay 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. Any adjustment payment required to be made in accordance with the resolution of a dispute shall be made, with interest payable in accordance with section 5.6 (*Interest*), within three (3) Business Days of that resolution.
- (c) All Statements are conclusively presumed final and accurate unless objected to in writing, with adequate explanation and documentation, within one (1) year after the month the Statement was received, or should have been received, by the Receiving Party.

5.6 Interest.

- (a) If a Party fails to pay to the other Party any amount due under this Master Agreement, interest shall be payable on that amount at an annual rate equal to the Interest Rate as applicable from time to time plus three percentage (3%) points compounded monthly from and including the due date for the payment or the last day on which payment can be timely made but excluding the date payment is 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 Interest Rate 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 to but excluding the date payment is made.

- (c) If the Interest Rate ceases temporarily or permanently to be published then the Party owed money may substitute a published interbank lending rate that it considers in good faith to be the equivalent of that rate.
- (d) If payable, interest shall be due within three (3) Business Days following notice from a Party to the other Party that such interest is due.

5.7 Payment Netting. If on any date amounts 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 amount shall be automatically satisfied and discharged and replaced by an obligation upon the Party owing the greater aggregate payment in connection with such amounts (if any) to pay the other Party the net difference owed by such Party on that date.

5.8 Physical Netting of Deliveries. Unless otherwise specified in Schedule 2 (*Elections*), if, on any date, Product of the same type (either Allowances or Offsets) and Specified Period would otherwise be Transferable between the Parties, then such Transfers will be automatically satisfied and discharged and replaced by obligations upon:

- (a) The Party obligated to Deliver the greater amount of Product (if any) to Deliver the difference between the total amount of Product it is obligated to Deliver and the total amount of Product to be Delivered to it by the other Party under such Transactions; and
- (b) The Party owing the greater aggregate payment in connection with such Transactions to pay the other Party the net difference owing to such Party.

ARTICLE 6 TAXES

6.1 Sales Taxes. All amounts referred to in this Master Agreement are exclusive of any applicable Sales Tax chargeable on the supply or supplies for which such amounts form the whole or part of the consideration for Sales Tax purposes. The Sales Tax treatment of any Transfer under a Transaction shall be determined pursuant to the Sales Tax law of the jurisdiction where a taxable transaction for Sales Tax purposes is deemed to take place. If Sales Tax is properly chargeable on any such supply or supplies, the Receiving Party shall pay to the Delivering Party an amount equal to the Sales Tax, 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 Sales Tax invoice in relation to that amount and (b) the Receiving Party shall be under no obligation to make any payment to the Delivering Party with respect to Sales Tax 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 Applicable Law provide the other with any additional valid Sales Tax invoices and any supporting documentation as required for the purposes of this Master Agreement and, to the extent required by Applicable Law, shall correctly account for any Sales Tax properly due in its jurisdiction.

6.2 Other Taxes. Subject to each Party's obligations relating to Sales 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 Master Agreement to be paid. In the event that the Delivering Party pays any tax which is properly for the account of the Receiving Party, the Receiving Party shall promptly indemnify or reimburse the Delivering Party with respect to such tax. In the event that the Receiving Party pays 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 Master Agreement and the Delivering Party shall promptly indemnify or reimburse the Receiving Party with respect to any such tax not so deducted.

6.3 Minimization of Taxes. Both Parties shall use reasonable efforts to administer this Master Agreement and to implement its provisions in accordance with the intent to minimize, where reasonable and possible, any potential tax payment collection or remittance obligations.

ARTICLE 7

FAILURE TO DELIVER, FAILURE TO ACCEPT AND INVALIDATION

7.1 Failure to Deliver. Except to the extent caused by the Receiving Party's non-performance under this Master Agreement or by a Force Majeure, Program Event, Illegality or Change in Law under Article 8 (*Force Majeure, Program Events, Illegality and Change in Law*), if the Delivering Party fails to Deliver a Quantity (whether in whole or in part) to the Receiving Party on or before a Delivery Date, such failure shall not constitute an Event of Default but the Receiving Party may provide an invoice to the Delivering Party for the Receiving Party's Replacement Cost and the Delivering Party shall pay the invoice within three (3) Business Days of receipt.

7.2 Failure to Accept. Except to the extent caused by the Delivering Party's non-performance under this Master Agreement or by a Force Majeure, Program Event, Illegality or Change in Law under Article 8 (*Force Majeure, Program Events, Illegality and Change in Law*), if the Receiving Party fails to Accept a Quantity (whether tendered in whole or in part) in accordance with its obligations under section 4.3 (*Acceptance*), or if it specifies an incorrect Holding Account, then such failure shall not constitute an Event of Default but the Delivering Party may provide an invoice to the Receiving Party for the Delivering Party's Replacement Cost and the Receiving Party shall pay the invoice within three (3) Business Days of receipt.

7.3 Invalidation.

- (a) If the Relevant Authority makes an Initial Invalidation Determination with respect to any Offsets that were Transferred pursuant to a Transaction, the Parties shall promptly confer and use commercially reasonable efforts to respond to any request made by the Relevant Authority and to cure the facts, circumstances or conditions alleged to be the basis of the Initial Invalidation Determination.
- (b) If the Relevant Authority makes a Final Invalidation Determination with respect to any Offsets that were Transferred pursuant to a Transaction (each, an "**Invalidated Offset**"), such determination shall not be an Event of Default but the Receiving Party may notify the Delivering Party that:
 - (i) it requests Qualified Replacement Offsets to be Delivered in which case, within ten (10) Business Days of such notice, the Delivering Party shall, at its sole cost and expense Deliver to the Receiving Party Qualified Replacement Offsets in a quantity equal to the quantity of the Invalidated Offsets; or
 - (ii) it will treat the Final Invalidation Determination as a Failure to Deliver in which case the Delivering Party shall be deemed to have failed to Deliver the Invalidated Offsets and the provisions of section 7.1 (*Failure to Deliver*) shall apply accordingly to such Invalidated Offsets.
- (c) In the event any Qualified Replacement Offsets Transferred to the Receiving Party pursuant to paragraph 7.3(b)(i) are or become Invalid, such Offsets shall be treated as Invalidated Offsets and the Receiving Party shall be entitled to exercise the rights set forth in this section 7.3 with respect to such Invalidated Offsets.

- (d) At the request of the Receiving Party, the Delivering Party shall provide a form of financial assurance reasonably acceptable to the Receiving Party to ensure that adequate funds shall be available at the time of an Invalidation to meet its obligations under this section 7.3 (the “**Invalidation Security**”). The Invalidation Security may be in the form of any of the following: the Credit Support Document, a separate guarantee, letter of credit, insurance policy, or such other financial assurance as the Receiving Party may deem acceptable.

7.4 Untimely Surrender Payment.

- (a) Unless otherwise specified in Schedule 2 (*Elections*), if Untimely Surrender Payment applies and the Transfer Date falls within the USP Risk Period (if any) specified in the relevant Confirmation, the Delivering Party shall pay any USP Amount incurred by the Receiving Party within three (3) Business Days of receipt of an invoice from the Receiving Party.
- (b) In all cases, the Receiving Party shall use commercially reasonable efforts to avoid or mitigate any Untimely Surrender Obligation it might incur as a result of the Delivering Party’s failure to Deliver the Undelivered Product, whether pursuant to clause 7.1(a) or due to the issuance of a TRD Determination by the Relevant Authority pursuant to clause 4.4(b), including entering into replacement transactions for Product of the same type (either Allowances or Offsets) in advance of the Compliance Deadline.
- (c) Upon request, the Receiving Party shall provide the Delivering Party with evidence:
 - (i) that the USP Amount was incurred by it;
 - (ii) that such USP Amount was incurred as a result of the Delivering Party’s failure to perform its Delivery obligation; and
 - (iii) of its commercially reasonable efforts to mitigate its exposure to such USP Amount as it has invoiced to the Delivering Party;

provided, however, that should the Delivering Party elect to challenge the Receiving Party in respect of any of the above matters, then the burden for demonstrating:

- (x) that such USP Amount was not actually incurred by the Receiving Party;
 - (y) that such USP Amount was not incurred by the Receiving Party as a result of the Delivering Party’s non-performance; and/or
 - (z) the insufficiency, lack of thoroughness or unreasonableness of such mitigation efforts
- shall be on the Delivering Party.
- (d) For the purposes of resolving disputes arising under clause 7.4(c):
 - (i) The Parties shall negotiate in good faith in an attempt to resolve any such dispute. If the Parties are unable to settle any dispute under clause 7.4(c) within ten (10) Business Days following the notice of such dispute, either Party may require such dispute to be referred to an Expert for determination in accordance with this clause 7.4(d).

- (ii) If any matter under clause 7.4(c) is referred to an Expert, the Expert is to be appointed by agreement between the Parties.
- (iii) The determination of the Expert shall be in writing and, to the extent permitted by Applicable Law, be final, conclusive and binding upon the Parties.
- (iv) The Parties agree that they will not have recourse to the courts of the jurisdiction specified in accordance with section 15.7 (*Governing Law and Disputes*) or any other court of competent jurisdiction for the purpose of challenging the Expert determination, *provided, however*, that each Party shall have the right to have the Expert determination enforced by any court of competent jurisdiction or included by such court in findings of fact and conclusions of law. For the avoidance of doubt, notwithstanding the provisions of this paragraph 7.4(d)(iv), nothing contained herein shall limit or in any way restrict the ability of any Party to challenge the appointment of the Expert for failing to satisfy the criteria set forth in the definition of Expert contained in Schedule 1 (*Definitions*).
- (v) The Parties shall use their respective reasonable efforts to ensure that the Expert makes a determination within twenty (20) Business Days of being appointed.
- (vi) Each of the Parties shall bear one half of the costs of the Expert.

ARTICLE 8

FORCE MAJEURE, PROGRAM EVENTS, ILLEGALITY AND CHANGE IN LAW

8.1 Force Majeure.

- (a) 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 shall also provide details of the Force Majeure and a good faith, non-binding estimate of the extent and the expected duration of its inability to perform any of its obligations due to the Force Majeure.
- (b) The obligations of both Parties under this Master Agreement with respect to the Transaction(s) affected by the Force Majeure (the “**FM Affected Transactions**”) shall be suspended for the duration of the Force Majeure from the date of the notification given above. During the continuation of the Force Majeure, the FM Affected Party shall use all reasonable efforts to overcome the Force Majeure. Upon the Force Majeure being overcome or it ceasing to exist, both Parties shall resume full performance of their obligations under this Master Agreement with respect to the FM Affected Transactions (including, for the avoidance of doubt, any suspended obligations) as soon as reasonably practicable thereafter but no later than the day that is five (5) Business Days prior to a Compliance Deadline (the “**Delayed Delivery Date**”). For the avoidance of doubt, where a Delivery Date is adjusted in accordance with this clause 8.1(b), then the use of the term “Delivery Date” elsewhere in this Master Agreement shall be construed to be a reference to the Delayed Delivery Date.
- (c) Where a Force Majeure continues for a period of forty (40) Business Days or as elected by the Parties in Schedule 2 (*Elections*), either Party may, by written notice to the other Party, terminate all (but not less than all) FM Affected Transactions.

8.2 Force Majeure Termination Payment. If an FM Affected Transaction is terminated in accordance with section 8.1 (*Force Majeure*), the Parties' corresponding Delivery 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) or (b) below, as elected by the Parties in Schedule 2 (*Elections*):

- (a) No Termination Payment. No Force Majeure termination payment shall be made between the Parties, *provided, however*, that the obligation to pay any Unpaid Amounts shall survive the termination of the FM Affected Transaction; or
- (b) Two-way Loss Termination Payment. Each Party shall determine its Loss with respect to the FM Affected Transaction and the Party with the lower Loss shall pay the Party with the higher Loss one half of the net difference between the Parties' respective Losses.

8.3 Program Events.

- (a) Registry Failure. If, as of the Delivery Date for a Transaction, the Delivering Party is unable to Deliver or the Receiving Party is unable to Accept Product solely because a Registry Failure has occurred, the event shall be treated as a Force Majeure, except that neither Party may terminate the FM Affected Transaction(s) during the continuation of the Registry Failure.
- (b) Program Abandonment. If, at any time, a Program Abandonment occurs, all outstanding Transactions between the Parties under this Master Agreement shall be terminated from the effective date of such Program Abandonment as FM Affected Transactions and clause 8.2(a) (*No Termination Payment*) shall apply.
- (c) Unpaid Amounts. No Party shall be relieved from any obligations to provide any notice or pay any Unpaid Amounts during or following a Program Event.

8.4 Illegality. If, at any time after a Transaction is entered into (i) any new Applicable Law is adopted or enacted or any existing Applicable Law is amended or (ii) there is any promulgation of, or any change in, the interpretation by any Governmental Authority of any Applicable Law, pursuant to which it becomes unlawful (other than as a result of a Program Event) for a Party (the "**Affected Party**"):

- (a) to perform any absolute or contingent obligation to make or receive a payment or Deliver or Accept Product with respect to that Transaction or to comply with any other material provision of this Master 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 sections 11.3 (*Early Termination Date*) and 11.4 (*Termination Payments*), except that, for the purposes of section 11.3 (*Early Termination Date*), either Party may designate an Early Termination Date and, for the purposes of section 11.4 (*Termination Payments*), 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, then each Party shall determine

its Loss with respect to the Illegality Affected Transaction and the Party with the lower Loss shall pay the Party with the higher Loss one half of the net difference between the Parties' respective Losses.

8.5 Change in Law. Unless otherwise specified in Schedule 2 (*Elections*):

- (a) Upon the occurrence of a Change in Law, the Party affected by the Change in Law may notify the other Party of such occurrence. The notice shall identify the Transactions affected by the Change in Law and describe in reasonable detail the Change in Law and the terms and conditions upon which the Affected Party is willing to continue to perform its obligations relating to such Transaction(s).
- (b) Upon notice of a Change in Law, the obligations of both Parties under this Master Agreement with respect to the Transactions affected by the Change in Law shall be suspended and the Parties shall renegotiate in good faith the material terms or conditions so affected in order to appropriately pass through or otherwise address or reflect the effects of the Change in Law.
- (c) If the Parties are unable to agree on revised material terms or conditions within twenty (20) Business Days following the notice of a Change in Law, the Party affected by the Change in Law may terminate the Transactions as FM Affected Transactions and clause 8.2(a) (*No Termination Payment*) shall apply.

8.6 Program Event, Illegality, Change in Law, Force Majeure and Event of Default. If an event or circumstance would, in the absence of this section 8.6, constitute or give rise to more than one of the following events, it shall be treated solely as the first of the following listed applicable events: (i) a Program Event; (ii) an Illegality; (iii) Change in Law; (iv) a Force Majeure; or (v) an Event of Default.

ARTICLE 9 REPRESENTATIONS AND WARRANTIES

9.1 Mutual Representations and Warranties. Each Party hereby 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 organized and validly existing under the laws of the jurisdiction of its organization or incorporation (and, if relevant under those laws, is in good standing).
- (b) Power. It has the power to:
 - (i) execute this Master Agreement and any other documentation relating to this Master Agreement to which it is a party;
 - (ii) deliver this Master Agreement and any other documentation required hereunder; and
 - (iii) perform its obligations under this Master Agreement and any obligations it has under any Credit Support Document to which it is a party,

and it has taken, or obtained, as the case may be, all approvals, consents, resolutions or other actions that are legally required in the relevant jurisdiction(s) to authorize such execution, delivery and performance.

- (c) No Violation or Conflict. The execution, delivery and performance referred to in clause 9.1(b) (*Power*) do not violate or conflict with Applicable Law, any provision of its

constitutional documents, or any contractual restriction binding on or affecting it or any of its assets.

- (d) Required Authorizations. Required authorizations, including all governmental and other licenses, authorizations, permits, consents, contracts and other approvals (if any) that are required to enable the Party to fulfill any of its obligations under this Master Agreement have been obtained and are in full force and effect, and all conditions of such required authorizations have been complied with.
- (e) Physical Settlement. It enters into each Transaction hereunder with the intention that it shall be physically settled through Delivery of Product and shall not be financially settled or otherwise constitute a “swap” within the meaning of the Commodity Exchange Act, 7 U.S.C. 1a(47)(A);
- (f) Obligations Binding. Its obligations under this Master 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, reorganization, insolvency, moratorium or similar laws affecting creditors’ rights generally and to equitable principles of general application.
- (g) No Event of Default. No 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 Master Agreement or any Credit Support Document to which it is a party.
- (h) 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 Master Agreement or that Credit Support Document or its ability to perform its obligations under this Master Agreement or that Credit Support Document.
- (i) No Reliance. It is not relying upon any representations of the other Party other than those expressly set out in this Master Agreement or any Credit Support Document to which it is a party.
- (j) Principal. It has negotiated, entered into and executed this Master 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).
- (k) Risk Assumption. It has entered into this Master 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.
- (l) Accurate Information. All applicable information 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 Master Agreement is, as of the date it is furnished to the other Party, true, accurate and complete in every material respect.
- (m) Compliance with Laws. It is currently in compliance with all Applicable Laws relevant to the Transaction(s).

ARTICLE 10 COVENANTS

10.1 No Encumbrances. The Delivering Party covenants to the Receiving Party that it shall convey to the Receiving Party full legal and beneficial title to the Transferred Product (whether or not such Product constitutes property) free and clear of any liens, taxes, claims, demands, security interests or other encumbrances or any interest in or right to use the Transferred Product by any other Entity and the Delivering Party shall indemnify and hold the Receiving Party harmless for any such adverse claims with respect to the Transferred Product.

10.2 Holding Accounts and Registries. So long as either Party has any Delivery or Acceptance obligation under a Transaction, each Party covenants to the other Party that:

- (a) it shall ensure that it has a Holding Account registered in accordance with the Program Rules in the Relevant Registry specified in the related Confirmation, which Holding Account shall be (i) capable of Delivering or Accepting (as applicable) the relevant Product for each Transaction; (ii) in good status; and (iii) held by the Party or an Affiliate of the Party; and
- (b) it shall notify the other Party of such Holding Account and all necessary Holding Account information no later than ten (10) Business Days prior to the Delivery Date.

ARTICLE 11 EVENTS OF DEFAULT AND TERMINATION

11.1 Events of Default. Subject to Article 7 (*Failure to Deliver, Failure to Accept and Invalidation*) and section 8.6 (*Program Event, Illegality, Change in Law, Force Majeure and Event of Default*), 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 Master Agreement, and that failure is not remedied on or before the third (3rd) Business Day after the Non-Defaulting Party gives the Defaulting Party notice of that failure.
- (b) Representation or Warranty. Any material representation or warranty made, or deemed to have been made, by the Party or any Credit Support Provider of that Party in this Master Agreement or any Credit Support Document proves to have been false or misleading in a material way 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 Master Agreement (other than an obligation referred to in clauses 11.1(a) (*Non-payment*) and 11.1(b) (*Representation or Warranty*) and sections 7.1 (*Failure to Deliver*), 7.2 (*Failure to Accept*), and 10.1 (*No Encumbrances*)) and that failure is not remedied within five (5) Business 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 subparagraphs (i) to (vii) (inclusive) of this clause 11.1(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 11.1(d).
- (e) Credit Support.
- (i) The Party or any Credit Support 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 if that failure is not remedied within three (3) Business Days of notification;
 - (ii) any Credit Support Document 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 Master 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 relates without the written consent of the other Party and such expiration or termination is not remedied within three (3) Business Days of notification; or
 - (iii) the Party or any Credit Support Provider of that Party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, that Credit

Support Document or otherwise fails to comply with or perform its obligations under or with respect to 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) with respect to 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) Business 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) Credit Event upon Merger. The Party or any Credit Support Provider of the 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 reorganizes, incorporates, reincorporates or reconstitutes into or as another Entity, or another Entity transfers all or substantially all its assets to, or reorganizes, incorporates, reincorporates or reconstitutes into or as such Party or any Credit Support Provider of the Party, and the creditworthiness of such Party, such Credit Support Provider or the resulting surviving transferee or successor Entity is, in the reasonable and good faith opinion of the other Party to this Master Agreement, materially weaker than that of the Party or such Credit Support Provider, as the case may be, immediately prior to such action.
- (i) Merger Without Assumption. The Party or any Credit Support Provider of the 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 reorganizes, incorporates,

reincorporates or reconstitutes into or as another Entity, or another Entity transfers all or substantially all its assets to, or reorganizes, incorporates, reincorporates or reconstitutes into or as such Party or any Credit Support Provider of the Party, and, at the time of such consolidation, amalgamation, merger, transfer, reorganization, 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 under this Master 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 other Party) to the performance by such resulting surviving transferee or successor Entity of its obligations under this Master Agreement.
- (j) Repudiation of Agreement. The Party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of this Master Agreement, any System 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).
- (k) Additional Termination Event. If any additional termination event is specified in Schedule 2 (*Elections*) or any Confirmation as applying (the “**Additional Termination Event**”), the occurrence of such event. For any specified Additional Termination Event, the Defaulting Party and the Non-Defaulting Party shall be specified in Schedule 2 (*Elections*) or the Confirmation.

11.2 Suspension Following Event of Default. Notwithstanding any other provision of this Master Agreement, after the occurrence of an Event of Default, the Non-Defaulting Party may:

- (a) withhold or suspend payments under this Master Agreement; or
- (b) suspend its compliance with Article 4 (*Product Transfers*).

11.3 Early Termination Date. If, at any time, an Event of Default has occurred and is continuing, the Non-Defaulting Party may designate a date (the “**Early Termination Date**”) on which to terminate, liquidate and accelerate all outstanding Transactions and calculate its Loss. Upon the effective designation or occurrence of an Early Termination Date: (a) no further payments or compliance with Article 4 (*Product Transfers*) is required with respect to any Transaction, and (b) the amount, if any, payable with respect to an Early Termination Date shall be determined pursuant to section 11.4 (*Termination Payments*). The Early Termination Date shall not be earlier than the date of the Non-Defaulting Party’s notice to the other Party and not later than fifteen (15) Business Days after the date of such notice. Such notice must specify and describe in reasonable detail the applicable Event of Default.

11.4 Termination Payments.

- (a) On, or as soon as reasonably practicable after, the Early Termination Date, the Non-Defaulting Party shall liquidate each terminated Transaction by in good faith calculating the termination payment (the “**Termination Payment**”), which is an amount equal to:
 - (i) the Non-Defaulting Party’s Loss (whether positive or negative) for all Transactions; plus

- (ii) all Unpaid Amounts owing to the Non-Defaulting Party; less
- (iii) any 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) Business Days of invoice or notification of the Termination Payment amount (the "**Termination Payment Date**").
- (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) Business Days of the Termination Payment Date.
- (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 Master 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) Business Days of the amount becoming ascertained.
- (g) Disputed amounts under this section 11.4 (*Termination Payments*) are to be paid by the Defaulting Party subject to refund with interest calculated in accordance with clause 5.6(b) (*Interest*) if the dispute is resolved in favor of the Defaulting Party.

11.5 Survival of Obligations. Any obligation of a Party that would have become due under a Transaction but for section 11.2 (*Suspension following Event of Default*) shall, notwithstanding the occurrence of the last scheduled due date for performance by that Party under that Transaction, become due 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.

ARTICLE 12 CONFIDENTIALITY

12.1 The Parties shall treat the terms of this Master Agreement and all information provided under or in connection with it (collectively, "**Confidential Information**") as confidential and may not either disclose Confidential Information or use it other than for bona fide purposes connected with this Master 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 favor of the other Party on terms substantially the same as those set out in this Article 12;

- (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 favor of the other Party on terms substantially the same as those set out in this Article 12;
- (c) the extent required by any Governmental Authority having competent jurisdiction over that Party;
- (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 favor of the other Party on terms substantially the same as those set out in this Article 12;
- (e) the extent required by any applicable laws, judicial process or the rules and regulations of any regulated market or recognized stock exchange;
- (f) any assignee of the rights and interests of a Party under this Master Agreement or under a Transaction or to a person intending to acquire an interest in a Party or that Party's Affiliate as long as such assignee or acquirer in turn is required by that Party to treat the Confidential Information as confidential in favor of the other Party on terms substantially the same as those set out in this Article 12;
- (g) the extent that the Confidential Information is in or lawfully comes into the public domain other than by breach of this Article 12; 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.

12.2 The obligations under this Article 12 shall survive termination of this Master Agreement or of each Transaction, as applicable, for a period of two (2) years.

ARTICLE 13 ASSIGNMENT

13.1 Prohibition of Assignment. Subject to section 13.2 (*Assignment of Termination Payments*), neither Party may assign or transfer to any person any of its rights or obligations with respect to this Master Agreement without the written consent of the other Party (which consent shall not be unreasonably withheld or delayed).

13.2 Assignment of Termination Payments. Notwithstanding section 13.1 (*Prohibition of Assignment*), a Party may assign all or any part of its interest in any Termination Payment payable to it by a Defaulting Party under section 11.4 (*Termination Payments*) together with any amounts payable on or with respect to that interest pursuant to section 5.6 (*Interest*) without the consent of the other Party.

ARTICLE 14 LIABILITIES

14.1 No Consequential Loss. Except to the extent included in any payment made in accordance with Article 7 (*Failure to Deliver, Failure to Accept and Invalidation*) or sections 8.2 (*Force Majeure Termination Payment*), 11.4 (*Termination Payments*) or 8.4 (*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.

14.2 Breach of Warranty or Covenant. Neither Party shall be liable with respect to any breach of warranty under Article 9 (*Representations and Warranties*) or covenant under Article 10 (*Covenants*) in relation to any Transaction for any greater sum than it would be liable for under Article 11 (*Events of Default and Termination*) in relation to such Transaction for any breach of Article 4 (*Product Transfers*).

14.3 Unlimited Liability. Notwithstanding anything to the contrary contained in this Master 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 section 14.3 confers a right or remedy upon the other Party to which that Party would not otherwise have been entitled.

14.4 Reasonable Pre-estimate and Maximum Liability. Each Party acknowledges that the payment obligations in Articles 7 (*Failure to Deliver, Failure to Accept and Invalidation*), 8 (*Force Majeure, Program Events and Illegality*) and 11 (*Events of Default and 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 Article 11 (*Events of Default and Termination*) shall constitute the maximum liability in the event of termination of this Master Agreement.

14.5 Sole Remedy. The rights to suspend, take action, terminate, liquidate and accelerate and to be paid a Termination Payment under Article 11 (*Events of Default and 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 with respect to the Defaulting Party.

ARTICLE 15 MISCELLANEOUS

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

15.2 Amendment. No amendment to the provisions of this Master Agreement is valid unless it is in writing and signed by each Party.

15.3 Entire Agreement. This Master 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 Master Agreement, but nothing in this section 15.3 limits or excludes any liability for fraud in relation to those representations.

15.4 Severability. If any provision or part of a provision of this Master 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 Master 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.

15.5 Notices. Any notice or other communication to be given or made with respect to this Master 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 sent by e-mail, on the Business Day the e-mail is sent or on the first (1st) Business Day after the date the e-mail is sent if sent on a day other than a Business Day, unless the sender receives an automatically generated response indicating that the e-mail address specified in Schedule 2 (*Elections*) is not valid.
- (b) if delivered by hand, on the Business Day of delivery or on the first (1st) Business Day after the date of delivery if delivered on a day other than a Business Day;
- (c) if sent by registered mail, on the Business Day of delivery or on the first (1st) Business Day after the date of delivery if delivered on a day other than a Business Day; or
- (d) if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission if transmitted before 5:00 p.m. on a Business Day or otherwise at 9:00 a.m. on the first Business Day after transmission.

15.6 Third Party Rights. Subject to the rights that may accrue to any successor or permitted assignees of the Parties, no provision of this Master 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 Master Agreement.

15.7 Governing Law and Disputes. THIS MASTER AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, UNLESS OTHERWISE SPECIFIED IN SCHEDULE 2 (*ELECTIONS*). THE PARTIES SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN NEW YORK COUNTY, NEW YORK, UNLESS OTHERWISE SPECIFIED IN SCHEDULE 2 (*ELECTIONS*), FOR THE PURPOSES OF ANY DISPUTE UNDER OR IN CONNECTION WITH THIS MASTER AGREEMENT AND ANY OBLIGATIONS ARISING OUT OF OR IN CONNECTION WITH IT. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS MASTER AGREEMENT. NOTWITHSTANDING THE FOREGOING, THE CREATION, ISSUANCE, TRANSFER, TRACKING AND RETIREMENT OF PRODUCT SHALL BE GOVERNED BY THE LAWS, RULES AND REGULATIONS OF CALIFORNIA.

15.8 Bankruptcy Code Acknowledgments. The Parties hereto intend for:

- (a) The Transactions hereunder and this Master Agreement each to be a “forward contract” within the meaning of the United States Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, including without limitation as such term is used in Sections 101, 362 and 555 thereof;
- (b) This Master Agreement to be a “master netting agreement” as defined in Section 101(38A) of the Bankruptcy Code;
- (c) A Party’s right to liquidate, terminate or accelerate any Transaction, to offset, net or net out termination values, payment amounts or other Transfer obligations, and to exercise any other remedies upon the occurrence of any Event of Default under this Master

Agreement or any Transaction thereunder with respect to the other Party that results in the termination or cancellation of this Master Agreement or any Transaction hereunder to constitute a “contractual right” within the meaning of Sections 560 and 561 of the Bankruptcy Code;

- (d) Any cash, securities or other property provided as performance assurance, credit support or collateral with respect to this Master Agreement or any Transaction hereunder to constitute “margin payments” and “transfers” “under” or “in connection with” this Master Agreement and each Transaction hereunder, and in each case within the meaning of the Bankruptcy Code; and
- (e) All payments or deliveries for, under or in connection with this Master Agreement or each Transaction hereunder, all payments for any securities or other assets and the transfer of such securities or other assets to constitute “settlement payments” and “transfers” “under” or “in connection with” this Master Agreement and each Transaction hereunder, and in each case within the meaning of the Bankruptcy Code.

15.9 Party Preparing this Agreement. The Party who has prepared copies of this Master Agreement (including any Confirmations) for execution (as indicated in item 15.9 of Schedule 2 (*Elections*)) warrants and undertakes to the other Party that no changes have been made to the standard form California Emissions Trading Master Agreement (Version 1.0, October 2, 2013) posted by the International Emission Trading Association on its website on October 2, 2013, except (a) the elections as set out in Part 1 of Schedule 2 and (b) any revisions specifically agreed in Part 2 of Schedule 2 (*Elections*).

15.10 Counterparts. This Master Agreement (including any Confirmations) may be executed in any volume 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 Master Agreement.

15.11 Statute of Frauds. The Parties hereto intend for the Transactions hereunder and this Master Agreement (including any Confirmations) each to be a “qualified financial contract” within the meaning of New York General Obligations Law § 5-701(b) and California Civil Code § 1624(b)(2), respectively.

15.12 Audit. Each Party and its duly authorized representatives shall have access to the accounting records and other documents maintained by the other Party which relate to the Product being transferred under this Master Agreement. Each Party shall have the right to audit such records once a year at any reasonable time or times within twenty-four (24) months of the rendition of any statement or invoice forming the basis of such audit request.

15.13 Conflict of Interest. Except as otherwise expressly provided herein, no director, employee or agent of either Party, its subcontractors or vendors, shall give or receive from any director, employee or agent of the other Party or any Affiliate any commission, fee, rebate, gift or entertainment of significant cost or value in connection with this Master Agreement. In addition, no director, employee or agent of either Party, its subcontractors or vendors, shall enter into any business arrangement with any director, employee or agent of the other Party or any Affiliate who is not acting as a representative of such Party or its Affiliate without prior written notification thereof. Any representative(s) authorized by either Party may audit the applicable records of the last three (3) years of the other Party for the sole purpose of determining whether there has been compliance with this section. All financial settlements, reports, and billings rendered to a Party are to properly reflect the facts about all activities and transactions.

IN WITNESS WHEREOF the Parties have duly executed and delivered this Master Agreement on the respective dates set out below with effect from the Effective Date.

.....
(Party A)

.....
(Party B)

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

SCHEDULE 1 DEFINITIONS

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

“**Accept**” means the completion by the Receiving Party of a Transfer Request Confirmation in accordance with section 4.4 (*Acceptance*), and “**Acceptance**” and “**Accepted**” shall be construed accordingly.

“**Account Representative**” means either a Primary Account Representative or an Alternate Account Representative, each term having the meaning given to it in the Cap-and-Trade Regulations.

“**Additional Termination Event**” is defined in clause 11.1(k).

“**Affected Party**” is defined in section 8.4 (*Illegality*).

“**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 percent (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.

“**Allowance**” means (a) the limited authorization to emit up to one metric ton of carbon dioxide equivalent issued in accordance with the Program Rules of a relevant Program and (b) to the extent the Relevant Registry does not permit the Parties to identify whether a specific authorization was issued by ARB or by an external GHG emissions trading system approved for linkage under the Cap-and-Trade Regulations, any other authorization to emit issued by such linked system that may be used to emit up to one (1) metric ton of carbon dioxide equivalent under the Cap-and-Trade Regulations, and, for the avoidance of doubt, excludes Offsets and Early Action Offset Credits.

“**Applicable Law**” means any applicable international, federal, provincial, state, local or municipal statute, law, constitution, treaty, rule, by-law, regulation, ordinance, code, permit, enactment, injunction, order, writ, decision, interpretation, advice letter, authorization, resolution, judgment, decree or other legal or regulatory determination or restriction by any Governmental Authority, court or arbitrator of competent jurisdiction that apply to the Program Rules or any one or both of the Parties (or any of their assets) or the terms hereof; and any binding interpretation of the foregoing.

“**ARB**” means the California Air Resources Board, the Executive Officer of the California Air Resources Board, any successor agency or any Entity or agency that receives delegation of authority pursuant to the Cap-and-Trade Regulations, including Offset Project Registries, as defined under the Cap-and-Trade Regulations.

“**Auction Reserve Price**” is defined in the Cap-and-Trade Regulations.

“**Business Day**” means any day other than a Saturday, Sunday, or a US federal government holiday.

“**CAISO**” means the California Independent System Operator.

“**Cal EPA**” means the California Environmental Protection Agency.

“**CEC**” means the California Energy Commission.

“**Cap-and-Trade Regulations**” means the Mandatory Greenhouse Gas Emissions Reporting regulation (Title 17, Subchapter 10, Article 2 of the California Code of Regulations) and the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulation (Title 17, Subchapter 10, Article 5 of the California Code of Regulations), as amended or modified from time to time.

“**Change in Law**” means the adoption, enactment or promulgation of any new Applicable Laws or the amendment, modification, revision or repeal of any existing Applicable Laws, or the issuance by a Governmental Authority of an order, decision or interpretation of any existing Applicable Laws as a result of which, on a Delivery Date: (i) the Receiving Party that was a covered Entity under the Program Rules as of the Trade Date is no longer a covered Entity under or is no longer obligated to comply with the Program Rules; (ii) the Receiving Party is no longer permitted to use the Product to satisfy its compliance obligations under the Program Rules; (iii) the Receiving Party's covered emissions under the Program Rules are materially lower than what they were scheduled to be under the Program Rules in effect at the Trade Date; or (iv) the Relevant Authority is unable to implement or enforce the Program Rules.

“**CITSS**” means the Compliance Instrument Tracking System Service authorized by the Cap-and-Trade Regulations in accordance with the Program Rules and administered by the Western Climate Initiative, Inc., or any successor system thereto.

“**Compliance Deadline**” means, unless otherwise specified in Schedule 2 (*Elections*), the last date by which an Entity may surrender Allowances or Offsets to the Relevant Authority to meet the applicable triennial compliance obligation, as defined under the Program Rules.

“**Compliance Registry**” means the CITSS, or another system mutually agreed to by the Parties to ensure the accurate accounting of the issuance, holding, Transfer, surrender (for compliance or otherwise), and cancellation of Allowances or Offsets.

“**Confidential Information**” is defined in Article 12 (*Confidentiality*).

“**Confirmation**” means a confirmation of a Transaction substantially in the form set out in Exhibit A with respect to Allowances or Exhibit B with respect to Offsets, or in a form otherwise agreed between the Parties.

“**Contract Amount**” means, for each Transaction, the amount (expressed in U.S. Dollars) calculated by multiplying the Product Price by the Quantity for that Transaction.

“**CPUC**” means the California Public Utilities Commission.

“**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**” is defined in Schedule 2 (*Elections*).

“**Cross Default Threshold**” means, for a Party, the amount specified in Schedule 2 (*Elections*).

“**Defaulting Party**” is defined in section 11.1 (*Events of Default*).

“Delayed Delivery Date” is defined in clause 8.1(b) (*Force Majeure*).

“Deliver” means the completion by the Delivering Party of the Transfer Request Initiation in accordance with section 4.2 (*Delivery*), and **“Delivery”** and **“Delivered”** shall be construed accordingly.

“Delivering Party” means the Party to the Transaction, as specified in the Confirmation, who is to Deliver the Product to the Receiving Party.

“Delivering Party’s Holding Account” means the Holding Account(s), specified by the Delivering Party in the Confirmation to a Transaction (including any additional account specified by the Delivering Party in accordance with Article 4 (*Product 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 Article 4 (*Product Transfers*) and/or section 10.2 (*Holding Accounts and Registries*).

“Delivering Party’s Replacement Cost” means with respect to a failure to Accept (or cause the Acceptance of) a Delivery of a volume of Product pursuant to section 7.2 (*Failure to Accept*) or pursuant to section 4.4 (*Transfer Request Deficiencies*), in either case, the **“Rejected Product”**:

- (a) any positive difference between (i) the Product Price multiplied by the volume of Rejected Product, 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 volume of like Product; plus
- (b) 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 section 5.6 (*Interest*); plus
- (c) the amount of such reasonable costs and expenses which the Delivering Party incurs with respect to the Rejected Product (including, without limitation, broker fees, commissions and legal fees).

“Delivery Date” means, in relation to a Transaction, the Business Day agreed between the Parties as the date by which the relevant Transfer Request Initiation is to be initiated.

“Early Action Offset Credit” is defined in the Cap-and-Trade Regulations.

“Early Termination Date” is defined in section 11.3 (*Early Termination Date*).

“Effective Date” means the date set out on the first page of this document.

“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.

“EPA” means the United States Environmental Protection Agency.

“Event of Default” is defined in section 11.1 (*Events of Default*).

“Expert” means a person qualified by education, experience and/or training with regard to the Program and Program Rules who is able to review and understand the contents of a Party’s GHG emissions trading portfolio and who neither is nor has been directly or indirectly employed by,

affiliated with, or under the influence of either of the Parties or otherwise has any conflict of interest.

“**FERC**” means the Federal Energy Regulatory Commission.

“**Final Invalidation Determination**” means a notice from the Relevant Authority of the Invalidation of a specified quantity of Offsets.

“**FM Affected Party**” is defined in section 8.1 (*Force Majeure*).

“**FM Affected Transaction**” is defined in section 8.1 (*Force Majeure*).

“**Force Majeure**” means the occurrence of any other event or circumstance, beyond the control of the FM Affected Party, 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 Product from any Holding Account in any Registry or (b) Accept the Delivery of Product into the relevant Receiving Party’s Holding Account(s), in accordance with the Program Rules. Without limitation, the following events shall not constitute a Force Majeure: (i) the inability of a Party to perform a relevant Delivery or Acceptance obligation as a result of it having insufficient Product in the relevant Holding Account; (ii) a change in the Auction Reserve Price; or (iii) changes to the number of Allowances allocated to, or that may be purchased or retired by, regulated or non-regulated entities.

“**GHG**” or “**Greenhouse Gas**” is defined in the Cap-and-Trade Regulations.

“**Governmental Authority**” means any international, national, federal, provincial, state, regional, municipal, county or local government, administrative, judicial or regulatory Entity operating under any Applicable Law and includes any court, administrative agency, board, bureau, commission, department or regulatory body of any government including, but not limited to, ARB, Cal EPA, CAISO, CEC, CPUC, EPA and FERC.

“**Holding Account**” means the account in the Relevant Registry that an Entity receives when it registers with the Relevant Authority or the Relevant Registry, as applicable, pursuant to the Program Rules, that will be used to record the Transfer of Product.

“**Holding Limit**” means the maximum quantity of Product that may be held by an Entity (or jointly held by a group of Entities with a direct corporate association) in accordance with the relevant Program Rules.

“**Illegality**” has the meaning given to it in section 8.4 (*Illegality*).

“**Illegality Affected Transactions**” is defined in section 8.4 (*Illegality*).

“**Indebtedness**” means any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) with respect to borrowed money.

“**Initial Invalidation Determination**” means a notice from the Relevant Authority of any initial determination by the Relevant Authority that grounds exist for the Invalidation of any Offset.

“**Interest Rate**” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15-519, or its successor publication.

“Invalidation” means the invalidation, rescission or termination of a specified volume of Offsets by the Relevant Registry or by a Relevant Authority in accordance with the Program Rules, including, without limitation, pursuant to § 95985 of the Cap-and-Trade Regulations. **“Invalid,” “Invalidated”** and cognate expressions shall be construed accordingly.

“Invalidated Offset” is defined in section 7.3 (*Invalidation*).

“Invalidation Security” is defined in section 7.4 (*Invalidation Security*).

“Loss” means:

- (a) for the purposes of clause 8.2(b) (*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 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 market who are independent of the Parties; or
- (b) for the purposes of section 11.4 (*Termination Payments*), an amount that the Non-Defaulting Party reasonably determines in good faith to be its aggregate 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 USP Amount (if applicable, in which case clause 7.1(d) (*Failure to Deliver*) shall apply equally to the determination of such amount), 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) with respect to any (i) payment required to have been made which has not been made or (ii) non-compliance with Article 4 (*Product Transfers*) (whether or not as a result of the suspension of the obligation to pay or comply with those Articles under section 11.2 (*Suspension following Event of Default*) or 11.3 (*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 market who are independent of the Parties; or
- (c) for the purposes of section 8.4 (*Illegality*):
 - (i) if there is only one Illegality Affected Party, as per the definition for the purposes of section 11.4 (*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 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 market who are independent of the Parties.

“Non-Defaulting Party” means the Party that is not the Defaulting Party.

“Offset” means an ARB Offset Credit or a Sector-Based Offset Credit, as defined in the Cap-and-Trade Regulations, and excludes Allowances and Early Action Offset Credits.

“Pacific Time” means Pacific Standard Time or Pacific Daylight Savings Time, as applicable.

“Party” means one or other of the parties to this Master Agreement and **“Parties”** is to be construed accordingly.

“Payment Due Date” is defined in section 5.1 (*Payment Due Date*), subject to the provisions of Article 7 (*Failure to Deliver, Failure to Accept and Invalidation*).

“Physically Netted Product” means the Product which was not actually Delivered to the relevant Receiving Party’s Holding Account as a result of the operation of section 5.8 (*Physical Netting of Deliveries*).

“Product” means the Allowances, Offsets or both specified in the relevant Confirmation as that which the Parties wish to trade for the purposes of the relevant Transaction.

“Product Price” means, for a particular Quantity, Specified Period and Transaction, the amount agreed to be the price for that Quantity (per Product), excluding any applicable taxes.

“Program” means the program created under the Program Rules.

“Program Abandonment” means a Governmental Authority has permanently discontinued the effective application of the Program Rules and such Government Authority action is final and non-appealable, and such circumstance is not within the reasonable control of, or the result of the negligence of, either Party.

“Program Event” means a Registry Failure or a Program Abandonment. Without limitation, the following events will not constitute a Program Event: (i) the inability of a Party to perform a relevant Transfer or Receipt obligation as a result of it having insufficient Product in the relevant Holding Account; (ii) a change in the Auction Reserve Price; or (iii) changes to the number of Allowances allocated to, or that may be purchased or retired by, regulated or non-regulated entities.

“Program Rules” means the Cap-and-Trade Regulations, the Registry Rules and applicable Protocols, as amended from time to time.

“Protocol” means any Compliance Offset Protocol or Offset Protocol, as defined in the Cap-and-Trade Regulations.

“Quantity” means the aggregate quantity of Product that the Parties have agreed to Deliver and Accept for that Transaction as specified in the relevant Confirmation.

“Qualified Replacement Offsets” means Offsets which may be submitted for compliance purposes to the same extent as the Invalidated Offsets.

“Receiving Party” means the Party to the Transaction, as specified in the Confirmation, who shall Accept the Quantity of Product from the Delivering Party.

“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 Article 4 (*Product 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 Article 4 (*Product Transfers*) and/or section 10.2 (*Holding Accounts and Registries*).

“Receiving Party’s Replacement Cost” means, with respect to a failure to Deliver a volume of Product pursuant to section 7.1 (*Failure to Deliver*) or pursuant to section 4.4 (*Transfer Request Deficiencies*), in either case, the **“Undelivered Product”**:

- (a) any amount previously paid by the Receiving Party to the Delivering Party for the Undelivered Product; plus, the positive difference, if any, between (A) the price the Receiving Party, acting in a commercially reasonable manner, does or would pay to replace the Undelivered Product in an arm’s length transaction for an equivalent quantity of like Product (including, where the Undelivered Product is Offsets, comparable Offsets that may be submitted for compliance purposes to the same extent as the Undelivered Product) and (B) the Product Price multiplied by the volume of Undelivered Product; plus
- (b) 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 section 5.6 (*Interest*); plus
- (c) the amount of reasonable costs and expenses that the Receiving Party incurs with respect to the Undelivered Product (including, without limitation, broker fees, commissions and legal fees).

“Recording” is defined in clause 3.3(a) (*Evidence of a Transaction*).

“Registry Failure” means a disruption in the ability of either Party to Deliver or Accept Product, as applicable, caused solely by the Relevant Registry that (i) is not specific to either Party’s Holding Account, (ii) is not subject to section 8.4 (*Illegality*), and (iii) is not within the control of, or the result of the negligence of, such Party and which could not have been avoided by the exercise of reasonable due diligence.

“Registry Rules” means all policies, procedures and requirements adopted by the Relevant Registry in connection with the management of its registry program, including, but not limited to, operating procedures, terms of use, program manual(s), and all applicable Protocols.

“Rejected Product” is defined in the definition of Delivering Party’s Replacement Cost.

“Relevant Authority” means ARB or any other body (or its affiliated agencies) that administer(s) the relevant Program.

“Relevant Registry” means the Compliance Registry specified in the Confirmation through which a Party is obligated to perform a Delivery or Acceptance obligation under and in accordance with a Transaction.

“Sales Tax” means, to the extent this definition is not amended or restated in Schedule 2 (*Elections*) or the Confirmation to a Transaction, any tax charged on the supply of goods or services including, by way of example only and without limitation, (a) any value added tax imposed by any government, (b) any replacement or other tax levied by reference to value added to a transaction, or (c) any goods and services tax, but not including any corporate tax on the net profits of a Party.

“Schedule” means each of Schedules 1 and 2 to the Master Agreement as well as each System Schedule.

“Sector-Based Offset Credit” is defined in the Cap-and-Trade Regulations.

“Specified Period” means, in relation to a Transaction and a Quantity, the relevant specified time period of issuance of Product 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 Master 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 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” means, for a Transaction, the statement referred to in section 5.3 (*Monthly Billing Statement*) for such Transaction.

“System Schedule” means any schedule to the Master Agreement that is executed by the Parties to permit the Transfer of certain compliance instruments issued by jurisdictions other than California.

“Termination Payment” is defined in clause 11.4(a) (*Termination Payments*).

“Termination Payment Date” is defined in clause 11.4(d) (*Termination Payments*).

“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 physically settled transactions involving Transfers of Product pursuant to the terms of this Master Agreement, as documented by a Confirmation or its equivalent as described in sections 3.2 (*Exchange of Confirmations*) and 3.3 (*Evidence of a Transaction*).

“Transfer” means (whether used as a verb or a noun) with respect to a Transaction, the transfer of ownership, receipt and deposit of Product from the Delivering Party’s Holding Account to the Receiving Party’s Holding Account in accordance with the relevant Program Rules, and **“Transferred”** and **“Transferable”** are to be construed accordingly.

“Transfer Date” means, in relation to a Transaction, the date on which Transfer occurs.

“Transfer Request” means a request made or any necessary procedures or actions to be taken by the Delivering Party in accordance with the relevant Program Rules to effect a Transfer.

“Transfer Request Confirmation” is defined in section 4.3 (*Acceptance*).

“Transfer Request Deficiency” or **“TRD”** means a deficiency in a completed Transfer Request in the Relevant Registry for which the Relevant Authority has grounds to impose the penalties set forth in the Program Rules, including monetary penalties, the reversal of a deficient Transfer, or the removal of compliance instruments from an Entity’s Holding Account, as applicable. For the avoidance of doubt, the violation or prospective violation of the Holding Limit in connection with a Transaction constitutes a TRD.

“Transfer Request Initiation” is defined in section 4.2 (*Delivery*).

“TRD Determination” means a finding or determination by the Relevant Authority that a TRD has occurred with respect to the Transfer of Product that is the subject of a Transaction.

“Undelivered Product” is defined in the definition of Receiving Party’s Replacement Cost.

“Unpaid Amounts” owing to any Party means

- (a) any amount that became payable to that Party or that relates to obligations performed by the Party prior to the first day of the period for which the obligations of the Parties are suspended or terminated under Article 8 (*Force Majeure, Program Events and Illegality*) which remains unpaid; or
- (b) any amount that became payable to that Party on or prior to an Early Termination Date under Article 11 (*Events of Default and Termination*) which remains unpaid.

“USP Amount” means an amount calculated in good faith by the Receiving Party to be its total losses and costs in connection with the Delivering Party’s failure to deliver the Undelivered Product to the extent that those losses and costs are not reflected elsewhere in the definition of Receiving Party’s Replacement Cost, including:

- (a) if this sub-paragraph (a) is specified in Schedule 2 (*Elections*) as applying, an amount equal to:
 - (i) the volume of Undelivered Product minus the volume of Product the Receiving Party, acting in a commercially reasonable manner, is able to procure in arm’s length transactions for Product of the same type, whether Allowances or Offsets, in advance of the Compliance Deadline; multiplied by three (3) (the **“USP Quantity”**); multiplied by
 - (ii) the price (per Allowance or Offset, as applicable) at which the Receiving Party, acting in a commercially reasonable manner, is or would be able to purchase the USP Quantity as soon as reasonably possible after the Compliance Deadline in arm’s length transactions; and

- (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 Untimely Surrender Obligation incurred by that third party as a result of the Delivering Party's failure to deliver the Undelivered Product.

"USP Quantity" has the meaning given to it in paragraph (a)(i) of the definition of USP Amount.

"USP Risk Period" means the time period, if any, specified in the Confirmation for the relevant Transaction during which Untimely Surrender Payment shall apply with respect to the Transaction.

"Untimely Surrender Obligation" means the compliance obligation for untimely surrender described in § 95857 of the Cap-and-Trade Regulations.

"Untimely Surrender Payment" or **"USP"** means, if specified as applicable in Schedule 2 (*Elections*) or the Confirmation for Transaction, payment of the USP Amount by the Delivering Party to the Receiving Party in connection with an Untimely Surrender Obligation to the extent such Untimely Surrender Obligation is caused in whole or in part by a Failure to Deliver by the Delivering Party.

SCHEDULE 2 ELECTIONS

PART 1 – ELECTIONS

2.2 **Time.** Any reference to “time” is to Pacific Time, unless specified below.

Time means: _____.

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), unless otherwise specified here.

The Parties intend: _____.

3.2 **Exchange of Confirmations.** The Delivering Party shall send to the Receiving Party by facsimile or email a Confirmation within three (3) Business Days of a Transaction having been entered into, unless otherwise specified here:

_____.

3.3(a) **Evidence of a Transaction.** The Parties consent to the recording of all telephone conversations between the Parties relating in whole or part to this Master Agreement, unless specified below.

No consent to recording is given. Such other evidence of the Parties’ agreement with respect to a particular Transaction as may exist (written or oral) shall be the controlling evidence in the event a Confirmation is not fully executed (or deemed accepted) by both Parties.

5.1 **Payment Due Date.** Payment shall be due within five (5) Business Days of the date on which the invoice is delivered to the Receiving Party in accordance with section 5.2 (*Invoices*) unless otherwise specified here:

the fifth (5th) Business Day after the Transfer Date, **or**

the later of (i) the twentieth (20th) day of the month following the month in which the relevant Delivery Date occurred and (ii) the fifth (5th) Business Day after the date on which the Statement is delivered to the Receiving Party in accordance with section 5.3 (*Monthly Billing Statement*).

5.8 **Physical Netting of Deliveries.** Physical netting of deliveries under section 5.8 (*Physical Netting of Deliveries*) applies unless otherwise specified here:

does not apply.

7.4 **Untimely Surrender Payment.** With respect to a Transaction and a Compliance Deadline, Untimely Surrender Payment applies unless specified below:

Untimely Surrender Payment does not apply.

If Untimely Surrender Payment applies with respect to a Transaction and a Compliance Deadline:

sub-paragraph (a) of the definition of USP Amount:

applies, **or**

does not apply; and

sub-paragraph (b) of the definition of USP Amount:

applies, **or**

does not apply;

subject in all cases to the USP Risk Period, if any, specified in the Confirmation for the relevant Transaction.

For purposes of Untimely Surrender Payment, Compliance Deadline shall have the meaning elected in this Schedule 2 (*Elections*) unless otherwise specified here:

With respect to USP only, the relevant Compliance Deadline shall be:

Annual, **or**

Triennial.

8.1(c) **Continuing Force Majeure.** Either Party may, by written notice to the other Party, terminate all (but not less than all) FM Affected Transactions when a Force Majeure continues for a period of forty (40) Business Days unless otherwise specified here:

five (5) Business Days prior to a Compliance Deadline; **or**

_____ () Business Days.

8.2 **Force Majeure Termination Payment.** Sub-paragraph (a) (*No Termination Payment*) of section 8.2 (*Force Majeure Termination Payment*) applies unless otherwise specified here:

sub-paragraph (b) (*Two-way Loss Termination Payment*) of section 8.2 (*Force Majeure Termination Payment*) applies.

8.5 **Change in Law.** Change in Law under section 8.5 (*Change in Law*) applies unless otherwise specified here:

Change in Law does not apply.

11.1(e)(ii) **Credit Support.** The expiry period applicable to any Credit Support Document is 30 days unless otherwise specified here:

_____ days.

11.1(f) **Cross Default.** Cross Default:

applies to Party A, **or**

does not apply to Party A; and

applies to Party B, **or**

does not apply to Party B.

If Cross Default applies, the Cross Default Threshold applicable to:

Party A is _____, and

Party B is _____.

11.1(k) **Additional Termination Events.** There are no Additional Termination Events unless specified here:

_____.

15.5 **Notices.** For the purpose of section 15.5 (*Notices*):

Address for notices or communications to Party A:

Address: _____

Attention: _____

Telex No.: _____ Answerback: _____

Facsimile No.: _____ Telephone No.: _____

E-mail: _____

Electronic Messaging System Details: _____

Specific Instructions: _____

Address for notices or communications to Party B:

Address: _____

Attention: _____

Telex No.: _____ Answerback: _____

Facsimile No.: _____ Telephone No.: _____

E-mail: _____

Electronic Messaging System Details: _____

Specific Instructions: _____

15.7 **Governing Law.** This Master Agreement is governed by and is to be construed in accordance with the law of the State of New York, unless otherwise specified here:

the State of California, **or**

_____.

Notwithstanding the foregoing, the Parties acknowledge and agree that the Cap-and-Trade Regulations govern the creation, issuance, tracking and retirement of Product.

The Parties submit to the non-exclusive jurisdiction of the state or federal courts in New York County, unless otherwise specified here:

_____ County, California, **or**

_____.

15.9 **Party Preparing this Master Agreement.** The Party preparing this Master Agreement is:

Party A, **or**

Party B.

Schedule 1 **Compliance Deadline.** The relevant Compliance Deadline is:

Annual, **or**

Triennial.

Schedule 1 **Credit Support Document.** The Credit Support Document(s) applicable to:

Party A is (are): _____, and

Party B is (are): _____.

Schedule 1 **Credit Support Provider.** The Credit Support Provider applicable to:

Party A is: _____, and

Party B is: _____.

Schedule 1 **Specified Transaction.** The definition of "Specified Transaction" is limited to the following commodities: *[If no election is made, "Specified Transaction" covers all commodity trading.]*

As it applies to Party A: _____.

As it applies to Party B: _____.]

Bank details:

Party A:

Party B:

EXHIBIT A
FORM OF CONFIRMATION FOR CALIFORNIA ALLOWANCE TRANSACTIONS

This Confirmation confirms a Transaction under the Master Agreement by and between [_____] (the “**Receiving Party**”) and [_____] (the “**Delivering Party**”), dated _____ (the “**Master Agreement**”) pursuant to which the Receiving Party shall purchase and the Delivering Party shall sell Product to the Receiving Party on the Transfer Dates on the terms set forth in the Master Agreement, Credit Support Document and this Confirmation.

PART A: TERMS

Trade Date: _____

Receiving Party: _____

Delivering Party: _____

Relevant Registry: CITSS

Receiving Party's Holding Account: _____

Delivering Party's Holding Account: _____

Product: Allowances

Product Price: _____

Quantity: _____

Contract Amount: _____

Specified Period: _____

Delivery Date(s): _____

Payment Due Date: _____

USP Risk Period: _____

PART B: ADDITIONAL TERMS

1. Confirmation Effective Date. This Confirmation Effective Date shall occur on the Trade Date and this Confirmation shall remain effective until all Transactions hereunder have been completed.

2. Definitions. All capitalized terms are defined in the Master Agreement or the Schedules thereto, the Credit Support Document, and if not therein, in the Program Rules.

3. Counterparts. This Confirmation may be executed and delivered in counterparts with the same effect as if both Parties had executed and delivered the same copy, and when each Party has signed and delivered a counterpart, all counterparts together constitute one agreement that evidences the Transaction under the Master Agreement. Delivery of a copy of this Confirmation by facsimile is good and sufficient delivery.

4. Authority. Each Party executing this Confirmation represents that the execution, delivery and performance of this Confirmation have been duly authorized by all necessary action and that the person executing this Confirmation has the authority to execute and deliver it on behalf of such Party.

If this Confirmation correctly sets out the terms of our agreement, please sign and return a copy of this Confirmation within three (3) Business Days from receipt of this Confirmation. If you believe that this Confirmation does not correctly set out the terms of our agreement, send a response within three (3) Business Days from receipt of this Confirmation that sets out in detail the alleged inaccuracy. If your response contains additional or different terms from those set out in this Confirmation or this Master Agreement, they only become part of the Transaction if we expressly agree to them in a supplemental written confirmation.

Receiving Party

Delivering Party

Signature: _____
Name: _____
Title: _____
Date: _____

Signature: _____
Name: _____
Title: _____
Date: _____

EXHIBIT B
FORM OF CONFIRMATION FOR CALIFORNIA OFFSET TRANSACTIONS

This Confirmation confirms a Transaction under the Master Agreement by and between [] (the "Receiving Party") and [] (the "Delivering Party"), dated [] (the "Master Agreement") pursuant to which the Receiving Party shall purchase and the Delivering Party shall sell Product to the Receiving Party on the Transfer Dates on the terms set forth in the Master Agreement, Credit Support Document and this Confirmation.

PART A: TERMS

Trade Date: _____

Receiving Party: _____

Delivering Party: _____

Relevant Registry: CITSS

Receiving Party's Holding Account: _____

Delivering Party's Holding Account: _____

Product: Offsets

Product Price: _____

Quantity: _____

Contract Amount: _____

Specified Period: _____

Delivery Date(s): _____

Payment Due Date: _____

Invalidation Security: _____

Product Issuance Date: _____

USP Risk Period: _____

PART B: ADDITIONAL TERMS

1. Confirmation Effective Date. This Confirmation Effective Date shall occur on the Trade Date and this Confirmation shall remain effective until all Transactions hereunder have been completed.

2. Definitions. All capitalized terms are defined in the Master Agreement or the Schedules thereto, the Credit Support Document, the Special Provisions on Invalidation Risk, and if not therein, in the Program Rules.

3. Counterparts. This Confirmation may be executed and delivered in counterparts with the same effect as if both Parties had executed and delivered the same copy, and when each Party has signed and delivered a counterpart, all counterparts together constitute one agreement that evidences the

Transaction under the Master Agreement. Delivery of a copy of this Confirmation by facsimile is good and sufficient delivery.

4. Authority. Each Party executing this Confirmation represents that the execution, delivery and performance of this Confirmation have been duly authorized by all necessary action and that the person executing this Confirmation has the authority to execute and deliver it on behalf of such Party.

If this Confirmation correctly sets out the terms of our agreement, please sign and return a copy of this Confirmation within three (3) Business Days from receipt of this Confirmation. If you believe that this Confirmation does not correctly set out the terms of our agreement, send a response within three (3) Business Days from receipt of this Confirmation that sets out in detail the alleged inaccuracy. If your response contains additional or different terms from those set out in this Confirmation or this Master Agreement, they only become part of the Transaction if we expressly agree to them in a supplemental written confirmation.

Receiving Party

Delivering Party

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____