



Climate Markets
& Investment
Association

Trade Agreement

for Single or Multiple Deliveries
of UK ETS Allowances

version 1.0
August 2021

CMIA UKA Trade Agreement – Cover Sheet

SELLER

COMPANY

Registration no. : _____

ADDRESS

Physical address : _____

Contact person : _____

Phone : _____

Fax : _____

E-mail : _____

BANK DETAILS

Bank name : _____

Bank account no. : _____

BIC/Swift code : _____

IBAN : _____

VAT registration no. : _____

REGISTRY DETAILS

Seller's Account no. : _____

BUYER

COMPANY

Registration no. : _____

ADDRESS

Physical address : _____

Contact person : _____

Phone : _____

Fax : _____

E-mail : _____

BANK DETAILS

Bank name : _____
 Bank account no. : _____
 BIC/Swift code : _____
 IBAN : _____
 VAT registration no. : _____

REGISTRY DETAILS

Buyer's Account no. : _____

TRANSACTION DETAILS

Delivery Date	Quantity (Allowances)	Certificate Price	Contract Price
Total Quantity:			
Total Contract Price:			

GENERAL DETAILS

Effective Date : _____
 Currency : _____
 Interest Rate : _____ percent (%) above the Base Interest Rate
 Base Interest Rate *(if other than defined)* : _____
 Default Cost of Carry Rate *(optional)* : _____
 Relevant Penalty : [] shall apply, *otherwise* Relevant Penalty shall not apply
 Special conditions / amendments to General Terms *(optional)* : _____

This Agreement (comprised of the Cover Sheet and General Terms) is executed by the duly authorised representative of each Party on the respective dates specified below with effect from the Effective Date.

SELLER:

BUYER:

Name:

Name:

Title:

Title:

Date:

Date:

CMIA UKA Trade Agreement – General Terms

1. SUBJECT OF THIS AGREEMENT; DEFINITIONS

- 1.1. The purpose of this Agreement is to set out the terms and conditions for one transaction with one or multiple Delivery Date(s), entered into by and between the Seller and the Buyer (referred to jointly as the "**Parties**", and individually referred to as a "**Party**"), where the Seller agrees to sell and Deliver and the Buyer agrees to buy and accept Delivery of a Quantity of Allowances.
- 1.2. This "**Agreement**" shall comprise of the "UKA Trade Agreement – General Terms" ("**General Terms**") and the "UKA Trade Agreement – Cover Sheet" ("**Cover Sheet**").
- 1.3. Capitalised terms not defined within this Agreement shall have the following meanings given to them:
 - a. "**Account**" means (i) an "operator holding account"; (ii) an "aircraft operator holding account"; or (iii) a "trading account", each on the Registry, each as defined by the ETS Order;
 - b. "**Administrator Event**" means the suspension of all or some of the processes in respect of the Registry in accordance with the Applicable Law by the Relevant Authority (i) where that Registry is not operated and maintained in accordance with the provisions of the Applicable Law, or (ii) for the purposes of carrying out scheduled or emergency maintenance, or (iii) where there has been or following reasonable suspicion of, a breach of security which threatens the integrity of the registries system (including any back up facilities);
 - c. "**Affected Allowance**" means an Allowance which is or is alleged to have been the subject of an Unauthorised Delivery as confirmed by the Relevant Authority or any other authority having power under the Applicable Law to block, suspend, refuse, reject, cancel or otherwise affect the Delivery (whether in whole or in part) of Allowances;
 - d. "**Affiliate**" means with respect to a Party, any entity Controlled, directly or indirectly, by that Party, any entity that Controls, directly or indirectly that Party, or any entity directly or indirectly under the common Control of a Party;
 - e. "**Allowance**" means an allowance to emit one tonne of carbon dioxide (CO₂) equivalent as defined in the ETS Order, valid for the purposes of meeting the emissions' related commitment obligations under the Applicable Law on the Delivery Date;
 - f. "**Applicable Law**" means any law, statute, statutory instrument, regulation, instruction, direction, rule or requirement (in each case) of any Competent Authority (but, for the avoidance of doubt, only to the extent having force of law) which applies in the jurisdiction of: (i) the Buyer; or (ii) the Seller; including (without limitation) the following laws:
 - i. the ETS Order;
 - ii. the Climate Change Act 2008;
 - iii. the Finance Act 2020;
 - iv. the Commission Implementing Regulation (EU) 2018/2066 (the Monitoring and

Reporting Regulation), as it forms part of UK domestic law;

- v. the Commission Implementing Regulation (EU) 2018/2067 of 19 December 2018 on the verification of data and on the accreditation of verifiers pursuant to Directive 2003/87/EC of the European Parliament and of the Council, as it forms part of UK domestic law;
- vi. the Commission Delegated Regulation (EU) 2019/331 (the Free Allocation Regulation), as it forms part of UK domestic law; and
- vii. the Commission Implementing Regulation (EU) 2019/1842 (the Activity Level Changes Regulation), as it forms part of UK domestic law,

each as amended from time to time;

- g. **"Base Interest Rate"** means the "GBP-SONIA-COMPOUND", "SONIA" being a reference rate equal to the overnight rate as calculated by the Bank of England, unless otherwise specified on the Cover Sheet;
- h. **"Business Day"** means a day (other than Saturday or Sunday) on which commercial banks are open for general business at the places where each Party has its registered office;
- i. **"Change in Law"** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, or repeal or other cancellation of, any Applicable Law (or in the application or official interpretation of any Applicable Law by a judgment or decision of any Competent Authority);
- j. **"Compliance Deadline"** means, in respect of an Allowance Delivery, 30 April in any Scheme Year in relation to the immediately preceding Scheme Year;
- k. **"Compliance Year"** means that period of time between each Compliance Deadline in respect of a Trading Period;
- l. **"Competent Authority"** means: (i) the government of any country in which either Party operates or has its seat, or any governmental authority, agency or department thereof; (ii) any entity having jurisdiction in relation to the Allowances; or (iii) any court or other tribunal of any country in which either Party operates or has its seat;
- m. **"Contract Price"** has the meaning specified in "Transaction Details" on the Cover Sheet;
- n. **"Control"** means ownership of more than fifty (50) percent of the voting power of a Party or entity and "Controlled" is to be construed accordingly;
- o. **"Cost of Carry Calculation Period"** means the number of calendar days from and including the original Invoice Due Date which would have applied but for delayed delivery to, but excluding, the delayed Invoice Due Date resulting from delayed delivery;
- p. **"Cost of Carry Rate"** means the Base Interest Rate, in respect of each day in the Cost of Carry Calculation Period, provided that if the interest rate would otherwise be less than zero (0), the interest rate shall be floored at zero (0) and any margin applied thereto;
- q. **"Default Cost of Carry Calculation Period"** means the number of calendar days from and including the original Invoice Due Date which would have applied but for

delayed delivery to, but excluding, the delayed Invoice Due Date that would have applied assuming that the Seller sent an invoice at the earliest date it would have been entitled to do so in accordance with Clause 5;

- r. **"Default Cost of Carry Rate"** means, unless otherwise specified on the Cover Sheet, the Base Interest Rate, in respect of each day in the Default Cost of Carry Calculation Period, provided that if the interest rate would otherwise be less than zero (0), the interest rate shall be floored at zero (0) and any margin applied thereto;
- s. **"Delivery"** means the transfer of Allowances from the Seller's Account into the Buyer's Account in accordance with the terms of this Agreement and Applicable Law;
- t. **"Delivery Date"** has the meaning specified on the Cover Sheet;
- u. **"Encumbrance Loss Amount"** means an amount reasonably determined by the Buyer in good faith to be its total losses and costs in connection with an Allowance Delivery arising from the Seller's breach of the No Encumbrance Obligation, including, but not limited to, any loss of bargain, cost of funding or, at the election of the Buyer but without duplication, loss or costs incurred as a result of its terminating, liquidating, obtaining or re-establishing any hedge or related trading position. Such amount includes losses and costs in respect of any payment already made in respect of such Allowance Delivery prior to the delivery of the written notice by the Buyer and the Buyer's legal fees and out-of-pocket expenses but does not include a Relevant Penalty or any amount which the Buyer must pay to a third party in respect of any such penalty payable to any other party (or Relevant Authority) by that third party. The Parties agree that in circumstances where there was a breach of the No Encumbrance Obligation by the Seller caused by the transfer of an Affected Allowance, the Buyer will be entitled to recover any losses arising out of or in connection with any claim, demand, action or proceeding brought against the Buyer by a third party consequent upon the transfer by the Buyer of an Affected Allowance transferred to it by the Seller under an Allowance Delivery;
- v. **"End of Trading Period Compliance Deadline"** means, in respect of an Allowance Delivery, the final Compliance Deadline determined in accordance with the Applicable Law for the surrender of Allowances in respect of the Trading Period;
- w. **"ETS Order"** means the Greenhouse Gas Emissions Trading Scheme Order 2020, as amended by the Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2020, each as amended from time to time;
- x. **"Long Stop Date"** means, in respect of a Suspension Event that occurs in relation to a Delivery or acceptance of Delivery obligation that would otherwise be required to be performed in a Scheme Year, 31 March of the following Scheme Year;
- y. **"Original Affected Party"** means the person from whose account the first Unauthorised Delivery of any Allowance occurred;
- z. **"Quantity"** has the meaning specified on the Cover Sheet;
- aa. **"Registry"** means "registry" as defined in the ETS Order in order to ensure the accurate accounting of the issue, holding, Delivery, acquisition, surrender, cancellation and replacement of Allowances;
- bb. **"Registry Operation"** means the establishment of and continuing functioning of the Registry pursuant to the Applicable Law;
- cc. **"Relevant Authority"** means, as applicable, (i) the "national authority", (ii) the

"regulator", or (iii) the "registry authority", each as defined in the ETS Order;

- dd. **"Relevant Penalty"** means a financial payment required to be made by the Buyer to the Relevant Authority, and includes the following:
- i. where the Buyer is an Operator: (A) an excess emissions penalty payable under the ETS Order for failure to surrender sufficient Allowances contrary to its obligations under the ETS Order; or (B) a civil penalty payable under the ETS Order for reportable emissions exceeding the verified reportable emissions and subsequent failure to surrender Allowances equal to such difference; or
 - ii. where the Buyer is an Aircraft Operator: (A) an excess emissions penalty payable under the ETS Order for failure to surrender sufficient Allowances contrary to its obligations under the ETS Order; or (B) a civil penalty payable under the ETS Order for aviation emissions exceeding the verified aviation emissions and subsequent failure to surrender Allowances equal to such difference;
- ee. **"Scheme Year"** means the calendar year beginning on 1 January 2021 or any of the nine subsequent calendar years, and a reference to a scheme year described by a calendar year;
- ff. **"Total Contract Price"** has the meaning specified on the Cover Sheet;
- gg. **"Trading Period"** means the period beginning on 1 January 2021 and ending on 31 December 2030, as defined in the ETS Order, including both the first allocation period (2021 to 2025) and the second allocation period (2026 to 2030); and
- hh. **"Unauthorised Delivery"** means the Delivery by debiting of any Allowance from an account holder's Account and the crediting of an Account of another person, where such Delivery is not initiated by the relevant authorised representative or additional authorised representative (as referred to in the Applicable Law) of the first Account holder.

2. DELIVERY AND ACCEPTANCE

- 2.1. No later than on the relevant Delivery Date, the Seller shall sell and Deliver, or cause to be Delivered, the Quantity of Allowances, and the Buyer shall purchase and accept Delivery, or cause such Delivery to be accepted, the Quantity and pay to the Seller the relevant Contract Price.
- 2.2. Title and risk in the Allowances shall pass when the Allowances are credited to the Buyer's Account.
- 2.3. Allowances Delivered in accordance with clause 2.1 shall be free and clear of any liens, security interests, encumbrances or similar adverse claims by any person (the **"No Encumbrance Obligation"**). Where a Party is in breach of the No Encumbrance Obligation, the following shall apply:
- a. this Agreement and obligations under it shall continue unaffected; and
 - b. without prejudice to any defences available to the Seller (including, but not limited to, any defences of statutes of limitation or similar), following written notice of that breach from the Buyer to the Seller (irrespective of how long after the relevant Delivery Date such notice is provided) and subject to clause 2.5:

- i. the Buyer shall determine the Encumbrance Loss Amount either on the date such notice is deemed to be received or as soon as reasonably practicable thereafter; and
- ii. shall notify the Seller of such Encumbrance Loss Amount due, including detailed support for its calculation.

The Buyer is not required to enter into a replacement agreement in order to determine the Encumbrance Loss Amount.

2.4. By no later than the third (3rd) Business Day after the later of:

- a. receipt of a valid invoice in connection with such Encumbrance Loss Amount; and
- b. receipt of the above-mentioned notice of detailed support of the Buyer's calculation of the Encumbrance Loss Amount,

the Seller shall pay the Encumbrance Loss Amount to the Buyer, which shall bear interest in accordance with clause 5.4. Upon payment of the Encumbrance Loss Amount by the Seller, the Parties shall have no further obligations in respect of that Allowance Delivery and that breach. The Buyer acknowledges that its exclusive remedies in respect of such breach are those set out in this clause 2.4.

2.5. Where a breach of the No Encumbrance Obligation is caused by the Delivery of an Affected Allowance, the Seller shall be liable for the Encumbrance Loss Amount if, at the date it first acquired, received or purchased such Affected Allowance, it was not acting in good faith; otherwise, the Seller shall only be liable for the Encumbrance Loss Amount (without prejudice to any other defences available to the Seller including, but not limited to, any defences of statutes of limitation or similar), if:

- a. the Buyer, whether or not the holder of such Affected Allowance, who is subject to a claim of the Original Affected Party, has, in order to resist or avoid any Encumbrance Loss Amount from arising, used its best endeavours to defend such a claim in respect of that Affected Allowance and was unsuccessful (other than for reasons of its own lack of good faith); or
- b. the Buyer, whether or not the holder of such Affected Allowance, who acted in good faith in respect of its purchase of such Affected Allowance and who is subject to a claim of a third party (other than the Original Affected Party) in respect of that Affected Allowance, has used all reasonable endeavours to mitigate the Encumbrances Loss Amount.

3. FAILURE TO DELIVER AND ACCEPT

3.1. If the Seller fails to Deliver the Quantity, in whole or in part, by the relevant Delivery Date pursuant to clause 2 and this is not:

- a. remedied within three (3) Business Days after receipt by the Seller of a written notice from the Buyer; or
- b. excused by Force Majeure, a Suspension Event, or the non-performance of the Buyer,

the Seller shall pay the Buyer as compensation an amount equal to the difference, if positive, between:

- c. the price at which Buyer acting in a commercially reasonable manner is or would be

able to purchase or otherwise acquire in the market the quantity of undelivered Allowances; and

- d. the Certificate Price multiplied by the quantity of undelivered Allowances.

This compensation shall be increased by any reasonable transaction costs and expenses which the Buyer incurs as a result of such failure to deliver the Quantity.

- 3.2. Where a Relevant Penalty is specified as applying on the Cover Sheet and has arisen, the compensation payable under clause 3.1 shall further be increased by the amount of the Relevant Penalty, provided that the Buyer at all times uses commercially reasonable endeavours (including, without limitation, making use of any excess Allowances it may have available to it at the time, and/or procuring such Allowances as are available in the market) to satisfy its obligation to surrender the required number of Allowances necessary to avoid or otherwise mitigate its Relevant Penalty liability. For the avoidance of doubt, the Buyer's duty to mitigate its Relevant Penalty exposure is limited to management of its Allowance portfolio and shall not impose upon it any further obligation regarding its operation of any installation with an obligation to surrender Allowances to a Relevant Authority.
- 3.3. To the extent an initially assessed and recovered Relevant Penalty is later reduced and/or fully or partly returned or credited to the Buyer by a Relevant Authority for any reason whatsoever, only such reduced and finally assessed Relevant Penalty shall apply. A Relevant Penalty recovered by the Buyer in the form of damages under this clause 3 which are later reduced or returned to such Buyer shall be returned upon demand to the Seller who paid such damages, and the Buyer shall provide the Seller with prompt notification of any such reduction or return.
- 3.4. If the Buyer fails to accept the Delivery of the Quantity, in whole or in part, on the Delivery Date and this is not:
 - a. remedied within three (3) Business Days after receipt by the Buyer of a written notice from the Seller; or
 - b. excused by an event of Force Majeure, a Suspension Event, or the non-performance of the Seller,

the Buyer shall pay the Seller as compensation the difference, if positive, between:

- c. the Certificate Price multiplied by the quantity of non-accepted Allowances; and
- d. the price at which the Seller is or would be able to sell the quantity of non-accepted Allowances in the market acting in a commercially reasonable manner.

This compensation shall be increased by any reasonable transaction costs and expenses which the Seller incurs as a result of such failure to accept the Quantity.

- 3.5. Amounts that are due under this clause 3 shall be invoiced and paid in accordance with clause 5.

4. VAT

- 4.1. All amounts referred to in this Agreement are exclusive of any applicable value added tax ("**VAT**"). The VAT treatment of the supplies under this Agreement shall be determined pursuant to the VAT laws of the jurisdiction where a taxable transaction for VAT purposes is deemed to take place according to this Agreement. If VAT is payable on such amounts, Buyer shall pay an amount equal to the VAT at the rate applicable from time to time, provided that such amount shall only be required to be paid once the Seller has provided a

valid VAT invoice (applicable in the jurisdiction of supply) in relation to that amount.

- 4.2. Where both Parties are established in the United Kingdom, for the purposes of sections 7A and 9 of the Value Added Tax Act 1994 ("**VAT Act**") concerning the place of supply of services, the Buyer gives the following VAT representations:
 - a. it is a taxable person acting as such; and
 - b. the place where it has established its business and VAT registration number are those specified on the Cover Sheet.
- 4.3. The Parties are mindful in their relations to other counterparties to comply with VAT requirements, and the Parties represent not to knowingly deal with counterparties being involved in VAT fraud.

5. INVOICING AND PAYMENT

- 5.1. The Seller will invoice the Buyer for the Allowances in respect of a specific Delivery Date after Delivery.
- 5.2. The "**Invoice Due Date**" shall be the tenth (10th) Business Day after receipt of an invoice.
- 5.3. The Buyer shall pay the Contract Price on or before the Invoice Due Date to the Seller's bank account specified on the Cover Sheet, free of any expenses and without any withholdings and deductions. Payment shall be remitted by bank transfer. Such payment shall be made in the currency specified on the Cover Sheet.
- 5.4. As from the Invoice Due Date, the Seller shall be entitled to charge default interest at the Interest Rate specified on the Cover Sheet released on the payment. Interest may be charged from, and including, the Invoice Due Date and to, and excluding, the date of complete payment.
- 5.5. If a Party, in good faith, disputes the accuracy of an invoice, it shall on or before the Invoice Due Date provide a written explanation of the basis for the dispute and shall pay the undisputed amount invoiced no later than the Invoice Due Date. If any amount withheld under dispute is finally determined to have been due, such withheld amount shall, at the election of the owed Party, be credited or returned to it within five (5) Business Days of such determination, along with interest as specified in clause 5.4.

6. REPRESENTATIONS AND WARRANTIES

- 6.1. The Seller hereby represents and warrants to the Buyer as of the Effective Date that, which will be deemed repeated on each Delivery Date:
 - a. the Seller is entitled to dispose of the Allowances; and
 - b. it has an Account number as specified on the Cover Sheet which is validly registered on the Registry to facilitate the Delivery.
- 6.2. The Buyer hereby represents and warrants to the Seller that as of the Effective Date, which will be deemed repeated on each Delivery Date, it has an Account number as specified on the Cover Sheet which is validly registered on the Registry to facilitate the Delivery.
- 6.3. Each Party represents and warrants to the other Party as of the Effective Date that, which will be deemed repeated on each Delivery Date:

- a. it is duly organised and existing under the laws of the jurisdiction of its organisation and has full power and legal right to execute, deliver and perform under this Agreement or any other documents relating to this Agreement to which it is a party;
- b. its execution, delivery and performance of this Agreement or any other documents relating to this Agreement to which it is a party does not constitute a violation of any law, governmental regulation, its memorandum and articles of association, other agreements or undertakings, and that it possesses the necessary knowledge in order to be able to perform pursuant to this Agreement or any other documents relating to this Agreement to which it is a party, and the person signing this Agreement or any other documents relating to this Agreement to which it is a party, is authorised and empowered to do so;
- c. it has obtained or submitted any authorisation or approval or other action by, or notice to or filing with, any Competent Authority that is required for the due execution, Delivery and performance of this Agreement or any other documents relating to this Agreement to which it is a party;
- d. this Agreement or any other documents relating to this Agreement to which it is a party (as applicable) has been duly and validly executed and delivered by it and constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganisation, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law);
- e. there are no pending or threatened legal or administrative proceedings to which it is a party, which to the best of its knowledge would materially adversely affect its ability to perform its obligations under this Agreement or any other documents relating to this Agreement to which it is a party;
- f. it has entered into this Agreement or any other documents relating to this Agreement to which it is a party in connection with its line of business and the terms hereof have been individually tailored and negotiated;
- g. it is not relying upon any representation or warranty of the other Party other than those expressly set forth in this Agreement or any other documents relating to this Agreement to which it is a party;
- h. it has entered into this Agreement or any other documents relating to this Agreement to which it is a party as principal (and not as agent or in any other capacity, fiduciary or otherwise);
- i. it has entered into this Agreement or any other documents relating to this Agreement to which it is a party with a full understanding of the material terms and risks hereof, and is capable of assuming those risks;
- j. it has made its investment and trading decisions (including regarding the suitability hereof) based upon its own judgement and any advice from such advisors as it has deemed necessary, and not in reliance upon any view expressed by the other party; and
- k. the other Party is not acting as a fiduciary or an advisor for it, nor has given to it any assurance or guarantee as to the expected performance or result of this Agreement or any other documents relating to this Agreement to which it is a party.

7. LIMITATION OF LIABILITY

- 7.1. Nothing in this agreement limits any liability which cannot legally be limited, including but not limited to liability for:
- a. death or personal injury caused by negligence; and
 - b. fraud or fraudulent misrepresentation.
- 7.2. Subject to clause 7.1 and except in respect of any amounts payable under clause 3 or clause 11, the liability of each Party, irrespective of from whatever legal base it might be claimed, for any actions, omissions or failures of itself, its employees, officers, contractors and/or agents, that causes any damage, loss, cost or expense incurred by the other Party, is limited to an amount equal to the Total Contract Price. This limitation of liability shall not apply to instances where the damage is due to gross negligence, intentional default or fraud of the Party, its employees, officers, contractors or agents used by such Party in performing its obligation under this Agreement.
- 7.3. The liability of a Party to the other shall in no event include any indirect or consequential damages, loss of profit, business opportunity, goodwill or anticipated savings. For the avoidance of doubt, the Parties agree that if a Relevant Penalty applies, such Relevant Penalty shall not be considered an indirect or consequential damage of the type excluded from recovery of damages under this clause.
- 7.4. Each Party shall use best effort to mitigate in a commercially reasonable manner its damage, loss, cost or expense in connection with this Agreement.

8. **FORCE MAJEURE**

- 8.1. "**Force Majeure**" means any event or circumstance beyond the reasonable control of the Party claiming the Force Majeure ("**FM Claiming Party**") which it could not overcome after using all reasonable efforts, and which makes it impossible for the FM Claiming Party to perform its Delivery or acceptance of Delivery obligations in accordance with the terms of this Agreement and the Applicable Law. For the avoidance of doubt, but without limitation, Force Majeure shall not include an event or circumstance where there are insufficient Allowances in the relevant Account to effect the required Delivery, whether that insufficiency is caused by the low or non-allocation of Allowances by the Relevant Authority, or the failure of that Party to procure sufficient Allowances to meet its Delivery obligations.
- 8.2. If the FM Claiming Party is fully or partly prevented, hindered or delayed in its performance of any of its obligations under this Agreement by reason of Force Majeure, then the FM Claiming Party is relieved of such obligations (such obligations not merely being suspended) to the extent that it is prevented by Force Majeure from complying with them, subject to the remaining provisions of this clause, as long as:
- a. the FM Claiming Party advises the other Party in writing as soon as reasonably practicable of:
 - i. the event or circumstance constituting Force Majeure;
 - ii. its estimate of the likely effect of that Force Majeure on its ability to perform its obligations; and
 - iii. its non-binding estimate of the likely period of that Force Majeure; and
 - b. the FM Claiming Party uses all reasonable efforts to terminate or overcome the event or circumstance constituting Force Majeure and resumes full performance of its obligations as soon as reasonably practicable.

- 8.3. If the FM Claiming Party is relieved from its obligations due to Force Majeure, the corresponding obligations of the other Party shall also be relieved (and not merely suspended).
- 8.4. Where Force Majeure continues for a period of time ending on the earlier to occur of:
- a. a period of nine (9) Business Days from the date that, but for Force Majeure, would have been the Delivery Date of the relevant Allowance Delivery(s);
 - b. the Compliance Deadline; or
 - c. the day which falls three (3) Business Days prior to the End of Trading Period Compliance Deadline,

either Party may, by written notice to the other Party, terminate all of the Deliveries affected by Force Majeure.

9. SUSPENSION EVENT

- 9.1. "**Suspension Event**" means the occurrence of any of the following events which makes it impossible for a Party affected by the Suspension Event ("**SE Affected Party**") to perform its Delivery or acceptance of Delivery obligations in accordance with the terms of this Agreement and the Applicable Law:
- a. absence of Registry Operation; or
 - b. the occurrence of an Administrator Event.
- 9.2. If a Party is prevented due to a Suspension Event from performing its obligations of Delivery or acceptance of Delivery, as applicable, ("**SE Affected Delivery**"), no breach or default on the part of the SE Affected Party shall be deemed to have occurred and the obligations of both Parties with respect to the Allowance Delivery affected by the Suspension Event will be suspended for the duration of the Suspension Event and, subject to clause 9.6, will not be required to be performed until the day that is ten (10) Business Days after the Suspension Event is overcome or ceases to subsist ("**Delayed Delivery Date**"), as long as:
- a. the SE Affected Party advises the other Party in writing as soon as reasonably practicable of:
 - i. the event or circumstance constituting Suspension Event;
 - ii. its estimate of the likely effect of that Suspension Event on its ability to perform its obligations; and
 - iii. its non-binding estimate of the likely period of that Suspension Event; and
 - b. the SE Affected Party uses all reasonable efforts to terminate or overcome the event or circumstance constituting Suspension Event and resumes full performance of its obligations as soon as reasonably practicable.
- 9.3. If the SE Affected Party's obligations are suspended due to Suspension Event, the corresponding obligations of the other Party shall also be suspended.
- 9.4. Subject to clause 9.6, upon the Suspension Event being overcome or ceasing to subsist, both Parties will resume full performance of their obligations under this Agreement (including, for the avoidance of doubt, any suspended obligations).

- 9.5. In the event that all or part of the Quantity of a SE Affected Delivery is Delivered to Buyer on or before the Delayed Delivery Date, Buyer shall pay to Seller an additional amount ("**Cost of Carry Amount**") calculated at the Cost of Carry Rate for the Cost of Carry Calculation Period on the product of the number of Allowances so Delivered and the Contract Price for the relevant Allowance Delivery, divided by three hundred and sixty (360). Such Cost of Carry Amount shall be identified in the relevant invoice.
- 9.6. Where a Suspension Event for a SE Affected Delivery continues to exist on the applicable Long Stop Date, the SE Affected Delivery shall be deemed as affected by Force Majeure and either Party may terminate all of the SE Affected Deliveries in accordance with clause 8.4.
- 9.7. If an event or circumstance which would otherwise constitute or give rise to Force Majeure also constitutes a Suspension Event, it will be treated as a Suspension Event and will not constitute a Force Majeure event.

10. CONFIDENTIALITY

- 10.1. Neither Party shall disclose the terms of this Agreement or any other documents relating to this Agreement to which it is a party ("**Confidential Information**") to a third party.
- 10.2. Notwithstanding clause 10.1, a Party is permitted to disclose Confidential Information exclusively in the following cases:
- a. with the other Party's prior written consent;
 - b. to such Party's directors, employees, Affiliates, agents, professional advisers, bank or other financing institution, rating agency or intended assignee;
 - c. to a Relevant Authority;
 - d. to comply with any Applicable Law, or in connection with any court or regulatory proceeding, provided that each Party shall, to the extent practicable and permissible under such Applicable Law, use reasonable efforts to prevent or limit the disclosure and to give the other Party prompt notice of it;
 - e. to price reporting agencies or for the calculation of an index provided that such disclosure shall not include the identity of the other Party; or
 - f. in respect of information which lawfully is in or comes into the public domain.
- 10.3. Where a Party is in breach of this confidentiality obligation and if the other Party determines in good faith that any damages available under this Agreement and Applicable Law are insufficient, it may seek injunctive relief with respect to the Party in breach in any necessary jurisdictions.
- 10.4. This confidentiality obligation shall expire one (1) year after the last Delivery Date.

11. TERM AND TERMINATION EVENT

- 11.1. This Agreement comes into force as of the Effective Date. Unless early terminated in accordance with its terms, this Agreement shall remain in force until all rights and obligations under this Agreement are fully performed or discharged by both Parties ("**Term**").
- 11.2. This Agreement may be terminated at any time upon the occurrence of one or more of the following events (each, a "**Termination Event**"):

- a. bankruptcy, insolvency or liquidation of a Party whether voluntarily or involuntarily or any other event, which, under the jurisdiction of the relevant Party has an analogous effect to such causes;
 - b. failure of a Party to make a payment when due and required, which is not cured within five (5) Business Days after the receipt of a written demand;
 - c. failure of a Party to initiate Delivery of one or more Allowances on the relevant Delivery Date or failure of a Party to accept Delivery of one or more Allowances on the relevant Delivery Date and such failure is not cured within ten (10) Business Days after the receipt of a written demand;
 - d. any other material breach of this Agreement which is not cured within ten (10) Business Days after the receipt of a written demand;
 - e. a Party is unable to Deliver or accept Delivery for reasons of a Force Majeure pursuant to clause 8.4;
 - f. a Party is unable to Deliver or accept Delivery for reasons of a Suspension Event and such inability has lasted for more than thirty (30) consecutive calendar days; or
 - g. a Change in Law which is not resolved in accordance with clause 12.
- 11.3. If a Termination Event with respect to a Party has occurred and is continuing, the other Party may terminate this Agreement without any juridical intervention ("**Early Termination**") by giving the other Party written notice.
- 11.4. The notice of Early Termination shall specify the relevant Termination Event and designate a day as an early termination date ("**Early Termination Date**"). The Early Termination Date may not be earlier than the day the notice is deemed to have been received under this Agreement and not later than twenty (20) Business Days after such date. With effect from the Early Termination Date, there shall be no obligation to Deliver or accept Delivery of any Allowances under this Agreement.
- 11.5. The Party which has terminated this Agreement based on any of the Termination Events described under clauses 11.2(a) to (d) (inclusive) and is not the Defaulting Party ("**Non-Defaulting Party**"), shall be entitled to receive a termination amount from the other Party ("**Defaulting Party**") as follows:
- a. if the Seller is the Defaulting Party, the "**Termination Amount**" shall be an amount equal to the difference (if positive) between:
 - i. the price at which Buyer acting in a commercially reasonable manner is or would be able to purchase or otherwise acquire in the market the quantity of undelivered Allowances; and
 - ii. the Certificate Price multiplied by the quantity of Allowances not Delivered.

This Termination Amount shall be increased by any reasonable transaction costs and expenses which the Buyer incurs as a result of such failure to Deliver the Quantity; or
 - b. if the Buyer is the Defaulting Party, the "**Termination Amount**" shall be an amount equal to the difference (if positive) between:
 - i. the Certificate Price multiplied by the quantity of non-accepted Allowances; and
 - ii. the price at which the Seller is or would be able to sell the quantity of non-

accepted Allowances in the market acting in a commercially reasonable manner.

This Termination Amount shall be increased by any reasonable transaction costs and expenses which the Seller incurs as a result of such failure to accept Delivery of the Quantity. For the avoidance of doubt, the Seller may additionally claim any outstanding amounts owed with respect to Deliveries of Allowances made prior to the Early Termination Date.

- 11.6. With effect as of the Early Termination Date, the Non-Defaulting Party shall calculate the Termination Amount pursuant to clause 11.5. The Termination Amount shall be deemed to be the sole and all-inclusive compensation for the damage and costs incurred by the Non-Defaulting Party as a result of the Early Termination. The Termination Amount will be invoiced to the Defaulting Party and payment shall be due within five (5) Business Days after receipt of the invoice. By paying the Termination Amount the Defaulting Party will be released from its obligations to Deliver or accept Delivery and thereafter no other remedies are enforceable towards the Non-Defaulting Party under this Agreement.
- 11.7. If either Party terminates this Agreement based on any of the Termination Events described under clauses 11.2(e) to (g) (inclusive), no termination payment or other financial settlement obligation shall be applicable (other than, for the avoidance of doubt, payment for any Allowances Delivered which were not prevented due to Force Majeure and/or payment of any damages due for non-performance of any portion of the terminated Allowance Deliveries not excused due to Force Majeure), and each Party shall be permanently released and discharged of any further obligations with respect to the Allowance Deliveries terminated by reason of Force Majeure.

12. CHANGE IN LAW

- 12.1. In case of any Change in Law after the Effective Date that:
- a. renders it impossible or unlawful to give effect to this Agreement; or
 - b. makes it impossible for a Party to perform its Delivery or acceptance of Delivery obligations under this Agreement,

the Parties shall, both acting reasonably and in good faith, seek to agree the amendments which should be made to this Agreement as are necessary to, to the extent possible, permit the Parties to continue to perform their obligations under this Agreement and in accordance with the Applicable Law.

- 12.2. If the Parties fail to agree on the necessary amendments after a period of thirty (30) calendar days, either Party may then terminate this Agreement at no liability to the other Party with exception of any amounts owed with respect to Deliveries made prior to the Change in Law.
- 12.3. Where an event or circumstance that would otherwise constitute Force Majeure also constitutes Change in Law, it is to be treated as Change in Law and not as Force Majeure.

13. ASSIGNMENT AND NOVATION

- 13.1. Subject to clause 13.2, neither Party shall be entitled to assign its rights or novate its rights and obligations under this Agreement to any person without the prior written consent of the other Party. Such consent may not be unreasonably refused, withheld or delayed.
- 13.2. Each Party shall be entitled to assign its rights or novate its rights and obligations without the prior consent of the other Party to an Affiliate of an equivalent or greater

creditworthiness, provided that such Affiliate is incorporated in the same jurisdiction as the assigning and novating Party.

- 13.3. Such an assignment or novation shall only become effective upon notice being received by the other Party. Any purported assignment, charge or transfer in violation of this clause 13 shall be void.

14. NOTIFICATIONS AND CORRESPONDENCE TERMS

- 14.1. All notices or other correspondence under this Agreement shall be in writing, in English and shall be deemed to have been received by a Party:

- a. if delivered by hand or courier, on the Business Day of delivery or on the first Business Day after the date of delivery if delivered on a day other than a Business Day;
- b. if posted, on the fifth (5th) Business Day after the day of posting;
- c. if sent by fax, and a valid transmission report confirming good receipt is generated, on the day of transmission if transmitted before 17.00 hours (recipient's time) on a Business Day or otherwise on the first Business Day after transmission; or
- d. if delivered by email, on the day of receipt if received before 17.00 hours (recipient's time) on a Business Day, or otherwise on the first (1st) Business Day after receipt.

- 14.2. All such notices and other communications shall be addressed as set out for the respective Party on the Cover Sheet, unless a Party has provided another address or number which may be reasonably relied upon by the other Party.

15. TELEPHONE RECORDINGS AND PERSONAL DATA PROTECTION

- 15.1. Each Party is entitled to record telephone conversations held in connection with this Agreement and to use the same as evidence. Each Party waives further notice of such recording and acknowledges that it has obtained all necessary consents of its officers and employees to such recording.

- 15.2. Each Party shall at all times, and in particular as concerns telephone recordings described in clause 15.1, observe their respective obligations in respect to the processing of personal data arising from the UK Data Protection Act 2018, the General Data Protection Regulation (Regulation (EU) 2016/679), and any other applicable UK, EU or national regulations relating to personal data protection ("**Data Protection Laws**") and shall in particular have the necessary technical and organisational measures in place to comply with the applicable requirements set forth in the Data Protection Laws.

16. SEVERABILITY

Subject to clause 12, in the event that any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent declared invalid or unenforceable without affecting the validity or enforceability of the other provisions of this Agreement, and the remainder of this Agreement shall remain binding on the Parties hereto. However, in the event that any such provision shall be declared unenforceable due to its scope, breadth or duration, then it shall be modified to the scope, breadth or duration permitted by Applicable Law or a Competent Authority, and shall continue to be fully enforceable as so modified.

17. ENTIRE AGREEMENT

This Agreement supersedes all prior agreements and understandings, written and oral, between the Parties with respect to its subject matter and constitutes the entire agreement between the Parties.

18. AMENDMENT

Any amendments or additions to this Agreement shall be made in writing and shall have no effect unless signed by the duly authorised representatives of the Parties.

19. THIRD PARTY RIGHTS

This Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

20. TRANSACTION COSTS

The Seller and the Buyer will each bear its own fees and expenses incurred in connection with the negotiations, preparation and execution of this Agreement as well as the performance of the transaction contemplated under this Agreement.

21. GOVERNING LAW AND DISPUTE RESOLUTION

21.1. This Agreement shall be governed by and construed in accordance with the laws of England & Wales.

21.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this agreement or its subject matter or formation.

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