



International Swaps and Derivatives Association, Inc.

## U.S. EMISSIONS ALLOWANCE

## TRANSACTION ANNEX

### to the Schedule

### to the ISDA Master Agreement

dated as of..... (“Effective Date”)

between ..... and .....  
 (“Party A”) (“Party B”)

#### Part [-] – U.S. Emissions Allowance Transactions

This U.S. Emissions Allowance Transaction Annex (“Emissions Annex”) supplements, forms part of, and is subject to the above-referenced Agreement and is part of the Schedule thereto.

(a) Emissions Transactions under this Agreement; Credit Support Documents

(i) Emissions Transactions. The provisions of this Emissions Annex apply solely to transactions between the parties for the purchase, sale or exchange of an Emissions Product (as defined below) on a spot or forward basis, or as an option to purchase, sell or exchange an Emissions Product (collectively, “Emissions Transactions”). All Emissions Transactions are deemed to have been entered into in accordance with the terms of this Agreement and are Transactions for the purposes hereof. A subsequent agreement between the parties to settle an Emissions Transaction other than by physical delivery of an Emissions Product will not affect its status as an Emissions Transaction under this Emissions Annex. In the event of any inconsistency among or between the other provisions of this Agreement and this Emissions Annex, this Emissions Annex will govern with respect to Emissions Transactions.

(ii) Applicability to Outstanding Emissions Transactions. If elected under clause (i) (Elective Provisions) of this Emissions Annex as being applicable:

Upon the Effective Date of this Emissions Annex, all Emissions Transactions then outstanding, or those Emissions Transactions set forth in Schedule 1, as applicable (“Outstanding Emissions Transactions”), will be Transactions for purposes of this Agreement and will be governed by, and subject to the terms and conditions of, this Agreement. All confirmations evidencing such Outstanding Emissions Transactions constitute “Confirmations” within the meaning of this Agreement and supplement, form part of, and are subject to this Agreement. If any Confirmation evidencing one or more Outstanding Emissions Transactions was issued or entered into pursuant to the terms of a master agreement or in a form that contains non-economic substantive provisions such as those relating to default and termination rights (such master agreement or the portion of such Confirmation containing such non-economic terms referred to herein as the “Prior Master Agreement”), then the terms of the Schedule and the pre-printed form of this Agreement automatically supersede such Prior Master Agreement effective upon the Effective Date of this Emissions Annex.

(iii) Credit Support Documents.

(A) Applicability of Credit Support Documents. If elected under clause (i) (Elective Provisions) of this Emissions Annex as being applicable:

To the extent that the parties have entered into or subsequently enter into a Credit Support Document in connection with this Agreement that governs the provision of collateral, margin, performance assurance or other similar form of credit support, then one of the following options, as elected by the parties in subclause 2 of clause (i) (Elective Provisions) of this Emissions Annex, will apply with respect to the application of such Credit Support Document(s) to Emissions Transactions:

OPTION A: The Credit Support Document(s) apply to all Emissions Transactions.

OPTION B: The Credit Support Document(s) do not apply to any Emissions Transactions.

OPTION C: The Credit Support Document(s) apply to all Emissions Transactions, except Immediately-Delivered Emissions Transactions as defined herein.

OPTION D: The Credit Support Document(s) apply to all Emissions Transactions, except those Emissions Transactions set forth in Schedule 2 as amended from time to time.

(B) Outstanding Credit Support. If elected under subclause 3 of clause (i) (Elective Provisions) of this Emissions Annex as being applicable:

To the extent any collateral, margin, performance assurance or other similar form of credit support (such credit support, excluding guaranties, being referred to herein as "Outstanding Credit Support"), is held by a party on the Effective Date of this Emissions Annex in connection with the obligations of the other party under Outstanding Emissions Transactions, and the parties have elected to apply this Emissions Annex relating to "Outstanding Emissions Transactions" as set forth in (a)(ii) above, Outstanding Credit Support thereafter is deemed to have been delivered in respect of the obligations of the other party under Outstanding Emissions Transactions. With respect to any Outstanding Credit Support: (x) if the parties have entered into a Credit Support Document in connection with this Agreement that governs the provision of collateral, margin, performance assurance or other similar form of credit support (such Credit Support Document, an "Existing ISDA Credit Support Document"), then, upon the Effective Date of this Emissions Annex, the Outstanding Credit Support shall be deemed to constitute credit support provided under the Existing ISDA Credit Support Document, and the Existing ISDA Credit Support Document automatically supersedes any agreement between the parties pursuant to which the Outstanding Credit Support was provided (the "Outstanding Credit Support Document") effective upon the effectiveness of this Emissions Annex; and (y) if the parties have not entered into an Existing ISDA Credit Support Document, then the Outstanding Credit Support Document constitutes a Credit Support Document with respect to the party that provided such credit support.

(C) Amendments/Guaranties. The parties will amend any Outstanding Credit Support Document as necessary to give effect to the terms of clauses (a)(iii)(A) and (B) above. To the extent that a guaranty was delivered in connection with a party's obligations under Outstanding Emissions Transactions, that party represents and warrants that any amendments or notices necessary to ensure that the guaranty extends to those applicable Outstanding Emissions Transactions, now Emissions Transactions subject to this Agreement, have been made prior to the Effective Date of this Emissions Annex, and the revised guaranty will be delivered to the guaranteed party. Such guaranty constitutes a Credit Support Document with respect to the obligations of such party and the guarantor under such guaranty constitutes a Credit Support Provider with respect to the obligations of such party.

(b) Obligations and Deliveries

(i) Seller's and Buyer's Obligations. With respect to each Emissions Transaction, Seller will sell and take all necessary action to Transfer and Buyer will purchase and accept Transfer of the Quantity of the

Emissions Product, or the parties to the Transaction will exchange the agreed upon Quantity of the Emissions Product, as applicable. However, with respect to any Option Emissions Transaction, the obligations set forth in the preceding sentence only arise if the option is exercised in accordance with its terms. Each party is responsible for its respective costs or charges imposed on or associated with Delivery and receipt of the Emissions Product.

(ii) **Transfer Procedures and Timing.** With respect to each Transaction, the Seller, or each exchanging party, will Transfer the Quantity of Emissions Product to Buyer's or receiving party's account, or as directed by Buyer or receiving party, in the applicable Tracking System in accordance with the procedures of the Tracking System and Applicable Emissions Law within the following time period unless otherwise set forth in the Confirmation:

(A) **Immediately-Delivered Emissions Transaction** – if an Immediately-Delivered Emissions Transaction, on or before the Delivery Date, which shall be three (3) Local Business Days after the Trade Date; or

(B) **Option Emissions Transaction** – if an Option Emissions Transaction, by no later than three (3) Local Business Days after the date such option is exercised; or

(C) **Forward Emissions Transaction** – if a Forward Emissions Transaction, on or before the Delivery Date as specified in the Transaction; or

(D) **Physical Exchange Emissions Transaction** – if a Physical Exchange Emissions Transaction, each party will Transfer to the other party the Emissions Product on or before the Delivery Date as specified in the Transaction.

Seller's obligations hereunder are subject to Buyer providing to Seller information required to effect Transfer and Delivery in accordance with the applicable Emissions Product definition as set forth in the Emissions Product Definition Exhibit. Seller and Buyer will cooperate fully to facilitate the Transfer and Delivery of the Emissions Product.

If the Administrator notifies the parties that the Administrator will not record the Transfer as contemplated by the Emissions Transaction for reasons other than a Delivery Disruption Event, the parties promptly will confer and cooperate in taking all reasonable actions necessary to cure any defects in the proposed Transfer in order to effect Delivery.

(iii) **Abandonment of Scheme.**

(A) If elected under clause (i) (Elective Provisions) of this Emissions Annex or under the applicable Confirmation as being applicable: the parties may designate in the this Emissions Annex or the applicable Confirmation that one of the following two options will apply with respect to the applicable Emissions Transaction:

**OPTION A(1):** An Abandonment of Scheme, as defined in clause (h)(iv) herein constitutes an Additional Termination Event under Section 5(b)(v) of the Agreement, and each Emissions Transaction subject to such Scheme will be an Affected Transaction.

**OPTION A(2):** Upon the occurrence of an Abandonment of Scheme, as defined in clause (h)(iv) herein, the following terms apply with respect to the applicable Emissions Transaction:

(I) If, before the date of Delivery, there occurs an Abandonment of Scheme, each Emissions Transaction subject to such Scheme will be an Affected Transaction and either party may, by written notice to the other party in accordance with Section 6(b)(i) of the Agreement, terminate the relevant Emissions Transaction(s); provided that, notwithstanding the provisions of Sections 6(d) and 6(e) of the Agreement, neither party will have any further Delivery or payment

obligations, including any termination payment obligations, under or in respect of such Emissions Transaction(s).

(II) In the event of a termination in accordance with sub-clause (I) above, the Seller promptly must refund to the Buyer any amount that may have been prepaid by the Buyer in respect of the Emissions Transaction(s) together with interest on that amount for the period from (and including) the date that amount was paid to (but excluding) the date of termination of the Emissions Transaction(s) in accordance with sub-clause (I), at the Non-default Rate.

(III) If the parties elect Option A(2) in a Confirmation, any Abandonment of Scheme with respect to the Scheme applicable to the relevant Emissions Transaction will not constitute an Illegality under the Agreement.

Unless stated otherwise herein or in a Confirmation, this clause (b)(iii)(A) (Abandonment of Scheme) and Option A(1) hereunder shall apply.

(B) Notwithstanding clause (b)(iii)(A) above, it shall not be an Abandonment of Scheme if the Scheme or Applicable Emissions Law to which an Emissions Transaction is subject is superseded by any other state, regional or federal emissions cap-and-trade program provided that the Seller or Transferring party is able to transfer the applicable Emissions Product to Buyer or receiving party either via the existing Scheme's Tracking System or the superseding program's Tracking System.

(iv) Delivery Disruption Event. To the extent that either party is prevented by a Delivery Disruption Event from Delivering all or part of the Emissions Product under the applicable Emissions Transaction on or by the Delivery Date and such party (the "Claiming Party") gives notice and details of the Delivery Disruption Event to the other party as soon as practicable, then, unless the terms of the applicable Emissions Transaction specify otherwise, the Claiming Party's performance of its obligations with respect to such Emissions Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Delivery Disruption Event) shall be suspended for as long as the Delivery Disruption Event is continuing. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding only to the obligations of the Claiming Party excused by the Delivery Disruption Event. At such time as when the Delivery Disruption Event has been resolved, the Claiming Party shall resume performance, including any of the Transfers or Deliveries not realized during the pendency of the Delivery Disruption Event. If the parties have elected that Abandonment of Scheme applies to the applicable Emissions Transaction(s), then, if a Delivery Disruption Event preventing a party from Delivering the applicable Emissions Product persists for a continuous period of fifteen (15) Local Business Days from the applicable Delivery Date, such Delivery Disruption Event shall be deemed to be an Abandonment of Scheme with respect to the affected Emissions Transaction(s) only, and clause (b)(iii), and any elections thereunder, shall apply.

(c) Remedies for Failure to Deliver or Receive

(i) Seller Failure. If Seller fails to Transfer all or part of the Quantity pursuant to an Emissions Transaction, and the failure is not excused under the terms of this Agreement or a Transaction, or by Buyer's failure to perform hereunder, then Seller will pay Buyer, within three (3) Local Business Days of Seller's receipt of notice from Buyer, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. Such notice will include a written statement explaining the calculation in reasonable detail. All determinations must be made in a commercially reasonable manner and Buyer is not required to enter into any actual replacement Transaction in order to determine the Replacement Price.

(ii) Buyer Failure. If Buyer fails to receive all or part of the Quantity pursuant to an Emissions Transaction and the failure is not excused under the terms of this Agreement or a Transaction, or by Seller's failure to perform, then Buyer will pay Seller, within three (3) Local Business Days of Buyer's receipt of notice from Seller, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. Such notice must include a written statement explaining the calculation in reasonable detail. All determinations must be made in a commercially reasonable manner and the Seller is not required to enter into any actual replacement Transaction in order to determine the Sales Price.

(d) Payment

(i) **Timeliness of Payment.** If applicable under the Transaction, Seller will send an invoice to Buyer with respect to an Emissions Transaction on or prior to Delivery of the applicable Emissions Product. Within three (3) Local Business Days after Buyer's receipt of written or electronic notification that the applicable Emissions Product has been Delivered to Buyer's account, or, as otherwise set forth in the applicable Confirmation, Buyer will pay Seller the Contract Price. Each party will make payments by electronic funds transfer, or by any other mutually agreeable method(s), to the account designated by the other party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Default Rate, such interest to be calculated from (and including) the due date to (but excluding) the date the delinquent amount is paid in full.

(ii) **Disputes.** If the invoiced party, in good faith, disputes the amount of any invoice or any part thereof, subject to the terms of clause (d)(iii) (Verification Rights) below, the invoiced party will pay the amount that it concedes to be correct; provided, however, if the invoiced party disputes the amount due, it must provide supporting documentation acceptable in industry practice to support the amount paid or disputed. In the event the parties are unable to resolve the dispute, either party may pursue any remedy available at law or in equity, subject to clause (e) (Limitation on Remedies; Liability and Damages) of this Emissions Annex, to enforce its rights pursuant to this clause (d)(ii).

(iii) **Verification Rights.** A party may, at its own expense, upon reasonable notice and at reasonable times, obtain copies of the relevant portion of the books, records and telephone recordings, if applicable, of the other party only to the extent reasonably necessary to verify the accuracy of any statement, charge, payment or computation made under this Emissions Annex. This right to obtain copies is not available with respect to proprietary information not directly relevant to Emissions Transactions. All invoices and billings will be presumed final and accurate, and all associated claims for underpayments or overpayments will be deemed waived, unless such invoices or billings are objected to in writing, with adequate explanation and documentation, within one (1) year after the month the Emissions Product has been Delivered. Any retroactive adjustment under this clause (d) (Payment) of this Emissions Annex must be paid in full by the party owing payment within three (3) Local Business Days of notice and reasonable substantiation of the amount due.

(iv) ***Payment for Options.*** The premium amount for the purchase of an option must be paid within two (2) Local Business Days after the Trade Date. Upon exercise of an option, payment for the Emissions Product underlying such option will be due in accordance with clause (d)(i) (Timeliness of Payment) above.

(e) **Limitation on Remedies; Liability and Damages**

**THE FOLLOWING PROVISION APPLIES SOLELY TO EMISSIONS TRANSACTIONS:**

THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE EMISSIONS PRODUCT DELIVERED AND TRANSFERRED WHETHER AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES IS THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY IS LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN AN EMISSIONS TRANSACTION, THE OBLIGOR'S LIABILITY IS LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE ACTUAL HARM OR LOSS. NEITHER PARTY WILL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL,

PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE EXCEPT TO THE EXTENT THAT THE PAYMENTS REQUIRED TO BE MADE PURSUANT TO THIS AGREEMENT (INCLUDING PAYMENTS REQUIRED TO BE MADE PURSUANT TO SECTION 6 OF THIS AGREEMENT) ARE DEEMED TO BE SUCH DAMAGES. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

(f) **Taxes**

(i) **Cooperation.** Each party must use reasonable efforts to implement the provisions of and to administer this Agreement insofar as it applies to Emissions Transactions in accordance with the intent of the parties to minimize all Taxes, so long as neither party is materially adversely affected by such efforts.

(ii) **Taxes.** Notwithstanding Section 2(d) of this Agreement, Seller will pay or cause to be paid all Taxes imposed by any governmental authority on or with respect to the Emissions Product or an Emissions Transaction arising prior to Delivery. Buyer will pay or cause to be paid all Taxes on or with respect to the Emissions Product or an Emissions Transaction at and after Delivery (other than ad valorem, franchise or income taxes which are related to the sale of the Emissions Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Taxes that are Buyer's responsibility hereunder, Buyer promptly will reimburse Seller for such Taxes. If Buyer is required by law or regulation to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct the amount of any such Taxes from the sums due to Seller under this Agreement. Nothing herein obligates or causes a party to pay or be liable to pay any Taxes for which it is exempt under the law.

(g) **Title and Risk of Loss; Seller's Warranties; Indemnity**

(i) **Title and Risk of Loss; Seller's Warranties.** Title to and risk of loss related to the Emissions Product will transfer from Seller to Buyer upon completion of Delivery to the extent permitted by law. Seller warrants to Buyer that at the time of Transfer and Delivery, Seller will possess the Quantity of the Emissions Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person. Seller further warrants to Buyer that at the time of Transfer, Seller has the right to sell or exchange and Transfer to Buyer the Emissions Product as required under the relevant Emissions Transaction. Seller further warrants to Buyer that at the time of Transfer and Delivery, the Emissions Products sold hereunder have not otherwise been, nor will be, sold, retired, submitted for compliance purposes under the Applicable Emissions Law, claimed or represented as part of electricity output or sales, or used to satisfy any other carbon or environmental attribute obligations or purposes.

(ii) **Indemnity.** Each party shall indemnify, defend and hold harmless the other party, and each of the other party's affiliates, directors, officers, employees, agents and permitted assigns, from and against any and all claims, losses, liabilities, damages, judgments, awards, fines, penalties, costs and expenses (including reasonable attorneys' fees and disbursements) ("Claims") directly incurred in connection with or directly arising from or out of (A) any violation of applicable law, regulation or order by such party; and/or (B) any breach of a representation or warranty by such party. In addition, each party shall indemnify, defend and hold harmless the other party against any Taxes for which such party is responsible pursuant to the Emissions Transactions and this Emissions Annex.

(h) **Certain Modifications to this Agreement**

(i) **Limitation on Condition Precedent.** Section 2(a)(iii) of the Agreement is hereby amended by adding the following phrase at the end of clause (1) immediately before the last comma of such phrase:

“(provided, however, that in relation to any Transaction that is an Emissions Transaction, if an Event of Default or a Potential Event of Default has occurred and is continuing for longer than ten (10) Local Business Days without an Early Termination Date being designated, then the condition specified in this clause (1) will cease to be a condition precedent to the obligations under Section 2(a)(i)”.

(ii) ***Events of Default.***

(A) With respect to all Emissions Transactions, (A) if the pre-printed form portion of this Agreement is the 1992 version of the ISDA Master Agreement, the words “or delivery under Section 2(a)(i) or 2(e)” in the second line of Section 5(a)(i) of this Agreement are deleted; and (B) if the pre-printed form portion of this Agreement is the 2002 ISDA Master Agreement, the words “or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4)” in the second line of Section 5(a)(i) of this Agreement, and “or the first Local Delivery Day in the case of any such delivery” and “, in each case,” in the third and fourth lines of Section 5(a)(i) of this Agreement, are deleted.

(B) With respect to all Emissions Transactions, (A) if the pre-printed form portion of this Agreement is the 1992 version of the ISDA Master Agreement, the words “or delivery under Section 2(a)(i) or 2(e)” in the second line of Section 5(a)(ii) are hereby deleted and the words “or to deliver or receive the Emissions Product, the exclusive remedy for which is provided in the Emissions Annex to the Schedule” are added at the end of the parenthetical of Section 5(a)(ii); and (B) if the pre-printed form portion of this Agreement is the 2002 ISDA Master Agreement, the words “or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4)” in the second line of Section 5(a)(ii)(1) are deleted and the words “or to deliver or receive the Emissions Product, the exclusive remedy for which is provided in the Emissions Annex to the Schedule” are hereby added at the end of the parenthetical of Section 5(a)(ii)(1).

(C) With respect to all Emissions Transactions, (A) if the pre-printed form portion of this Agreement is the 1992 version of the ISDA Master Agreement, the parenthetical “(other than by failing to make a delivery)” is inserted after the word “defaults” in clause (1) of Section 5(a)(v) and the words “or delivery” and “, delivery” in clause (2) of Section 5(a)(v) of this Agreement are deleted; and (B) if the pre-printed form portion of this Agreement is the 2002 ISDA Master Agreement, the words “(including any delivery due on the last delivery or exchange date of) a Specified Transaction or” in clause (3) of Section 5(a)(v) of this Agreement are deleted.

(iii) ***Force Majeure.*** If the pre-printed portion of this Agreement is the 2002 ISDA Master Agreement, Section 5(b)(ii) of this Agreement will not apply to any Emissions Transaction.

(iv) ***Definitions: Section 14.*** Section 14 of this Agreement is hereby amended by adding the following definitions:

“Abandonment of Scheme” means that the relevant Scheme is discontinued or eliminated and it is impossible to transfer the applicable Emissions Product.

“Administrator” means the administrator of the applicable Tracking System.

“Applicable Emissions Law” has the meaning set forth in the relevant Emissions Product definition as set forth in the Emissions Product Definitions Exhibit.

“Buyer” means the party to an Emissions Transaction that is obligated to purchase and receive, or cause to be received, the Emissions Product, as specified in an Emissions Transaction.

“Contract Price” means the price of the Emissions Product as specified in an Emissions Transaction.

“Delivery” is deemed to occur when the Emissions Product is recorded in the Buyer’s or receiving party’s account on the applicable Tracking System, or as directed by the Buyer or receiving party.

“Delivery Date” means the date the parties agree the Seller or transferring party will Transfer the applicable Emissions Product as set forth in the applicable Emissions Transaction.

“Delivery Disruption Event” means a suspension in the operation or functioning of the applicable Tracking System that prevents Delivery of the relevant Emission Products between accounts in the Tracking System as required under the affected Emissions Transaction(s).

“Emissions Product(s)” means a product as defined in the Emissions Product Definitions Exhibit or as otherwise defined in a Confirmation.

“Emissions Transaction” shall have the meaning specified in clause (a)(i) of this Emissions Annex.

“Forward Emissions Transaction” means an Emissions Transaction, pursuant to which Seller will Transfer to Buyer, or at Buyer’s direction, the Emissions Products on a date set forth in the Transaction.

“Immediately-Delivered Emissions Transaction” means an Emissions Transaction in which Transfer is to occur within three (3) Local Business Days after the Trade Date.

“Option Emissions Transaction” means an Emissions Transaction pursuant to which the buyer of the option has the right, but not the obligation unless exercised, to purchase, sell or exchange, as the case may be, one or more Emissions Products pursuant to the terms of the Transaction.

“Physical Exchange Emissions Transaction” means an Emissions Transaction pursuant to which each party will Transfer to the other party the Emissions Products on the date set forth in the Transaction. For purposes of Physical Exchange Emissions Transactions only: (A) clauses (c)(i) and (ii) herein are amended by (1) deleting the word “Seller” wherever it appears and replacing it with the phrase “the Transferring party”, and (2) deleting the word “Buyer” wherever it appears and replacing it with the phrase “the receiving party”; (B) for purposes of calculating the remedies for failure to Deliver or failure to receive pursuant to clauses (c)(i) and (ii) only, the definition of “Contract Price” is deemed to be equal to zero (0) U.S. Dollars; (C) the definitions of “Replacement Price” and “Sales Price” in clause (h)(iv) herein are amended by (1) deleting the word “Seller” wherever it appears and replacing it with the phrase “the Transferring party”, and (2) deleting the word “Buyer” wherever it appears and replacing it with the phrase “the receiving party”; and (D) if a party fails to (1) Transfer and Deliver and (2) receive the Quantities of Emissions Products to be exchanged pursuant to a Physical Exchange Emissions Transaction (the “Failing Party”), and such failure is not excused under the terms of the Emissions Product(s) or Transaction, by a Delivery Disruption Event, by the other party’s failure to perform or by the terms of this Agreement, then the Failing Party will pay the other party (the “Non-Failing Party”), within three (3) Local Business Days of Failing Party’s receipt of notice from the Non-Failing Party stating an amount (calculated in a commercially reasonable manner) for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price (with the Failing Party being deemed the “Buyer” and the Non-Failing Party being deemed the “Seller” in the definition of Sales Price for purposes of this calculation only) from the Replacement Price (with the Non-Failing Party being deemed the “Buyer” and the Failing Party being deemed the “Seller” in the definition of Replacement Price for purposes of this calculation only).

“Quantity” means the quantity of the Emissions Product that Seller agrees to make available or sell and Transfer, or cause to be Delivered, to Buyer, or at Buyer’s direction, and that Buyer agrees to purchase and receive, or cause to be received, from Seller, or the quantity of the Emissions Products the parties agree to exchange, as specified in an Emissions Transaction.

“Replacement Price” means (A) the price at which Buyer, acting in a commercially reasonable manner, purchases a replacement for any Emissions Product specified in an Emissions Transaction but not Transferred by Seller in accordance with the terms of this Agreement, plus costs reasonably incurred by Buyer in purchasing such substitute Emissions Product, or, absent a purchase, (B) the market price for an Emissions Product not Transferred (equivalent as to Quantity, Vintage and Delivery date, as applicable), as determined by Buyer in a commercially reasonable manner.



“Sales Price” means (A) the price at which Seller, acting in a commercially reasonable manner, resells any Emissions Product not received by Buyer in accordance with the terms of this Agreement, deducting from such proceeds any costs reasonably incurred by Seller in reselling such Emissions Product, or, absent a sale, (B) the market price for an Emissions Product not received (equivalent as to Quantity, Vintage and Delivery date, as applicable), as determined by Seller in a commercially reasonable manner.

“Scheme” means the applicable cap-and-trade program, including any related Tracking System, existing under Applicable Emissions Law, or by voluntary agreement, and that governs, or is utilized to Deliver, a particular Emissions Product.

“Seller” means the party to an Emissions Transaction that is obligated to sell and Transfer, or cause to be Transferred, the Emissions Product, as specified in an Emissions Transaction.

“Tracking System” has the meaning set forth in the relevant Emissions Product definition as set forth in the Emissions Product Definitions Exhibit or as set forth in a Confirmation.

“Trade Date” means, with respect to an Emissions Transaction, the date on which the parties enter into the Emissions Transaction.

“Transfer” means the transfer of the Quantity of Emissions Product(s) to Buyer or receiving party, or at Buyer’s or receiving party’s direction. Transfer may include the process of retiring the Emissions Product(s) upon the instruction of Buyer under the Applicable Emissions Law, or as mutually agreed upon by the Seller and Buyer in a commercially reasonable manner.

“Vintage” means the vintage year(s) of the applicable Emissions Product(s) as specified in an Emissions Transaction.

(i) **Elective Provisions**

**1. (a)(ii) – Outstanding Emissions Transactions.** This Emissions Annex applies to the following pre-existing Emissions Transactions pursuant to clause (a)(ii) of this Emissions Annex:

Option A: All Emissions Transactions outstanding between the parties as of the Effective Date of this Emissions Annex.

Option B: The Emissions Transactions listed in Schedule 1 to this Emissions Annex only.

Option C: None of the Emissions Transactions between the parties that were executed prior to the Effective Date of this Emissions Annex.

If none of the above options is selected, Option A applies.

**2. (a)(iii)(A) – Applicability of Credit Support Documents**

Option A: The Credit Support Document(s) apply to all Emissions Transactions.

Option B: The Credit Support Document(s) do not apply to any Emissions Transactions.

Option C: The Credit Support Document(s) apply to all Emissions Transactions, except Immediately-Delivered Emissions Transactions.

Option D: The Credit Support Document(s) apply to all Emissions Transactions except those Emissions Transactions set forth in Schedule 2 as amended from time to time.

If none of the above options is selected, Option A applies.

3. (a)(iii)(B) – Outstanding Credit Support

\_\_\_ Outstanding Credit Support held by a party in connection with Outstanding Emissions Transactions is deemed to have been delivered under and in connection with this Agreement pursuant to clause (a)(iii)(B) of this Emissions Annex.

If not checked, not applicable.

4. (b)(iii) – Abandonment of Scheme

\_\_\_ Option A: Abandonment of Scheme applies to all Emissions Transactions:

\_\_\_ Option A(1): Abandonment of Scheme constitutes an Additional Termination Event.

\_\_\_ Option A(2): Abandonment of Scheme entails no further obligations.

\_\_\_ Option B: The applicability of Abandonment of Scheme to Emissions Transactions will be set forth in the applicable Confirmation.

\_\_\_ Option C: Abandonment of Scheme does not apply to any Emissions Transactions.

If none of the above options is selected, Option A and Option A(1) apply.

(j) **Notices for Emissions Transactions**

**PARTY A**

**Invoices:**

As set forth in Part 4 of the Schedule unless otherwise set forth below:

Attn:

\_\_\_\_\_

Phone:

\_\_\_\_\_

Facsimile:

\_\_\_\_\_

**Confirmations:**

As set forth in Part 4 of the Schedule unless otherwise set forth below:

Attn:

\_\_\_\_\_

Phone:

\_\_\_\_\_

Facsimile:

\_\_\_\_\_

**PARTY B**

**Invoices:**

As set forth in Part 4 of the Schedule unless otherwise set forth below:

Attn:

\_\_\_\_\_

Phone:

\_\_\_\_\_

Facsimile:

\_\_\_\_\_

**Confirmations:**

As set forth in Part 4 of the Schedule unless otherwise set forth below:

Attn:

\_\_\_\_\_

Phone:

\_\_\_\_\_

Facsimile:

\_\_\_\_\_

**Option Exercise:**

As set forth in Part 4 of the Schedule unless otherwise set forth below:

Attn:

\_\_\_\_\_  
Phone:

\_\_\_\_\_  
Facsimile:

**Wire Transfer:**

As set forth in Part 4 of the Schedule unless otherwise set forth below:

Bank:

\_\_\_\_\_  
ABA:

\_\_\_\_\_  
Account:

\_\_\_\_\_  
Other Details:

**Option Exercise:**

As set forth in Part 4 of the Schedule unless otherwise set forth below:

Attn:

\_\_\_\_\_  
Phone:

\_\_\_\_\_  
Facsimile:

**Wire Transfer:**

As set forth in Part 4 of the Schedule unless otherwise set forth below:

Bank:

\_\_\_\_\_  
ABA:

\_\_\_\_\_  
Account:

\_\_\_\_\_  
Other Details:

(k) **Other Provisions/Modifications to this Emissions Annex**

## **EMISSIONS PRODUCT DEFINITIONS EXHIBIT**

**Last Updated September 2, 2010**

As used in this Emissions Annex or any Emissions Transaction Confirmation, the following shall be Emissions Products and shall have the meanings set forth below:

**“NO<sub>x</sub> Emissions Product”** means a limited authorization issued by the state permitting authority or the United States Environmental Protection Agency (“EPA”) Administrator under an approved state implementation plan to emit a certain amount of nitrogen oxides (“NO<sub>x</sub>”) during a specified control period under Applicable Emissions Law. For purposes of NO<sub>x</sub> Emissions Products:

(1) “Applicable Emissions Law” means the statutes and regulations implementing the NO<sub>x</sub> SIP Call Program, the Clean Air Interstate Rule (“CAIR program”) or any successor NO<sub>x</sub> trading program, and any amendments thereto; and

(2) “Tracking System” means the system(s) established by the EPA by which the Administrator records allocations, deductions and transfers of NO<sub>x</sub> Emissions Products among various entities or persons under the Applicable Emissions Law (or any successor system).

**“Regional Emissions Product”** means any emissions allowance or emissions reduction credit created and promulgated under a multi-state and/or -province emissions reduction or cap-and-trade Scheme. For purposes of Regional Emissions Products:

(1) “Applicable Emissions Law” has the meaning specified in the relevant Confirmation; and

(2) “Tracking System” has the meaning specified in the relevant Confirmation.

**“RGGI Emissions Product”** means a limited authorization issued by a state regulatory agency, department or authority administering the RGGI Scheme to emit a certain amount of carbon dioxide (“CO<sub>2</sub>”) or CO<sub>2</sub> equivalent during a specified control period under Applicable Emissions Law. For purposes of RGGI Emissions Products:

(1) “Applicable Emissions Law” means the statutes and regulations implementing the RGGI Scheme in all states that are signatories to the RGGI Memorandum of Understanding, originally dated December 20, 2005 as amended from time to time (“RGGI MOU”);

(2) “RGGI” means the Regional Greenhouse Gas Initiative, a multi-state emissions reduction initiative created under the RGGI MOU and administered by RGGI, Inc.; and

(3) “Tracking System” means the RGGI CO<sub>2</sub> Allowance Tracking System (“COATS”) (or any successor system).

**“SO<sub>2</sub> Emissions Product”** means a limited authorization issued by the Administrator of the EPA to emit a certain amount of sulfur dioxide (“SO<sub>2</sub>”) during a specified control period under Applicable Emissions Law. For purposes of SO<sub>2</sub> Emissions Products:

(1) “Applicable Emissions Law” means Title IV of the Clean Air Act Amendments of 1990 (effective November 15, 1990) and any regulations promulgated thereunder, or the statutes and regulations implementing the CAIR program, or any successor SO<sub>2</sub> trading program, and any amendments thereto; and

(2) “Tracking System” means the system(s) established by the EPA by which the Administrator records allocations, deductions and transfers of SO<sub>2</sub> Emissions Products among various entities or persons under the Applicable Emissions Law (or any successor system).

“State Emissions Product” means any emissions allowance or emissions reduction credit created and promulgated under a U.S. state Scheme as defined under Applicable Emissions Law. For purposes of State Emissions Products:

- (1) “Applicable Emissions Law” has the meaning specified in the relevant Confirmation; and
- (2) “Tracking System” has the meaning specified in the relevant Confirmation.

“Voluntary Emissions Product” means any emissions allowance, emissions credit, emissions offset or emissions reduction credit, created, or issued under a voluntary Scheme or as specified in the applicable Confirmation. For purposes of Voluntary Emissions Products:

- (1) “Applicable Emissions Law” means the rules and procedures set forth and administered by the applicable voluntary Scheme, or as specified in the applicable Confirmation; and
- (2) “Tracking System” means the applicable registry or a similar record-keeping system (or any successor system) with specifically articulated standards, processes and procedures relating to issuance, transfer and retirement of Voluntary Emissions Products, or as specified in the applicable Confirmation.

**SCHEDULE 1**

**Outstanding Emissions Transactions**

The Emissions Transactions set forth below constitute Outstanding Emissions Transactions:

**SCHEDULE 2**

**Applicability of Credit Support Document(s) – Option D**

The Credit Support Document(s) apply to all Emissions Transactions except those Emissions Transactions set forth herein: