

25 November 2020

**Strictly Private & Confidential**

to THE A2 MILK COMPANY LIMITED  
Level 10, 51 Shortland Street, AUCKLAND,  
NEW ZEALAND, 1010

+61 2 9697 7001

subject **Disclosure Of Substantial Shareholding**

Dear Sirs

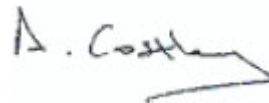
Please find attached a notification of substantial shareholding in THE A2 MILK COMPANY LIMITED (Stock code: ATM.NZ/ A2M.AX) for trade date 18 November 2020. Due to file size limit, it would be released in three batches, please find the second batch as follows. Please contact Andrew Costley at +852 3712 3707 should you have any queries in relation to this matter.

Yours sincerely,

UBS Group AG



Joanne Chan  
Group Compliance, Regulatory &  
Governance



Andrew Costley  
Group Compliance, Regulatory &  
Governance

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Confirmation).

- (j) **Definitions.** Section 14 is hereby amended to include the following definitions in their appropriate alphabetical order:

"**Code**" means the U.S. Internal Revenue Code of 1986, as amended, or any successor statute.

"**ERISA**" means the U.S. Employee Retirement Income Security Act of 1974, as amended, or any successor statute.

"**General Partner**" means [REDACTED] a limited liability company organized under the laws of the State of Delaware.

"**Investment Manager**" means [REDACTED] a limited partnership organized under the laws of the State of Delaware.

"**Net Asset Value**" means the result in U.S. Dollars of subtracting the total value of all liabilities (including but not limited to the aggregate mark-to-market value of all trading positions constituting liabilities) from the total value of all assets (including but not limited to cash, deposit accounts and instruments, securities, and the aggregate mark-to-market value of all trading positions constituting assets). For purposes of this computation, amounts denominated in a currency other than U.S. Dollars shall be converted to U.S. Dollars at the spot rate for such currency prevailing on the date of determination of the Net Asset Value.

- (k) **Tax Event Upon Merger.** Section 5(b)(iii) of this Agreement is hereby amended by deleting the word "Indemnifiable" the second time it appears in the paragraph.

- (l) **FX and Precious Metal Confirmations.** For each FX Transaction, Currency Option Transaction, Bullion Transaction and Bullion Option Transaction entered into hereunder, Party A shall promptly send to Party B a Confirmation, via electronic transmission, web-based communication or facsimile transmission. Party B agrees to respond to such Confirmation by close of business the next Local Business Day after receipt of such Confirmation, either confirming agreement thereto or requesting a correction of any error(s) contained therein. Failure by Party B to respond within such period shall not affect the validity or enforceability of such Transaction and shall be deemed to be an affirmation of the terms contained in such Confirmation, absent manifest error ("Deemed Acceptance"). The parties agree that any such exchange or Deemed Acceptance of an electronic transmission, web-based communication or facsimile transmission shall constitute a Confirmation of such Transaction for all purposes hereunder.

- (m) **FATCA - HIRE Act.**

(a) **FATCA PROTOCOL PROVISION.** Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. "Tax" as used in Part 2(a) of this Schedule (Payer Tax Representation) and "Indemnifiable Tax" as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "FATCA Withholding Tax"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this agreement. If the parties each independently

decide to adhere to any ISDA Protocol on FATCA Withholding Tax, upon effective adherence by both parties, the provisions of such Protocol shall supersede the foregoing provision.

(b) **Section 871(m).** The parties agree that the amendments set out in the Attachment to the ISDA 2015 Section 871(m) Protocol published by ISDA on November 2, 2015, which is available on the ISDA website ([www.isda.org](http://www.isda.org)) (the "Protocol"), will apply to this Agreement. The parties further agree that this Agreement will be deemed to be a Covered Master Agreement and that the Implementation Date will be the effective date of this Agreement as amended by the parties for the purposes of such amendments, regardless of the definitions of such terms in the Protocol.

- (n) **ISDA Dodd Frank Protocols.** The parties agree that, notwithstanding anything to the contrary in the ISDA August 2012 Dodd Frank Protocol (as published by the International Swaps and Derivatives Association, Inc. on August 13, 2012) that may have previously been entered into by the parties (the "August DF Protocol Agreement") and the March 2013 Dodd Frank Protocol Agreement (as published by the International Swaps and Derivatives Association, Inc. on March 22, 2013) that may have previously been entered into by the parties (the "March DF Protocol Agreement") (together, the "Protocol Agreements"), this Agreement shall constitute a "Protocol Covered Agreement" for all purposes under the Protocol Agreements.
- (o) **Counterparts.** This Agreement may be executed in counterparts by facsimile or pdf signature, each of which shall be deemed to be a signed original.
- (p) **Financial Statements.** Section 3(d) is hereby amended by adding in the third line thereof after the word "respect" and before the period:

"or, in the case of financial statements, a fair presentation of the financial condition of the relevant party".

- (q) **Limitation of Liability.** Notwithstanding anything to the contrary contained in this Agreement or any Schedule, addendum, Confirmation, or other document issued or delivered in connection with any Transaction entered into under this Agreement, any amounts owed or liabilities incurred by Party B, in respect of any Transaction entered into under this Agreement, may be satisfied solely from the assets of Party B. Without limiting the generality of the foregoing, in no event shall Party A or any of Party A's Affiliates have recourse, whether by set-off or otherwise, with respect to any such amounts owed or liabilities incurred by Party B to Party A, to or against (a) any assets of any person or entity (including without limitation, any person or entity whose account is under the management of the investment manager of Party B) other than Party B, (b) any assets of any affiliate of Party B, or (c) any assets of any investment manager or general partner of Party B or any affiliate of such general partner or investment manager.
- (r) Section 2 of the Agreement is amended to add at the end a new Section 2(f), reading in its entirety as follows:

"(f) **Condition End Date.**

(i) If an Event of Default occurs, the Defaulting Party may, by notice to the Non-defaulting Party identifying the Event of Default and confirming its occurrence, specify that clause (iii) will apply to that Event of Default.

(ii) If a Potential Event of Default occurs with respect to a party, that party may, by notice to the other party identifying the Potential Event of Default and confirming its occurrence:

(A) waive any requirement that notice be given or that any period of time elapse, by virtue of which waiver the Potential Event of Default will become an Event of Default; and

(B) specify that clause (iii) will apply to that Event of Default.

(iii) If this clause (iii) applies to an Event of Default, then the condition precedent specified in Section 2(a)(iii)(1) with respect to that Event of Default will cease to be a condition precedent to each obligation of the Non-defaulting Party on the relevant Condition End Date. Any obligation that would have been payable or deliverable by the Non-defaulting Party but for Section 2(a)(iii)(1) will become payable or deliverable on the first Local Business Day falling after the Condition End Date, together with:

(A) interest (to the extent permitted under applicable law) at the Non-default Rate on any obligation that would have been payable by the Non-defaulting Party but for Section 2(a)(iii)(1) in the currency of that obligation from (and including) the date such obligation would have been required to have been paid to (but excluding) the actual date of payment by the Non-defaulting Party under this clause (iii), to be calculated on the basis of daily compounding and the actual number of days elapsed; and

(B) compensation (to the extent permitted under applicable law) in respect of any obligation required to be settled by delivery that would have been deliverable by the Non-defaulting Party but for Section 2(a)(iii)(1) if and to the extent expressly provided for in the relevant Confirmation or elsewhere in this Agreement in relation to delivery obligations deferred under Section 2(a)(iii)(1).

(iv) Subject to clause (v) below, if, after a party has given a notice under clause (i) or (ii) above with respect to an Event of Default or Potential Event of Default, another Event of Default or Potential Event of Default occurs with respect to that party, then, with respect to the earlier Event of Default, no Condition End Date will occur and therefore clause (iii) will not apply. This will not affect the right of that party to give a notice under clause (i) in respect of the subsequent Event of Default or under clause (ii) in respect of the subsequent Potential Event of Default. This clause (iv) is without prejudice to the right of the Defaulting Party to give a new notice to the Non-defaulting Party under clause (i) with respect to the earlier Event of Default.

(v) If the Defaulting Party has given a notice under clause (i) above in respect of an Event of Default under Section 5(a)(vii), then clause (iv) will not apply.”

2. Section 14 of the Agreement is amended to add in the appropriate alphabetical position a new definition of “Condition End Date”, reading in its entirety as follows:

“**Condition End Date**” means, with respect to an Event of Default, the day falling 90 days after a notice given by the Defaulting Party under Section 2(f)(i) or Section 2(f)(ii) is effective if the Event of Default is still continuing on that day.”





- (s) Limitation on Designation of Early Termination Date. Notwithstanding anything in Section 9(f) of the Agreement to the contrary, if upon the occurrence of an Event of Default or Termination Event, as applicable, (each, an "Event" for purposes of this provision), such Event has not been declared within 60 calendar days of the date on which the Non-defaulting Party or non-Affected Party (as applicable, "X") receives written notice from the Defaulting Party or Affected Party (as applicable, "Y") of the relevant Event (which notice must expressly reference this provision, the 60 calendar day notice period and the specific Event in order to be effective) X shall have no further right to declare an Event of Default or Termination Event, as applicable, with respect to such Event, and the Event shall be deemed to be no longer continuing. Notwithstanding the foregoing, in respect of any Event constituting either (i) a Cross-Default or (ii) a decline in Party B's Net Asset Value (in each case, howsoever described) under Part 1(h)(i) and Part 1(h)(ii) where there is a material deterioration of the circumstances constituting the original occurrence (as reasonably determined by X) within 90 calendar days of the original notice that such Event has occurred, such subsequent material deterioration shall constitute a separate Event with respect to which X shall have the right to designate an Early Termination Date. Y shall promptly provide X with material information relating to the Event as it may reasonably request during such period.

IN WITNESS WHEREOF the parties have executed this Schedule with effect from the date specified on the first page of this document.

UBS AG

By:   
Name: Jennifer Gabrielson  
Title: Director  
Region Americas Legal

By:   
Name:  
Title:  
Danielle Murray  
Director  
Region Americas Legal

## EXHIBIT A

[date]

UBS AG, Stamford Branch  
Attention: Legal Affairs  
677 Washington Boulevard  
Stamford, CT 06912-0300

Ladies and Gentlemen:

In connection with over-the-counter transactions to be entered into between [REDACTED] (the "Client") and UBS AG ("UBS") under the ISDA Master Agreement dated as of June 13, 2016 (the "Agreement") which may include rate swap transactions, swap options, basis swaps, forward rate transactions, commodity swaps, commodity options, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, credit protection transactions, credit swaps, credit default swaps, credit default options, total return swaps, credit spread transactions, weather index transactions, bullion/precious metal transactions, base metal transaction, or forward purchases or sales of a security, commodity or other financial instrument or interest, or any other similar transaction (including any option with respect to any of these transactions) and any combination of these transactions (collectively, "Derivative Transactions") we hereby acknowledge, represent and warrant continuously to, and covenant and agree with, UBS that:

- (a) We are an investment adviser registered under the Investment Advisers Act of 1940, as amended, and we are in compliance with the requirements of such Act. We are duly organized and validly existing in good standing under the laws of the jurisdiction of our organization.
- (b) Pursuant to a management or advisory agreement with the Client, we have been duly authorized by the Client to take all requisite action on its behalf to enter into Derivative Transactions with UBS at our discretion and to execute confirmations of Derivative Transactions and the Agreement covering Derivative Transactions on its behalf. You may rely on our assurance that, on the basis of such investigation as we have deemed appropriate, we are satisfied that the person or persons who signed our management or advisory agreement were themselves properly authorized by the Client. In lieu of furnishing you with the specific evidence of our authority to enter into Derivative Transactions, we request that you rely upon this letter as conclusive evidence of such authority with respect to any Derivative Transaction, until and unless we or the Client provide you with written notice of the revocation or limitation of such authority.
- (c) We have knowledge and experience in financial and business matters and are capable of evaluating the merits and risks of Derivative Transactions on behalf of the Client, and prior to entering into a Derivative Transaction on behalf of the Client, we shall determine that such Derivative Transaction is suitable for the Client.
- (d) We will notify you promptly in the event that our business relationship with the Client is terminated or our authority to act as agent for the Client with respect to the obligations arising under (i) any Derivative Transaction which we may enter into with UBS on behalf of the Client, or (ii) the Master Agreement is terminated or materially limited.

**THIS LETTER AGREEMENT SHALL BE CONSTRUED UNDER AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANY OTHER STATE.**

We understand and acknowledge that UBS will rely on the foregoing representations, warranties, covenants and agreements when offering to enter into Derivative Transactions with our Client. We agree to notify UBS promptly at the address above, attention Legal Affairs, if at any time we discover or learn of facts at material variance with the foregoing representations and warranties.

Very truly yours,



By: \_\_\_\_\_

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

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

(Multicurrency—Cross Border)

# ISDA®

International Swap Dealers Association, Inc.

## MASTER AGREEMENT

dated as of 11 October 2016

UBS AG

..... and .....  
have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:—

### 1. Interpretation

- (a) **Definitions.** The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

#### (a) General Conditions.

- (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
- (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.
- (iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

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(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If:—

- (1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);
- (2) X does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(e) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

### 3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:—

(a) **Basic Representations.**

- (i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;
- (ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;
- (iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
- (v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated,

organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located (“Stamp Tax Jurisdiction”) and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party’s execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

## 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an “Event of Default”) with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party 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 such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) 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, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If “Cross Default” is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however

described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) 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, such 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 dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) 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; (7) 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 such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event

Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:—

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Tax Event.** Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) **Tax Event Upon Merger.** The party (the “Burdened Party”) on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, such party (“X”), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(v) **Additional Termination Event.** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

## 6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the “Defaulting Party”) has occurred and is then continuing, the other party (the “Non-defaulting Party”) may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, “Automatic Early Termination” is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) **Right to Terminate.** If:—

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then

continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) ***Calculations.***

(i) ***Statement.*** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) ***Payment Date.*** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) ***Payments on Early Termination.*** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) ***Events of Default.*** If the Early Termination Date results from an Event of Default:—

(1) ***First Method and Market Quotation.*** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) ***First Method and Loss.*** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) ***Second Method and Market Quotation.*** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the



Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount (“X”) and the Settlement Amount of the party with the lower Settlement Amount (“Y”) and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss (“X”) and the Loss of the party with the lower Loss (“Y”).

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) **Adjustment for Bankruptcy.** In circumstances where an Early Termination Date occurs because “Automatic Early Termination” applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate.** The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

## 7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that: —

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

## 8. Contractual Currency

(a) **Payment in the Contractual Currency.** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the “Contractual Currency”). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term “rate of exchange” includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

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

(d) **Evidence of Loss.** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

## 9. Miscellaneous

- (a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.
- (b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.
- (c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.
- (d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.
- (e) **Counterparts and Confirmations.**
- (i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
  - (ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.
- (f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.
- (g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

## 10. Offices; Multibranch Parties

- (a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.
- (b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.
- (c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

## 11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document

to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 12. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

## 13. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement (“Proceedings”), each party irrevocably:—

- (i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and
- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or reenactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Service of Process.** Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any

reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

#### **14. Definitions**

As used in this Agreement:—

**“Additional Termination Event”** has the meaning specified in Section 5(b).

**“Affected Party”** has the meaning specified in Section 5(b).

**“Affected Transactions”** means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

**“Affiliate”** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

**“Applicable Rate”** means:—

- (a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;
- (b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;
- (c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and
- (d) in all other cases, the Termination Rate.

**“Burdened Party”** has the meaning specified in Section 5(b).

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

**“consent”** includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

**“Credit Event Upon Merger”** has the meaning specified in Section 5(b).

**“Credit Support Document”** means any agreement or instrument that is specified as such in this Agreement.

**“Credit Support Provider”** has the meaning specified in the Schedule.

**“Default Rate”** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**“Defaulting Party”** has the meaning specified in Section 6(a).

**“Early Termination Date”** means the date determined in accordance with Section 6(a) or 6(b)(iv).

**“Event of Default”** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**“Illegality”** has the meaning specified in Section 5(b).

**“Indemnifiable Tax”** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

**“law”** includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and **“lawful”** and **“unlawful”** will be construed accordingly.

**“Local Business Day”** means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

**“Loss”** means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that 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 this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

**“Market Quotation”** means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the “Replacement Transaction”) that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have

been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

**“Non-default Rate”** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

**“Non-defaulting Party”** has the meaning specified in Section 6(a).

**“Office”** means a branch or office of a party, which may be such party's head or home office.

**“Potential Event of Default”** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**“Reference Market-makers”** means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

**“Relevant Jurisdiction”** means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

**“Scheduled Payment Date”** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**“Set-off”** means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

**“Settlement Amount”** means, with respect to a party and any Early Termination Date, the sum of:—

(a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

**“Specified Entity”** has the meaning specified in the Schedule.

**“Specified Indebtedness”** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

**“Specified Transaction”** means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**“Stamp Tax”** means any stamp, registration, documentation or similar tax.

**“Tax”** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

**“Tax Event”** has the meaning specified in Section 5(b).

**“Tax Event Upon Merger”** has the meaning specified in Section 5(b).

**“Terminated Transactions”** means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if “Automatic Early Termination” applies, immediately before that Early Termination Date).

**“Termination Currency”** has the meaning specified in the Schedule.

**“Termination Currency Equivalent”** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the “Other Currency”), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

**“Termination Event”** means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

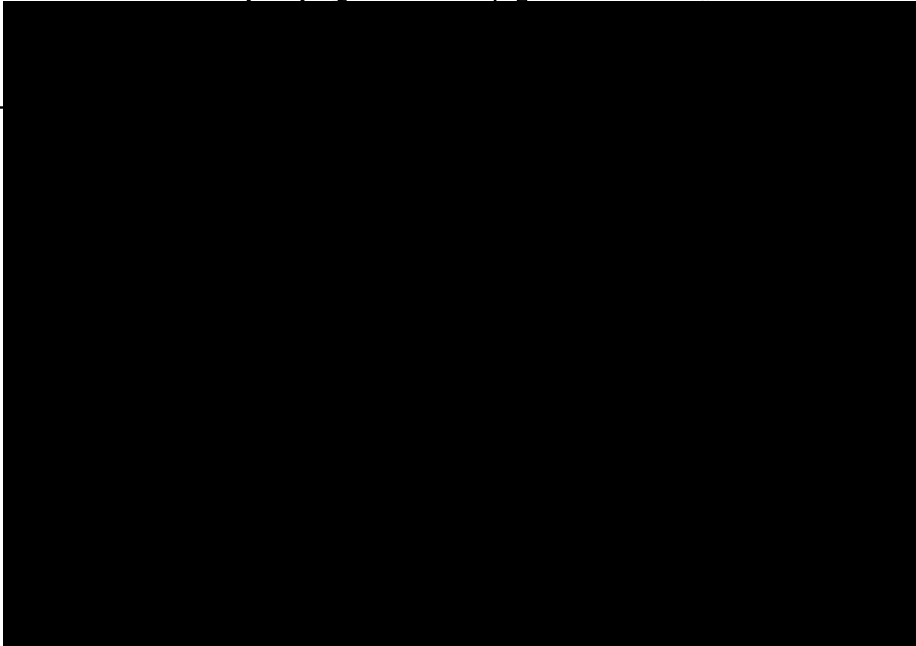
**“Termination Rate”** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

**“Unpaid Amounts”** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market



value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the ~~date specified~~ on the first page of this document.



SCHEDULE  
to the Master Agreement  
dated as of

11 October 2016

between

UBS AG,  
a banking corporation organized  
under the law of Switzerland  
("Party A"),

and



("Party B")

Part 1  
Termination Provisions

In this Agreement:

- (a) "*Specified Entity*" means in relation to Party A for the purpose of:

Section 5(a)(v),	UBS SECURITIES LLC
Section 5(a)(vi),	NONE
Section 5(a)(vii),	NONE
Section 5(b)(iv),	NONE

and in relation to Party B for the purpose of:

Section 5(a)(v),	None
Section 5(a)(vi),	None
Section 5(a)(vii),	None
Section 5(b)(iv),	None

- (b) "*Specified Transaction*" will have the meaning specified in Section 14 of this Agreement and shall also include any swap options, credit protection transactions, credit swaps, credit default swaps, credit default options, total return swaps, credit spread transactions, buy/sellback transactions repurchase agreements, reverse repurchase agreements, securities lending agreements, prime brokerage agreements, forward contracts, precious metals transactions, letters of credit reimbursement obligations and indebtedness for borrowed money (whether or not evidenced by a note or similar instrument) now existing or hereafter entered into between a party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party).
- (c) The "*Default under Specified Transaction*" provisions of Section 5 (a)(v) of this Agreement is modified below, will apply to Party A and to Party B, Section 5(a)(v) of this Agreement is hereby amended by the addition of the following at the end thereof:

"provided, however, that notwithstanding the foregoing, an Event of Default shall not occur under either (1) or (2) above if, as demonstrated to the reasonable satisfaction of the other party, (a) the default and liquidation, acceleration or early termination referred to in (1) or the failure to pay or deliver referred to in (2) is a failure to pay caused by an error or omission of an administrative or operational nature; and (b) funds were available to such

party to enable it to make the relevant payment when due; and (c) such relevant payment is made within three Business Days following receipt of written notice from an interested party of such failure to pay.”

The “**Cross Default**” provisions of Section 5(a)(vi) of this Agreement, as modified below, will apply to Party A and to Party B. Section 5(a)(vi) of this Agreement is hereby amended by

(i) Section 5(a)(vi) of this Agreement is hereby amended by the addition of the following at the end thereof:

“provided, however, that notwithstanding the foregoing, an Event of Default shall not occur under (2) above if, as demonstrated to the reasonable satisfaction of the other party, (a) the failure to pay referred to in (2) is a failure to pay caused by an error or omission of an administrative or operational nature; and (b) funds were available to such party to enable it to make the relevant payment when due; and (c) such relevant payment is made within three Local Business Days following receipt of written notice from an interested party of such failure to pay.”

Additionally, Section 5(a)(vi) of this Agreement is hereby amended by deleting in the seventh line thereof the words, “or becoming capable at such time of being declared.”

If such provisions apply:

**“Specified Indebtedness”** means any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) (i) for the payment or repayment of borrowed money, (ii) in respect of any transaction of a type specified in clause (a) or (b) of the definition of “Specified Transaction” which is entered into between one party to the Agreement and an entity other than the other party to this Agreement, or any Credit Support Provider or Specified Entity of such other party (each, a “Financial Market Transaction”), (iii) with respect to any securities lending transaction or agreement or (iv) with respect to any prime brokerage transaction or agreement; *provided* that (A) the amount of Specified Indebtedness owing to any entity for purposes of Section 5(a)(vi) shall be the net aggregate amount, after application of the proceeds of any collateral available therefor, payable upon any liquidation or close-out of, acceleration of obligations under, or early termination of, the transaction(s) relating to such Specified Indebtedness and (B) when used in Section 5(a)(vi), the words “default, event of default or other similar condition or event (however described)” shall be deemed not to include any “Illegality”, “Tax Event”, “Tax Event Upon Merger” or “Credit Event Upon Merger” (each a “**Non-Fault Based Termination Event**”) under and as defined in any ISDA Master Agreement relating to Specified Indebtedness arising in respect of any Financial Market Transaction or (in the case of any Specified Indebtedness arising out of any obligation set forth in clause (iii) or (iv) above) any condition or event that is substantially equivalent to any such Non-Fault Based Termination Event. For the avoidance of doubt, the parties agree that a Non-Fault Based Termination Event shall not include any Additional Termination Event under and as defined in any ISDA Master Agreement or any condition or event that is substantially equivalent to such Additional Termination Event.

**“Threshold Amount”** means

(i) with respect to Party A, an amount equal to 3% of shareholders’ equity (howsoever described) of Party A as shown on the most recent annual audited financial statements of Party A, and

(ii) with respect to Party B, the lesser of U.S. \$25 million (or the equivalent in any other currency or currencies) or an amount equal to 3% of the Net Asset Value of Party B, as shown on the most recent annual audited financial statements of Party B.

(d) **The “Credit Event Upon Merger”** provisions of Section 5(b)(iv) will not apply to Party A and Party B.

(e) **The “Automatic Early Termination”** provision of Section 6(a) will not apply to Party A or Party B; *provided* that if the Event of Default specified in Section 5(a)(vii)(1), (3), (4), (5), (6) or, to the extent analogous thereto, (8) is governed by a system of law that does not permit termination to take place after the occurrence of the relevant Event of Default with respect to a party, then the Automatic Early Termination provision of Section 6(a) will apply to such party.

(f) **“Payments on Early Termination”**.

(1) The terms of Section 6(d)(i) of the Agreement are amended in their entirety as follows:

“(d) **Calculations: Payment Date**

(i) Statement. On or as soon as reasonably practicable following the occurrence of an Early Termination

Date, each party will make the calculations on its part if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations), (2) specifying (except where there are two Affected Parties) any Early Termination Amount payable and (3) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation or market data obtained in determining a Close-out Amount, the records of the party obtaining such quotation or market data will be conclusive evidence of the existence and accuracy of such quotation or market data.”

(2) The terms of Section 6(e) of the Agreement are amended in their entirety as follows:

“(e) **Payments on Early Termination.** If an Early Termination Date occurs, the amount, if any, payable in respect of that Early Termination Date (the **Early Termination Amount**) will be determined pursuant to this Section 6(e) and will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default, the Early Termination Amount will be an amount equal to (1) the sum of (A) the Termination Currency Equivalent of the Close-out Amount or Close-out Amounts (whether positive or negative) determined by the Non-defaulting Party for each Terminated Transaction or group of Terminated Transactions, as the case may be, and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (2) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If the Early Termination Amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of the Early Termination Amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event;

(1) **One Affected Party.** Subject to clause (3) below, if there is one Affected Party, the Early Termination Amount will be determined in accordance with Section 6 (e)(i) , except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.

(2) **Two Affected Parties.** Subject to clause (3) below, if there are two Affected Parties, each party will determine an amount equal to the Termination Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be and the Early Termination Amount will be an amount equal to (A) the sum of (1) one-half of the difference between the higher amount so determined (by party “X”) and the lower amount so determined (by party “Y”) and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.

(iii) **Adjustment for Bankruptcy.** In circumstances where an Early Termination Date occurs because **Automatic Early Termination** applies in respect of a party, the Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate.** The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions.”

(3) The term **Termination Currency Equivalent** in Section 14 of the Agreement is hereby amended by replacing **Market Quotation or Loss** (as the case may be) with **Close-out Amount**.

(4) The following terms are added to Section 14 of the Agreement in the appropriate alphabetical position:

“*Close-out Amount*” means with respect to each Terminated Transaction or each group of Terminated Transactions and a Determining Party, the amount of the losses or costs of the Determining Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Determining Party that are or would be realized under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Determining Party the economic equivalent of, (a) the material terms of that Terminated Transaction or group of Terminated Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of that Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in Section 2(a)(iii) and (b) the option rights of the parties in respect of that Terminated Transaction or group of Terminated Transactions.

Any Close-out Amount will be determined by the Determining Party (or its agent), which will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. The Determining Party may determine a Close-out Amount for any group of Terminated Transactions or any individual Terminated Transaction but, in the aggregate, for not less than all Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

Unpaid Amounts in respect of a Terminated Transaction or group of Terminated Transactions and legal fees and out-of-pocket expenses referred to in Section 11 are to be excluded in all determinations of Close-out Amounts.

In determining a Close-out Amount, the Determining Party may consider any relevant information, including, without limitation, one or more of the following types of information:

- (i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation between the Determining Party and the third party providing the quotation;
- (ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or
- (iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party’s Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

The Determining Party will consider, taking into account the standards and procedures described in this definition, quotations pursuant to clause (i) above or relevant market data pursuant to clause (ii) above unless the Determining Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in clause (i), (ii) or (iii) above, the Determining Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilized. Third parties supplying quotations pursuant to clause (i) above or market data pursuant to clause (ii) above may include, without limitation, dealers to the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Without duplication of amounts calculated based on information described in clause (i), (ii) or (iii) above, or other relevant information, and when it is commercially reasonable to do so, the Determining Party may in addition consider in calculating a Close-out Amount any loss or cost incurred in connection with its terminating, liquidating, or re-establishing any hedge related to a Terminated Transaction or group of Terminated Transactions (or any gain resulting from any of them).

Commercially reasonable procedures used in determining a Close-out Amount may include the following:

- (1) application to relevant market data from third parties pursuant to clause (ii) above or information from internal sources pursuant to clause (iii) above of pricing or other valuation models that are, at the time of the determination of the Close-out Amount, used by the Determining Party in the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the Terminated Transaction or group of Terminated Transactions; and

- (2) application of different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.

“**Determining Party**” means the party determining a Close-out Amount.”

“**Early Termination Amount**” has the meaning specified in Section 6(e)”

“**Non-affected Party**” means, so long as there is only one Affected Party, the other party.”

- (5) The following terms in Section 14 of the Agreement are deleted in their entirety: **Loss**, **Market Quotation**, **Reference Market-Makers** and **Settlement-Amount**.

If any of these terms are used in any Annex or Schedule to the Agreement or a Confirmation, the 1994 ISDA Equity Option Definitions, the 1996 ISDA Equity Derivatives Definitions, the 2002 ISDA Equity Derivatives Definitions, the 1997 ISDA Government Bond Option Definitions, the 1998 FX and Currency Option Definitions, the 1999 ISDA Credit Derivatives Definitions or any other ISDA document incorporated by reference or executed by the parties hereto, the terms will have the respective meanings ascribed to them in the standard form 1992 ISDA Master Agreement (Multicurrency-Cross Border).

- (g) “**Termination Currency**” means one of the currencies in which payments are required to be made pursuant to a Confirmation in respect of a Terminated Transaction selected by the Non-defaulting Party or the non-Affected Party, as the case may be, or, in the circumstances where there are two Affected Parties, as agreed between the parties or, failing such agreement, if the currency so selected is not freely available and transferable, the Termination Currency shall be U.S. Dollars.

- (h) “**Additional Termination Event**” will apply. If any of the following events occurs with respect to Party B, such shall constitute an Additional Termination Event (in which case the Affected Party shall be Party B):

- (i) **Decline in Net Asset Value.** (i) a 20% or greater decline in Party B's Performance Decline compared to Party B's Performance Decline as of the last business day of the immediately preceding month or (ii) a 25% or greater decline in Party B's Performance Decline compared to Party B's Performance Decline as of the last business day of any of the three preceding months or (iii) a 35% or greater decline in Party B's Performance Decline compared to Party B's Performance Decline as of the last business day of any of the twelve preceding months. Each of the parties hereto agrees that an Additional Termination Event under this paragraph shall be deemed not to be continuing for all purposes of the Agreement if it would not have occurred based on a comparison to any later reported Net Asset Value.

For purposes of this Agreement, “**Performance Decline**” means a decline in Party B's Net Asset Value calculated without regard to all subscriptions, contributions, dividends, distributions, redemptions, and withdrawals occurring within the relevant time frame.

- (ii) **Leverage.** If at any time Party B's Leverage exceeds 340% of Party B's Net Asset Value. Each of the parties hereto agrees that an Additional Termination Event under this paragraph shall not occur if (i) Party B notifies Party A within one Business Day of exceeding such limit, and (ii) Party B decreases its Leverage to an amount equal to or below 340% of Party B's Net Asset Value within five (5) Business Days of such breach.

For the purposes of this agreement, “**Leverage**” means at any time on any date of determination, an amount (expressed as a percentage) equal to Gross Exposure divided by the Net Asset Value of Party B.

“**Gross Exposure**” shall mean the sum, expressed on a U.S. dollar basis, of (i) the total value of all of Party B's assets (including, without limitation, cash, deposit accounts and instruments, securities and the aggregate mark-to-market value of all trading positions constituting assets), (ii) the aggregate gross delta equivalent of options per reference entity, (iii) the aggregate gross notional exposure of equity index and single stock derivatives per reference entity (which shall be for each reference entity, the aggregate notional long exposure of equity index and single stock derivatives plus the aggregate notional short exposure of equity index and single stock derivatives per reference entity), (iv) the

aggregate gross notional of credit default swaps entered into by Party B where Party B is a seller of credit protection, (v) the aggregate net present value of all fixed amounts payable under credit default swaps entered into by Party B where Party B is a buyer of credit protection and (vi) the aggregate gross notional exposure of total return swaps.

- (iii) **Change of Investment Manager.** The Investment Manager ceases to be the investment manager to Party B and shall not have been replaced by (x) an Affiliate of the Investment Manager or (y) another person or entity approved by Party A.
  
- (iv) **Failure to Deliver Net Asset Value Report.** Party B shall fail to deliver a written report of its Net Asset Value and performance on or before the second Local Business Day following the day on which Party A provides Party B with notice of its failure to deliver such written report on the required delivery date specified in Part 3 of this Schedule.
  
- (v) **Change in Regulatory Status.** The Investment Manager ceases to be regulated by a recognized regulatory body in a FATF (Financial Action Task Force) country.

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**Part 2**  
**Tax Representations**

(a) ***Payer Tax Representation.*** For the purpose of Section 3(e), ***Party A and Party B*** hereby make the following representation: It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e)) to be made by it to the other party under this Agreement and any payments that are treated as dividend equivalent payments. In making this representation, it may rely on: (A) the accuracy of any representation made by the other party pursuant to Section 3(f); (B) the satisfaction of the agreement of the other party contained in Section 4(a)(i) or 4(a)(iii) and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii); and (C) the satisfaction of the agreement of the other party contained in Section 4(d); provided that it shall not be a breach of this representation where reliance is placed on clause (B) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

(b) ***Payee Tax Representations.*** For the purpose of Section 3(f) of this Agreement, ***Party A*** makes the following representations to Party B:

(i) In respect of each Transaction that Party A enters into under this Agreement through an Office that is located in the U.S., or for every Transaction in which personnel of Party A located in the U.S. materially participated, Party A makes the following representation to Party B:

For US federal income tax purposes, Party A is acting as nominee on behalf of UBS Securities LLC, a person that is a "US person" as that term is defined under Section 7701(a)(30) of the US Internal Revenue Code ("Code") and an "exempt recipient" as that term is defined in section 1.6049-4(c)(1)(ii) of the U.S. Treasury Regulations ("Regulations").

(ii) In respect of each Transaction that Party A enters into under this Agreement through an Office that is not located in the U.S., and in which no personnel of Party A located in the U.S. materially participated, Party A makes the following representations to Party B:

(A) No payment received or to be received by Party A under this Agreement will be effectively connected with Party A's conduct of a trade or business within the U.S. It is fully eligible for the benefits of the "Business Profits" or "Industrial and Commercial Profits" provision, as the case may be, the "Interest" provision or the "Other Income" provision (if any) of the Specified Treaty with respect to any payment described in such provisions and received or to be received by it in connection with this Agreement and no such payment is attributable to a trade or business carried on by it through a permanent establishment in the Specified Jurisdiction.

If such representation applies, then:

"Specified Treaty" means, with respect to a Transaction, the tax treaty applicable between Switzerland and the United States of America.

"Specified Jurisdiction" means the United States of America.

(B) Party A is a 'non-U.S. branch of a foreign person' as that term is used in section 1.1441-4(a)(3)(ii) of the Regulations, and Party A is a 'foreign person' as that term is used in section 1.6041-4(a)(4) of the Regulations.

(c) ***Payee Tax Representations.*** For the purpose of Section 3(f) of this Agreement, ***Party B*** makes the following representation to Party A:

(i) Party B is a U.S. person as that term is defined in Section 7701(a)(30).

(ii) It is fully eligible for the benefits of the "Business Profits" or "Industrial and Commercial Profits" provision, as the case may be, the "Interest" provision or the "Other Income" provision (if any) of the Specified Treaty with respect to any payment described in such provisions and received or to be received by it in connection with



this Agreement and no such payment is attributable to a trade or business carried on by it through a permanent establishment in the Specified Jurisdiction.

If such representation applies, then:

“Specified Treaty” means, with respect to a Transaction, the tax treaty applicable between the United States of America and Switzerland.

“Specified Jurisdiction” means Switzerland.

**Part 3**  
**Agreement to Deliver Documents**

For the purpose of Sections 4(a) (i) and (ii) of this Agreement, each party agrees to deliver the following documents, as applicable:

(a) Tax forms, documents or certificates to be delivered are:

Each party agrees to complete, accurately and in a manner reasonably satisfactory to the other party (or any Specified Entity of the other party), and to execute, arrange for any required certification of, and deliver to the other party (or such Specified Entity) (or to such government or taxing authority as the other party (or such Specified Entity) reasonably directs), any form or document that may be required or reasonably requested in order to allow the other party (or such Specified Entity) to make a payment under this Agreement (or a Credit Support Document of the other party or a Specified Entity thereof) without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate, promptly upon the earlier of (i) reasonable demand by the other party (or such Specified Entity) and (ii) learning that the form or document is required.

<b><u>Party required to deliver document</u></b>	<b><u>Form/Document/Certificate</u></b>	<b><u>Date by which to be delivered</u></b>
Party A	With respect to each Transaction that is entered into under this Agreement whereby Party A is acting as nominee on behalf of UBS Securities LLC, a person that is a "US person" as that term is defined under Section 7701(a)(30) of the Code, a duly completed and executed U.S. Internal Revenue Service Form W-8IMY (or successor thereto) for UBS AG, together with the required schedule and a duly executed and completed U.S. Internal Revenue Service Form W-9 for UBS Securities LLC.	(i) Upon execution and delivery of this Agreement, with such form to be updated at the beginning of each succeeding three calendar year period beginning after execution of this Agreement, or as otherwise required under then applicable Regulations; (ii) promptly upon reasonable demand by Party B; (iii) promptly upon learning that any Form W-8IMY (or any successor thereto) or W-9 has become inaccurate or incorrect; and (iv) prior to the expiration or obsolescence of any previously delivered form.
Party A	With respect to each Transaction that is entered into under this Agreement through an Office of Party A that is not located in the U.S., one duly executed and completed U.S. Internal Revenue Service Form W-8BEN-E (or any successor of such form).	(i) Upon execution and delivery of this Agreement, with such Form to be updated at the beginning of each succeeding three calendar year period beginning after execution of this Agreement, or as otherwise required under then applicable Regulations; (ii) promptly upon reasonable demand by Party B; (iii) promptly upon learning that any Form W-8BEN-E (or any successor thereto) has become inaccurate or incorrect; and (iv) prior to the expiration or obsolescence of any previously delivered form .
Party B	A duly completed and executed U.S. Internal Revenue Service Form W-9 (or any successor of such form).	(i) Upon execution and delivery of this Agreement, (ii) promptly upon reasonable demand by Party A, (iii) promptly upon learning that any such Form previously provided by Party B has become inaccurate or incorrect, and (iv) prior to the expiration or obsolescence of any previously delivered form.

(a) Other documents to be delivered are:

<b>Party required to deliver document</b>	<b>Form/Document/Certificate</b>	<b>Date by which to be delivered</b>	<b>Covered by Section 3(d) Representation</b>
Party A and Party B	Evidence of the authority and true signatures of each official or representative signing this Agreement or, as the case may be, a Confirmation, on its behalf.	On or before execution of this Agreement and each Confirmation forming a part of this Agreement.	YES
Party B	Party B's internal estimate of the aggregate mark-to-market value of its portfolio	Within 48 hours after such request from Party A.	NO
Party B	Written reports of its Net Asset Value and performance	Monthly (within 15 Local Business Days after the end of the applicable calendar month); <i>provided</i> that for purposes of this Part 3(b) only, "Local Business Day" shall mean any day on which banks and foreign exchange markets in New York and London are open for the transaction of business of the nature contemplated hereby.	YES, provided that for purposes of these reports, Section 3(d) shall be amended by deleting the words, "true, accurate and complete" and replacing them with the words "true and accurate".
Party B	Annual audited financial statements	Within 180 days of the last Business Day of Party B's fiscal year end beginning with the fiscal year ending June 30, 2017	YES, provided that for these purposes Section 3(d) of this Agreement is amended by adding in the third line thereof after the word "respect" the words "or, in the case of audited financial statements, a true and fair representation of the financial condition of the relevant person."
Party B	Copy of the board resolution (or equivalent authorizing documentation) authorizing the execution and delivery of this Agreement, Transactions (and confirmations thereof) and performance of its obligations thereunder	On or before execution of this Agreement	YES

Party B	Copy of the constitutive documents of the company	On or before execution of this Agreement	YES
Party B	Copy of the Investment Management Agreement (or equivalent documentation)	On or before execution of this Agreement	YES

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**Part 4**  
**Miscellaneous**

(a) **Addresses for Notices.** For the purposes of Section 12(a) of this Agreement:

- (i) All notices or communications to Party A shall, with respect to a particular Transaction, be sent to the address or facsimile number reflected in the Confirmation of that Transaction, and any notice for purposes of Sections 5 or 6 shall be sent to:

Address: 5 Broadgate, London EC2M 2QS  
Attention: Documentation Unit / Legal Department  
Facsimile no: +44 20 7567 4406 / +44 20 7568 9257  
Telephone no: +44 20 7567 8000

- (ii) In connection with Section 12(a), all notices or communications to Party B (other than as noted in subsection (b) below) in respect of this Agreement, other than Confirmations with respect to each Transaction, shall be sent to the following:

Address:

- (a) With respect to Party B: As set forth in Part 4(a) of the Schedule to the Agreement.

[Redacted address information]

With a copy to:

[Redacted recipient information]

- (b) Notices with respect to Party B for purposes of Sections 5 or 6 shall be sent to:

[Redacted address information]

(b) **Process Agent.** For the purpose of Section 13 (c) of this Agreement:

Party A appoints as its Process Agent: Not Applicable

Party B appoints as its Process Agent:

[Redacted Party B Process Agent information]

- (c) **Offices.** The provisions of Section 10(a) of this Agreement will apply to Party A and Party B.
- (d) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement:
- (i) Party A is a Multibranch Party and may act through its branches in any of the following territories or countries: England and Wales, Hong Kong, United States of America, Singapore, Australia and Switzerland.
  - (ii) Party B is not a [REDACTED]
- (e) **Calculation Agent.** The Calculation Agent is Party A, unless otherwise specified in a Confirmation in relation to the relevant Transaction provided that (i) the failure by a party in its capacity as Calculation Agent to comply with or perform any agreement or obligation of the Calculation Agent under this Agreement (including any obligation under any definitions published by ISDA incorporated into any Confirmation or otherwise into this Agreement) will not constitute an Event of Default with respect to such party and (ii) if an Event of Default with respect to Party A shall have occurred and be continuing or if Party A in its capacity as Calculation Agent shall fail to comply with or perform any agreement or obligation of the Calculation Agent under this Agreement, then Party B (or a Reference Market-maker selected by Party B in good faith) shall be the Calculation Agent so long as no Event of Default with respect to Party B shall have occurred and be continuing. Whenever the Calculation Agent is required to act or to exercise judgment in any way under or in connection with this Agreement, it will do so in good faith and in a commercially reasonable manner.

Notwithstanding the foregoing, and subject to the last paragraph of this Part 4(e), if Party B in good faith has a commercially reasonable basis for disagreement with any calculation or determination made by Party A in its role as Calculation Agent, Party B may express such disagreement within one Local Business Day of receipt of any calculation or determination from Party A. With respect to a disagreement, Party B shall specify in reasonable detail: (i) Party B's basis for dispute, together with supporting calculations or evidence, (ii) the amount of Party B's calculation or the result of Party B's determination, (iii) in the case of a calculation the amount by which Party B's calculation differs from Party A's calculation, and in the case of a determination, if ascertainable, the amount of the difference between applying the Party A's determination and applying Party B's determination (the "Disputed Amount") and (iv) if applicable, the amount that is not subject to dispute (the "Undisputed Amount").

The Undisputed Amount shall be paid or delivered, as the case may, as scheduled for the relevant Transaction.

Party A and Party B shall negotiate in good faith to resolve the Disputed Amount as promptly as practicable. If Party A and Party B are unable to reach agreement as to the Disputed Amount within one Local Business Day of the date on which Party B notifies Party A of the dispute, then Party A will recalculate the amount by requesting three independent third parties which are leading dealers for the relevant transaction to provide their respective calculations of the Disputed Amount and taking the arithmetic average of those obtained. With respect to any determination made by the Calculation Agent that is not susceptible to resolution by arithmetic averaging, Party A will request one independent third party which is a leading dealer for the relevant Transaction (the "Independent Calculation Agent") to determine whether the Calculation Agent's determination under dispute is commercially reasonable. If such leading dealer determines that the disputed determination is commercially reasonable, then the Calculation Agent's original determination shall apply. If such leading dealer determines that the disputed determination is not commercially reasonable, such dealer (the "Substitution Calculation Agent") shall provide its own determination.

It being understood, if no leading dealer provides the requested calculation or opines on the determination (or, if applicable, the Independent Calculation Agent does not so provide or opine) by 1:00 p.m. London time on the Local Business Day that is two Local Business Days after the date on which Party B notifies Party A of the dispute (the "Dispute Resolution Date"), then the Calculation Agent's original calculations or determinations will be used. Any calculation or determination made pursuant to this section by leading dealer(s) will be binding in the absence of manifest error except as provided in the next paragraph of this Part 4(e).

Party A will notify Party B of its recalculation of the Disputed Amount, and any resulting adjustments (such as Disputed Amount, as adjusted pursuant hereto, the "Adjusted Amount"). If such notice is given prior to 1:00 p.m. London time on Dispute Resolution Date, the applicable party shall transfer the Adjusted Amount, if any, by 6:00 p.m. London time on such Dispute Resolution Date. If such notice is given after 1:00 p.m. London time on the Dispute Resolution Date, the applicable party shall transfer the Adjusted Amount, if any, by 1:00 p.m. London time on the Local Business Day next succeeding the date on which such notice is given.

The costs (if any) relating to a Substitute Calculation Agent, Independent Calculation Agent or to such polling of leading dealer(s) shall be borne equally by Party A and Party B.

Notwithstanding the previous paragraphs, where the terms of any Transaction hereunder provides or contemplates that the Calculation Agent will solicit quotations from one or more dealers for purposes of making a calculation, selection of those dealers shall not be subject to this Part 4(e).

- (f) **Credit Support Document.** Details of any Credit Support Document for Party A and Party B: not applicable.
- (g) **Credit Support Provider.** NOT APPLICABLE
- (h) **Governing Law.** This Agreement, any non-contractual obligations arising out of or in relation to this Agreement and each Transaction entered into hereunder will be governed by, and construed and enforced in accordance with, the law of England and Wales.
- (i) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will apply, except the following groups of Transactions which shall be treated separately: (1) FX Transactions (including FX Transactions resulting from the exercise of Currency Option Transactions), (2) premium payable under Currency Option Transactions (each of (1) and (2) as defined in the 1998 FX and Currency Option Definitions) and (3) Commodity Transactions (as defined in the 2005 ISDA Commodity Definitions), in which case subparagraph (ii) of Section 2(c) of this Agreement will not apply.
- (j) "**Affiliate**" will have the meaning specified in Section 14 of this Agreement and in relation to Party B, shall mean none.

**Part 5**  
**Other Provisions**

(a) **Set-off.**

Without affecting the provisions of the Agreement requiring the calculation of certain net payment amounts, all payments under this Agreement will be made without set-off or counterclaim; provided, however, that upon the designation of any Early Termination Date in circumstances where there is a Defaulting Party or an Affected Party, in addition to and not in limitation of any other right or remedy (including any right to set off, counterclaim, or otherwise withhold payment or any recourse to any Credit Support Document) under applicable law, contract or otherwise the Non-defaulting Party or Non-affected Party (in either case, "X") may without prior notice to any person set off any sum or obligation (whether or not arising under this Agreement and whether matured or unmatured, whether or not contingent and irrespective of the currency, place of payment or booking office of the sum or obligation) owed by the Defaulting Party or Affected Party (in either case, "Y") to X or any Affiliate of X against any sum or obligation (whether or not arising under this Agreement, whether matured or unmatured, whether or not contingent and irrespective of the currency, place of payment or booking office of the sum or obligation) owed by X or any Affiliate of X to Y and, for this purpose, may convert one currency into another at a market rate determined by X in good faith and in a commercially reasonable manner. If any sum or obligation is unascertained, X may in good faith estimate that sum or obligation and set-off in respect of that estimate, subject to X or Y, as the case may be, accounting to the other party when such sum or obligation is ascertained. X will give notice to the other party of any set-off effected under this Part 5(a). Nothing in this Part 5(a) shall be effective to create a charge or other security interest.

(b) **Representations, Warranties and Covenants.** Each applicable party represents and warrants to and for the benefit of each other applicable party as of the date hereof, and shall be deemed to represent and warrant to and for the benefit of that party as of the date of each Transaction, as follows:

(i) **Party A and Party B Representations.**

(A) ***No Agency.*** It is entering into this Agreement and each Transaction as principal (and not as agent or in any other capacity, fiduciary or otherwise).

(B) ***Eligible Contract Participant.*** It is an "eligible contract participant" as that term is defined in Section 1a(18) of the Commodity Exchange Act, as amended."

(C) ***Non-Public Information.*** Each party represents and warrants that, in effecting a Transaction referenced to a security, it will not be aware of any material non-public information or non-public price sensitive information with respect to any security related to a Transaction that, under applicable securities laws, it would have to disclose in advance to a party effecting a purchase or sale with the Offeree of such security.

(D) ***Securities Act Representations.*** If any Transaction and/or the instrument underlying a Transaction is not otherwise excluded from the coverage, or otherwise exempt from the registration requirements, of the United States Securities Act of 1933, as amended (the "Securities Act"), then each party makes the following representations, warranties and covenants with respect to such Transaction, and such representations, warranties and covenants shall remain in full force and effect whenever the offeree or buyer of the Transaction and/or the offeree or buyer of the instrument underlying the Transaction (the "Offeree") shall enter into a Transaction, or make any payment or delivery relating to a Transaction:

(I) Each party is entering into the Transaction for its own account as principal, and not with a view to, or for, resale, distribution or fractionalization thereof, in whole or in part;

(II) Each party acknowledges its understanding that the offer and sale of any Transaction with the other party is intended to be excluded from the coverage of, or otherwise exempt from registration under, the Securities Act, by virtue of Section 4(2) of the Securities Act. In furtherance thereof, each party represents and warrants to the other party that (i) it has the financial ability to bear the economic risk of its investment, including a loss of its entire investment, (ii) it is an "accredited investor" as that term is defined under Regulation D under the Securities Act, and (iii) it has the knowledge and experience of investing in instruments similar to the Transaction and is capable of evaluating the risks and merits of the Transaction and has, or has had an opportunity to request, such information as it deemed necessary to



make such evaluation; and

(III) Each party understands that the Transaction has not been, and is not intended to be, registered under the Securities Act or under the securities laws of certain states and, therefore, cannot be resold, pledged, assigned or otherwise disposed of unless an exclusion from the coverage of the Securities Act, or an exemption for such resale, pledge, assignment or disposition is available. Neither party is obliged to register the Transaction or to assist the Offeree in complying with any exclusion from the coverage the Securities Act, or with any exemption from registration under the Securities Act or state securities laws.

(ii) **Party B Representations.**

(A) ***Compliance with Applicable Internal Policies.*** Each Transaction entered into under this Agreement will be entered into in accordance with and will at all times comply with applicable internal policies, guidelines or other requirements (including without limitation any investment policy) of Party B (if any, as may be adopted or amended from time to time by Party B) that may affect the due authorization or validity of any Transaction or the Agreement."

(B) ***No ERISA Funds.*** The assets of Party B do not include "plan assets" within the meaning of Section 3(42) of ERISA, and Party B is not otherwise subject to Title I of ERISA or Section 4975 of the Code. This representation shall be deemed to be repeated at all times.

(C) ***Governmental Plan Representations of the Fund.*** The Fund represents and warrants, on and as of the date hereof and on and as of each date this Agreement, any Credit Support Document or any Transaction is entered or remains outstanding (and regardless of whether such Transaction or any portion thereof has been finally allocated to the Fund), that the execution, delivery and performance of this Agreement, each Credit Support Document and each Transaction do not and will not violate any Governmental Plan Law.

i. "Governmental Plan" has the same meaning as in Section 3(32) of ERISA; and

ii "Governmental Plan Law" means any federal, state or local constitutional provision, statute, regulation, ordinance or rule regulating the investment of the assets of any Governmental Plan that invests in Party B.

(D) ***Authority of the Investment Manager.*** The Investment Manager, on behalf of Party B, is authorized to enter into and perform the Transactions contemplated by this Agreement and to bind Party B in connection with all obligations in connection therewith and under this Agreement, and each Transaction entered into in connection with this Agreement on behalf of Party B is suitable and appropriate and in accordance with the investment objectives and guidelines for Party B on the date such Transaction is entered into.

(E) ***Reliance on the Investment Manager's Authority.*** Party A will incur no liability from operating pursuant to the then-current provisions of this Agreement unless and until it has received written notice of any change in the authority of the Investment Manager to act on behalf of Party B, provided, however, that no such change shall affect the validity of any Transaction entered into prior to such change.

(iii) **Party A Representations.**

(A) Party A has reviewed the policy of The Treasurer of North Carolina (the "Treasurer") entitled "Prohibition of Gifts to State Employees," available at <https://www.nctreasurer.com/Inside-The-Department/OpenGovernment/Pages/Department-Policies.aspx>. To the best of Party A's knowledge, none of Party A, its affiliates, or any officers, partners, or principals thereof that are reasonably expected to provide services to Party B has made any gift or favour to any employee of the Treasurer that would violate that policy. In addition, Party A has adopted, and will maintain, written compliance policies and procedures reasonably designed to prevent Party A and its officers, partners, principals or affiliates from violating any applicable law or regulation regarding gifts to government employees.

(B) Party A has reviewed the Treasurer’s policy entitled “Charitable Donations Policy,” available at <https://www.nctreasurer.com/Inside-The-Department/OpenGovernment/Pages/Department-Policies.aspx>. To the best of Party A’s knowledge, none of Party A, its affiliates, or any officers, partners, or principals that are reasonably expected to provide services to Party B has made on or after December 1, 2009 any charitable donation in excess of \$150.00 as a result of a direct or indirect solicitation by an employee of the Treasurer that meets the definition of “covered person” under the Charitable Donations Policy. In addition, Party A has adopted, and will maintain, written compliance policies and procedures reasonably designed to prevent Party A and its officers, partners, principals or affiliates from violating any applicable law or regulation regarding charitable donations solicited by government employees.

(C) Party A has reviewed Section IX. “Political Contributions” of the Treasurer’s policy entitled “Placement Agent, Political Contribution, and Connection Disclosure Policy,” available at <https://www.nctreasurer.com/Inside-The-Department/OpenGovernment/Pages/Department-Policies.aspx> (the “*Political Contributions Policy*”). To the best of Party A’s knowledge, none of Party A, its affiliates, or any officers, partners, or principals that are reasonably expected to provide services to Party B has, on or after December 1, 2009, made, coordinated or solicited any Political Contribution (as defined in the aforesaid policy) to the Treasurer or any incumbent, nominee, candidate or successful candidate for North Carolina State Treasurer or for the campaign of the current State Treasurer running for a different office in violation of applicable state or federal law. In addition, Party A has adopted, and will maintain, written compliance policies and procedures reasonably designed to prevent Party A and its officers, partners, principals or affiliates from violating any applicable law or regulation regarding political contributions.”

(c) **Additional Notification Requirements**

- (i) ***Notice of Termination of Investment Manager's Relationship; Reliance on Notices.*** Party B shall notify Party A promptly following any change in the Investment Manager's authority to act on behalf of Party B or in the event that Investment Manager's business relationship with Party B is terminated. Except as otherwise stated herein, each party shall be entitled to rely upon any oral or written notices and instructions reasonably believed to be originated from the other party hereto or its duly authorized agent (including, in the case of Party B, the Investment Manager) and shall not incur any liability to the other party in acting in accordance with such notices and instructions.
- (ii) ***Notice of Decline in Net Asset Value.*** Party B shall notify Party A within two (2) Business Days if the Net Asset Value of Party B decreases by an amount that would trigger an early termination event specified in paragraph h (i) or (ii) in Part 1 of this Schedule.
- (iii) ***Notice of Increase of Constituent Plan Investment.*** Party B shall notify Party A immediately in the event that any class of equity interest issued by it will be directly or indirectly owned to the extent of 25% or more by one or more Benefit Plan Investors, as determined under the Plan Assets Regulation.

(d) **Relationship Between Parties.** Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):

- (i) ***Non-Reliance.*** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction.
- (ii) ***Assessment and Understanding.*** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.

- (iii) **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction.
- (e) **Waiver of Jury Trial.** EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION AND ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO THE OTHER PARTY'S ENTERING INTO THIS AGREEMENT.
- (f) **Consent to Recording.** Each Party (i) consents to the recording of all telephone conversations between trading, operations and marketing personnel of the parties and their Affiliates in connection with this Agreement or any potential Transaction; (ii) agrees to give notice to such personnel of it and its Affiliates that their calls will be recorded; and (iii) agrees that in any Proceedings, it will not object to the introduction of such recordings in evidence on grounds that consent was not properly given.
- (g) **Scope of Agreement.** Upon the effectiveness of this Agreement, unless otherwise agreed to in writing by the parties to this Agreement with respect to specific Specified Transactions, all Specified Transactions then outstanding or any future Specified Transactions between Offices of the parties listed in Part 4(d) shall be subject to the terms hereof, with the exception of repurchase agreements, reverse repurchase agreements, securities lending agreements, letters of credit reimbursement obligations and indebtedness for borrowed money, and each such Specified Transaction shall be a "Transaction" for purposes of this Agreement.
- (h) **Agreements.** Section 4 of this Agreement is hereby amended by the addition of Section 4(f) as follows:
- “(f) **Physical Delivery.** In respect of any physically settled Transactions, it will, at the time of delivery, be the legal and beneficial owner, free of liens and other encumbrances, of any securities or commodities it delivers to the other party; and, in addition, with respect to any breach of this Section 4(f), Section 5(a)(ii) of this Agreement is hereby amended by the insertion of a period after “Agreement” on the fifth line and the deletion of the remainder of the Section.”
- (i) **ISDA Definitions.** Unless otherwise specified in a Confirmation with respect to the relevant Transaction, (a) the definitions and provisions of the 2006 ISDA Definitions (the "2006 ISDA Definitions"), as published by the International Swaps and Derivatives Association, Inc. ("ISDA") shall apply, (b) the definitions and provisions of the 1998 FX and Currency Option Definitions (as published by the ISDA, the Emerging Markets Traders Association and the Foreign Exchange Committee) (the "1998 FX Definitions") are hereby incorporated in their entirety into this Agreement and each Confirmation and shall apply to any FX Transaction or Currency Option Transaction as defined in Section 1.12 and Section 1.5, respectively, of Article 1 of the 1998 FX Definitions (each an "FX Transaction" or "Currency Option Transaction", respectively) entered into by the parties hereto, and (c) the definition and provisions of the 2005 ISDA Commodity Definitions (as published by ISDA) (the "Commodity Definitions") are hereby incorporated in their entirety and shall apply to any Transaction as defined in Section 1.1 of Article 1 of the Commodity Definitions (each a "Commodity Transaction") entered into by the parties hereto). For these purposes, all references in the 2006 ISDA Definitions to a "Swap Transaction" shall be deemed to apply to each Transaction under this Agreement. If in relation to any Transaction there is any inconsistency between the 2006 ISDA Definitions, the 1998 FX Definitions or the Commodity Definitions (as applicable), this Agreement, any Confirmation and any other definitions published by ISDA that are incorporated into any Confirmation, the following will prevail for purposes of such Transaction in the order of precedence indicated: (i) such Confirmation (without reference to any definitions or provisions incorporated therein); (ii) this Agreement; (iii) in the case of any FX Transaction or Currency Option, the 1998 FX Definitions; (iv) in the case of any Commodity Transaction, the Commodity Definitions, and (v) the 2006 ISDA Definitions.
- (j) **Additional Covenants Relating to Payments Instructions from Investment Manager.** In addition to its agreements under Section 4, Party B agrees with Party A that, so long as either party has or may have any obligations under this Agreement: (i) any amounts payable by Party A under this Agreement shall be deemed satisfied when paid by Party A in accordance with the payment instructions of the Investment Manager.
- (k) **Definitions.** Section 14 is hereby amended to include the following definitions in their appropriate alphabetical order:

"Code" means the Internal Revenue Code of 1986, as amended, or any successor statute.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute.

"**Financial Instruments**" shall mean rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction, any swap options, credit protection transactions, credit swaps, credit default swaps, credit default options, total return swaps, credit spread transactions, buy/sellback transactions, repurchase agreements, reverse repurchase agreements, securities lending agreements, forward contracts, precious metals transactions, letters of credit reimbursement obligations and indebtedness for borrowed money.

"**Investment Manager**" means Marshall Wace LLP

"**Net Asset Value**" shall mean the market value of all assets (net of liabilities), including cash, cash equivalents, accrued interest and the market value of all Financial Instruments, including the market value of derivatives on Financial Instruments.

(l) **Modification of Certain Provisions.**

(i) **Financial Statements.** Section 3(d) is modified by adding the words "or, in the case of any financial statements, fairly present, in all material respects, the financial condition and results of operations of the person or persons referred to therein as at the date thereof or for the fiscal period covered thereby all in accordance with generally accepted accounting principles in its jurisdiction of organization applied on a consistent basis" immediately prior to the period at the end of Section 3(d).

(ii) **Authorised Representative.** Clause (3) of Section 5(a)(v) is modified by inserting the words "in writing" immediately before the word "disaffirms". Clause (2) of Section 5(a)(vii) is modified by inserting the words ", through any authorised representative," immediately before the word "admits".

(iii) **Tax Event.** Section 5(b)(ii) is modified by deleting the following words from line 4: ", or there is a substantial likelihood that it will,".

(iv) **Tax Event Upon Merger.** Section 5(b)(iii) of this Agreement is hereby amended by deleting the word "Indemnifiable" in the fifth line thereof.

(m) **Confirmations.** For each FX Transaction, Currency Option Transaction, Bullion Transaction and Bullion Option Transaction entered into hereunder, Party A shall promptly send to Party B a Confirmation, via electronic transmission, web-based communication, telex or facsimile transmission. Party B agrees to respond to such Confirmation by close of business the next Local Business Day after receipt of such Confirmation, either confirming agreement thereto or requesting a correction of any error(s) contained therein. Failure by Party B to respond within such period shall not affect the validity or enforceability of such Transaction and shall be deemed to be an affirmation of the terms contained in such Confirmation, absent manifest error ("Deemed Acceptance"). The parties agree that any such exchange or Deemed Acceptance of an electronic transmission, web-based communication, telex or facsimile transmission shall constitute a Confirmation of such Transaction for all purposes hereunder.

(n) **Severability.** If any term, provision, covenant or condition of this Agreement, or the application thereof to either party or any circumstance, is held to be unenforceable, invalid or illegal (in whole or in part) for any reason (in any relevant jurisdiction), the remaining terms, provisions, covenants and conditions of this Agreement, modified by the deletion of the unenforceable, invalid or illegal portion (in any relevant jurisdiction), will continue in full force and effect, and such unenforceability, invalidity, or illegality will not otherwise affect the enforceability, validity or legality of the remaining terms, provisions, covenants and conditions of this Agreement so long as this Agreement as so modified continues to express, without material change, the original intentions of the parties as to the subject matter hereof and the deletion of such portion of this Agreement will not substantially impair the respective expectations or reciprocal obligations of the parties or the practical realization of the benefits that would otherwise be conferred upon the parties. The parties will endeavour in good faith negotiations to replace the prohibited or unenforceable provision with a valid provision, the economic effect of which comes as close as possible to that of the prohibited or unenforceable provision.

(o) **Limitation of Liability.** Any amounts owed or liabilities incurred by Party B, in respect of any transaction entered into under this Agreement, may be satisfied solely from the assets of Party B. Without limiting the

generality of the foregoing, and except as otherwise stated above, in no event shall Party A have recourse under this Agreement, whether by set-off or otherwise, with respect to any such amounts owed or liabilities incurred to or against (a) any assets of any person or entity whose account is under the management of the investment manager or the general partner (if applicable) of Party B other than Party B (b) any assets of any affiliate of Party B, (c) any assets of the investment manager or the general partner (if applicable) of Party B or any affiliate of such investment manager or the general partner (if applicable), or (d) the assets of the Treasurer of North Carolina, the Retirement Systems of North Carolina, and any other limited liability companies wholly owned by the Retirement Systems of North Carolina; provided that, for the avoidance of doubt, the assets referred to in this clause (d) shall not include the assets of Party B. To the extent that the fraud of any third party (including, without limitation, the investment manager, the general partner (if applicable), any affiliate of the investment manager or of the general partner (if applicable), or any principal of Party B, of the investment manager, of the general partner (if applicable), or of an affiliate of the investment manager or of the general partner (if applicable)) contributes to or results in any liability, loss, damages, costs or expenses suffered by Party A in respect of any transaction entered into under this Agreement, nothing in the preceding sentence shall prevent Party A from seeking reimbursement for any such liability, loss, damages, costs or expenses from such third party.

- (p) **Failure to Pay or Deliver.** Section 5(a)(i) of this Agreement is amended by the replacement of the word ‘third’ with ‘first’ on the third line thereof; and is further amended by inserting the following at the end of the provision:

"Notwithstanding the foregoing, an Event of Default shall not have occurred if a party (the "Subject Party") has failed to perform its obligation to make any payment or delivery (a "Specified Failure") and, as demonstrated to the reasonable satisfaction of the other party on or before the first Local Business Day or first Local Delivery Day (as applicable) after notice of such failure is given to the party: (a) such Specified Failure was caused by an error or omission of an administrative or operational nature (an "Excusable Failure") and (b) other than such Excusable Failure, the Subject Party has taken all steps necessary for it to take in order to cause such delivery or payment, as the case may be, to be made and, but for the Excusable Failure, is in all other respect capable of making delivery or payment, as the case may be on the scheduled delivery or payment date relating to such Specified Failure, and provided such relevant payment or delivery is made within three Local Business Days or Local Delivery Days (as applicable) after notice of such failure to pay is given to the party."

- (q) **FATCA – HIRE Act.**

(a) **FATCA PROTOCOL PROVISION.** “Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. “Tax” as used in Part 2(a) of this Schedule (Payer Tax Representation) and “Indemnifiable Tax” as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “Code”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “FATCA Withholding Tax”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this agreement.

(b) **Section 871(m).** The parties agree that the amendments set out in the Attachment to the ISDA 2015 Section 871(m) Protocol published by ISDA on November 2, 2015, which is available on the ISDA website ([www.isda.org](http://www.isda.org)) (the “Protocol”), will apply to this Agreement. The parties further agree that this Agreement will be deemed to be a Covered Master Agreement and that the Implementation Date will be the effective date of this Agreement as amended by the parties for the purposes of such amendments, regardless of the definitions of such terms in the Protocol.

- (r) **ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol.**

Both parties agree that the amendments and provisions set out in the Attachment to the ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol published by ISDA on 19 July 2013 and available on the ISDA website ([www.isda.org](http://www.isda.org)) (the "**PRDR Protocol**") shall be incorporated into and apply to this Agreement and that (i) references therein to the “Protocol Covered Agreement” shall be deemed to be references to this Agreement (and each “Protocol Covered Agreement” shall be read accordingly), and (ii) references therein to “Implementation Date” shall be deemed to be references to the date of this Agreement.

Furthermore, the parties agree that (i) the definition of “Adherence Letter” shall be deemed to be deleted and references to “Adherence Letter” shall be deemed to be to this clause (and references to “such party's Adherence Letter” and “its Adherence Letter” shall be read accordingly), (ii) references to “adheres to the Protocol” shall be deemed to be “enters into this Agreement”. For the purposes of this clause the parties make the following elections:

- (a) **Portfolio reconciliation process status.** Each party confirms its status as follows:

Party A: Portfolio Data Sending Entity

Party B: Portfolio Data Receiving Entity

- (b) **Local Business Days.** Each party specifies the following place(s) for the purposes of the definition of Local Business Day as it applies to it:

Party A: London, United Kingdom

Party B: London, United Kingdom

- (c) **Contact details for Portfolio Data, discrepancy notices and Dispute Notices:**

Party A: Address: 100 Liverpool Street, London EC2M 2RH  
Attention: Portfolio Reconciliations  
Email: portrecs-emir-regula@ubs.com

Party B: [REDACTED]

- (s) **ISDA Dodd Frank Protocols.** The parties agree that, notwithstanding anything to the contrary in the ISDA August 2012 Dodd Frank Protocol (as published by the International Swaps and Derivatives Association, Inc. on August 13, 2012) that may have previously been entered into by the parties (the “August DF Protocol Agreement”) and the March 2013 Dodd Frank Protocol Agreement (as published by the International Swaps and Derivatives Association, Inc. on March 22, 2013) that may have previously been entered into by the parties (the “March DF Protocol Agreement”) (together, the “Protocol Agreements”), this Agreement shall constitute a “Protocol Covered Agreement” for all purposes under the Protocol Agreements.
- (t) **Master Representations.** The representations set forth in Section 3(a)(iii) and Section 3(a)(iv) are hereby amended by adding to the end of each such representation the following: “, provided that this representation does not apply with respect to Section 406 of ERISA, Section 4975 of the Code or any Governmental Plan Law”.
- (u) **Inspection Rights.** Upon five Business Days’ prior notice, Party B and its duly authorized officers, employees or agents, including the Treasurer of North Carolina, the North Carolina Retirement Systems and each of their directors, officers, employees, representatives or agents, and employees and agents of the regulatory agencies having jurisdiction over Party B shall have access to inspect and copy Party A’s books and records relating to this Agreement during Party A’s normal business hours. Copies of any such books and records shall be provided to Party B at Party B’s expense. Party A shall preserve all records related to this Agreement for the period required by applicable law unless such records are earlier surrendered in connection with the termination of this Agreement.
- (v) **Publicity.** Without the prior written consent of Party B, Party A shall not use the name of Party B, “Treasurer of the State of North Carolina,” “North Carolina Total Retirement Plans,” or “North Carolina Retirement Systems” or any name derivative thereof in any offering material, press release, brochure, notice or other publication, or in any written marketing presentation made in connection with the offering of any services or products similar to those provided to Party B under this Agreement; provided that Party B shall not unreasonably withhold such consent. For the avoidance of doubt, the foregoing shall in no way restrict the Party A from disclosing such information (a) as required by law, rule, regulation or order applicable to Party B or the Party A, (b) to service providers of Party A who have a need to know such information and who are subject to an obligation to keep such information confidential.

(w) **Counterparts.** This Agreement may be executed in counterparts by facsimile or pdf signature, each of which shall be deemed to be a signed original.

(x) **Restricted Markets:** Party A acknowledges and agrees that it may not transact with Party B any over-the-counter derivatives transaction that references a security listed on any securities exchange of Indian (each such transaction a "Restricted Market Transaction") without first agreeing with Party A terms specific to that market, including representations and warranties, reasonably requested by Party A at such time to enable it to comply with local market law and regulations. If Party B transacts with Party A prior to the written agreement of such local market terms, this shall not be deemed an Additional Termination Event hereunder but Party A may elect to terminate such Restricted Market Transactions by electing to have the provisions of Section 6(b) of this Agreement apply as if an Additional Termination Event had occurred and the Restricted Market Transactions were the sole Affected Transactions and Party B was the sole Affected Party.

(y) **Taiwanese transactions:** If the parties are entering into a Covered Transaction referencing Taiwanese underliers where the relevant Exchange (as defined in the 2002 ISDA Equity Derivatives Definitions) is in Taiwan ("Taiwanese Transaction"), Party B agrees to make the following representations, warranties and undertakings as at the date of this Agreement (which representations will be deemed to be repeated by Party B to Party A on each date on which a Taiwanese Transaction is entered into):

(a) Party B is a fund domiciled outside Taiwan and outside the People's Republic of China (excluding Hong Kong and Macau) ("PRC") and investments in Party B utilizing funds sourced from Taiwan or PRC do not represent a material portion of Party B's assets under management.

(b) Party B authorizes, instructs and empowers Party A and its affiliates to submit all such information and file all such reports with the regulatory authorities of Taiwan regarding Party B, the Transactions, or otherwise as may be required by the Taiwan Regulations Governing Investments in Securities by Overseas Chinese and Foreign Nationals or otherwise as may reasonably be requested by Taiwan authorities and waives any objection Party B may have thereto on the grounds of confidentiality or otherwise.

(c) Party B undertakes and agrees that it will provide Party A or, to the extent permitted by the relevant governmental or regulatory authority, provide directly to such governmental or regulatory authority, such additional information, from time to time, that Party A or its affiliate deems necessary or appropriate in order to comply with any request by any governmental or regulatory authority or the court of competent authority or if so required under application regulations in Taiwan.

If a representation, warranty or undertaking given above proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated; or if Party B fails to comply with or perform any agreement or obligation undertaken by it with respect to a Taiwanese Transaction, it shall be an Additional Termination Event with all Taiwanese Transactions being the sole Affected Transactions, and with Party B being the sole Affected Party.

(z) **Chinese transactions:** If the parties are entering into a Covered Transaction which is linked to the performance of one or more PRC Securities (as defined below) (a "PRC Transaction"), Party B agrees to make the following representations as at the date of this Agreement (which representations will be deemed to be repeated by Party B to Party A on each date on which a PRC Transaction is entered into):

(a) it is not (1) a PRC Citizen resident in the PRC (excluding Hong Kong, Macau and Taiwan), (2) a PRC Citizen resident outside the PRC who is not a permanent resident of another country or permanent resident of Hong Kong, Macau or Taiwan, or (3) a Legal Person Registered in the PRC, (each a "Domestic Investor");

(b) in the case where the Transaction is entered into by Party B as trustee for a trust, interests in the trust are not majority-owned by, and the management decision over the trust is not controlled by, one or more Domestic Investor(s). For the avoidance of doubt, in the case only where a trust's investments are being managed on a discretionary basis by an investment manager, such investment manager shall not be deemed to control such entity for the purposes of this representation by reason only of it being able to control the decision-making in relation to the entity's financial, investment and/or operating policies;

(c) to the best of its knowledge and belief after enquiries that it reasonably deems necessary, all amounts paid or to be paid by it under the Transaction did not and will not involve moneys financed by or sourced from any Domestic Investor in contravention of the laws and regulations of the PRC.

If a representation, proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated it shall be an Additional Termination Event in respect of all PRC Transactions being the sole Affected Transactions, and with Party B being the sole Affected Party.

**"Legal Person Registered in the PRC"** means an entity incorporated or organized in the PRC (excluding Hong Kong, Macau and Taiwan).

**"PRC"** means the People's Republic of China.

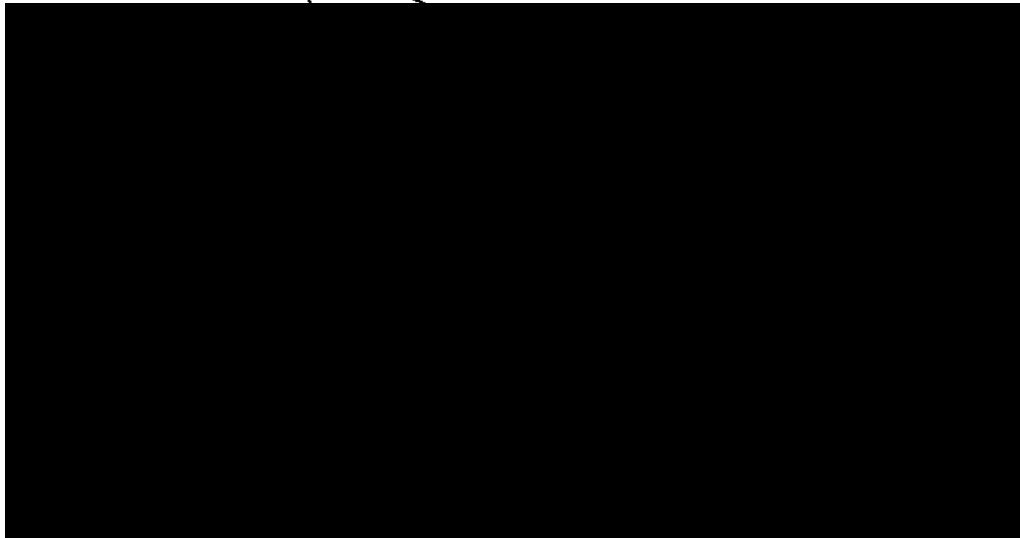
**"PRC Citizen"** means any person holding a resident identification card of the PRC (excluding Hong Kong, Macau and Taiwan).

**"PRC Securities"** means any shares, bonds, warrants or other securities listed on any stock exchange in the PRC (excluding Hong Kong, Macau and Taiwan), securities investment funds quoted in Renminbi or any other financial instruments in which a Qualified Foreign Institutional Investor may from time to time invest under the laws and regulations of the PRC (excluding Hong Kong, Macau and Taiwan).

**"Qualified Foreign Institutional Investor"** means a Qualified Foreign Institutional Investor (合格境外机构投资者) defined in the Measures on the Administration of Domestic Securities Investments by Qualified Foreign Institutional Investors (合格境外机构投资者境内证券投资管理办法), as may be amended and supplemented from time to time.

**"trust"** includes a trust fund or any similar arrangement where the legal title to the trust assets are held by a trustee or legal representative but the beneficial interests in the trust assets are held by beneficiaries; and **"trustee"** shall be construed accordingly.

IN WITNESS WHEREOF the parties have executed this Schedule with effect from the date specified on the first page of this document.





# ISDA®

International Swaps and Derivatives Association, Inc.

## 2002 MASTER AGREEMENT

dated as of 18 November 2016

UBS AG

and



("Party A")

("Party B")

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this 2002 Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties or otherwise effective for the purpose of confirming or evidencing those Transactions. This 2002 Master Agreement and the Schedule are together referred to as this "Master Agreement".

Accordingly, the parties agree as follows:—

### 1. Interpretation

- (a) *Definitions.* The terms defined in Section 14 and elsewhere in this Master Agreement will have the meanings therein specified for the purpose of this Master Agreement.
- (b) *Inconsistency.* In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement, such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) *Single Agreement.* All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

- (a) *General Conditions.*
  - (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
  - (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is,

other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other condition specified in this Agreement to be a condition precedent for the purpose of this Section 2(a)(iii).

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the Scheduled Settlement Date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting of Payments.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by which the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount and payment obligation will be determined in respect of all amounts payable on the same date in the same currency in respect of those Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or any Confirmation by specifying that "Multiple Transaction Payment Netting" applies to the Transactions identified as being subject to the election (in which case clause (ii) above will not apply to such Transactions). If Multiple Transaction Payment Netting is applicable to Transactions, it will apply to those Transactions with effect from the starting date specified in the Schedule or such Confirmation, or, if a starting date is not specified in the Schedule or such Confirmation, the starting date otherwise agreed by the parties in writing. This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required.

However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If:—

(1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);

(2) X does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

### 3. Representations

Each party makes the representations contained in Sections 3(a), 3(b), 3(c), 3(d), 3(e) and 3(f) and, if specified in the Schedule as applying, 3(g) to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement). If any “Additional Representation” is specified in the Schedule or any Confirmation as applying, the party or parties specified for such Additional Representation will make and, if applicable, be deemed to repeat such Additional Representation at the time or times specified for such Additional Representation.

(a) **Basic Representations.**

(i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it, any of its Credit Support Providers or any of its applicable Specified Entities any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

(g) **No Agency.** It is entering into this Agreement, including each Transaction, as principal and not as agent of any person or entity.

#### **4. Agreements**

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under clause (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply With Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organised, managed and controlled or considered to have its seat, or where an Office through which it is acting for the purpose of this Agreement is located (“Stamp Tax Jurisdiction”), and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party’s execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

## 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes (subject to Sections 5(c) and 6(e)(iv)) an event of default (an “Event of Default”) with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) required to be made by it if such failure is not remedied on or before the first Local Business Day in the case of any such payment or the first Local Delivery Day in the case of any such delivery after, in each case, notice of such failure is given to the party;

(ii) **Breach of Agreement; Repudiation of Agreement.**

(1) Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied within 30 days after notice of such failure is given to the party; or

(2) the party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, this Master Agreement, 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);

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party 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 such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document, or any security interest granted by such party or such Credit Support Provider to the other party pursuant to any such Credit Support Document, to be in full force and effect for the purpose of this Agreement (in each case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iv) **Misrepresentation.** A representation (other than a representation under Section 3(e) or 3(f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default Under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) defaults (other than by failing to make a delivery) under a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction;

(2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment due on the last payment or exchange date of, or any payment on early termination of, a Specified Transaction (or, if there is no applicable notice requirement or grace period, such default continues for at least one Local Business Day);

(3) defaults in making any delivery due under (including any delivery due on the last delivery or exchange date of) a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, all transactions outstanding under the documentation applicable to that Specified Transaction; or

(4) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, a Specified Transaction or any credit support arrangement relating to a Specified Transaction that is, in either case, confirmed or evidenced by a document or other confirming evidence executed and delivered by that party, Credit Support Provider or Specified Entity (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross-Default.** If “Cross-Default” is specified in the Schedule as applying to the party, the occurrence or existence of:—

(1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) where the aggregate principal amount of such agreements or instruments, either alone or together with the amount, if any, referred to in clause (2) below, is not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments before it would otherwise have been due and payable; or

(2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments under such agreements or instruments on the due date for payment (after giving effect to any applicable notice requirement or grace period) in an aggregate amount, either alone or together with the amount, if any, referred to in clause (1) above, of not less than the applicable Threshold Amount;

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, 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 by it or such regulator, supervisor or similar official, or (B) 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 such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (I) 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 (II) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) 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; (7) 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 such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, reincorporates or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganisation, reincorporation or reconstitution:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes (subject to Section 5(c)) an Illegality if the event is specified in clause (i) below, a Force Majeure Event if the event is specified in clause (ii) below, a Tax Event if the event is specified in clause (iii) below, a Tax Event Upon Merger if the event is specified in clause (iv) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to clause (v) below or an Additional Termination Event if the event is specified pursuant to clause (vi) below:—

(i) **Illegality.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, due to an event or circumstance (other than any action taken by a party or, if applicable, any Credit Support Provider of such party) occurring after a Transaction is entered into, it becomes unlawful under any applicable law (including without limitation the laws of any country in which payment, delivery or compliance is required by either party or any Credit Support Provider, as the case may be), on any day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day (in each case, other than as a result of a breach by the party of Section 4(b)):—

(1) for the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction to perform any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) for such party or any Credit Support Provider of such party (which will be the Affected Party) to perform any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, to receive a payment or delivery under such Credit Support Document or to comply with any other material provision of such Credit Support Document;

(ii) **Force Majeure Event.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, by reason of force majeure or act of state occurring after a Transaction is entered into, on any day:—

(1) the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction is prevented from performing any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, from receiving a payment or delivery in respect of such Transaction or from complying with any other material provision of this Agreement relating to such Transaction (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or



impracticable for such Office so to perform, receive or comply (or it would be impossible or impracticable for such Office so to perform, receive or comply if such payment, delivery or compliance were required on that day); or

(2) such party or any Credit Support Provider of such party (which will be the Affected Party) is prevented from performing any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, from receiving a payment or delivery under such Credit Support Document or from complying with any other material provision of such Credit Support Document (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply (or it would be impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply if such payment, delivery or compliance were required on that day),

so long as the force majeure or act of state is beyond the control of such Office, such party or such Credit Support Provider, as appropriate, and such Office, party or Credit Support Provider could not, after using all reasonable efforts (which will not require such party or Credit Support Provider to incur a loss, other than immaterial, incidental expenses), overcome such prevention, impossibility or impracticability;

(iii) **Tax Event.** Due to (1) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (2) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Settlement Date (A) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (B) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 9(h)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iv) **Tax Event Upon Merger.** The party (the “Burdened Party”) on the next succeeding Scheduled Settlement Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets (or any substantial part of the assets comprising the business conducted by it as of the date of this Master Agreement) to, or reorganising, reincorporating or reconstituting into or as, another entity (which will be the Affected Party) where such action does not constitute a Merger Without Assumption;

(v) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, a Designated Event (as defined below) occurs with respect to such party, any Credit Support Provider of such party or any applicable Specified Entity of such party (in each case, “X”) and such Designated Event does not constitute a Merger Without Assumption, and the creditworthiness of X or, if applicable, the successor, surviving or transferee entity of X, after taking into account any applicable Credit Support Document, is materially weaker immediately after the occurrence of such Designated Event than that of X immediately prior to the occurrence of such Designated Event (and, in any such event, such party or its successor, surviving or transferee entity, as appropriate, will be the Affected Party). A “Designated Event” with respect to X means that:—

(1) X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or any substantial part of the assets comprising the business conducted by X as of the

date of this Master Agreement) to, or reorganises, reincorporates or reconstitutes into or as, another entity;

(2) any person, related group of persons or entity acquires directly or indirectly the beneficial ownership of (A) equity securities having the power to elect a majority of the board of directors (or its equivalent) of X or (B) any other ownership interest enabling it to exercise control of X; or

(3) X effects any substantial change in its capital structure by means of the issuance, incurrence or guarantee of debt or the issuance of (A) preferred stock or other securities convertible into or exchangeable for debt or preferred stock or (B) in the case of entities other than corporations, any other form of ownership interest; or

(vi) **Additional Termination Event.** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties will be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Hierarchy of Events.**

(i) An event or circumstance that constitutes or gives rise to an Illegality or a Force Majeure Event will not, for so long as that is the case, also constitute or give rise to an Event of Default under Section 5(a)(i), 5(a)(ii)(1) or 5(a)(iii)(1) insofar as such event or circumstance relates to the failure to make any payment or delivery or a failure to comply with any other material provision of this Agreement or a Credit Support Document, as the case may be.

(ii) Except in circumstances contemplated by clause (i) above, if an event or circumstance which would otherwise constitute or give rise to an Illegality or a Force Majeure Event also constitutes an Event of Default or any other Termination Event, it will be treated as an Event of Default or such other Termination Event, as the case may be, and will not constitute or give rise to an Illegality or a Force Majeure Event.

(iii) If an event or circumstance which would otherwise constitute or give rise to a Force Majeure Event also constitutes an Illegality, it will be treated as an Illegality, except as described in clause (ii) above, and not a Force Majeure Event.

(d) **Deferral of Payments and Deliveries During Waiting Period.** If an Illegality or a Force Majeure Event has occurred and is continuing with respect to a Transaction, each payment or delivery which would otherwise be required to be made under that Transaction will be deferred to, and will not be due until:—

(i) the first Local Business Day or, in the case of a delivery, the first Local Delivery Day (or the first day that would have been a Local Business Day or Local Delivery Day, as appropriate, but for the occurrence of the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event) following the end of any applicable Waiting Period in respect of that Illegality or Force Majeure Event, as the case may be; or

(ii) if earlier, the date on which the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event ceases to exist or, if such date is not a Local Business Day or, in the case of a delivery, a Local Delivery Day, the first following day that is a Local Business Day or Local Delivery Day, as appropriate.

(e) **Inability of Head or Home Office to Perform Obligations of Branch.** If (i) an Illegality or a Force Majeure Event occurs under Section 5(b)(i)(1) or 5(b)(ii)(1) and the relevant Office is not the Affected Party’s head or home office, (ii) Section 10(a) applies, (iii) the other party seeks performance of the relevant obligation or

compliance with the relevant provision by the Affected Party's head or home office and (iv) the Affected Party's head or home office fails so to perform or comply due to the occurrence of an event or circumstance which would, if that head or home office were the Office through which the Affected Party makes and receives payments and deliveries with respect to the relevant Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and such failure would otherwise constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) with respect to such party, then, for so long as the relevant event or circumstance continues to exist with respect to both the Office referred to in Section 5(b)(i)(1) or 5(b)(ii)(1), as the case may be, and the Affected Party's head or home office, such failure will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1).

## **6. Early Termination; Close-Out Netting**

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event other than a Force Majeure Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction, and will also give the other party such other information about that Termination Event as the other party may reasonably require. If a Force Majeure Event occurs, each party will, promptly upon becoming aware of it, use all reasonable efforts to notify the other party, specifying the nature of that Force Majeure Event, and will also give the other party such other information about that Force Majeure Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, other than immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice of such occurrence is given under Section 6(b)(i) to avoid that Termination Event.

(iv) ***Right to Terminate.***

(1) If:—

(A) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(B) a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there are two Affected Parties, or the Non-affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, if the relevant Termination Event is then continuing, by not more than 20 days notice to the other party, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(2) If at any time an Illegality or a Force Majeure Event has occurred and is then continuing and any applicable Waiting Period has expired:—

(A) Subject to clause (B) below, either party may, by not more than 20 days notice to the other party, designate (I) a day not earlier than the day on which such notice becomes effective as an Early Termination Date in respect of all Affected Transactions or (II) by specifying in that notice the Affected Transactions in respect of which it is designating the relevant day as an Early Termination Date, a day not earlier than two Local Business Days following the day on which such notice becomes effective as an Early Termination Date in respect of less than all Affected Transactions. Upon receipt of a notice designating an Early Termination Date in respect of less than all Affected Transactions, the other party may, by notice to the designating party, if such notice is effective on or before the day so designated, designate that same day as an Early Termination Date in respect of any or all other Affected Transactions.

(B) An Affected Party (if the Illegality or Force Majeure Event relates to performance by such party or any Credit Support Provider of such party of an obligation to make any payment or delivery under, or to compliance with any other material provision of, the relevant Credit Support Document) will only have the right to designate an Early Termination Date under Section 6(b)(iv)(2)(A) as a result of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2) following the prior designation by the other party of an Early Termination Date, pursuant to Section 6(b)(iv)(2)(A), in respect of less than all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or 6(b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 9(h)(i) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date will be determined pursuant to Sections 6(e) and 9(h)(ii).

(d) **Calculations; Payment Date.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations), (2) specifying (except where there are two Affected Parties) any Early Termination Amount payable and (3) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation or market data obtained in determining a Close-out Amount, the records of the party obtaining such quotation or market data will be conclusive evidence of the existence and accuracy of such quotation or market data.

(ii) **Payment Date.** An Early Termination Amount due in respect of any Early Termination Date will, together with any amount of interest payable pursuant to Section 9(h)(ii)(2), be payable (1) on the day on which notice of the amount payable is effective in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default and (2) on the day which is two Local Business Days after the day on which notice of the amount payable is effective (or, if there are two Affected Parties, after the day on which the statement provided pursuant to clause (i) above by the second party to provide such a statement is effective) in the case of an Early Termination Date which is designated as a result of a Termination Event.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the amount, if any, payable in respect of that Early Termination Date (the "Early Termination Amount") will be determined pursuant to this Section 6(e) and will be subject to Section 6(f).

(i) **Events of Default.** If the Early Termination Date results from an Event of Default, the Early Termination Amount will be an amount equal to (1) the sum of (A) the Termination Currency Equivalent of the Close-out Amount or Close-out Amounts (whether positive or negative) determined by the Non-defaulting Party for each Terminated Transaction or group of Terminated Transactions, as the case may be, and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (2) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If the Early Termination Amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of the Early Termination Amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) **One Affected Party.** Subject to clause (3) below, if there is one Affected Party, the Early Termination Amount will be determined in accordance with Section 6(e)(i), except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.

(2) **Two Affected Parties.** Subject to clause (3) below, if there are two Affected Parties, each party will determine an amount equal to the Termination Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an amount equal to (A) the sum of (I) one-half of the difference between the higher amount so determined (by party "X") and the lower amount so determined (by party "Y") and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.

(3) *Mid-Market Events.* If that Termination Event is an Illegality or a Force Majeure Event, then the Early Termination Amount will be determined in accordance with clause (1) or (2) above, as appropriate, except that, for the purpose of determining a Close-out Amount or Close-out Amounts, the Determining Party will:—

(A) if obtaining quotations from one or more third parties (or from any of the Determining Party's Affiliates), ask each third party or Affiliate (I) not to take account of the current creditworthiness of the Determining Party or any existing Credit Support Document and (II) to provide mid-market quotations; and

(B) in any other case, use mid-market values without regard to the creditworthiness of the Determining Party.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because Automatic Early Termination applies in respect of a party, the Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Adjustment for Illegality or Force Majeure Event.* The failure by a party or any Credit Support Provider of such party to pay, when due, any Early Termination Amount will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) if such failure is due to the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event. Such amount will (1) accrue interest and otherwise be treated as an Unpaid Amount owing to the other party if subsequently an Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions and (2) otherwise accrue interest in accordance with Section 9(h)(ii)(2).

(v) *Pre-Estimate.* The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks, and, except as otherwise provided in this Agreement, neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions.

(f) *Set-Off.* Any Early Termination Amount payable to one party (the "Payee") by the other party (the "Payer"), in circumstances where there is a Defaulting Party or where there is one Affected Party in the case where either a Credit Event Upon Merger has occurred or any other Termination Event in respect of which all outstanding Transactions are Affected Transactions has occurred, will, at the option of the Non-defaulting Party or the Non-affected Party, as the case may be ("X") (and without prior notice to the Defaulting Party or the Affected Party, as the case may be), be reduced by its set-off against any other amounts ("Other Amounts") payable by the Payee to the Payer (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party of any set-off effected under this Section 6(f).

For this purpose, either the Early Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) will be effective to create a charge or other security interest. This Section 6(f) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which any party is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise).

## **7. Transfer**

Subject to Section 6(b)(ii) and to the extent permitted by applicable law, neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

- (a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and
- (b) a party may make such a transfer of all or any part of its interest in any Early Termination Amount payable to it by a Defaulting Party, together with any amounts payable on or with respect to that interest and any other rights associated with that interest pursuant to Sections 8, 9(h) and 11.

Any purported transfer that is not in compliance with this Section 7 will be void.

## **8. Contractual Currency**

(a) **Payment in the Contractual Currency.** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the “Contractual Currency”). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in good faith and using commercially reasonable procedures in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in clause (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purpose of such judgment or order and the rate of exchange at which such party is able, acting in good faith and using

commercially reasonable procedures in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party.

(c) **Separate Indemnities.** To the extent permitted by applicable law, the indemnities in this Section 8 constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) **Evidence of Loss.** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

## 9. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. Each of the parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a party for fraud.

(b) **Amendments.** An amendment, modification or waiver in respect of this Agreement will only be effective if in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

### (e) Counterparts and Confirmations.

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission and by electronic messaging system), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation will be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes, by an exchange of electronic messages on an electronic messaging system or by an exchange of e-mails, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex, electronic message or e-mail constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.



(h) ***Interest and Compensation.***

(i) ***Prior to Early Termination.*** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction:—

(1) ***Interest on Defaulted Payments.*** If a party defaults in the performance of any payment obligation, it will, to the extent permitted by applicable law and subject to Section 6(c), pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (3)(B) or (C) below), at the Default Rate.

(2) ***Compensation for Defaulted Deliveries.*** If a party defaults in the performance of any obligation required to be settled by delivery, it will on demand (A) compensate the other party to the extent provided for in the relevant Confirmation or elsewhere in this Agreement and (B) unless otherwise provided in the relevant Confirmation or elsewhere in this Agreement, to the extent permitted by applicable law and subject to Section 6(c), pay to the other party interest (before as well as after judgment) on an amount equal to the fair market value of that which was required to be delivered in the same currency as that amount, for the period from (and including) the originally scheduled date for delivery to (but excluding) the date of actual delivery (and excluding any period in respect of which interest or compensation in respect of that amount is due pursuant to clause (4) below), at the Default Rate. The fair market value of any obligation referred to above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party that was entitled to take delivery.

(3) ***Interest on Deferred Payments.*** If:—

(A) a party does not pay any amount that, but for Section 2(a)(iii), would have been payable, it will, to the extent permitted by applicable law and subject to Section 6(c) and clauses (B) and (C) below, pay interest (before as well as after judgment) on that amount to the other party on demand (after such amount becomes payable) in the same currency as that amount, for the period from (and including) the date the amount would, but for Section 2(a)(iii), have been payable to (but excluding) the date the amount actually becomes payable, at the Applicable Deferral Rate;

(B) a payment is deferred pursuant to Section 5(d), the party which would otherwise have been required to make that payment will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the amount of the deferred payment to the other party on demand (after such amount becomes payable) in the same currency as the deferred payment, for the period from (and including) the date the amount would, but for Section 5(d), have been payable to (but excluding) the earlier of the date the payment is no longer deferred pursuant to Section 5(d) and the date during the deferral period upon which an Event of Default or Potential Event of Default with respect to that party occurs, at the Applicable Deferral Rate; or

(C) a party fails to make any payment due to the occurrence of an Illegality or a Force Majeure Event (after giving effect to any deferral period contemplated by clause (B) above), it will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as the event or circumstance giving rise to that Illegality or Force Majeure Event

continues and no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the date the party fails to make the payment due to the occurrence of the relevant Illegality or Force Majeure Event (or, if later, the date the payment is no longer deferred pursuant to Section 5(d)) to (but excluding) the earlier of the date the event or circumstance giving rise to that Illegality or Force Majeure Event ceases to exist and the date during the period upon which an Event of Default or Potential Event of Default with respect to that party occurs (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (B) above), at the Applicable Deferral Rate.

(4) *Compensation for Deferred Deliveries.* If:—

(A) a party does not perform any obligation that, but for Section 2(a)(iii), would have been required to be settled by delivery;

(B) a delivery is deferred pursuant to Section 5(d); or

(C) a party fails to make a delivery due to the occurrence of an Illegality or a Force Majeure Event at a time when any applicable Waiting Period has expired,

the party required (or that would otherwise have been required) to make the delivery will, to the extent permitted by applicable law and subject to Section 6(c), compensate and pay interest to the other party on demand (after, in the case of clauses (A) and (B) above, such delivery is required) if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

(ii) *Early Termination.* Upon the occurrence or effective designation of an Early Termination Date in respect of a Transaction:—

(1) *Unpaid Amounts.* For the purpose of determining an Unpaid Amount in respect of the relevant Transaction, and to the extent permitted by applicable law, interest will accrue on the amount of any payment obligation or the amount equal to the fair market value of any obligation required to be settled by delivery included in such determination in the same currency as that amount, for the period from (and including) the date the relevant obligation was (or would have been but for Section 2(a)(iii) or 5(d)) required to have been performed to (but excluding) the relevant Early Termination Date, at the Applicable Close-out Rate.

(2) *Interest on Early Termination Amounts.* If an Early Termination Amount is due in respect of such Early Termination Date, that amount will, to the extent permitted by applicable law, be paid together with interest (before as well as after judgment) on that amount in the Termination Currency, for the period from (and including) such Early Termination Date to (but excluding) the date the amount is paid, at the Applicable Close-out Rate.

(iii) *Interest Calculation.* Any interest pursuant to this Section 9(h) will be calculated on the basis of daily compounding and the actual number of days elapsed.

## 10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to and agrees with the other party that, notwithstanding the place of booking or its jurisdiction of incorporation or organisation, its obligations are the same in terms of recourse against it as if it had entered into the Transaction through its head or home office, except that a party will not have recourse to the head or home office of the other party in respect of any payment or delivery deferred pursuant to Section 5(d) for so long as the payment or delivery is so deferred. This representation and agreement will be deemed to be repeated by each party on each date on which the parties enter into a Transaction.

(b) If a party is specified as a Multibranch Party in the Schedule, such party may, subject to clause (c) below, enter into a Transaction through, book a Transaction in and make and receive payments and deliveries with respect to a Transaction through any Office listed in respect of that party in the Schedule (but not any other Office unless otherwise agreed by the parties in writing).

(c) The Office through which a party enters into a Transaction will be the Office specified for that party in the relevant Confirmation or as otherwise agreed by the parties in writing, and, if an Office for that party is not specified in the Confirmation or otherwise agreed by the parties in writing, its head or home office. Unless the parties otherwise agree in writing, the Office through which a party enters into a Transaction will also be the Office in which it books the Transaction and the Office through which it makes and receives payments and deliveries with respect to the Transaction. Subject to Section 6(b)(ii), neither party may change the Office in which it books the Transaction or the Office through which it makes and receives payments or deliveries with respect to a Transaction without the prior written consent of the other party.

## 11. Expenses

A Defaulting Party will on demand indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, execution fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 12. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner described below (except that a notice or other communication under Section 5 or 6 may not be given by electronic messaging system or e-mail) to the address or number or in accordance with the electronic messaging system or e-mail details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered or its delivery is attempted;
- (v) if sent by electronic messaging system, on the date it is received; or

- (vi) if sent by e-mail, on the date it is delivered,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication will be deemed given and effective on the first following day that is a Local Business Day.

- (b) **Change of Details.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system or e-mail details at which notices or other communications are to be given to it.

### 13. Governing Law and Jurisdiction

- (a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule;

- (b) **Jurisdiction.** With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Agreement (“Proceedings”), each party irrevocably:—

- (i) submits:—

- (1) if this Agreement is expressed to be governed by English law, to (A) the non-exclusive jurisdiction of the English courts if the Proceedings do not involve a Convention Court and (B) the exclusive jurisdiction of the English courts if the Proceedings do involve a Convention Court; or

- (2) if this Agreement is expressed to be governed by the laws of the State of New York, to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City;

- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party; and

- (iii) agrees, to the extent permitted by applicable law, that the bringing of Proceedings in any one or more jurisdictions will not preclude the bringing of Proceedings in any other jurisdiction.

- (c) **Service of Process.** Each party irrevocably appoints the Process Agent, if any, specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party’s Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12(a)(i), 12(a)(iii) or 12(a)(iv). Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by applicable law.

- (d) **Waiver of immunities.** Each party irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

## 14. Definitions

As used in this Agreement:—

**“Additional Representation”** has the meaning specified in Section 3.

**“Additional Termination Event”** has the meaning specified in Section 5(b).

**“Affected Party”** has the meaning specified in Section 5(b).

**“Affected Transactions”** means (a) with respect to any Termination Event consisting of an Illegality, Force Majeure Event, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event (which, in the case of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2), means all Transactions unless the relevant Credit Support Document references only certain Transactions, in which case those Transactions and, if the relevant Credit Support Document constitutes a Confirmation for a Transaction, that Transaction) and (b) with respect to any other Termination Event, all Transactions.

**“Affiliate”** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

**“Agreement”** has the meaning specified in Section 1(c).

**“Applicable Close-out Rate”** means:—

- (a) in respect of the determination of an Unpaid Amount:—
  - (i) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;
  - (ii) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate;
  - (iii) in respect of obligations deferred pursuant to Section 5(d), if there is no Defaulting Party and for so long as the deferral period continues, the Applicable Deferral Rate; and
  - (iv) in all other cases following the occurrence of a Termination Event (except where interest accrues pursuant to clause (iii) above), the Applicable Deferral Rate; and
- (b) in respect of an Early Termination Amount:—
  - (i) for the period from (and including) the relevant Early Termination Date to (but excluding) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable:—
    - (1) if the Early Termination Amount is payable by a Defaulting Party, the Default Rate;
    - (2) if the Early Termination Amount is payable by a Non-defaulting Party, the Non-default Rate; and
    - (3) in all other cases, the Applicable Deferral Rate; and

(ii) for the period from (and including) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable to (but excluding) the date of actual payment:—

- (1) if a party fails to pay the Early Termination Amount due to the occurrence of an event or circumstance which would, if it occurred with respect to a payment or delivery under a Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and for so long as the Early Termination Amount remains unpaid due to the continuing existence of such event or circumstance, the Applicable Deferral Rate;
- (2) if the Early Termination Amount is payable by a Defaulting Party (but excluding any period in respect of which clause (1) above applies), the Default Rate;
- (3) if the Early Termination Amount is payable by a Non-defaulting Party (but excluding any period in respect of which clause (1) above applies), the Non-default Rate; and
- (4) in all other cases, the Termination Rate.

**“Applicable Deferral Rate”** means:—

- (a) for the purpose of Section 9(h)(i)(3)(A), the rate certified by the relevant payer to be a rate offered to the payer by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market;
- (b) for purposes of Section 9(h)(i)(3)(B) and clause (a)(iii) of the definition of Applicable Close-out Rate, the rate certified by the relevant payer to be a rate offered to prime banks by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer after consultation with the other party, if practicable, for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market; and
- (c) for purposes of Section 9(h)(i)(3)(C) and clauses (a)(iv), (b)(i)(3) and (b)(ii)(l) of the definition of Applicable Close-out Rate, a rate equal to the arithmetic mean of the rate determined pursuant to clause (a) above and a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount.

**“Automatic Early Termination”** has the meaning specified in Section 6(a).

**“Burdened Party”** has the meaning specified in Section 5(b)(iv).

**“Change in Tax Law”** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs after the parties enter into the relevant Transaction.

**“Close-out Amount”** means, with respect to each Terminated Transaction or each group of Terminated Transactions and a Determining Party, the amount of the losses or costs of the Determining Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Determining Party that are or would be realised under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Determining Party the economic equivalent of, (a) the material terms of that Terminated Transaction or group of Terminated Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of that Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in

Section 2(a)(iii) and (b) the option rights of the parties in respect of that Terminated Transaction or group of Terminated Transactions.

Any Close-out Amount will be determined by the Determining Party (or its agent), which will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. The Determining Party may determine a Close-out Amount for any group of Terminated Transactions or any individual Terminated Transaction but, in the aggregate, for not less than all Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

Unpaid Amounts in respect of a Terminated Transaction or group of Terminated Transactions and legal fees and out-of-pocket expenses referred to in Section 11 are to be excluded in all determinations of Close-out Amounts.

In determining a Close-out Amount, the Determining Party may consider any relevant information, including, without limitation, one or more of the following types of information:—

- (i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;
- (ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or
- (iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party's Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

The Determining Party will consider, taking into account the standards and procedures described in this definition, quotations pursuant to clause (i) above or relevant market data pursuant to clause (ii) above unless the Determining Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in clause (i), (ii) or (iii) above, the Determining Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilised. Third parties supplying quotations pursuant to clause (i) above or market data pursuant to clause (ii) above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Without duplication of amounts calculated based on information described in clause (i), (ii) or (iii) above, or other relevant information, and when it is commercially reasonable to do so, the Determining Party may in addition consider in calculating a Close-out Amount any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to a Terminated Transaction or group of Terminated Transactions (or any gain resulting from any of them).

Commercially reasonable procedures used in determining a Close-out Amount may include the following:—

- (1) application to relevant market data from third parties pursuant to clause (ii) above or information from internal sources pursuant to clause (iii) above of pricing or other valuation models that are, at the time of the determination of the Close-out Amount, used by the Determining Party in the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the Terminated Transaction or group of Terminated Transactions; and

(2) application of different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.

“**Confirmation**” has the meaning specified in the preamble.

“**consent**” includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

“**Contractual Currency**” has the meaning specified in Section 8(a).

“**Convention Court**” means any court which is bound to apply to the Proceedings either Article 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters or Article 17 of the 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

“**Credit Event Upon Merger**” has the meaning specified in Section 5(b).

“**Credit Support Document**” means any agreement or instrument that is specified as such in this Agreement.

“**Credit Support Provider**” has the meaning specified in the Schedule.

“**Cross-Default**” means the event specified in Section 5(a)(vi).

“**Default Rate**” means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

“**Defaulting Party**” has the meaning specified in Section 6(a).

“**Designated Event**” has the meaning specified in Section 5(b)(v).

“**Determining Party**” means the party determining a Close-out Amount.

“**Early Termination Amount**” has the meaning specified in Section 6(e).

“**Early Termination Date**” means the date determined in accordance with Section 6(a) or 6(b)(iv).

“**electronic messages**” does not include e-mails but does include documents expressed in markup languages, and “**electronic messaging system**” will be construed accordingly.

“**English law**” means the law of England and Wales, and “**English**” will be construed accordingly.

“**Event of Default**” has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

“**Force Majeure Event**” has the meaning specified in Section 5(b).

“**General Business Day**” means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits).

“**Illegality**” has the meaning specified in Section 5(b).



**“Indemnifiable Tax”** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

**“law”** includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority), and **“unlawful”** will be construed accordingly.

**“Local Business Day”** means (a) in relation to any obligation under Section 2(a)(i), a General Business Day in the place or places specified in the relevant Confirmation and a day on which a relevant settlement system is open or operating as specified in the relevant Confirmation or, if a place or a settlement system is not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) for the purpose of determining when a Waiting Period expires, a General Business Day in the place where the event or circumstance that constitutes or gives rise to the Illegality or Force Majeure Event, as the case may be, occurs, (c) in relation to any other payment, a General Business Day in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment and, if that currency does not have a single recognised principal financial centre, a day on which the settlement system necessary to accomplish such payment is open, (d) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), a General Business Day (or a day that would have been a General Business Day but for the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event) in the place specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (e) in relation to Section 5(a)(v)(2), a General Business Day in the relevant locations for performance with respect to such Specified Transaction.

**“Local Delivery Day”** means, for purposes of Sections 5(a)(i) and 5(d), a day on which settlement systems necessary to accomplish the relevant delivery are generally open for business so that the delivery is capable of being accomplished in accordance with customary market practice, in the place specified in the relevant Confirmation or, if not so specified, in a location as determined in accordance with customary market practice for the relevant delivery.

**“Master Agreement”** has the meaning specified in the preamble.

**“Merger Without Assumption”** means the event specified in Section 5(a)(viii).

**“Multiple Transaction Payment Netting”** has the meaning specified in Section 2(c).

**“Non-affected Party”** means, so long as there is only one Affected Party, the other party.

**“Non-default Rate”** means the rate certified by the Non-defaulting Party to be a rate offered to the Non-defaulting Party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the Non-defaulting Party for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market.

**“Non-defaulting Party”** has the meaning specified in Section 6(a).

**“Office”** means a branch or office of a party, which may be such party’s head or home office.

**“Other Amounts”** has the meaning specified in Section 6(f).

**“Payee”** has the meaning specified in Section 6(f).

**“Payer”** has the meaning specified in Section 6(f).

**“Potential Event of Default”** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**“Proceedings”** has the meaning specified in Section 13(b).

**“Process Agent”** has the meaning specified in the Schedule.

**“Rate of exchange”** includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

**“Relevant Jurisdiction”** means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

**“Schedule”** has the meaning specified in the preamble.

**“Scheduled Settlement Date”** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**“Specified Entity”** has the meaning specified in the Schedule.

**“Specified Indebtedness”** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

**“Specified Transaction”** means, subject to the Schedule, (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is not a Transaction under this Agreement but (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**“Stamp Tax”** means any stamp, registration, documentation or similar tax.

**“Stamp Tax Jurisdiction”** has the meaning specified in Section 4(e).

**“Tax”** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

**“Tax Event”** has the meaning specified in Section 5(b).

**“Tax Event Upon Merger”** has the meaning specified in Section 5(b).

**“Terminated Transactions”** means, with respect to any Early Termination Date, (a) if resulting from an Illegality or a Force Majeure Event, all Affected Transactions specified in the notice given pursuant to Section 6(b)(iv), (b) if resulting from any other Termination Event, all Affected Transactions and (c) if resulting from an Event of Default, all Transactions in effect either immediately before the effectiveness of the notice designating that Early Termination Date or, if Automatic Early Termination applies, immediately before that Early Termination Date.

**“Termination Currency”** means (a) if a Termination Currency is specified in the Schedule and that currency is freely available, that currency, and (b) otherwise, euro if this Agreement is expressed to be governed by English law or United States Dollars if this Agreement is expressed to be governed by the laws of the State of New York.

**“Termination Currency Equivalent”** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the “Other Currency”), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Close-out Amount is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

**“Termination Event”** means an Illegality, a Force Majeure Event, a Tax Event, a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

**“Termination Rate”** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

**“Threshold Amount”** means the amount, if any, specified as such in the Schedule.

**“Transaction”** has the meaning specified in the preamble.

**“Unpaid Amounts”** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii) or due but for Section 5(d)) to such party under Section 2(a)(i) or 2(d)(i)(4) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date, (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii) or 5(d)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered and (c) if the Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions, any Early Termination Amount due prior to such Early Termination Date and which remains unpaid as of such Early Termination Date, in each case together with any amount of interest accrued or other

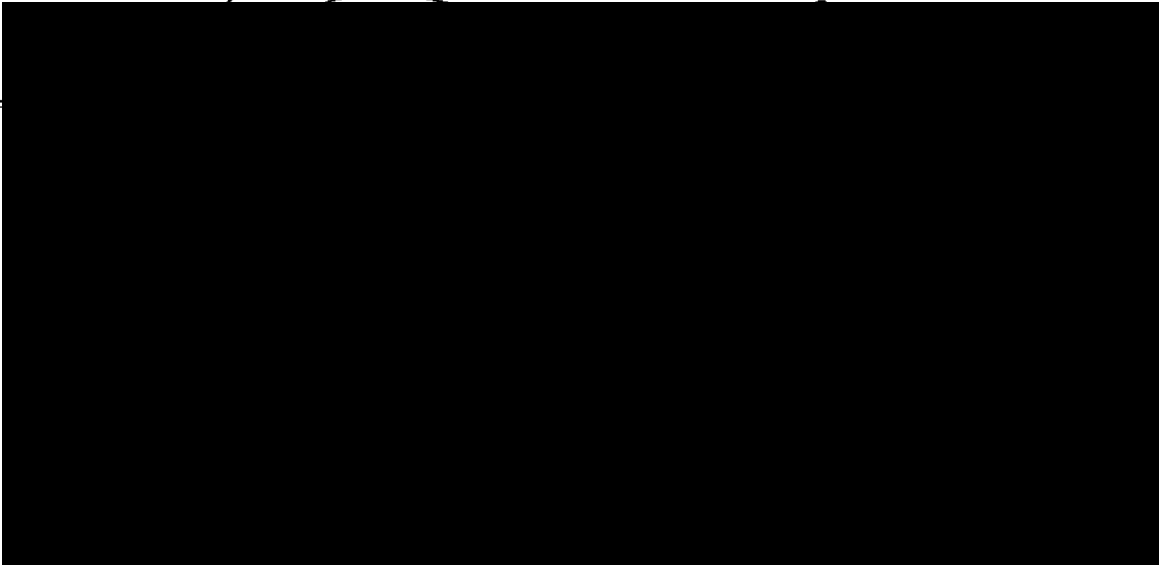
compensation in respect of that obligation or deferred obligation, as the case may be, pursuant to Section 9(h)(ii)(1) or (2), as appropriate. The fair market value of any obligation referred to in clause (b) above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it will be the average of the Termination Currency Equivalents of the fair market values so determined by both parties.

*"Waiting Period"* means:—

(a) in respect of an event or circumstance under Section 5(b)(i), other than in the case of Section 5(b)(i)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of three Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance; and

(b) in respect of an event or circumstance under Section 5(b)(ii), other than in the case of Section 5(b)(ii)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of eight Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document \_\_\_\_\_





referred to in (1) or the failure to pay referred to in (2) is, or is due to, a failure to pay caused by an error or omission of an administrative or operational nature; (b) funds were available to such party to enable it to make the relevant payment when due; and (c) the relevant payment is made within three Local Business Days following receipt of written notice from an interested party of the failure to pay."

**"Specified Indebtedness"** means any obligation (whether present or future, contingent or otherwise as principal or surety or otherwise) for the payment or repayment of any money including without limitation any payment or repayment obligation with respect to any securities lending transaction or agreement or any prime brokerage transaction or agreement.

**"Threshold Amount"** means:

- (i) with respect to Party A: an amount equal to 3% of shareholders' equity (however described) of Party A as shown on the most recent annual audited financial statements of Party A; and
- (ii) with respect to Party B, the lesser of USD 10,000,000 (or the equivalent in any other currency or currencies) and an amount equal to 3% of Net Asset Value as shown on the most recent annual audited financial statements of Party B.

- (d) The **"Credit Event Upon Merger"** provisions of Section 5(b)(v) of this Agreement will apply to Party A and Party B.
- (e) The **"Automatic Early Termination"** provision of Section 6(a) of this Agreement applies to Party A and does not apply to Party B.

Section 6(e)(iii) of this Agreement is hereby amended by the addition of the following at the end thereof:

"In addition, to, and notwithstanding anything to the contrary in the preceding sentence of this Section 6(e)(iii), if an Early Termination Date is deemed to have occurred under Section 6(a) as a result of Automatic Early Termination, the Defaulting Party hereby agrees to indemnify the Non-defaulting Party on demand against all loss or damage that the Non-defaulting Party may sustain or incur in respect of each Transaction as a result of movement in interest rates, currency exchange rates or market quotations between the Early Termination Date and the date (the "Determination Date") upon which the Non-defaulting Party first becomes aware that the Early Termination Date has been deemed to have occurred under Section 6(a).

If the Non-defaulting Party shall determine that it would gain or benefit from the movement in interest rates, currency exchange rates or market quotations between the Early Termination Date and the Determination Date, the amount of such gain or benefit shall be deducted from the amount payable by the Defaulting Party, or added to the amount payable by the Non-defaulting Party, pursuant to Section 6(e)(i).

The Determination Date shall be a date not later than the date upon which creditors generally of the Defaulting Party are notified of the occurrence of the Event of Default leading to the deemed Early Termination Date."

- (f) **"Termination Currency"** means one of the currencies in which payments are required to be made pursuant to a Confirmation in respect of a Terminated Transaction that is selected by the Non-defaulting Party or non-Affected Party, or, if there are two Affected Parties, as agreed

between the parties or, failing agreement of if the currency selected is not freely available, the Termination Currency shall be U.S. Dollars.

- (g) **Additional Termination Event** will apply. If any of the following events occurs with respect to Party B, such event shall constitute an Additional Termination Event in which case Party B shall be the Affected Party:
- (A) **Decline in Net Asset Value.** (A) a 15% or greater decline in Party B's Net Asset Value compared to Party B's Net Asset Value as of the last Local Business Day of the preceding month, or (B) a 25% or greater decline in Party B's Net Asset Value compared to Party B's Net Asset Value as of the last Local Business Day of the third preceding month, or (C) a 35% or greater decline in Party B's Net Asset Value compared to Party B's Net Asset Value as of the last Local Business Day of the twelfth preceding month;
  - (B) **Minimum Net Asset Value.** The Net Asset Value of Party B is equal to or less than (i) 60% of Party B's Net Asset Value as of the last Local Business Day of the previous fiscal year (as reflected in Party B's annual audited financial statements for such fiscal year) and (ii) 60% of Party B's Net Asset Value as of the signing of this Agreement;
  - (C) **Change of Investment Adviser.** The Investment Adviser (as defined in Part 5 hereof) ceases to be the Investment Adviser of Party B in principally the same or similar capacity as that held as of the date of this Agreement, and (A) is not replaced by either (x) an Affiliate of the Investment Adviser which is reasonably acceptable to Party A acting in good faith and in a commercially reasonable manner or (y) a new Investment Adviser, which is reasonably acceptable to Party A acting in good faith and in a commercially reasonable manner;
  - (D) **Change of Investment Manager.** The Investment Manager (as defined in Part 5 hereof) ceases to be the Investment Manager of Party B in principally the same or similar capacity as that held as of the date of this Agreement, and (A) is not replaced by either (x) an Affiliate of the Investment Manager which is reasonably acceptable to Party A acting in good faith and in a commercially reasonable manner or (y) a new investment manager, which is reasonably acceptable to Party A acting in good faith and in a commercially reasonable manner;
  - (E) **Failure to Deliver Net Asset Value Statement.** Party B fails to deliver a statement of its Net Asset Value or its monthly investment report on or before the fifth Local Business Day of Party A notifying Party B (whether in writing or orally) of Party B's failure to provide the report on the required delivery date specified in Part 3 of this Schedule; and
  - (F) **Change in Regulatory Status.** The Investment Manager ceases to be regulated by a recognized regulatory body in a FATF (Financial Action Task Force) country.

## Part 2 Tax Representations

- (a) ***Payer Tax Representations.*** For the purpose of Section 3(e) of this Agreement, Party A and Party B each makes the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 9(h) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, **PROVIDED** that it shall not be a breach of this representation where reliance is placed on sub-clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

- (b) ***Payee Tax Representations.*** For the purpose of Section 3(f) of this Agreement, Party A and Party B make no representations.



**Part 3**  
**Agreement to Deliver Documents**

For the purposes of Sections 3(d), 4(a)(i) and (ii) of this Agreement, each party agrees to supply the following documents:

- (a) Tax forms, documents or certificates to be delivered are: None
- (b) Other documents to be delivered are:

<b>PARTY REQUIRED TO DELIVER DOCUMENT:</b>	<b>FORM/DOCUMENT/CERTIFICATE:</b>	<b>DATE BY WHICH TO BE DELIVERED:</b>	<b>COVERED BY SECTION 3(D) REPRESENTATION:</b>
Party A and Party B	Evidence of the authority and true signatures of each official or representative signing this Agreement or, as the case may be, a Confirmation, on its behalf.	On or before execution of this Agreement and each Confirmation forming a part of this Agreement.	Yes
Party B	Evidence reasonably satisfactory to Party A authorising Party B's execution of this Agreement and each Confirmation and performance of its obligations hereunder.	On or before execution of this Agreement.	Yes
Party B	Annual audited financial statements	As soon as practicable but in any event within 180 days of the end of each financial year	Yes
Party B	Confirmation of the NAV of Party B	Within 20 days of the last Local Business Day in each calendar month	Yes
Party B	Any other information which Party A may reasonably request from Party B from time to time	Upon request of Party A	Yes

**Part 4**  
**Miscellaneous**

(a) Notices or communications to Party A:

For a particular Transaction, the address, telex number or facsimile number specified in the Confirmation and for any other notice the address specified below:

Address: 5 Broadgate, London EC2M 2QS  
Attention: Documentation Unit / Legal Department  
Facsimile no: +44 20 7567 4406 / +44 20 7568 9257  
Telephone no: +44 20 7567 8000

Address for notices or communications to Party B:

[REDACTED]

(b) **Process Agent.** For the purpose of Section 13(c) of this Agreement:

For Party A: Not applicable.

For Party B: [REDACTED]

(c) **Offices.** The provisions of Section 10(a) of this Agreement apply to Party A and Party B.

(d) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement:

Party A is a Multibranch Party and may act through its branches in any of the following territories or countries:

England and Wales, Australia, Hong Kong, Singapore and Switzerland.

Party B is not a Multibranch Party.

(e) **Calculation Agent.** The Calculation Agent is Party A, unless (1) otherwise specified in a Confirmation for the relevant Transaction or (2) an Event of Default has occurred and is continuing with respect to Party A, in which case the parties shall select a mutually agreeable independent third party which is a leading dealer for the relevant Transaction, to act as Calculation Agent (a "**Substitute Calculation Agent**"). If the parties cannot agree on a Substitute Calculation Agent, then Party A and Party B shall each pick a leading dealer in the relevant market and such dealers shall choose a third leading dealer to be the Substitute Calculation Agent. Party A or the Substitute Calculation Agent shall make each calculation in

good faith and in a commercially reasonable manner. Such calculations shall be binding absent manifest error.

Notwithstanding the foregoing, and subject to the last paragraph of this Part 4(e), if Party B in good faith has a commercially reasonable basis for disagreement with any calculation or determination made by Party A in its role as Calculation Agent, Party B may express such disagreement within one Local Business Day of receipt of any calculation or determination from Party A. With respect to a disagreement, Party B shall specify in reasonable detail: (i) Party B's basis for dispute, together with supporting calculations or evidence, (ii) the amount of Party B's calculation or the result of Party B's determination, (iii) in the case of a calculation the amount by which Party B's calculation differs from Party A's calculation, and in the case of a determination, if ascertainable, the amount of the difference between applying the Party A's determination and applying Party B's determination (the "**Disputed Amount**") and (iv) if applicable, the amount that is not subject to dispute (the "**Undisputed Amount**").

The Undisputed Amount shall be paid or delivered, as the case may, as scheduled for the relevant Transaction.

Party A and Party B shall negotiate in good faith to resolve the Disputed Amount as promptly as practicable. If Party A and Party B are unable to reach agreement as to the Disputed Amount within one Local Business Day of the date on which Party B notifies Party A of the dispute, then Party A will recalculate the amount by requesting three independent third parties which are leading dealers for the relevant transaction to provide their respective calculations of the Disputed Amount and taking the arithmetic average of those obtained. With respect to any determination made by the Calculation Agent that is not susceptible to resolution by arithmetic averaging, Party A will request one independent third party which is a leading dealer for the relevant Transaction (the "**Independent Calculation Agent**") to determine whether the Calculation Agent's determination under dispute is commercially reasonable. If such Independent Calculation Agent determines that the disputed determination is commercially reasonable, then the Calculation Agent's original determination shall apply. If such Independent Calculation Agent determines that the disputed determination is not commercially reasonable, such dealer shall provide its own determination.

It being understood, if no leading dealer provides the requested calculation or opines on the determination (or, if applicable, the Independent Calculation Agent does not so provide or opine) by 1:00 p.m. London time on the Local Business Day that is two Local Business Days after the date on which Party B notifies Party A of the dispute (the "**Dispute Resolution Date**"), then the Calculation Agent's original calculations or determinations will be used. Any calculation or determination made pursuant to this section by leading dealer(s) will be binding in the absence of manifest error except as provided in the next paragraph of this Part 4(e).

Party A will notify Party B of its recalculation of the Disputed Amount, and any resulting adjustments (such Disputed Amount, as adjusted pursuant hereto, the "**Adjusted Amount**"). If such notice is given prior to 1:00 p.m. London time on Dispute Resolution Date, the applicable party shall transfer the Adjusted Amount, if any, by 6:00 p.m. London time on such Dispute Resolution Date. If such notice is given after 1:00 p.m. London time on the Dispute Resolution Date, the applicable party shall transfer the Adjusted Amount, if any, by 1:00 p.m. London time on the Local Business Day next succeeding the date on which such notice is given.

The costs (if any) relating to a Substitute Calculation Agent, Independent Calculation Agent or to such polling of leading dealer(s) shall be borne equally by Party A and Party B.

Notwithstanding the previous paragraphs, where the terms of any Transaction hereunder provides or contemplates that the Calculation Agent will solicit quotations from one or more

dealers for purposes of making a calculation, selection of those dealers shall not be subject to this Part 4(e).

- (f) **Credit Support Document.** Details of any Credit Support Document for Party A and Party B: not applicable.
- (g) **Credit Support Provider.** Credit Support Provider means in relation to Party A and Party B: not applicable.
- (h) **Governing Law.** This Agreement and any non-contractual obligations arising out of or in connection with it or with the subject matter of this contract shall be governed by, and construed in accordance with, English law.
- (i) **Netting of Payments.** Multiple Transaction Payment Netting will not apply for the purpose of Section 2(c) of this Agreement, except that Multiple Transaction Payment Netting will apply for the purpose of Section 2(c) of this Agreement for the following groups of Transactions, which shall be treated separately: (1) FX Transactions (including FX Transactions resulting from the exercise of Currency Option Transactions); (2) premium payable under Currency Option Transactions (each of (1) and (2) as defined in the 1998 ISDA FX and Currency Option Definitions); and (3) Commodity Transactions (as defined in the 2005 ISDA Commodity Definitions) starting from the date of this Agreement.
- (j) **"Affiliate"** will have the meaning specified in Section 14 of this Agreement. Notwithstanding the foregoing, the parties agree that Party B has no Affiliates for the purposes of this Agreement
- (k) **Absence of Litigation.** For the purpose of Section 3(c):  
**"Specified Entity"** means in relation to Party A, any Affiliate of Party A.  
**"Specified Entity"** means in relation to Party B, any Affiliate of Party B.
- (l) **No Agency.** The provisions of Section 3(g) will apply to this Agreement.
- (m) **Additional Representation** will apply. For the purpose of Section 3 of this Agreement, the following will constitute an Additional Representation:

**Relationship Between Parties.** Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):

- (i) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction, it being understood that information and explanations related to the terms and conditions of a Transaction will not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party will be deemed to be an assurance or guarantee as to the expected results of that Transaction.
- (ii) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and

understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.

- (iii) *Status of Parties.* The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction.

References in this clause to a "party" shall, in the case of UBS AG and where the context so allows, include reference to any Affiliate of UBS AG.

- (n) ***Recording of Conversations.*** Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings.

## Part 5 Other Provisions

- (a) **Scope of Agreement.** Upon the effectiveness of this Agreement and unless the parties to this Agreement otherwise agree in writing, by specific reference to this Agreement, that this provision does not apply, all Derivative Transactions (as defined below) then outstanding, or which may be entered into thereafter, between the parties, including Transactions entered into by the parties through Offices, if any, listed in Part 4(d), are deemed to be Transactions governed by this Agreement and any confirmation or other confirming evidence of the Transaction is deemed to be a Confirmation.

'Derivative Transaction' means any transaction (including an agreement with respect thereto) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, weather index transaction, bullion/precious metal transaction, base metal transaction, or forward purchase or sale of a security, commodity or other financial instrument or interest, or any other similar transaction (including any option with respect to any of these transactions) and any combination of these transactions.

**ISDA Definitions.** (i) The provisions of the 1998 FX and Currency Option Definitions (as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and the Foreign Exchange Committee) (the "1998 FX Definitions") are hereby incorporated in their entirety and shall apply to any FX Transaction or Currency Option Transaction as defined in Section 1.12 and Section 1.5, respectively, of Article 1 of the 1998 FX Definitions (each an "FX Transaction" or "Currency Option Transaction", respectively) entered into by the parties hereto (unless, in relation to a particular FX Transaction or Currency Option Transaction, as otherwise specified in the relevant Confirmation) ; and

(ii) The provisions of the 2005 ISDA Commodity Definitions (as published by the International Swaps and Derivatives Association, Inc.) (the "Commodity Definitions") are hereby incorporated in their entirety and shall apply to any Transaction as defined in Section 1.1 of Article 1 of the Commodity Definitions (each a "Commodity Transaction") entered into by the parties hereto (unless, in relation to a particular Commodity Transaction, as otherwise specified in the relevant Confirmation).

- (b) **Failure to Pay or Deliver / Default Under Specified Transaction.**

In relation to Party A only, Sections 5(a)(i) and 5(a)(v)(2) of this Agreement are amended by inserting the following at the end of both provisions:

"Notwithstanding the foregoing, an Event of Default shall not have occurred if a party (the "Subject Party") has failed to perform its obligation to make any payment or delivery (a "Specified Failure") and, as demonstrated to the reasonable satisfaction of the other party on or before the first Local Business Day or first Local Delivery Day (as applicable) after notice of such failure is given to the party : (a) such Specified Failure was caused by an error or omission of an administrative or operational nature (an "Excusable Failure") and (b) other than such Excusable Failure, the Subject Party has taken all steps necessary for it to take in order to cause such delivery or payment, as the case may be, to be made and, but for the Excusable Failure, is in all other respect capable of making delivery or payment, as the case may be on the scheduled delivery or payment date relating to such Specified Failure, and provided such relevant payment or delivery is

made within three Local Business Days or Local Delivery Days (as applicable) after notice of such failure to pay is given to the party."

For Party B only, Section 5(a)(i) is deleted in its entirety and replaced by:

"(i) **Failure to Pay or Deliver.** Failure by Party B to make, when due, any payment under this Agreement or any delivery under Section 2(a)(i) or 9(h) required to be made by it and Party B does not comply with the Grace Period Procedure."

(c) **Bankruptcy.** Section 5(a)(vii) of this Agreement is amended by replacing "15" with "30" on lines eighteen and twenty five.

(d) **Set-Off.** Section 6(f) is amended by the addition of:

"(or any other amounts whether or not arising under this Agreement, matured, contingent and irrespective of the currency, place of payment of booking of the obligation)" on the first line immediately after "Amount", and "or its Affiliates if it is the Non-defaulting Party or Non-affected Party" immediately after both instances of "party" on the first line.

(e) **Waiver of Jury Trial.** Each party hereby irrevocably waives any and all right to trial by jury in any suit, action or proceeding arising out of or relating to this agreement or any transaction and acknowledges that this waiver is a material inducement to the other party's entering into this agreement.

(f) **2002 Master Agreement Protocol.** The parties agree that the definitions and provisions contained in Annexes 1 to 18 and Section 6 of the 2002 Master Agreement Protocol published by the International Swaps and Derivative Association, Inc., on 15th July 2003 are incorporated into and will supplement and form part of this Agreement. References in those definitions and provisions to any "ISDA 2002 Master Agreement" or "2002 Master" will be deemed to be references to this Agreement.

(g) **Further Representation of Party B.** In addition to its representations under Section 3, Party B represents to Party A (which representations will be deemed to be repeated by Party B on each date on which any Transaction subsists) that:

(i) **Investment Adviser's/Investment Manager's Authority.** It has appointed the Investment Adviser and/or Investment Manager to act as its agent for all purposes under this Agreement. The Investment Adviser and/or Investment Manager is authorized to enter into Transactions on Party B's behalf, and unless it has received written notice of termination of the Investment Adviser's or Investment Manager's authority, Party A shall be entitled to rely upon any and all instructions or notices received from the Investment Adviser or Investment Manager with respect to this Agreement or any Transaction, and Party A shall be under no duty to determine whether the giving of any notice or instruction, or the entry into any Transaction (including without limitation its nature and its amount), on behalf of Party B is within the Investment Manager's or Investment Adviser's authority;

(ii) **Compliance with Applicable Internal Policies.** Each Transaction entered into under this Agreement will be entered into in accordance with, and will at all times comply with, applicable investment policies, guidelines or other requirements of Party B (if any, as may be adopted or amended from time to time by Party B) that may affect the due authorization or validity of any Transaction or the Agreement;

(iii) Each of the Investment Adviser and the Investment Manager, on behalf of Party B, has the power to execute Confirmations relating to this Agreement and to deliver any other

documentation relating to this Agreement that it is required by this Agreement to deliver;

- (iv) The Investment Adviser or the Investment Manager, on behalf of Party B, is authorized to enter into and perform the Transactions contemplated by this Agreement and to bind Party B in connection with all obligations in connection therewith and under this Agreement;
  - (v) To its knowledge such execution, delivery and performance by the Investment Adviser or the Investment Manager, on behalf of Party B does not conflict with any law or regulation applicable to the Investment Adviser or the Investment Manager, any provision of the constituent documents of the Investment Adviser or the Investment Manager, any order or judgment of any court or other agency of government applicable to the Investment Adviser or the Investment Manager or any of the assets of the Investment Adviser or the Investment Manager or any contractual restriction binding on or affecting the Adviser or the Investment Manager or any assets of the Investment Adviser or the Investment Manager;
  - (vi) Each Transaction entered into in connection with this Agreement on behalf of Party B is suitable and appropriate and in accordance with the investment objectives and guidelines for Party B on the date such Transaction is entered into; and
  - (vii) To its knowledge all governmental and other consents that are required to have been obtained by each of the Investment Adviser and the Investment Manager with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with.
- (h) **Further Agreements of Party B.** In addition to its agreements under Section 4, Party B agrees with Party A that, so long as either party has or may have any obligations under this Agreement:
- (i) Any amounts payable by Party A under this Agreement are deemed satisfied when paid by Party A in accordance with the instructions of the Investment Adviser or Investment Manager; and
  - (ii) Party B shall be bound as principal of any Transaction executed by the Investment Adviser or Investment Manager (or any other person representing or purporting to represent the Adviser or Investment Manager) as its agent, notwithstanding any lack of authority or power to act on the part of the Investment Adviser or Investment Manager or such other person, unless Party A has received written notice of any change in the authority of the Investment Adviser or Investment Manager to act on behalf of Party B, provided, however, that no such change shall affect the validity of any Transaction entered into prior to such change.
- (i) **Reliance on Notices.** Except as otherwise stated herein, each party may rely upon any oral or written notices and instructions reasonably believed to be originated from the other party or its duly authorised agent (including, for Party B, the Investment Adviser) and does not incur any liability to the other party in acting in accordance with those notices and instructions.
- (j) **Definitions.** Section 14 is hereby amended to include the following definition in its appropriate alphabetical position:

**Base Currency** means United States Dollars

**Close of Business** means 6p.m. New York time.



**Customer Business Day** means, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in the Customer Business Day City. In any event, a day on which the relevant banks or settlement system would have been open for business but for an action taken by a governmental authority less than 1 month prior to that day, will be a Customer Business Day.

**Customer Business Day City** means, London

**Failure Notice** means, in relation to Party B's obligation to make, when due, any payment under this Agreement or any delivery under Section 2(a)(i) or 9(h) required by it, a notice of Party B's failure to satisfy payment under this Agreement or make delivery under Section 2(a)(i) or 9(h), which notice Party A has either used reasonable efforts to despatch to the fax and e-mail addresses, if any, specified for Failure Notices or otherwise delivered to Party B or an Investment Adviser (Party A having used such reasonable efforts or, if earlier, such delivery to constitute "issue" for the purposes of Section 5(a)(i)).

**Grace Period Procedure** is the procedure that Party B complies with in relation to a failure contemplated by Section 5(a)(i) if, and only if,

- (i) following Party A's issue of a Failure Notice in relation to such failure,
  - (x) if the Failure Notice was issued between 7 a.m. and 5 p.m. (inclusive, and in the Customer Business Day City) on a Customer Business Day, within three hours of Party A issuing a Failure Notice,
  - (y) if the Failure Notice was issued after 5 p.m. (in the Customer Business Day City) on a Customer Business Day, or other than on a Customer Business Day, by 10 a.m. on the following Customer Business Day, or
  - (z) if the Failure Notice was issued before 7 a.m. (in the Customer Business Day City) on a Customer Business Day, by 10 a.m. on that Customer Business Day,
- (ii) Party B demonstrates to Party A's reasonable satisfaction that such failure was due entirely to an error or omission of an administrative or operational nature, and that, at all times between the time at which the relevant transfer was due and the time of such demonstration, funds were available for Party B to make the relevant transfer by such time, and that a reputable bank or broker has received from Party B an irrevocable instruction to make a transfer of funds that are freely available to Party B in an account in Party B's name on the books of that bank or broker, so as to remedy such failure within the applicable time period under (ii) below; and
- (ii) having so demonstrated, Party B makes the relevant transfer by,
  - (xx) where (x) above applies, 5 p.m. London time on the first Termination Currency Business Day after Party A's issue of the Failure Notice,
  - (yy) where (y) above applies, Close of Business on the first Termination Currency Business Day after Party A's issue of the Failure Notice, or
  - (zz) where (z) above applies, Close of Business on the Customer Business Day on which Party A issued the Failure Notice, or, if that is not a Termination Currency Business Day, the first Termination Currency Business Day thereafter.

**Investment Adviser** means Marshall Wace LLP or any successor affiliated entity.

**Investment Advisory Agreement** means the agreement between Party B and [REDACTED]

**Investment Manager** means [REDACTED] or any successor affiliated entity.

**Investment Management Agreement** means the agreement between [REDACTED] and [REDACTED]

**'Net Asset Value' or "NAV"** means the result in U.S. Dollars of subtracting the total value of all liabilities (including but not limited to the aggregate mark-to-market value of all trading positions constituting liabilities) from the total value of all assets (including but not limited to cash, deposit accounts and instruments, securities, and the aggregate mark-to-market value of all trading positions constituting assets). For purposes of this computation, amounts denominated in a currency other than U.S. Dollars shall be converted to U.S. Dollars at the spot rate for such currency prevailing on the date of such calculation.

**Termination Currency Business Day** means (1) in case that the Termination Currency is Euro, a day on which TARGET (the Trans-European Automated Real-time Gross settlement Express Transfer system) is open, or, (2) in any other case, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in the principal financial centre of the Base Currency, in each case, including a day on which the relevant banks or settlement system would have been open for business but for an action taken by a Governmental Authority less than 1 month prior to that day.

- (k) **Indian transactions.** If the parties are entering into a Transaction which is or otherwise involves an offshore derivative instrument ("**ODI**") (as such term is defined for the purposes of the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 2014, and notifications, circulars, rules and guidelines of the Securities and Exchange Board of India issued from time to time) (collectively referred to as the "**FPI Regulations**"), the representations and undertakings made by Party B in favour of Party A in a letter titled "Notice Regarding Derivative Products Linked to Indian Securities or Indices" (which may be amended/replaced from time to time) (the "**ODI Letter**") shall apply to the Transaction and references to ODI in the ODI Letter shall be construed to include the Transaction. If a representation or undertaking in the ODI Letter proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated; or if Party B fails to comply with or perform any agreement or obligation undertaken by it in the ODI Letter, it shall be an Additional Termination Event with all Transactions which are or otherwise involve an ODI (as defined in the ODI Letter) being the sole Affected Transactions, and with Party B being the sole Affected Party.
- (l) **Taiwanese transactions.** If the parties are entering into a Transaction referencing Taiwanese underliers where the relevant Exchange is in the Republic of China, Party B represents to Party A that:
- (i) it is not entering into the Transaction for the specific benefit or account of:
    - (a) any residents of the People's Republic of China ("**PRC**"), corporations in the PRC, or corporations outside the PRC that are beneficially owned by residents of the PRC or
    - (b) any residents of the Republic of China ("**ROC**" or "**Taiwan**"), corporations in Taiwan, or corporations outside Taiwan that are beneficially owned by residents of Taiwan.

- (ii) it will not, sell, transfer, assign, novate or otherwise dispose of the Transaction to or for the benefit or account of, or enter into any back-to-back equity derivative transaction with:
  - (a) any residents of the PRC, corporations in the PRC, or corporations outside the PRC which are beneficially owned by residents of the PRC or
  - (b) any residents of Taiwan, corporations in Taiwan, or corporations outside Taiwan that are beneficially owned by residents of Taiwan.
- (iii) details of the Transaction (including the identity of the parties) may,
  - (a) upon request or order by any competent authority, regulatory or enforcement organisation, governmental or otherwise, including without limitation, the stock exchange on which the underlying shares are listed,
  - (b) as required by applicable law, rules, regulations, codes or guidelines (whether having the force of law or otherwise), be disclosed in accordance with such request, order, law, rules, regulations, codes or guidelines (whether such disclosure is to be made to third parties or otherwise). By entering into the Transaction, Party B agrees to such disclosure and releases Party A (and its subsidiaries and affiliates) from any duty of confidentiality owed to it in relation to such information.

(m) ***Chinese transactions.***

- (i) If the parties are entering into a Transaction referencing **PRC** underliers where the relevant Exchange is in the PRC, Party B represents to Party A that:
  - (a) It is not a Domestic Investor;
  - (b) none of its investors are Domestic Investors.
  - (c) it will not sell, transfer, assign, novate or otherwise dispose of the Transaction to, or enter into any back-to-back equity derivative transaction with any Domestic Investor;
  - (d) details of the Transaction (including identity of the parties) may (a) upon request or order by any competent authority, regulatory or enforcement organisation, governmental or otherwise, including without limitation, the stock exchange on which the underlying shares are listed, (b) as required by applicable law, rules, regulations, codes or guidelines (whether having the force of law or otherwise), be disclosed in accordance with such request, order, law, rules, regulations, codes or guidelines (whether such disclosure is to be made to third parties or otherwise). By entering into the Transaction, Party B agrees to such disclosure and releases Party A (and its subsidiaries and affiliates) from any duty of confidentiality regarding such disclosure.
- (ii) **Domestic Investor** means:
  - (a) domestic individual as defined in the Administrative Measures on Foreign Exchange Matters for Individuals as issued by the People's Bank of China, and
  - (b) legal persons organised under the laws of the PRC (excluding Hong Kong, Macau and Taiwan).

- (n) ***Prior Agreements.*** This Agreement shall supersede all agreements between the parties entered into prior to the date of execution of this Agreement governing the terms of any Derivative Transaction between the parties and all confirmations relating to such Derivative Transactions shall supplement, form part of, and be subject to this Agreement, such confirmations shall be Confirmations hereunder and such Derivative Transactions shall be Transactions hereunder.

- (o) **Counterparts.** This Agreement may be executed in counterparts by facsimile or pdf signature, each of which shall be deemed to be a signed original.
- (p) **Contracts (Rights of Third Parties) Act 1999.** A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- (q) **FATCA – HIRE Act.**

(a) **FATCA PROTOCOL PROVISION.** “Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. “Tax” as used in Part 2(a) of this Schedule (Payer Tax Representation) and “Indemnifiable Tax” as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “**FATCA Withholding Tax**”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this agreement. If the parties each independently decide to adhere to any ISDA Protocol on FATCA Withholding Tax, upon effective adherence by both parties, the provisions of such Protocol shall supersede the foregoing provision.

(b) **Section 871(m).** The amendments set out in the Attachment to the ISDA 2015 Section 871(m) Protocol published by ISDA on November 2, 2015, which is available on the ISDA website ([www.isda.org](http://www.isda.org)) will apply to this Agreement. This Agreement will be deemed to be a Covered Master Agreement and the Implementation Date will be the effective date of this Agreement for the purposes of such protocol.

- (r) **ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol.**

Both parties agree that the amendments and provisions set out in the Attachment to the ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol published by ISDA on 19 July 2013 and available on the ISDA website ([www.isda.org](http://www.isda.org)) (the “**PRDR Protocol**”) shall be incorporated into and apply to this Agreement and that (i) references therein to the “Protocol Covered Agreement” shall be deemed to be references to this Agreement (and each “Protocol Covered Agreement” shall be read accordingly), and (ii) references therein to “Implementation Date” shall be deemed to be references to the date of this Agreement.

Furthermore, the parties agree that the elections made in each party's Adherence Letter (as defined in the PRDR Protocol) shall apply equally to this Agreement as if set out in full herein.

- (s) **Address for Failure Notice:** [REDACTED]

(t) **Limited Recourse.** Each of Party A and Party B enter into this Agreement and all Transactions hereunder in reliance upon the fact that [REDACTED] (the “**Company**”) is an umbrella Irish collective asset-management vehicle with segregated liability between sub-funds (each a “**Sub-Fund**” and together the “**Sub-Funds**”) pursuant to the Irish Collective Asset-management Vehicle (ICAV) Act 2015

(the "Act", and such type of Irish corporate fund vehicle being an "ICAV"). Party A and Party B agree that this Agreement shall be construed accordingly.

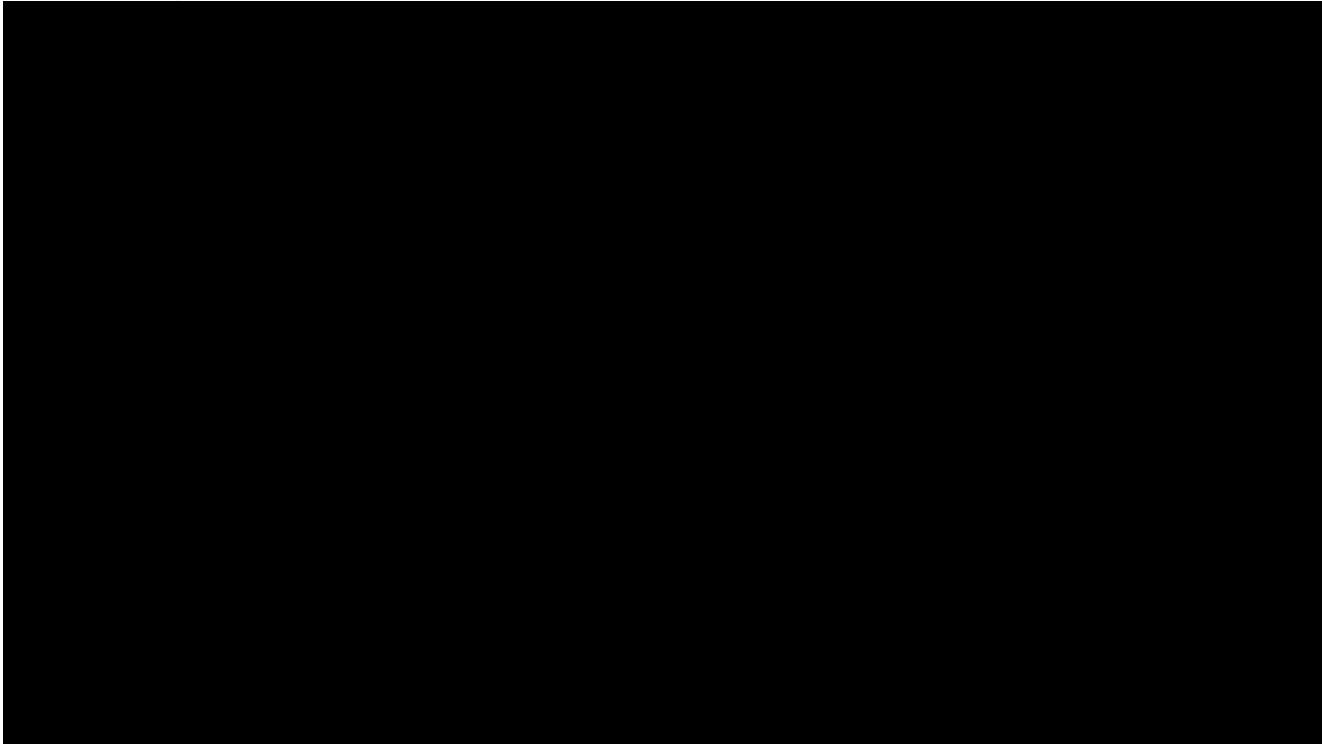
As a sub-fund within an ICAV, any liabilities or claims against ██████████ (the "Relevant Fund") may only be satisfied out of the assets of the Relevant Fund, and cannot extend to those of any other Sub-Fund within the Company. The parties agree that under no circumstances shall any rights, obligations, remedies or liabilities in respect of the Relevant Fund, or with respect to transactions in respect of the Relevant Fund, be deemed to constitute rights, obligations, remedies or liabilities applicable to any other Sub-Fund or to be transactions to which any other Sub-Fund is a party. Any rights of set off which arise under this Agreement will apply to the Company with respect to the Relevant Fund only.

Without prejudice to the foregoing:

- (a) Party A shall not seek whether in any proceedings or by any other means whatsoever or wheresoever to have recourse to any assets of any sub-fund of the Company in the discharge in all or any part of the liability which was not incurred on behalf of that sub-fund;
- (b) if Party A shall succeed by any means whatsoever or wheresoever in having recourse to any assets of any sub-fund in the discharge in all or any part of a liability which was not incurred on behalf of that sub-fund, Party A shall be liable to the Company to a sum equal to the value of the benefit thereby obtained by Party A;
- (c) if Party A shall succeed in seizing or attaching by any means, or otherwise levying execution against, any assets of a sub-fund in respect of a liability which was not incurred on behalf of that sub-fund, Party A shall hold those assets or the direct or indirect proceeds of the sale of such assets on trust for the Company and shall keep those assets or proceeds separately and identifiable as such property; and
- (d) any claim of Party A against a sub-fund not met from the assets of the sub-fund shall be extinguished and Party A shall not be able to petition for the winding-up of the Company or the termination of any other sub-fund as a consequence

Notwithstanding the foregoing, to the extent that Party A has an unsatisfied claim against the Relevant Fund, Party A may seek, in accordance with applicable law, to recoup further sums from the Relevant Fund in the event that the Relevant Fund subsequently recovers further assets in accordance with applicable law.

**IN WITNESS WHEREOF** the parties have executed this Schedule on the respective dates specified below with effect from the date specified on the first page of this document.



# ISDA<sup>®</sup>

International Swaps and Derivatives Association, Inc.

## 2002 MASTER AGREEMENT

dated as of 18 November 2016

UBS AG

and



("Party A")

("Party B")

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this 2002 Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties or otherwise effective for the purpose of confirming or evidencing those Transactions. This 2002 Master Agreement and the Schedule are together referred to as this "Master Agreement".

Accordingly, the parties agree as follows:—

### 1. Interpretation

- (a) *Definitions.* The terms defined in Section 14 and elsewhere in this Master Agreement will have the meanings therein specified for the purpose of this Master Agreement.
- (b) *Inconsistency.* In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement, such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) *Single Agreement.* All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

- (a) *General Conditions.*
  - (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
  - (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is,

other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other condition specified in this Agreement to be a condition precedent for the purpose of this Section 2(a)(iii).

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the Scheduled Settlement Date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting of Payments.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by which the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount and payment obligation will be determined in respect of all amounts payable on the same date in the same currency in respect of those Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or any Confirmation by specifying that "Multiple Transaction Payment Netting" applies to the Transactions identified as being subject to the election (in which case clause (ii) above will not apply to such Transactions). If Multiple Transaction Payment Netting is applicable to Transactions, it will apply to those Transactions with effect from the starting date specified in the Schedule or such Confirmation, or, if a starting date is not specified in the Schedule or such Confirmation, the starting date otherwise agreed by the parties in writing. This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required.



However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If:—

(1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);

(2) X does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

### 3. Representations

Each party makes the representations contained in Sections 3(a), 3(b), 3(c), 3(d), 3(e) and 3(f) and, if specified in the Schedule as applying, 3(g) to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement). If any “Additional Representation” is specified in the Schedule or any Confirmation as applying, the party or parties specified for such Additional Representation will make and, if applicable, be deemed to repeat such Additional Representation at the time or times specified for such Additional Representation.

(a) **Basic Representations.**

(i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it, any of its Credit Support Providers or any of its applicable Specified Entities any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

(g) **No Agency.** It is entering into this Agreement, including each Transaction, as principal and not as agent of any person or entity.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under clause (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply With Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organised, managed and controlled or considered to have its seat, or where an Office through which it is acting for the purpose of this Agreement is located (“Stamp Tax Jurisdiction”), and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party’s execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

## 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes (subject to Sections 5(c) and 6(e)(iv)) an event of default (an “Event of Default”) with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) required to be made by it if such failure is not remedied on or before the first Local Business Day in the case of any such payment or the first Local Delivery Day in the case of any such delivery after, in each case, notice of such failure is given to the party;

(ii) **Breach of Agreement; Repudiation of Agreement.**

(1) Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied within 30 days after notice of such failure is given to the party; or

(2) the party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, this Master Agreement, 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);

(iii) ***Credit Support Default.***

(1) Failure by the party or any Credit Support Provider of such party 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 such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document, or any security interest granted by such party or such Credit Support Provider to the other party pursuant to any such Credit Support Document, to be in full force and effect for the purpose of this Agreement (in each case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iv) ***Misrepresentation.*** A representation (other than a representation under Section 3(e) or 3(f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) ***Default Under Specified Transaction.*** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) defaults (other than by failing to make a delivery) under a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction;

(2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment due on the last payment or exchange date of, or any payment on early termination of, a Specified Transaction (or, if there is no applicable notice requirement or grace period, such default continues for at least one Local Business Day);

(3) defaults in making any delivery due under (including any delivery due on the last delivery or exchange date of) a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, all transactions outstanding under the documentation applicable to that Specified Transaction; or

(4) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, a Specified Transaction or any credit support arrangement relating to a Specified Transaction that is, in either case, confirmed or evidenced by a document or other confirming evidence executed and delivered by that party, Credit Support Provider or Specified Entity (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross-Default.** If “Cross-Default” is specified in the Schedule as applying to the party, the occurrence or existence of:—

(1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) where the aggregate principal amount of such agreements or instruments, either alone or together with the amount, if any, referred to in clause (2) below, is not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments before it would otherwise have been due and payable; or

(2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments under such agreements or instruments on the due date for payment (after giving effect to any applicable notice requirement or grace period) in an aggregate amount, either alone or together with the amount, if any, referred to in clause (1) above, of not less than the applicable Threshold Amount;

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, 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 by it or such regulator, supervisor or similar official, or (B) 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 such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (I) 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 (II) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) 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; (7) 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 such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, reincorporates or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganisation, reincorporation or reconstitution:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes (subject to Section 5(c)) an Illegality if the event is specified in clause (i) below, a Force Majeure Event if the event is specified in clause (ii) below, a Tax Event if the event is specified in clause (iii) below, a Tax Event Upon Merger if the event is specified in clause (iv) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to clause (v) below or an Additional Termination Event if the event is specified pursuant to clause (vi) below:—

(i) **Illegality.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, due to an event or circumstance (other than any action taken by a party or, if applicable, any Credit Support Provider of such party) occurring after a Transaction is entered into, it becomes unlawful under any applicable law (including without limitation the laws of any country in which payment, delivery or compliance is required by either party or any Credit Support Provider, as the case may be), on any day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day (in each case, other than as a result of a breach by the party of Section 4(b)):—

(1) for the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction to perform any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) for such party or any Credit Support Provider of such party (which will be the Affected Party) to perform any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, to receive a payment or delivery under such Credit Support Document or to comply with any other material provision of such Credit Support Document;

(ii) **Force Majeure Event.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, by reason of force majeure or act of state occurring after a Transaction is entered into, on any day:—

(1) the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction is prevented from performing any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, from receiving a payment or delivery in respect of such Transaction or from complying with any other material provision of this Agreement relating to such Transaction (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or

impracticable for such Office so to perform, receive or comply (or it would be impossible or impracticable for such Office so to perform, receive or comply if such payment, delivery or compliance were required on that day); or

(2) such party or any Credit Support Provider of such party (which will be the Affected Party) is prevented from performing any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, from receiving a payment or delivery under such Credit Support Document or from complying with any other material provision of such Credit Support Document (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply (or it would be impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply if such payment, delivery or compliance were required on that day),

so long as the force majeure or act of state is beyond the control of such Office, such party or such Credit Support Provider, as appropriate, and such Office, party or Credit Support Provider could not, after using all reasonable efforts (which will not require such party or Credit Support Provider to incur a loss, other than immaterial, incidental expenses), overcome such prevention, impossibility or impracticability;

(iii) **Tax Event.** Due to (1) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (2) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Settlement Date (A) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (B) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 9(h)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iv) **Tax Event Upon Merger.** The party (the “Burdened Party”) on the next succeeding Scheduled Settlement Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets (or any substantial part of the assets comprising the business conducted by it as of the date of this Master Agreement) to, or reorganising, reincorporating or reconstituting into or as, another entity (which will be the Affected Party) where such action does not constitute a Merger Without Assumption;

(v) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, a Designated Event (as defined below) occurs with respect to such party, any Credit Support Provider of such party or any applicable Specified Entity of such party (in each case, “X”) and such Designated Event does not constitute a Merger Without Assumption, and the creditworthiness of X or, if applicable, the successor, surviving or transferee entity of X, after taking into account any applicable Credit Support Document, is materially weaker immediately after the occurrence of such Designated Event than that of X immediately prior to the occurrence of such Designated Event (and, in any such event, such party or its successor, surviving or transferee entity, as appropriate, will be the Affected Party). A “Designated Event” with respect to X means that:—

(1) X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or any substantial part of the assets comprising the business conducted by X as of the

date of this Master Agreement) to, or reorganises, reincorporates or reconstitutes into or as, another entity;

(2) any person, related group of persons or entity acquires directly or indirectly the beneficial ownership of (A) equity securities having the power to elect a majority of the board of directors (or its equivalent) of X or (B) any other ownership interest enabling it to exercise control of X; or

(3) X effects any substantial change in its capital structure by means of the issuance, incurrence or guarantee of debt or the issuance of (A) preferred stock or other securities convertible into or exchangeable for debt or preferred stock or (B) in the case of entities other than corporations, any other form of ownership interest; or

(vi) **Additional Termination Event.** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties will be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Hierarchy of Events.**

(i) An event or circumstance that constitutes or gives rise to an Illegality or a Force Majeure Event will not, for so long as that is the case, also constitute or give rise to an Event of Default under Section 5(a)(i), 5(a)(ii)(1) or 5(a)(iii)(1) insofar as such event or circumstance relates to the failure to make any payment or delivery or a failure to comply with any other material provision of this Agreement or a Credit Support Document, as the case may be.

(ii) Except in circumstances contemplated by clause (i) above, if an event or circumstance which would otherwise constitute or give rise to an Illegality or a Force Majeure Event also constitutes an Event of Default or any other Termination Event, it will be treated as an Event of Default or such other Termination Event, as the case may be, and will not constitute or give rise to an Illegality or a Force Majeure Event.

(iii) If an event or circumstance which would otherwise constitute or give rise to a Force Majeure Event also constitutes an Illegality, it will be treated as an Illegality, except as described in clause (ii) above, and not a Force Majeure Event.

(d) **Deferral of Payments and Deliveries During Waiting Period.** If an Illegality or a Force Majeure Event has occurred and is continuing with respect to a Transaction, each payment or delivery which would otherwise be required to be made under that Transaction will be deferred to, and will not be due until:—

(i) the first Local Business Day or, in the case of a delivery, the first Local Delivery Day (or the first day that would have been a Local Business Day or Local Delivery Day, as appropriate, but for the occurrence of the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event) following the end of any applicable Waiting Period in respect of that Illegality or Force Majeure Event, as the case may be; or

(ii) if earlier, the date on which the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event ceases to exist or, if such date is not a Local Business Day or, in the case of a delivery, a Local Delivery Day, the first following day that is a Local Business Day or Local Delivery Day, as appropriate.

(e) **Inability of Head or Home Office to Perform Obligations of Branch.** If (i) an Illegality or a Force Majeure Event occurs under Section 5(b)(i)(1) or 5(b)(ii)(1) and the relevant Office is not the Affected Party’s head or home office, (ii) Section 10(a) applies, (iii) the other party seeks performance of the relevant obligation or



compliance with the relevant provision by the Affected Party's head or home office and (iv) the Affected Party's head or home office fails so to perform or comply due to the occurrence of an event or circumstance which would, if that head or home office were the Office through which the Affected Party makes and receives payments and deliveries with respect to the relevant Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and such failure would otherwise constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) with respect to such party, then, for so long as the relevant event or circumstance continues to exist with respect to both the Office referred to in Section 5(b)(i)(1) or 5(b)(ii)(1), as the case may be, and the Affected Party's head or home office, such failure will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1).

## **6. Early Termination; Close-Out Netting**

(a) ***Right to Terminate Following Event of Default.*** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) ***Right to Terminate Following Termination Event.***

(i) ***Notice.*** If a Termination Event other than a Force Majeure Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction, and will also give the other party such other information about that Termination Event as the other party may reasonably require. If a Force Majeure Event occurs, each party will, promptly upon becoming aware of it, use all reasonable efforts to notify the other party, specifying the nature of that Force Majeure Event, and will also give the other party such other information about that Force Majeure Event as the other party may reasonably require.

(ii) ***Transfer to Avoid Termination Event.*** If a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, other than immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) ***Two Affected Parties.*** If a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice of such occurrence is given under Section 6(b)(i) to avoid that Termination Event.

(iv) ***Right to Terminate.***

(1) If:—

(A) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(B) a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there are two Affected Parties, or the Non-affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, if the relevant Termination Event is then continuing, by not more than 20 days notice to the other party, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(2) If at any time an Illegality or a Force Majeure Event has occurred and is then continuing and any applicable Waiting Period has expired:—

(A) Subject to clause (B) below, either party may, by not more than 20 days notice to the other party, designate (I) a day not earlier than the day on which such notice becomes effective as an Early Termination Date in respect of all Affected Transactions or (II) by specifying in that notice the Affected Transactions in respect of which it is designating the relevant day as an Early Termination Date, a day not earlier than two Local Business Days following the day on which such notice becomes effective as an Early Termination Date in respect of less than all Affected Transactions. Upon receipt of a notice designating an Early Termination Date in respect of less than all Affected Transactions, the other party may, by notice to the designating party, if such notice is effective on or before the day so designated, designate that same day as an Early Termination Date in respect of any or all other Affected Transactions.

(B) An Affected Party (if the Illegality or Force Majeure Event relates to performance by such party or any Credit Support Provider of such party of an obligation to make any payment or delivery under, or to compliance with any other material provision of, the relevant Credit Support Document) will only have the right to designate an Early Termination Date under Section 6(b)(iv)(2)(A) as a result of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2) following the prior designation by the other party of an Early Termination Date, pursuant to Section 6(b)(iv)(2)(A), in respect of less than all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or 6(b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 9(h)(i) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date will be determined pursuant to Sections 6(e) and 9(h)(ii).

(d) **Calculations; Payment Date.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations), (2) specifying (except where there are two Affected Parties) any Early Termination Amount payable and (3) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation or market data obtained in determining a Close-out Amount, the records of the party obtaining such quotation or market data will be conclusive evidence of the existence and accuracy of such quotation or market data.

(ii) **Payment Date.** An Early Termination Amount due in respect of any Early Termination Date will, together with any amount of interest payable pursuant to Section 9(h)(ii)(2), be payable (1) on the day on which notice of the amount payable is effective in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default and (2) on the day which is two Local Business Days after the day on which notice of the amount payable is effective (or, if there are two Affected Parties, after the day on which the statement provided pursuant to clause (i) above by the second party to provide such a statement is effective) in the case of an Early Termination Date which is designated as a result of a Termination Event.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the amount, if any, payable in respect of that Early Termination Date (the "Early Termination Amount") will be determined pursuant to this Section 6(e) and will be subject to Section 6(f).

(i) **Events of Default.** If the Early Termination Date results from an Event of Default, the Early Termination Amount will be an amount equal to (1) the sum of (A) the Termination Currency Equivalent of the Close-out Amount or Close-out Amounts (whether positive or negative) determined by the Non-defaulting Party for each Terminated Transaction or group of Terminated Transactions, as the case may be, and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (2) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If the Early Termination Amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of the Early Termination Amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) **One Affected Party.** Subject to clause (3) below, if there is one Affected Party, the Early Termination Amount will be determined in accordance with Section 6(e)(i), except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.

(2) **Two Affected Parties.** Subject to clause (3) below, if there are two Affected Parties, each party will determine an amount equal to the Termination Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an amount equal to (A) the sum of (I) one-half of the difference between the higher amount so determined (by party "X") and the lower amount so determined (by party "Y") and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.

(3) *Mid-Market Events.* If that Termination Event is an Illegality or a Force Majeure Event, then the Early Termination Amount will be determined in accordance with clause (1) or (2) above, as appropriate, except that, for the purpose of determining a Close-out Amount or Close-out Amounts, the Determining Party will:—

(A) if obtaining quotations from one or more third parties (or from any of the Determining Party's Affiliates), ask each third party or Affiliate (I) not to take account of the current creditworthiness of the Determining Party or any existing Credit Support Document and (II) to provide mid-market quotations; and

(B) in any other case, use mid-market values without regard to the creditworthiness of the Determining Party.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because Automatic Early Termination applies in respect of a party, the Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Adjustment for Illegality or Force Majeure Event.* The failure by a party or any Credit Support Provider of such party to pay, when due, any Early Termination Amount will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) if such failure is due to the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event. Such amount will (1) accrue interest and otherwise be treated as an Unpaid Amount owing to the other party if subsequently an Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions and (2) otherwise accrue interest in accordance with Section 9(h)(ii)(2).

(v) *Pre-Estimate.* The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks, and, except as otherwise provided in this Agreement, neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions.

(f) *Set-Off.* Any Early Termination Amount payable to one party (the "Payee") by the other party (the "Payer"), in circumstances where there is a Defaulting Party or where there is one Affected Party in the case where either a Credit Event Upon Merger has occurred or any other Termination Event in respect of which all outstanding Transactions are Affected Transactions has occurred, will, at the option of the Non-defaulting Party or the Non-affected Party, as the case may be ("X") (and without prior notice to the Defaulting Party or the Affected Party, as the case may be), be reduced by its set-off against any other amounts ("Other Amounts") payable by the Payee to the Payer (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party of any set-off effected under this Section 6(f).

For this purpose, either the Early Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) will be effective to create a charge or other security interest. This Section 6(f) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which any party is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise).

## **7. Transfer**

Subject to Section 6(b)(ii) and to the extent permitted by applicable law, neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

- (a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and
- (b) a party may make such a transfer of all or any part of its interest in any Early Termination Amount payable to it by a Defaulting Party, together with any amounts payable on or with respect to that interest and any other rights associated with that interest pursuant to Sections 8, 9(h) and 11.

Any purported transfer that is not in compliance with this Section 7 will be void.

## **8. Contractual Currency**

(a) **Payment in the Contractual Currency.** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the “Contractual Currency”). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in good faith and using commercially reasonable procedures in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in clause (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purpose of such judgment or order and the rate of exchange at which such party is able, acting in good faith and using

commercially reasonable procedures in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party.

(c) **Separate Indemnities.** To the extent permitted by applicable law, the indemnities in this Section 8 constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) **Evidence of Loss.** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

## 9. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. Each of the parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a party for fraud.

(b) **Amendments.** An amendment, modification or waiver in respect of this Agreement will only be effective if in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) **Counterparts and Confirmations.**

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission and by electronic messaging system), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation will be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes, by an exchange of electronic messages on an electronic messaging system or by an exchange of e-mails, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex, electronic message or e-mail constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

(h) ***Interest and Compensation.***

(i) ***Prior to Early Termination.*** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction:—

(1) ***Interest on Defaulted Payments.*** If a party defaults in the performance of any payment obligation, it will, to the extent permitted by applicable law and subject to Section 6(c), pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (3)(B) or (C) below), at the Default Rate.

(2) ***Compensation for Defaulted Deliveries.*** If a party defaults in the performance of any obligation required to be settled by delivery, it will on demand (A) compensate the other party to the extent provided for in the relevant Confirmation or elsewhere in this Agreement and (B) unless otherwise provided in the relevant Confirmation or elsewhere in this Agreement, to the extent permitted by applicable law and subject to Section 6(c), pay to the other party interest (before as well as after judgment) on an amount equal to the fair market value of that which was required to be delivered in the same currency as that amount, for the period from (and including) the originally scheduled date for delivery to (but excluding) the date of actual delivery (and excluding any period in respect of which interest or compensation in respect of that amount is due pursuant to clause (4) below), at the Default Rate. The fair market value of any obligation referred to above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party that was entitled to take delivery.

(3) ***Interest on Deferred Payments.*** If:—

(A) a party does not pay any amount that, but for Section 2(a)(iii), would have been payable, it will, to the extent permitted by applicable law and subject to Section 6(c) and clauses (B) and (C) below, pay interest (before as well as after judgment) on that amount to the other party on demand (after such amount becomes payable) in the same currency as that amount, for the period from (and including) the date the amount would, but for Section 2(a)(iii), have been payable to (but excluding) the date the amount actually becomes payable, at the Applicable Deferral Rate;

(B) a payment is deferred pursuant to Section 5(d), the party which would otherwise have been required to make that payment will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the amount of the deferred payment to the other party on demand (after such amount becomes payable) in the same currency as the deferred payment, for the period from (and including) the date the amount would, but for Section 5(d), have been payable to (but excluding) the earlier of the date the payment is no longer deferred pursuant to Section 5(d) and the date during the deferral period upon which an Event of Default or Potential Event of Default with respect to that party occurs, at the Applicable Deferral Rate; or

(C) a party fails to make any payment due to the occurrence of an Illegality or a Force Majeure Event (after giving effect to any deferral period contemplated by clause (B) above), it will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as the event or circumstance giving rise to that Illegality or Force Majeure Event

continues and no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the date the party fails to make the payment due to the occurrence of the relevant Illegality or Force Majeure Event (or, if later, the date the payment is no longer deferred pursuant to Section 5(d)) to (but excluding) the earlier of the date the event or circumstance giving rise to that Illegality or Force Majeure Event ceases to exist and the date during the period upon which an Event of Default or Potential Event of Default with respect to that party occurs (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (B) above), at the Applicable Deferral Rate.

(4) *Compensation for Deferred Deliveries.* If:—

(A) a party does not perform any obligation that, but for Section 2(a)(iii), would have been required to be settled by delivery;

(B) a delivery is deferred pursuant to Section 5(d); or

(C) a party fails to make a delivery due to the occurrence of an Illegality or a Force Majeure Event at a time when any applicable Waiting Period has expired,

the party required (or that would otherwise have been required) to make the delivery will, to the extent permitted by applicable law and subject to Section 6(c), compensate and pay interest to the other party on demand (after, in the case of clauses (A) and (B) above, such delivery is required) if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

(ii) *Early Termination.* Upon the occurrence or effective designation of an Early Termination Date in respect of a Transaction:—

(1) *Unpaid Amounts.* For the purpose of determining an Unpaid Amount in respect of the relevant Transaction, and to the extent permitted by applicable law, interest will accrue on the amount of any payment obligation or the amount equal to the fair market value of any obligation required to be settled by delivery included in such determination in the same currency as that amount, for the period from (and including) the date the relevant obligation was (or would have been but for Section 2(a)(iii) or 5(d)) required to have been performed to (but excluding) the relevant Early Termination Date, at the Applicable Close-out Rate.

(2) *Interest on Early Termination Amounts.* If an Early Termination Amount is due in respect of such Early Termination Date, that amount will, to the extent permitted by applicable law, be paid together with interest (before as well as after judgment) on that amount in the Termination Currency, for the period from (and including) such Early Termination Date to (but excluding) the date the amount is paid, at the Applicable Close-out Rate.

(iii) *Interest Calculation.* Any interest pursuant to this Section 9(h) will be calculated on the basis of daily compounding and the actual number of days elapsed.



## 10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to and agrees with the other party that, notwithstanding the place of booking or its jurisdiction of incorporation or organisation, its obligations are the same in terms of recourse against it as if it had entered into the Transaction through its head or home office, except that a party will not have recourse to the head or home office of the other party in respect of any payment or delivery deferred pursuant to Section 5(d) for so long as the payment or delivery is so deferred. This representation and agreement will be deemed to be repeated by each party on each date on which the parties enter into a Transaction.

(b) If a party is specified as a Multibranch Party in the Schedule, such party may, subject to clause (c) below, enter into a Transaction through, book a Transaction in and make and receive payments and deliveries with respect to a Transaction through any Office listed in respect of that party in the Schedule (but not any other Office unless otherwise agreed by the parties in writing).

(c) The Office through which a party enters into a Transaction will be the Office specified for that party in the relevant Confirmation or as otherwise agreed by the parties in writing, and, if an Office for that party is not specified in the Confirmation or otherwise agreed by the parties in writing, its head or home office. Unless the parties otherwise agree in writing, the Office through which a party enters into a Transaction will also be the Office in which it books the Transaction and the Office through which it makes and receives payments and deliveries with respect to the Transaction. Subject to Section 6(b)(ii), neither party may change the Office in which it books the Transaction or the Office through which it makes and receives payments or deliveries with respect to a Transaction without the prior written consent of the other party.

## 11. Expenses

A Defaulting Party will on demand indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, execution fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 12. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner described below (except that a notice or other communication under Section 5 or 6 may not be given by electronic messaging system or e-mail) to the address or number or in accordance with the electronic messaging system or e-mail details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered or its delivery is attempted;
- (v) if sent by electronic messaging system, on the date it is received; or

- (vi) if sent by e-mail, on the date it is delivered,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication will be deemed given and effective on the first following day that is a Local Business Day.

- (b) **Change of Details.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system or e-mail details at which notices or other communications are to be given to it.

### 13. Governing Law and Jurisdiction

- (a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule;

- (b) **Jurisdiction.** With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Agreement (“Proceedings”), each party irrevocably:—

- (i) submits:—

- (1) if this Agreement is expressed to be governed by English law, to (A) the non-exclusive jurisdiction of the English courts if the Proceedings do not involve a Convention Court and (B) the exclusive jurisdiction of the English courts if the Proceedings do involve a Convention Court; or

- (2) if this Agreement is expressed to be governed by the laws of the State of New York, to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City;

- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party; and

- (iii) agrees, to the extent permitted by applicable law, that the bringing of Proceedings in any one or more jurisdictions will not preclude the bringing of Proceedings in any other jurisdiction.

- (c) **Service of Process.** Each party irrevocably appoints the Process Agent, if any, specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party’s Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12(a)(i), 12(a)(iii) or 12(a)(iv). Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by applicable law.

- (d) **Waiver of immunities.** Each party irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

#### 14. Definitions

As used in this Agreement:—

**“Additional Representation”** has the meaning specified in Section 3.

**“Additional Termination Event”** has the meaning specified in Section 5(b).

**“Affected Party”** has the meaning specified in Section 5(b).

**“Affected Transactions”** means (a) with respect to any Termination Event consisting of an Illegality, Force Majeure Event, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event (which, in the case of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2), means all Transactions unless the relevant Credit Support Document references only certain Transactions, in which case those Transactions and, if the relevant Credit Support Document constitutes a Confirmation for a Transaction, that Transaction) and (b) with respect to any other Termination Event, all Transactions.

**“Affiliate”** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

**“Agreement”** has the meaning specified in Section 1(c).

**“Applicable Close-out Rate”** means:—

- (a) in respect of the determination of an Unpaid Amount:—
  - (i) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;
  - (ii) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate;
  - (iii) in respect of obligations deferred pursuant to Section 5(d), if there is no Defaulting Party and for so long as the deferral period continues, the Applicable Deferral Rate; and
  - (iv) in all other cases following the occurrence of a Termination Event (except where interest accrues pursuant to clause (iii) above), the Applicable Deferral Rate; and
- (b) in respect of an Early Termination Amount:—
  - (i) for the period from (and including) the relevant Early Termination Date to (but excluding) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable:—
    - (1) if the Early Termination Amount is payable by a Defaulting Party, the Default Rate;
    - (2) if the Early Termination Amount is payable by a Non-defaulting Party, the Non-default Rate; and
    - (3) in all other cases, the Applicable Deferral Rate; and

(ii) for the period from (and including) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable to (but excluding) the date of actual payment:—

- (1) if a party fails to pay the Early Termination Amount due to the occurrence of an event or circumstance which would, if it occurred with respect to a payment or delivery under a Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and for so long as the Early Termination Amount remains unpaid due to the continuing existence of such event or circumstance, the Applicable Deferral Rate;
- (2) if the Early Termination Amount is payable by a Defaulting Party (but excluding any period in respect of which clause (1) above applies), the Default Rate;
- (3) if the Early Termination Amount is payable by a Non-defaulting Party (but excluding any period in respect of which clause (1) above applies), the Non-default Rate; and
- (4) in all other cases, the Termination Rate.

**“Applicable Deferral Rate”** means:—

- (a) for the purpose of Section 9(h)(i)(3)(A), the rate certified by the relevant payer to be a rate offered to the payer by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market;
- (b) for purposes of Section 9(h)(i)(3)(B) and clause (a)(iii) of the definition of Applicable Close-out Rate, the rate certified by the relevant payer to be a rate offered to prime banks by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer after consultation with the other party, if practicable, for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market; and
- (c) for purposes of Section 9(h)(i)(3)(C) and clauses (a)(iv), (b)(i)(3) and (b)(ii)(l) of the definition of Applicable Close-out Rate, a rate equal to the arithmetic mean of the rate determined pursuant to clause (a) above and a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount.

**“Automatic Early Termination”** has the meaning specified in Section 6(a).

**“Burdened Party”** has the meaning specified in Section 5(b)(iv).

**“Change in Tax Law”** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs after the parties enter into the relevant Transaction.

**“Close-out Amount”** means, with respect to each Terminated Transaction or each group of Terminated Transactions and a Determining Party, the amount of the losses or costs of the Determining Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Determining Party that are or would be realised under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Determining Party the economic equivalent of, (a) the material terms of that Terminated Transaction or group of Terminated Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of that Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in

Section 2(a)(iii) and (b) the option rights of the parties in respect of that Terminated Transaction or group of Terminated Transactions.

Any Close-out Amount will be determined by the Determining Party (or its agent), which will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. The Determining Party may determine a Close-out Amount for any group of Terminated Transactions or any individual Terminated Transaction but, in the aggregate, for not less than all Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

Unpaid Amounts in respect of a Terminated Transaction or group of Terminated Transactions and legal fees and out-of-pocket expenses referred to in Section 11 are to be excluded in all determinations of Close-out Amounts.

In determining a Close-out Amount, the Determining Party may consider any relevant information, including, without limitation, one or more of the following types of information:—

- (i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;
- (ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or
- (iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party's Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

The Determining Party will consider, taking into account the standards and procedures described in this definition, quotations pursuant to clause (i) above or relevant market data pursuant to clause (ii) above unless the Determining Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in clause (i), (ii) or (iii) above, the Determining Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilised. Third parties supplying quotations pursuant to clause (i) above or market data pursuant to clause (ii) above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Without duplication of amounts calculated based on information described in clause (i), (ii) or (iii) above, or other relevant information, and when it is commercially reasonable to do so, the Determining Party may in addition consider in calculating a Close-out Amount any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to a Terminated Transaction or group of Terminated Transactions (or any gain resulting from any of them).

Commercially reasonable procedures used in determining a Close-out Amount may include the following:—

- (1) application to relevant market data from third parties pursuant to clause (ii) above or information from internal sources pursuant to clause (iii) above of pricing or other valuation models that are, at the time of the determination of the Close-out Amount, used by the Determining Party in the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the Terminated Transaction or group of Terminated Transactions; and

(2) application of different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.

**“Confirmation”** has the meaning specified in the preamble.

**“consent”** includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

**“Contractual Currency”** has the meaning specified in Section 8(a).

**“Convention Court”** means any court which is bound to apply to the Proceedings either Article 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters or Article 17 of the 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

**“Credit Event Upon Merger”** has the meaning specified in Section 5(b).

**“Credit Support Document”** means any agreement or instrument that is specified as such in this Agreement.

**“Credit Support Provider”** has the meaning specified in the Schedule.

**“Cross-Default”** means the event specified in Section 5(a)(vi).

**“Default Rate”** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**“Defaulting Party”** has the meaning specified in Section 6(a).

**“Designated Event”** has the meaning specified in Section 5(b)(v).

**“Determining Party”** means the party determining a Close-out Amount.

**“Early Termination Amount”** has the meaning specified in Section 6(e).

**“Early Termination Date”** means the date determined in accordance with Section 6(a) or 6(b)(iv).

**“electronic messages”** does not include e-mails but does include documents expressed in markup languages, and **“electronic messaging system”** will be construed accordingly.

**“English law”** means the law of England and Wales, and **“English”** will be construed accordingly.

**“Event of Default”** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**“Force Majeure Event”** has the meaning specified in Section 5(b).

**“General Business Day”** means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits).

**“Illegality”** has the meaning specified in Section 5(b).

**“Indemnifiable Tax”** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

**“law”** includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority), and **“unlawful”** will be construed accordingly.

**“Local Business Day”** means (a) in relation to any obligation under Section 2(a)(i), a General Business Day in the place or places specified in the relevant Confirmation and a day on which a relevant settlement system is open or operating as specified in the relevant Confirmation or, if a place or a settlement system is not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) for the purpose of determining when a Waiting Period expires, a General Business Day in the place where the event or circumstance that constitutes or gives rise to the Illegality or Force Majeure Event, as the case may be, occurs, (c) in relation to any other payment, a General Business Day in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment and, if that currency does not have a single recognised principal financial centre, a day on which the settlement system necessary to accomplish such payment is open, (d) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), a General Business Day (or a day that would have been a General Business Day but for the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event) in the place specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (e) in relation to Section 5(a)(v)(2), a General Business Day in the relevant locations for performance with respect to such Specified Transaction.

**“Local Delivery Day”** means, for purposes of Sections 5(a)(i) and 5(d), a day on which settlement systems necessary to accomplish the relevant delivery are generally open for business so that the delivery is capable of being accomplished in accordance with customary market practice, in the place specified in the relevant Confirmation or, if not so specified, in a location as determined in accordance with customary market practice for the relevant delivery.

**“Master Agreement”** has the meaning specified in the preamble.

**“Merger Without Assumption”** means the event specified in Section 5(a)(viii).

**“Multiple Transaction Payment Netting”** has the meaning specified in Section 2(c).

**“Non-affected Party”** means, so long as there is only one Affected Party, the other party.

**“Non-default Rate”** means the rate certified by the Non-defaulting Party to be a rate offered to the Non-defaulting Party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the Non-defaulting Party for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market.

**“Non-defaulting Party”** has the meaning specified in Section 6(a).

**“Office”** means a branch or office of a party, which may be such party’s head or home office.

**“Other Amounts”** has the meaning specified in Section 6(f).

**“Payee”** has the meaning specified in Section 6(f).

**“Payer”** has the meaning specified in Section 6(f).

**“Potential Event of Default”** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**“Proceedings”** has the meaning specified in Section 13(b).

**“Process Agent”** has the meaning specified in the Schedule.

**“Rate of exchange”** includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

**“Relevant Jurisdiction”** means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

**“Schedule”** has the meaning specified in the preamble.

**“Scheduled Settlement Date”** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**“Specified Entity”** has the meaning specified in the Schedule.

**“Specified Indebtedness”** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

**“Specified Transaction”** means, subject to the Schedule, (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is not a Transaction under this Agreement but (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**“Stamp Tax”** means any stamp, registration, documentation or similar tax.

**“Stamp Tax Jurisdiction”** has the meaning specified in Section 4(e).



**“Tax”** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

**“Tax Event”** has the meaning specified in Section 5(b).

**“Tax Event Upon Merger”** has the meaning specified in Section 5(b).

**“Terminated Transactions”** means, with respect to any Early Termination Date, (a) if resulting from an Illegality or a Force Majeure Event, all Affected Transactions specified in the notice given pursuant to Section 6(b)(iv), (b) if resulting from any other Termination Event, all Affected Transactions and (c) if resulting from an Event of Default, all Transactions in effect either immediately before the effectiveness of the notice designating that Early Termination Date or, if Automatic Early Termination applies, immediately before that Early Termination Date.

**“Termination Currency”** means (a) if a Termination Currency is specified in the Schedule and that currency is freely available, that currency, and (b) otherwise, euro if this Agreement is expressed to be governed by English law or United States Dollars if this Agreement is expressed to be governed by the laws of the State of New York.

**“Termination Currency Equivalent”** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the “Other Currency”), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Close-out Amount is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

**“Termination Event”** means an Illegality, a Force Majeure Event, a Tax Event, a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

**“Termination Rate”** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

**“Threshold Amount”** means the amount, if any, specified as such in the Schedule.

**“Transaction”** has the meaning specified in the preamble.

**“Unpaid Amounts”** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii) or due but for Section 5(d)) to such party under Section 2(a)(i) or 2(d)(i)(4) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date, (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii) or 5(d)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered and (c) if the Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions, any Early Termination Amount due prior to such Early Termination Date and which remains unpaid as of such Early Termination Date, in each case together with any amount of interest accrued or other

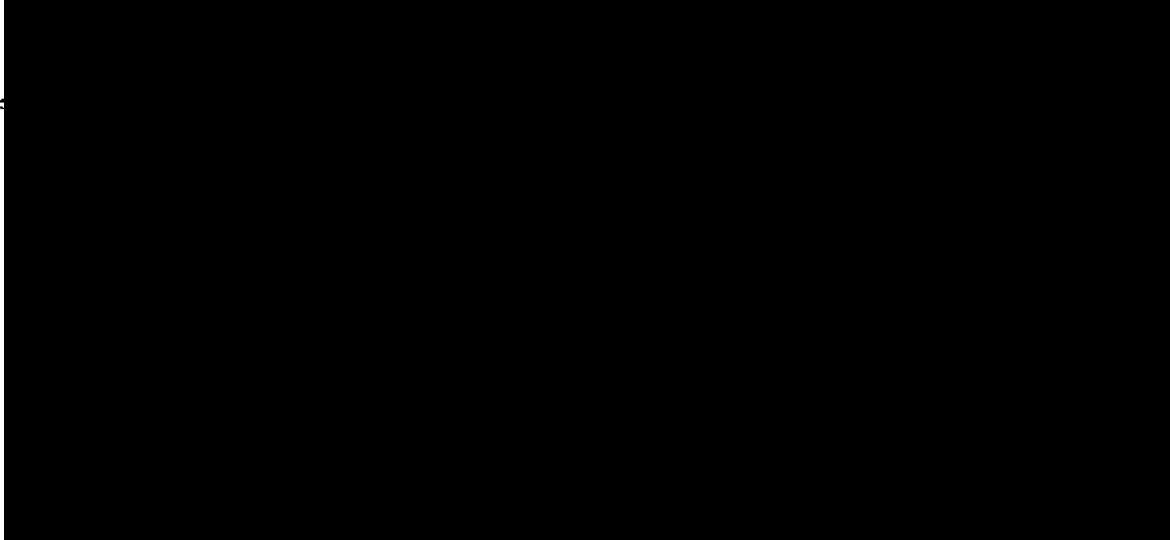
compensation in respect of that obligation or deferred obligation, as the case may be, pursuant to Section 9(h)(ii)(1) or (2), as appropriate. The fair market value of any obligation referred to in clause (b) above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it will be the average of the Termination Currency Equivalents of the fair market values so determined by both parties.

*"Waiting Period"* means:—

(a) in respect of an event or circumstance under Section 5(b)(i), other than in the case of Section 5(b)(i)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of three Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance; and

(b) in respect of an event or circumstance under Section 5(b)(ii), other than in the case of Section 5(b)(ii)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of eight Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document \_\_\_\_\_



**SCHEDULE  
to the  
2002 Master Agreement  
dated as of 18 November 2016  
between**

**UBS AG**  
a bank organised under the laws of  
Switzerland  
("Party A")

and

  
("Party B")

**Part 1  
Termination Provisions**

(a) **"Specified Entity"** means:

(i) in relation to Party A for the purpose of:

Section 5(a)(v) of this Agreement,	UBS Limited, UBS Securities LLC
Section 5(a)(vi) of this Agreement,	none,
Section 5(a)(vii) of this Agreement,	none;
Section 5(b)(v) of this Agreement	none; and

(ii) in relation to Party B for the purpose of:

Section 5(a)(v) of this Agreement,	none,
Section 5(a)(vi) of this Agreement,	none,
Section 5(a)(vii) of this Agreement,	none,
Section 5(b)(v) of this Agreement	none.

(b) **"Specified Transaction"** will have the meaning specified in Section 14 of this Agreement with the addition of the following after "weather index transaction" on the eleventh line: "precious metal transaction, letters of credit reimbursement obligation, indebtedness for borrowed money (whether or not evidenced by a note or similar instrument) and any amounts payable under any prime brokerage or exchange traded derivative agreements", **provided** however, that with respect to defaults under repurchase agreements, reverse repurchase agreements and securities lending agreements, it shall not be an Event of Default under Section 5(a)(v) unless the result of such default is a liquidation of, an acceleration of obligations under or an early termination of, all (but not less than all) transactions outstanding under the master documentation applicable to that repurchase agreement or reverse repurchase agreement or securities lending agreement.

(c) The **"Cross Default"** provisions of Section 5(a)(vi) of this Agreement apply to Party A and to Party B and are amended as follows:

- (i) The words, " or becoming capable at such time of being declared" in the seventh line of Section 5(a)(vi); and
- (ii) The following shall be added at the end thereof:

" however, an Event of Default does not occur under either (1) or (2) above if such party demonstrates to the reasonable satisfaction of the other that (a) the event or condition

referred to in (1) or the failure to pay referred to in (2) is, or is due to, a failure to pay caused by an error or omission of an administrative or operational nature; (b) funds were available to such party to enable it to make the relevant payment when due; and (c) the relevant payment is made within three Local Business Days following receipt of written notice from an interested party of the failure to pay."

**"Specified Indebtedness"** means any obligation (whether present or future, contingent or otherwise as principal or surety or otherwise) for the payment or repayment of any money including without limitation any payment or repayment obligation with respect to any securities lending transaction or agreement or any prime brokerage transaction or agreement.

**"Threshold Amount"** means:

- (i) with respect to Party A: an amount equal to 3% of shareholders' equity (however described) of Party A as shown on the most recent annual audited financial statements of Party A; and
- (ii) with respect to Party B, the lesser of USD 10,000,000 (or the equivalent in any other currency or currencies) and an amount equal to 3% of Net Asset Value as shown on the most recent annual audited financial statements of Party B.

- (d) The **"Credit Event Upon Merger"** provisions of Section 5(b)(v) of this Agreement will apply to Party A and Party B.
- (e) The **"Automatic Early Termination"** provision of Section 6(a) of this Agreement applies to Party A and does not apply to Party B.

Section 6(e)(iii) of this Agreement is hereby amended by the addition of the following at the end thereof:

"In addition, to, and notwithstanding anything to the contrary in the preceding sentence of this Section 6(e)(iii), if an Early Termination Date is deemed to have occurred under Section 6(a) as a result of Automatic Early Termination, the Defaulting Party hereby agrees to indemnify the Non-defaulting Party on demand against all loss or damage that the Non-defaulting Party may sustain or incur in respect of each Transaction as a result of movement in interest rates, currency exchange rates or market quotations between the Early Termination Date and the date (the "Determination Date") upon which the Non-defaulting Party first becomes aware that the Early Termination Date has been deemed to have occurred under Section 6(a).

If the Non-defaulting Party shall determine that it would gain or benefit from the movement in interest rates, currency exchange rates or market quotations between the Early Termination Date and the Determination Date, the amount of such gain or benefit shall be deducted from the amount payable by the Defaulting Party, or added to the amount payable by the Non-defaulting Party, pursuant to Section 6(e)(i).

The Determination Date shall be a date not later than the date upon which creditors generally of the Defaulting Party are notified of the occurrence of the Event of Default leading to the deemed Early Termination Date."

- (f) **"Termination Currency"** means one of the currencies in which payments are required to be made pursuant to a Confirmation in respect of a Terminated Transaction that is selected by the Non-defaulting Party or non-Affected Party, or, if there are two Affected Parties, as agreed

between the parties or, failing agreement of if the currency selected is not freely available, the Termination Currency shall be U.S. Dollars.

- (g) **Additional Termination Event** will apply. If any of the following events occurs with respect to Party B, such event shall constitute an Additional Termination Event in which case Party B shall be the Affected Party:
- (A) **Decline in Net Asset Value.** (A) a 15% or greater decline in Party B's Net Asset Value compared to Party B's Net Asset Value as of the last Local Business Day of the preceding month, or (B) a 25% or greater decline in Party B's Net Asset Value compared to Party B's Net Asset Value as of the last Local Business Day of the third preceding month, or (C) a 35% or greater decline in Party B's Net Asset Value compared to Party B's Net Asset Value as of the last Local Business Day of the twelfth preceding month;
  - (B) **Minimum Net Asset Value.** The Net Asset Value of Party B is equal to or less than (i) 60% of Party B's Net Asset Value as of the last Local Business Day of the previous fiscal year (as reflected in Party B's annual audited financial statements for such fiscal year) and (ii) 60% of Party B's Net Asset Value as of the signing of this Agreement;
  - (C) **Change of Investment Adviser.** The Investment Adviser (as defined in Part 5 hereof) ceases to be the Investment Adviser of Party B in principally the same or similar capacity as that held as of the date of this Agreement, and (A) is not replaced by either (x) an Affiliate of the Investment Adviser which is reasonably acceptable to Party A acting in good faith and in a commercially reasonable manner or (y) a new Investment Adviser, which is reasonably acceptable to Party A acting in good faith and in a commercially reasonable manner;
  - (D) **Change of Investment Manager.** The Investment Manager (as defined in Part 5 hereof) ceases to be the Investment Manager of Party B in principally the same or similar capacity as that held as of the date of this Agreement, and (A) is not replaced by either (x) an Affiliate of the Investment Manager which is reasonably acceptable to Party A acting in good faith and in a commercially reasonable manner or (y) a new investment manager, which is reasonably acceptable to Party A acting in good faith and in a commercially reasonable manner;
  - (E) **Failure to Deliver Net Asset Value Statement.** Party B fails to deliver a statement of its Net Asset Value or its monthly investment report on or before the fifth Local Business Day of Party A notifying Party B (whether in writing or orally) of Party B's failure to provide the report on the required delivery date specified in Part 3 of this Schedule; and
  - (F) **Change in Regulatory Status.** The Investment Manager ceases to be regulated by a recognized regulatory body in a FATF (Financial Action Task Force) country.

## Part 2 Tax Representations

- (a) ***Payer Tax Representations.*** For the purpose of Section 3(e) of this Agreement, Party A and Party B each makes the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 9(h) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, **PROVIDED** that it shall not be a breach of this representation where reliance is placed on sub-clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

- (b) ***Payee Tax Representations.*** For the purpose of Section 3(f) of this Agreement, Party A and Party B make no representations.

**Part 3**  
**Agreement to Deliver Documents**

For the purposes of Sections 3(d), 4(a)(i) and (ii) of this Agreement, each party agrees to supply the following documents:

- (a) Tax forms, documents or certificates to be delivered are: None
- (b) Other documents to be delivered are:

<b>PARTY REQUIRED TO DELIVER DOCUMENT:</b>	<b>FORM/DOCUMENT/CERTIFICATE:</b>	<b>DATE BY WHICH TO BE DELIVERED:</b>	<b>COVERED BY SECTION 3(D) REPRESENTATION:</b>
Party A and Party B	Evidence of the authority and true signatures of each official or representative signing this Agreement or, as the case may be, a Confirmation, on its behalf.	On or before execution of this Agreement and each Confirmation forming a part of this Agreement.	Yes
Party B	Evidence reasonably satisfactory to Party A authorising Party B's execution of this Agreement and each Confirmation and performance of its obligations hereunder.	On or before execution of this Agreement.	Yes
Party B	Annual audited financial statements	As soon as practicable but in any event within 180 days of the end of each financial year	Yes
Party B	Confirmation of the NAV of Party B	Within 20 days of the last Local Business Day in each calendar month	Yes
Party B	Any other information which Party A may reasonably request from Party B from time to time	Upon request of Party A	Yes

**Part 4  
Miscellaneous**

(a) Notices or communications to Party A:

For a particular Transaction, the address, telex number or facsimile number specified in the Confirmation and for any other notice the address specified below:

Address: 5 Broadgate, London EC2M 2QS  
Attention: Documentation Unit / Legal Department  
Facsimile no: +44 20 7567 4406 / +44 20 7568 9257  
Telephone no: +44 20 7567 8000

Address for notices or communications to Party B:

Address: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

(b) **Process Agent.** For the purpose of Section 13(c) of this Agreement:

For Party A: Not applicable.

For Party B: [REDACTED]  
[REDACTED]

(c) **Offices.** The provisions of Section 10(a) of this Agreement apply to Party A and Party B.

(d) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement:

Party A is a Multibranch Party and may act through its branches in any of the following territories or countries:

England and Wales, Australia, Hong Kong, Singapore and Switzerland.

Party B is not a Multibranch Party.

(e) **Calculation Agent.** The Calculation Agent is Party A, unless (1) otherwise specified in a Confirmation for the relevant Transaction or (2) an Event of Default has occurred and is continuing with respect to Party A, in which case the parties shall select a mutually agreeable independent third party which is a leading dealer for the relevant Transaction, to act as Calculation Agent (a "**Substitute Calculation Agent**"). If the parties cannot agree on a Substitute Calculation Agent, then Party A and Party B shall each pick a leading dealer in the relevant market and such dealers shall choose a third leading dealer to be the Substitute Calculation Agent. Party A or the Substitute Calculation Agent shall make each calculation in



good faith and in a commercially reasonable manner. Such calculations shall be binding absent manifest error.

Notwithstanding the foregoing, and subject to the last paragraph of this Part 4(e), if Party B in good faith has a commercially reasonable basis for disagreement with any calculation or determination made by Party A in its role as Calculation Agent, Party B may express such disagreement within one Local Business Day of receipt of any calculation or determination from Party A. With respect to a disagreement, Party B shall specify in reasonable detail: (i) Party B's basis for dispute, together with supporting calculations or evidence, (ii) the amount of Party B's calculation or the result of Party B's determination, (iii) in the case of a calculation the amount by which Party B's calculation differs from Party A's calculation, and in the case of a determination, if ascertainable, the amount of the difference between applying the Party A's determination and applying Party B's determination (the "**Disputed Amount**") and (iv) if applicable, the amount that is not subject to dispute (the "**Undisputed Amount**").

The Undisputed Amount shall be paid or delivered, as the case may, as scheduled for the relevant Transaction.

Party A and Party B shall negotiate in good faith to resolve the Disputed Amount as promptly as practicable. If Party A and Party B are unable to reach agreement as to the Disputed Amount within one Local Business Day of the date on which Party B notifies Party A of the dispute, then Party A will recalculate the amount by requesting three independent third parties which are leading dealers for the relevant transaction to provide their respective calculations of the Disputed Amount and taking the arithmetic average of those obtained. With respect to any determination made by the Calculation Agent that is not susceptible to resolution by arithmetic averaging, Party A will request one independent third party which is a leading dealer for the relevant Transaction (the "**Independent Calculation Agent**") to determine whether the Calculation Agent's determination under dispute is commercially reasonable. If such Independent Calculation Agent determines that the disputed determination is commercially reasonable, then the Calculation Agent's original determination shall apply. If such Independent Calculation Agent determines that the disputed determination is not commercially reasonable, such dealer shall provide its own determination.

It being understood, if no leading dealer provides the requested calculation or opines on the determination (or, if applicable, the Independent Calculation Agent does not so provide or opine) by 1:00 p.m. London time on the Local Business Day that is two Local Business Days after the date on which Party B notifies Party A of the dispute (the "**Dispute Resolution Date**"), then the Calculation Agent's original calculations or determinations will be used. Any calculation or determination made pursuant to this section by leading dealer(s) will be binding in the absence of manifest error except as provided in the next paragraph of this Part 4(e).

Party A will notify Party B of its recalculation of the Disputed Amount, and any resulting adjustments (such Disputed Amount, as adjusted pursuant hereto, the "**Adjusted Amount**"). If such notice is given prior to 1:00 p.m. London time on Dispute Resolution Date, the applicable party shall transfer the Adjusted Amount, if any, by 6:00 p.m. London time on such Dispute Resolution Date. If such notice is given after 1:00 p.m. London time on the Dispute Resolution Date, the applicable party shall transfer the Adjusted Amount, if any, by 1:00 p.m. London time on the Local Business Day next succeeding the date on which such notice is given.

The costs (if any) relating to a Substitute Calculation Agent, Independent Calculation Agent or to such polling of leading dealer(s) shall be borne equally by Party A and Party B.

Notwithstanding the previous paragraphs, where the terms of any Transaction hereunder provides or contemplates that the Calculation Agent will solicit quotations from one or more

dealers for purposes of making a calculation, selection of those dealers shall not be subject to this Part 4(e).

- (f) **Credit Support Document.** Details of any Credit Support Document for Party A and Party B: not applicable.
- (g) **Credit Support Provider.** Credit Support Provider means in relation to Party A and Party B: not applicable.
- (h) **Governing Law.** This Agreement and any non-contractual obligations arising out of or in connection with it or with the subject matter of this contract shall be governed by, and construed in accordance with, English law.
- (i) **Netting of Payments.** Multiple Transaction Payment Netting will not apply for the purpose of Section 2(c) of this Agreement, except that Multiple Transaction Payment Netting will apply for the purpose of Section 2(c) of this Agreement for the following groups of Transactions, which shall be treated separately: (1) FX Transactions (including FX Transactions resulting from the exercise of Currency Option Transactions); (2) premium payable under Currency Option Transactions (each of (1) and (2) as defined in the 1998 ISDA FX and Currency Option Definitions); and (3) Commodity Transactions (as defined in the 2005 ISDA Commodity Definitions) starting from the date of this Agreement.
- (j) **"Affiliate"** will have the meaning specified in Section 14 of this Agreement. Notwithstanding the foregoing, the parties agree that Party B has no Affiliates for the purposes of this Agreement
- (k) **Absence of Litigation.** For the purpose of Section 3(c):  
**"Specified Entity"** means in relation to Party A, any Affiliate of Party A.  
**"Specified Entity"** means in relation to Party B, any Affiliate of Party B.
- (l) **No Agency.** The provisions of Section 3(g) will apply to this Agreement.
- (m) **Additional Representation** will apply. For the purpose of Section 3 of this Agreement, the following will constitute an Additional Representation:

**Relationship Between Parties.** Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):

- (i) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction, it being understood that information and explanations related to the terms and conditions of a Transaction will not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party will be deemed to be an assurance or guarantee as to the expected results of that Transaction.
- (ii) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and

understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.

- (iii) *Status of Parties.* The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction.

References in this clause to a "party" shall, in the case of UBS AG and where the context so allows, include reference to any Affiliate of UBS AG.

- (n) ***Recording of Conversations.*** Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings.

## Part 5 Other Provisions

- (a) ***Scope of Agreement.*** Upon the effectiveness of this Agreement and unless the parties to this Agreement otherwise agree in writing, by specific reference to this Agreement, that this provision does not apply, all Derivative Transactions (as defined below) then outstanding, or which may be entered into thereafter, between the parties, including Transactions entered into by the parties through Offices, if any, listed in Part 4(d), are deemed to be Transactions governed by this Agreement and any confirmation or other confirming evidence of the Transaction is deemed to be a Confirmation.

'Derivative Transaction' means any transaction (including an agreement with respect thereto) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, weather index transaction, bullion/precious metal transaction, base metal transaction, or forward purchase or sale of a security, commodity or other financial instrument or interest, or any other similar transaction (including any option with respect to any of these transactions) and any combination of these transactions.

***ISDA Definitions.*** (i) The provisions of the 1998 FX and Currency Option Definitions (as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and the Foreign Exchange Committee) (the "1998 FX Definitions") are hereby incorporated in their entirety and shall apply to any FX Transaction or Currency Option Transaction as defined in Section 1.12 and Section 1.5, respectively, of Article 1 of the 1998 FX Definitions (each an "FX Transaction" or "Currency Option Transaction", respectively) entered into by the parties hereto (unless, in relation to a particular FX Transaction or Currency Option Transaction, as otherwise specified in the relevant Confirmation) ; and

(ii) The provisions of the 2005 ISDA Commodity Definitions (as published by the International Swaps and Derivatives Association, Inc.) (the "Commodity Definitions") are hereby incorporated in their entirety and shall apply to any Transaction as defined in Section 1.1 of Article 1 of the Commodity Definitions (each a "Commodity Transaction") entered into by the parties hereto (unless, in relation to a particular Commodity Transaction, as otherwise specified in the relevant Confirmation).

- (b) ***Failure to Pay or Deliver / Default Under Specified Transaction.***

In relation to Party A only, Sections 5(a)(i) and 5(a)(v)(2) of this Agreement are amended by inserting the following at the end of both provisions:

"Notwithstanding the foregoing, an Event of Default shall not have occurred if a party (the "Subject Party") has failed to perform its obligation to make any payment or delivery (a "Specified Failure") and, as demonstrated to the reasonable satisfaction of the other party on or before the first Local Business Day or first Local Delivery Day (as applicable) after notice of such failure is given to the party : (a) such Specified Failure was caused by an error or omission of an administrative or operational nature (an "Excusable Failure") and (b) other than such Excusable Failure, the Subject Party has taken all steps necessary for it to take in order to cause such delivery or payment, as the case may be, to be made and, but for the Excusable Failure, is in all other respect capable of making delivery or payment, as the case may be on the scheduled delivery or payment date relating to such Specified Failure, and provided such relevant payment or delivery is

made within three Local Business Days or Local Delivery Days (as applicable) after notice of such failure to pay is given to the party."

For Party B only, Section 5(a)(i) is deleted in its entirety and replaced by:

"(i) **Failure to Pay or Deliver.** Failure by Party B to make, when due, any payment under this Agreement or any delivery under Section 2(a)(i) or 9(h) required to be made by it and Party B does not comply with the Grace Period Procedure."

(c) **Bankruptcy.** Section 5(a)(vii) of this Agreement is amended by replacing "15" with "30" on lines eighteen and twenty five.

(d) **Set-Off.** Section 6(f) is amended by the addition of:

"(or any other amounts whether or not arising under this Agreement, matured, contingent and irrespective of the currency, place of payment of booking of the obligation)" on the first line immediately after "Amount", and "or its Affiliates if it is the Non-defaulting Party or Non-affected Party" immediately after both instances of "party" on the first line.

(e) **Waiver of Jury Trial.** Each party hereby irrevocably waives any and all right to trial by jury in any suit, action or proceeding arising out of or relating to this agreement or any transaction and acknowledges that this waiver is a material inducement to the other party's entering into this agreement.

(f) **2002 Master Agreement Protocol.** The parties agree that the definitions and provisions contained in Annexes 1 to 18 and Section 6 of the 2002 Master Agreement Protocol published by the International Swaps and Derivative Association, Inc., on 15th July 2003 are incorporated into and will supplement and form part of this Agreement. References in those definitions and provisions to any "ISDA 2002 Master Agreement" or "2002 Master" will be deemed to be references to this Agreement.

(g) **Further Representation of Party B.** In addition to its representations under Section 3, Party B represents to Party A (which representations will be deemed to be repeated by Party B on each date on which any Transaction subsists) that:

(i) **Investment Adviser's/Investment Manager's Authority.** It has appointed the Investment Adviser and/or Investment Manager to act as its agent for all purposes under this Agreement. The Investment Adviser and/or Investment Manager is authorized to enter into Transactions on Party B's behalf, and unless it has received written notice of termination of the Investment Adviser's or Investment Manager's authority, Party A shall be entitled to rely upon any and all instructions or notices received from the Investment Adviser or Investment Manager with respect to this Agreement or any Transaction, and Party A shall be under no duty to determine whether the giving of any notice or instruction, or the entry into any Transaction (including without limitation its nature and its amount), on behalf of Party B is within the Investment Manager's or Investment Adviser's authority;

(ii) **Compliance with Applicable Internal Policies.** Each Transaction entered into under this Agreement will be entered into in accordance with, and will at all times comply with, applicable investment policies, guidelines or other requirements of Party B (if any, as may be adopted or amended from time to time by Party B) that may affect the due authorization or validity of any Transaction or the Agreement;

(iii) Each of the Investment Adviser and the Investment Manager, on behalf of Party B, has the power to execute Confirmations relating to this Agreement and to deliver any other

documentation relating to this Agreement that it is required by this Agreement to deliver;

- (iv) The Investment Adviser or the Investment Manager, on behalf of Party B, is authorized to enter into and perform the Transactions contemplated by this Agreement and to bind Party B in connection with all obligations in connection therewith and under this Agreement;
  - (v) To its knowledge such execution, delivery and performance by the Investment Adviser or the Investment Manager, on behalf of Party B does not conflict with any law or regulation applicable to the Investment Adviser or the Investment Manager, any provision of the constituent documents of the Investment Adviser or the Investment Manager, any order or judgment of any court or other agency of government applicable to the Investment Adviser or the Investment Manager or any of the assets of the Investment Adviser or the Investment Manager or any contractual restriction binding on or affecting the Adviser or the Investment Manager or any assets of the Investment Adviser or the Investment Manager;
  - (vi) Each Transaction entered into in connection with this Agreement on behalf of Party B is suitable and appropriate and in accordance with the investment objectives and guidelines for Party B on the date such Transaction is entered into; and
  - (vii) To its knowledge all governmental and other consents that are required to have been obtained by each of the Investment Adviser and the Investment Manager with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with.
- (h) **Further Agreements of Party B.** In addition to its agreements under Section 4, Party B agrees with Party A that, so long as either party has or may have any obligations under this Agreement:
- (i) Any amounts payable by Party A under this Agreement are deemed satisfied when paid by Party A in accordance with the instructions of the Investment Adviser or Investment Manager; and
  - (ii) Party B shall be bound as principal of any Transaction executed by the Investment Adviser or Investment Manager (or any other person representing or purporting to represent the Adviser or Investment Manager) as its agent, notwithstanding any lack of authority or power to act on the part of the Investment Adviser or Investment Manager or such other person, unless Party A has received written notice of any change in the authority of the Investment Adviser or Investment Manager to act on behalf of Party B, provided, however, that no such change shall affect the validity of any Transaction entered into prior to such change.
- (i) **Reliance on Notices.** Except as otherwise stated herein, each party may rely upon any oral or written notices and instructions reasonably believed to be originated from the other party or its duly authorised agent (including, for Party B, the Investment Adviser) and does not incur any liability to the other party in acting in accordance with those notices and instructions.
- (j) **Definitions.** Section 14 is hereby amended to include the following definition in its appropriate alphabetical position:

**Base Currency** means United States Dollars

**Close of Business** means 6p.m. New York time.

**Customer Business Day** means, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in the Customer Business Day City. In any event, a day on which the relevant banks or settlement system would have been open for business but for an action taken by a governmental authority less than 1 month prior to that day, will be a Customer Business Day.

**Customer Business Day City** means, London

**Failure Notice** means, in relation to Party B's obligation to make, when due, any payment under this Agreement or any delivery under Section 2(a)(i) or 9(h) required by it, a notice of Party B's failure to satisfy payment under this Agreement or make delivery under Section 2(a)(i) or 9(h), which notice Party A has either used reasonable efforts to despatch to the fax and e-mail addresses, if any, specified for Failure Notices or otherwise delivered to Party B or an Investment Adviser (Party A having used such reasonable efforts or, if earlier, such delivery to constitute "issue" for the purposes of Section 5(a)(i)).

**Grace Period Procedure** is the procedure that Party B complies with in relation to a failure contemplated by Section 5(a)(i) if, and only if,

- (i) following Party A's issue of a Failure Notice in relation to such failure,
  - (x) if the Failure Notice was issued between 7 a.m. and 5 p.m. (inclusive, and in the Customer Business Day City) on a Customer Business Day, within three hours of Party A issuing a Failure Notice,
  - (y) if the Failure Notice was issued after 5 p.m. (in the Customer Business Day City) on a Customer Business Day, or other than on a Customer Business Day, by 10 a.m. on the following Customer Business Day, or
  - (z) if the Failure Notice was issued before 7 a.m. (in the Customer Business Day City) on a Customer Business Day, by 10 a.m. on that Customer Business Day,
- (ii) Party B demonstrates to Party A's reasonable satisfaction that such failure was due entirely to an error or omission of an administrative or operational nature, and that, at all times between the time at which the relevant transfer was due and the time of such demonstration, funds were available for Party B to make the relevant transfer by such time, and that a reputable bank or broker has received from Party B an irrevocable instruction to make a transfer of funds that are freely available to Party B in an account in Party B's name on the books of that bank or broker, so as to remedy such failure within the applicable time period under (ii) below; and
- (ii) having so demonstrated, Party B makes the relevant transfer by,
  - (xx) where (x) above applies, 5 p.m. London time on the first Termination Currency Business Day after Party A's issue of the Failure Notice,
  - (yy) where (y) above applies, Close of Business on the first Termination Currency Business Day after Party A's issue of the Failure Notice, or
  - (zz) where (z) above applies, Close of Business on the Customer Business Day on which Party A issued the Failure Notice, or, if that is not a Termination Currency Business Day, the first Termination Currency Business Day thereafter.

**Investment Adviser** means Marshall Wace LLP or any successor affiliated entity.

**Investment Advisory Agreement** means the agreement between Party B and [REDACTED]

**Investment Manager** means [REDACTED] or any successor affiliated entity.

**Investment Management Agreement** means the agreement between [REDACTED]

**'Net Asset Value' or "NAV"** means the result in U.S. Dollars of subtracting the total value of all liabilities (including but not limited to the aggregate mark-to-market value of all trading positions constituting liabilities) from the total value of all assets (including but not limited to cash, deposit accounts and instruments, securities, and the aggregate mark-to-market value of all trading positions constituting assets). For purposes of this computation, amounts denominated in a currency other than U.S. Dollars shall be converted to U.S. Dollars at the spot rate for such currency prevailing on the date of such calculation.

**Termination Currency Business Day** means (1) in case that the Termination Currency is Euro, a day on which TARGET (the Trans-European Automated Real-time Gross settlement Express Transfer system) is open, or, (2) in any other case, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in the principal financial centre of the Base Currency, in each case, including a day on which the relevant banks or settlement system would have been open for business but for an action taken by a Governmental Authority less than 1 month prior to that day.

- (k) **Indian transactions.** If the parties are entering into a Transaction which is or otherwise involves an offshore derivative instrument ("**ODI**") (as such term is defined for the purposes of the Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 2014, and notifications, circulars, rules and guidelines of the Securities and Exchange Board of India issued from time to time) (collectively referred to as the "**FPI Regulations**"), the representations and undertakings made by Party B in favour of Party A in a letter titled "Notice Regarding Derivative Products Linked to Indian Securities or Indices" (which may be amended/replaced from time to time) (the "**ODI Letter**") shall apply to the Transaction and references to ODI in the ODI Letter shall be construed to include the Transaction. If a representation or undertaking in the ODI Letter proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated; or if Party B fails to comply with or perform any agreement or obligation undertaken by it in the ODI Letter, it shall be an Additional Termination Event with all Transactions which are or otherwise involve an ODI (as defined in the ODI Letter) being the sole Affected Transactions, and with Party B being the sole Affected Party.
- (l) **Taiwanese transactions.** If the parties are entering into a Transaction referencing Taiwanese underliers where the relevant Exchange is in the Republic of China, Party B represents to Party A that:
- (i) it is not entering into the Transaction for the specific benefit or account of:
    - (a) any residents of the People's Republic of China ("**PRC**"), corporations in the PRC, or corporations outside the PRC that are beneficially owned by residents of the PRC or
    - (b) any residents of the Republic of China ("**ROC**" or "**Taiwan**"), corporations in Taiwan, or corporations outside Taiwan that are beneficially owned by residents of Taiwan.



- (ii) it will not, sell, transfer, assign, novate or otherwise dispose of the Transaction to or for the benefit or account of, or enter into any back-to-back equity derivative transaction with:
  - (a) any residents of the PRC, corporations in the PRC, or corporations outside the PRC which are beneficially owned by residents of the PRC or
  - (b) any residents of Taiwan, corporations in Taiwan, or corporations outside Taiwan that are beneficially owned by residents of Taiwan.
- (iii) details of the Transaction (including the identity of the parties) may,
  - (a) upon request or order by any competent authority, regulatory or enforcement organisation, governmental or otherwise, including without limitation, the stock exchange on which the underlying shares are listed,
  - (b) as required by applicable law, rules, regulations, codes or guidelines (whether having the force of law or otherwise), be disclosed in accordance with such request, order, law, rules, regulations, codes or guidelines (whether such disclosure is to be made to third parties or otherwise). By entering into the Transaction, Party B agrees to such disclosure and releases Party A (and its subsidiaries and affiliates) from any duty of confidentiality owed to it in relation to such information.

(m) ***Chinese transactions.***

- (i) If the parties are entering into a Transaction referencing **PRC** underliers where the relevant Exchange is in the PRC, Party B represents to Party A that:
  - (a) It is not a Domestic Investor;
  - (b) none of its investors are Domestic Investors.
  - (c) it will not sell, transfer, assign, novate or otherwise dispose of the Transaction to, or enter into any back-to-back equity derivative transaction with any Domestic Investor;
  - (d) details of the Transaction (including identity of the parties) may (a) upon request or order by any competent authority, regulatory or enforcement organisation, governmental or otherwise, including without limitation, the stock exchange on which the underlying shares are listed, (b) as required by applicable law, rules, regulations, codes or guidelines (whether having the force of law or otherwise), be disclosed in accordance with such request, order, law, rules, regulations, codes or guidelines (whether such disclosure is to be made to third parties or otherwise). By entering into the Transaction, Party B agrees to such disclosure and releases Party A (and its subsidiaries and affiliates) from any duty of confidentiality regarding such disclosure.
- (ii) **Domestic Investor** means:
  - (a) domestic individual as defined in the Administrative Measures on Foreign Exchange Matters for Individuals as issued by the People's Bank of China, and
  - (b) legal persons organised under the laws of the PRC (excluding Hong Kong, Macau and Taiwan).

- (n) ***Prior Agreements.*** This Agreement shall supersede all agreements between the parties entered into prior to the date of execution of this Agreement governing the terms of any Derivative Transaction between the parties and all confirmations relating to such Derivative Transactions shall supplement, form part of, and be subject to this Agreement, such confirmations shall be Confirmations hereunder and such Derivative Transactions shall be Transactions hereunder.

- (o) **Counterparts.** This Agreement may be executed in counterparts by facsimile or pdf signature, each of which shall be deemed to be a signed original.
- (p) **Contracts (Rights of Third Parties) Act 1999.** A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- (q) **FATCA – HIRE Act.**

(a) **FATCA PROTOCOL PROVISION.** “Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. “Tax” as used in Part 2(a) of this Schedule (Payer Tax Representation) and “Indemnifiable Tax” as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “**Code**”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “**FATCA Withholding Tax**”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this agreement. If the parties each independently decide to adhere to any ISDA Protocol on FATCA Withholding Tax, upon effective adherence by both parties, the provisions of such Protocol shall supersede the foregoing provision.

(b) **Section 871(m).** The amendments set out in the Attachment to the ISDA 2015 Section 871(m) Protocol published by ISDA on November 2, 2015, which is available on the ISDA website ([www.isda.org](http://www.isda.org)) will apply to this Agreement. This Agreement will be deemed to be a Covered Master Agreement and the Implementation Date will be the effective date of this Agreement for the purposes of such protocol.

- (r) **ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol.**

Both parties agree that the amendments and provisions set out in the Attachment to the ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol published by ISDA on 19 July 2013 and available on the ISDA website ([www.isda.org](http://www.isda.org)) (the “**PRDR Protocol**”) shall be incorporated into and apply to this Agreement and that (i) references therein to the “Protocol Covered Agreement” shall be deemed to be references to this Agreement (and each “Protocol Covered Agreement” shall be read accordingly), and (ii) references therein to “Implementation Date” shall be deemed to be references to the date of this Agreement.

Furthermore, the parties agree that the elections made in each party's Adherence Letter (as defined in the PRDR Protocol) shall apply equally to this Agreement as if set out in full herein.

- (s) **Address for Failure Notice:** [REDACTED]

(t) **Limited Recourse.** Each of Party A and Party B enter into this Agreement and all Transactions hereunder in reliance upon the fact that [REDACTED] (the “**Company**”) is an umbrella Irish collective asset-management vehicle with segregated liability between sub-funds (each a “**Sub-Fund**” and together the “**Sub-Funds**”) pursuant to the Irish Collective Asset-management Vehicle (ICAV) Act 2015

(the "Act", and such type of Irish corporate fund vehicle being an "ICAV"). Party A and Party B agree that this Agreement shall be construed accordingly.

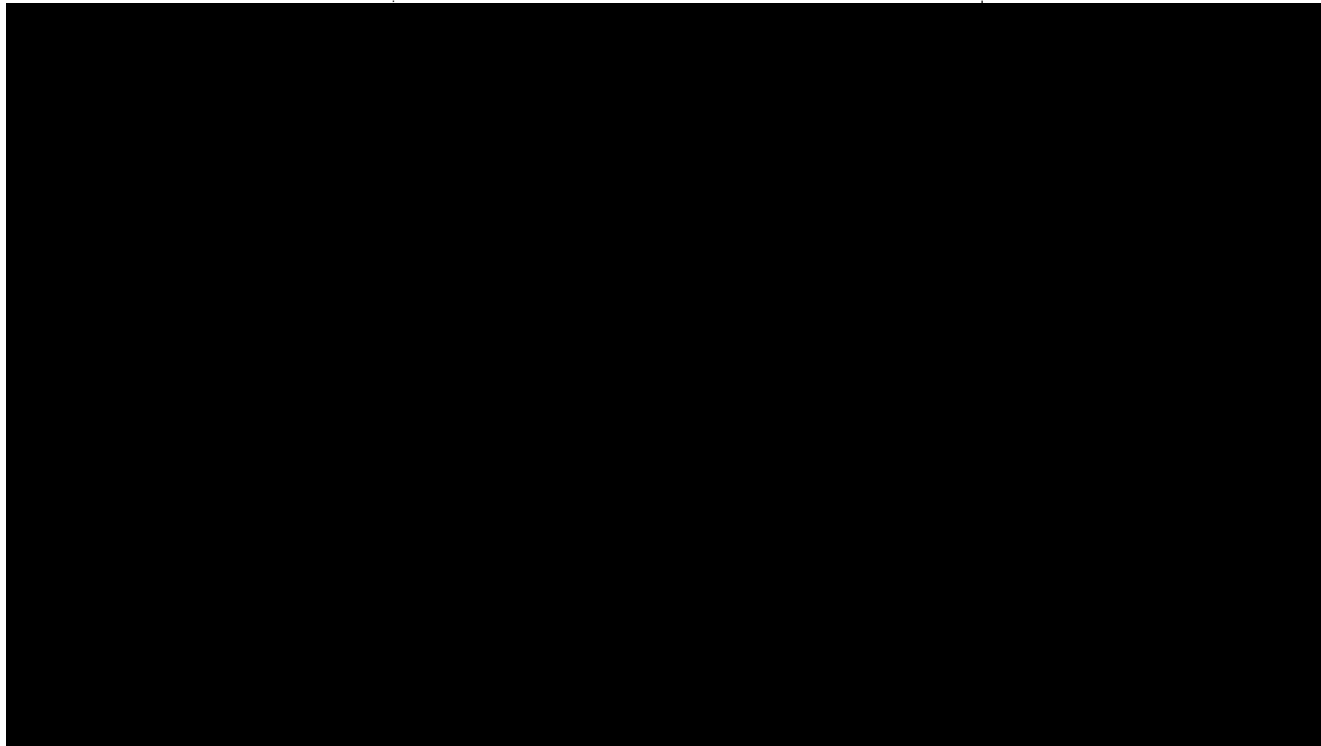
As a sub-fund within an ICAV, any liabilities or claims against ██████████ (the "Relevant Fund") may only be satisfied out of the assets of the Relevant Fund, and cannot extend to those of any other Sub-Fund within the Company. The parties agree that under no circumstances shall any rights, obligations, remedies or liabilities in respect of the Relevant Fund, or with respect to transactions in respect of the Relevant Fund, be deemed to constitute rights, obligations, remedies or liabilities applicable to any other Sub-Fund or to be transactions to which any other Sub-Fund is a party. Any rights of set off which arise under this Agreement will apply to the Company with respect to the Relevant Fund only.

Without prejudice to the foregoing:

- (a) Party A shall not seek whether in any proceedings or by any other means whatsoever or wheresoever to have recourse to any assets of any sub-fund of the Company in the discharge in all or any part of the liability which was not incurred on behalf of that sub-fund;
- (b) if Party A shall succeed by any means whatsoever or wheresoever in having recourse to any assets of any sub-fund in the discharge in all or any part of a liability which was not incurred on behalf of that sub-fund, Party A shall be liable to the Company to a sum equal to the value of the benefit thereby obtained by Party A;
- (c) if Party A shall succeed in seizing or attaching by any means, or otherwise levying execution against, any assets of a sub-fund in respect of a liability which was not incurred on behalf of that sub-fund, Party A shall hold those assets or the direct or indirect proceeds of the sale of such assets on trust for the Company and shall keep those assets or proceeds separately and identifiable as such property; and
- (d) any claim of Party A against a sub-fund not met from the assets of the sub-fund shall be extinguished and Party A shall not be able to petition for the winding-up of the Company or the termination of any other sub-fund as a consequence

Notwithstanding the foregoing, to the extent that Party A has an unsatisfied claim against the Relevant Fund, Party A may seek, in accordance with applicable law, to recoup further sums from the Relevant Fund in the event that the Relevant Fund subsequently recovers further assets in accordance with applicable law.

**IN WITNESS WHEREOF** the parties have executed this Schedule on the respective dates specified below with effect from the date specified on the first page of this document.



(Multicurrency—Cross Border)

# ISDA®

International Swap Dealers Association, Inc.

## MASTER AGREEMENT

dated as of 21 April 2011

UBS AG  
("PARTY A")

A BANK ORGANISED UNDER THE LAWS OF  
SWITZERLAND

[REDACTED]

..... and .....  
have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:---

### 1. Interpretation

- (a) **Definitions.** The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

- (a) **General Conditions.**
  - (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
  - (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.
  - (iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If:—

- (1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);
- (2) X does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(e) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

### 3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:—

(a) **Basic Representations.**

- (i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;
- (ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;
- (iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
- (v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:—

- (i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;
- (ii) any other documents specified in the Schedule or any Confirmation; and
- (iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated,



organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction") and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

## 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party 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 such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) 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, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however

described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) 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, such 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 dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) 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; (7) 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 such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event

Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below: ---

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party): ---

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Tax Event.** Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) **Tax Event Upon Merger.** The party (the "Burdened Party") on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) **Credit Event Upon Merger.** If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(v) **Additional Termination Event.** If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

## 6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) **Right to Terminate.** If: ---

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then

continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(c) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) ***Calculations.***

(i) ***Statement.*** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) ***Payment Date.*** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) ***Payments on Early Termination.*** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) ***Events of Default.*** If the Early Termination Date results from an Event of Default:—

(1) ***First Method and Market Quotation.*** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) ***First Method and Loss.*** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) ***Second Method and Market Quotation.*** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the

Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount (“X”) and the Settlement Amount of the party with the lower Settlement Amount (“Y”) and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss (“X”) and the Loss of the party with the lower Loss (“Y”).

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) **Adjustment for Bankruptcy.** In circumstances where an Early Termination Date occurs because “Automatic Early Termination” applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(i).

(iv) **Pre-Estimate.** The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

## 7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that: —

- (a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and
- (b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

## 8. Contractual Currency

(a) *Payment in the Contractual Currency.* Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the “Contractual Currency”). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) *Judgments.* To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term “rate of exchange” includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

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

(d) *Evidence of Loss.* For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

## 9. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

(b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) **Counterparts and Confirmations.**

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

## 10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.

(b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.

(c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

## 11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document



to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 12. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

## 13. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

- (i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and
- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or reenactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Service of Process.** Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any

reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

#### 14. Definitions

As used in this Agreement:—

**"Additional Termination Event"** has the meaning specified in Section 5(b).

**"Affected Party"** has the meaning specified in Section 5(b).

**"Affected Transactions"** means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

**"Affiliate"** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

**"Applicable Rate"** means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

**"Burdened Party"** has the meaning specified in Section 5(b).

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

**"consent"** includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

**"Credit Event Upon Merger"** has the meaning specified in Section 5(b).

**"Credit Support Document"** means any agreement or instrument that is specified as such in this Agreement.

**"Credit Support Provider"** has the meaning specified in the Schedule.

**"Default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**"Defaulting Party"** has the meaning specified in Section 6(a).

**"Early Termination Date"** means the date determined in accordance with Section 6(a) or 6(b)(iv).

**"Event of Default"** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**"Illegality"** has the meaning specified in Section 5(b).

**"Indemnifiable Tax"** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

**"law"** includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and **"lawful"** and **"unlawful"** will be construed accordingly.

**"Local Business Day"** means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

**"Loss"** means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that 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 this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

**"Market Quotation"** means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have

been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

**"Non-default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

**"Non-defaulting Party"** has the meaning specified in Section 6(a).

**"Office"** means a branch or office of a party, which may be such party's head or home office.

**"Potential Event of Default"** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**"Reference Market-makers"** means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

**"Relevant Jurisdiction"** means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

**"Scheduled Payment Date"** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**"Set-off"** means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

**"Settlement Amount"** means, with respect to a party and any Early Termination Date, the sum of:—

(a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

**"Specified Entity"** has the meaning specified in the Schedule.

**“Specified Indebtedness”** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

**“Specified Transaction”** means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**“Stamp Tax”** means any stamp, registration, documentation or similar tax.

**“Tax”** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

**“Tax Event”** has the meaning specified in Section 5(b).

**“Tax Event Upon Merger”** has the meaning specified in Section 5(b).

**“Terminated Transactions”** means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if “Automatic Early Termination” applies, immediately before that Early Termination Date).

**“Termination Currency”** has the meaning specified in the Schedule.

**“Termination Currency Equivalent”** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the “Other Currency”), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

**“Termination Event”** means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

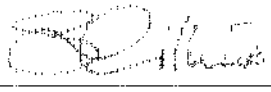
**“Termination Rate”** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

**“Unpaid Amounts”** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market

value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

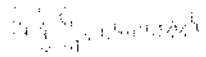
IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

**UBS AG**

By:   
Name: \_\_\_\_\_  
Title: **Sophia Arthur**  
**Director**  
**Trade Products Legal**

By:   
Name: \_\_\_\_\_  
Title: **Robert Danielik**  
**Managing Director**  
**Trade Products**  
**Legal**





By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE  
to the  
Master Agreement  
dated as of 21 April 2011  
between**

**UBS AG  
("Party A")**

**and**

**a bank organised under the laws of  
Switzerland**

[REDACTED]

**Part 1  
Termination Provisions**

- (a) **"Specified Entity"** means:
- (i) in relation to Party A for the purpose of:  
  
Section 5(a)(v) of this Agreement, UBS Limited,  
Section 5(a)(vi) of this Agreement, none,  
Section 5(a)(vii) of this Agreement, none,  
Section 5(b)(iv) of this Agreement none; and
  - (ii) in relation to Party B for the purpose of:  
  
Section 5(a)(v) of this Agreement, none,  
Section 5(a)(vi) of this Agreement, none,  
Section 5(a)(vii) of this Agreement, none,  
Section 5(b)(iv) of this Agreement, none.
- (b) **"Specified Transaction"** will have the meaning specified in Section 14 of this Agreement and shall also mean securities lending agreements and exchange traded derivatives now existing or hereafter entered into between one party to this Agreement and the other party to this Agreement.
- (c) The **"Cross Default"** provisions of Section 5(a)(vi) of this Agreement, as modified below, will apply to Party A and to Party B. Section 5(a)(vi) of this Agreement is hereby amended by the deletion in the seventh line thereof the words ", or becoming capable at such time of being declared,"; and the addition of the following at the end thereof:

"provided, however, that notwithstanding the foregoing, an Event of Default shall not occur under either (1) or (2) above if, as demonstrated to the reasonable satisfaction of the other party, (a) the event or condition referred to in (1) or the failure to pay referred to in (2) is a failure to pay caused by an error or omission of an administrative or operational nature; and (b) funds were available to such party to enable it to make the relevant payment when due; and (c) such relevant payment is made within three Business Days following receipt of written notice from an interested party of such failure to pay."

**"Specified Indebtedness"** will have the meaning specified in Section 14 of this Agreement.

**"Threshold Amount"** means:

- (i) in relation to Party A, 3% of shareholders equity (howsoever described) of Party A as shown on the most recent annual audited financial statements of Party A; and
  - (ii) in relation to Party B, 3% of the net asset value of Party B, as shown on the most recent annual audited financial statements of Party B.
- (d) The **"Credit Event Upon Merger"** provisions of Section 5(b)(iv) of this Agreement will apply to both Party A and Party B. Section 5(b)(iv) of this Agreement is hereby amended by the substitution of the following therefore:

(iv) **Credit Event Upon Merger.** A Designated Event (as defined below) occurs with respect to a party, any Credit Support Provider of the party or any applicable Specified Entity of the party (any such party or entity, "X"), and such Designated Event does not constitute an event described in Section 5(a)(viii) but the creditworthiness of X, or, if applicable, the resulting, surviving, or transferee entity of X, as the case may be, is materially weaker than that of X immediately prior to such action (and in such event X or such resulting, surviving or transferee entity of X will be the Affected Party). For the purposes hereof, a Designated Event shall mean that, after the date of this Agreement:

- (1) X 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,
- (2) another entity transfers all or substantially all its assets to, or reorganizes, incorporates, reincorporates or reconstitutes into or as X, or
- (3) any Person or group of related Persons acquires directly or indirectly the beneficial ownership of equity securities having the power to elect a majority of the board of directors of X or otherwise acquires directly or indirectly the power to control the policy making decisions of X."



- (e) The "**Automatic Early Termination**" provision of Section 6(a) of this Agreement will not apply to Party A and will not apply to Party B; provided, however, where the Event of Default is specified in section 5(a)(vii)(1), (3), (4), (5), (6) or to the extent analogous thereto, (8), and is governed by a system of laws which does not permit termination to take place upon or after the occurrence of the relevant Event of Default in accordance with the terms of this Agreement, then the Automatic Early Termination provisions of Section 6(a) will apply to Party A and will apply to Party B.
- (f) "**Termination Currency**" means one of the currencies in which payments are required to be made pursuant to a Confirmation in respect of a Terminated Transaction selected by the Non-defaulting Party or the non-Affected Party, as the case may be, or, in the circumstances where there are two Affected Parties, as agreed between the parties or, failing such agreement as aforesaid, or if the currency so selected is not freely available, the Termination Currency shall be Euro.
- (g) **Additional Termination Event.** The following are Additional Termination Events for which Party B is the Affected Party.

**Change of Investment Manager.** [REDACTED] (the "Investment Manager") ceases to be the investment Manager to Party B and is not replaced by (a) Henderson Global Investors Limited or an appropriately authorised Affiliate of Henderson Group plc or (b) an investment manager reasonably acceptable to Party A.

**Part 2**  
**Tax Representations**

- (a) ***Payer Tax Representations.*** For the purpose of Section 3(e) of this Agreement, Party A and Party B each makes the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, **PROVIDED that** it shall not be a breach of this representation where reliance is placed on sub-clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

- (b) ***Payee Tax Representations.*** For the purpose of Section 3(f) of this Agreement, Party A and Party B make no representations.

**Part 3**  
**Agreement to Deliver Documents**

For the purposes of Sections 3(d), 4(a)(i) and (ii) of this Agreement, each party agrees to supply the following documents:

(a) Tax forms, documents or certificates to be delivered are:

Each party agrees to complete, accurately and in a manner reasonably satisfactory to the other party, and to execute, arrange for any required certification of, and deliver to the other party (or to such government or taxing authority as the other party reasonably directs), any form or document that may be required or reasonably requested in order to allow the other party to make a payment under this Agreement without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate, promptly upon the earlier of (i) reasonable demand by the other party and (ii) learning that the form or document is required.

(b) Other documents to be delivered are:

<b>PARTY REQUIRED TO DELIVER DOCUMENT:</b>	<b>FORM/DOCUMENT/ CERTIFICATE.</b>	<b>DATE BY WHICH TO BE DELIVERED</b>	<b>COVERED BY SECTION 3(D) REPRESENTATION</b>
Party A and the SICAV	Evidence reasonably satisfactory to the other party of the authority and true signatures of each agent, official or representative signing this Agreement or, as the case may be, a Confirmation, on its behalf.	On or before execution of this Agreement and each Confirmation, if requested, forming a part of this Agreement.	Yes
The SICAV	Evidence reasonably satisfactory to Party A authorising Party B's entry into this Agreement and each Confirmation and performance of Party B's obligations.	On or before execution of this Agreement.	Yes
The SICAV	Annual Audited Financial Statements of each Party B	As soon as practicable but in any event within 120 days of the end of each financial year	Yes

The SICAV

Up to date copy of Prospectus (with CSSF visa attached) and articles of incorporation of Party B (as may be amended from time to time).

On or before execution of this agreement.

Yes



- (e) **Calculation Agent.** The Calculation Agent is Party A, unless otherwise specified in a Confirmation in relation to the relevant Transaction. The Calculation Agent is responsible for making all determinations for each Transaction under this agreement that are not expressed to be the responsibility of an identified party. The Calculation Agent must make all determinations in good faith and a commercially reasonable manner. If Party B disputes any determination or a failure to make a determination (other than a determination relating to subsections 1.14(a), (b) or (c) of the 2003 ISDA Credit Derivatives Definitions):
- (i) Party A and Party B must pay each other any and all undisputed amounts when due; and
  - (ii) Party A must appoint a leading independent dealer to act as substitute Calculation Agent in place of Party A ("Substitute Calculation Agent") for the disputed determination.

The Substitute Calculation Agent cannot be an affiliate of Party A or Party B. If the Substitute Calculation Agent considers that the determination of Party A is not reasonable, the determination of the Substitute Calculation Agent replaces the determination of Party A. Unless there is a clear error, the determination of the Substitute Calculation Agent is binding and conclusive. Party B and Party A must pay any costs of the Substitute Calculation Agent equally. Party B and Party A waive any claim they might otherwise have against the Substitute Calculation Agent for errors or omissions made in good faith in making any determination.

- (f) **Credit Support Document.** Details of any Credit Support Document in relation to Party A and Party B: Not applicable.
- (g) **Credit Support Provider.** Credit Support Provider means in relation to Party A and Party B: Not applicable.
- (h) **Governing Law.** This Agreement and any non-contractual obligations arising out of or in relation to the Agreement will be governed by, and construed in accordance with, English law.
- (i) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will apply in respect of all Transactions; however, (b) at such time as Party B can operationally make net payments across FX and Currency Option Transactions in respect of amounts payable on the same date and in the same currency and notifies Party A of this, then subparagraph (ii) of Section 2(c) will not apply for that Party B in respect of FX and Currency Option Transactions. Party B agrees to notify Party A when it operationally has the capability to make net payments across FX and Currency Option Transactions..
- (j) **"Affiliate"** will have the meaning specified in Section 14 of this Agreement.

**Part 5**  
**Other Provisions**

- (a) **Section 6 of this Agreement is hereby amended by the addition of Section 6(f) as follows:**

**"Set-off**

(f) Set-off. Any amount (the "Early Termination Amount") payable to one party (the Payee) by the other party (the Payer) under Section 6(e), in circumstances where there is a Defaulting Party or one Affected Party in the case where a Termination Event under Section 5(b)(iv) or Section 5(b)(v) has occurred, will, at the option of the party ("X") other than the Defaulting Party or the Affected Party (and without prior notice to the Defaulting Party or the Affected Party), be reduced by its set-off against any amount(s) (the "Other Agreement Amount") payable (whether at such time or in the future upon the occurrence of contingency) by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreements(s) between the Payee and Payer or instrument(s) or undertaking(s) issued or executed by one party to, or in favour of, the other party (and Other Agreement Amount will be discharged promptly and in all respect to the extent it is so set-off). X will give notice to the other party of any set-off effected under this Section 6(f).

For this purpose, either the Early Termination Amount or the Other Agreement Amount (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) shall be effective to create a charge or other security interest. This Section 6(f) shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise)"

- (b) ***Waiver Of Jury Trial.*** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this agreement or any credit support document or any transaction. Each party (i) certifies that no representative, agent or attorney of the other party or any credit support provider has represented, expressly or otherwise, that such other party would not seek to enforce the foregoing waiver in the event of any such suit, action or proceeding and (ii) acknowledges that it and the other party have entered into this agreement and any credit support document, as applicable, in reliance on, among other things, the mutual waivers and certifications in this section.

(c) **Consent to Recording.** Each Party (i) consents for itself and on behalf of its agents, delegates or Affiliates to the recording of all telephone conversations between trading, operations and marketing personnel of the relevant persons in connection with this Agreement or any potential Transaction; (ii) agrees to give notice to its personnel and its agents, delegates or Affiliates that their calls will be recorded; and (iii) agrees that in any Proceedings, it will not object to the introduction of such recordings in evidence on the ground that consent was not properly given.

(d) **Relationship between the Parties.** This Agreement is hereby amended by the addition of a new Section 15 as follows:

"15. **Relationship between the Parties.**

Each party will be deemed to represent to the other party on the date on which it enters into a Transaction (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):

(a) **Non Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgement and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction.

(b) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.

(c) **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction."

References in this clause to a "party" shall, in the case of UBS AG and where the context so allows, include reference to any Affiliate of UBS AG.

(e) **Scope of Agreement.** Upon the effectiveness of this Agreement and unless the parties to this Agreement otherwise agree in writing, by specific reference to this Agreement, that this provision does not apply, all Derivative Transactions (as defined below) then outstanding, or which may be entered into thereafter, between the parties, including Transactions entered into by the parties through Offices, if any, listed in Part 4(d), are deemed to be Transactions governed by this Agreement and any confirmation or other confirming evidence of the Transaction is deemed to be a Confirmation.



'Derivative Transaction' means any transaction (including an agreement with respect thereto) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, weather index transaction, bullion/precious metal transaction, base metal transaction, or forward purchase or sale of a security, commodity or other financial instrument or interest, or any other similar transaction (including any option with respect to any of these transactions) and any combination of these transactions.

- (f) **Agreements.** Section 4 of this Agreement is hereby amended by the addition of Section 4(f) as follows:

"(f) **Physical Delivery.** In respect of any physically settled Transactions, it will, at the time of delivery, be (in the case of Party A) the legal and beneficial owner and (in the case of Party B) the beneficial owner, free of liens and other encumbrances, of any securities or commodities it delivers to the other party; and, in addition, with respect to any breach of this Section 4(f), Section 5(a)(ii) of this Agreement is hereby amended by the insertion of a full stop after "Agreement" on the fifth line and the deletion of the remainder of the Section."

- (g) **Further Representation of Party B.** In addition to its representations under Section 3, Party B represents to Party A (which representations are deemed to be repeated by Party B on each date on which any Transaction exists) that:

- (i) the Investment Manager has been appointed to act as Party B's agent for all purposes under this Agreement (including, without limitation, for the purpose of entering into Transactions on its behalf); and
- (ii) any person (including, without limitation, the Investment Manager and any person representing or reasonably believed by Party A to represent the Investment Manager) signing the Agreement or any Confirmation on behalf of Party B, and any such person entering into any Transaction on behalf of Party B, is authorised to do so on behalf of Party B.

- (h) **Further Agreements of Party B.** In addition to its agreements under Section 4, Party B agrees with Party A that, so long as either party has or may have any obligations under this Agreement:

- (i) Any amounts payable by Party A under this Agreement are deemed satisfied when paid to an account as instructed by the Investment Manager; and
- (ii) Each Party B is bound as principal of any Transaction entered into through the Investment Manager or any other person representing or reasonably believed by Party A to represent the Investment Manager, despite any lack of power or authority on the part of the Investment Manager or such other person.

(i) Accuracy of Information. Section 3(d) is hereby amended by adding in the third line thereof after the word "respect" and before the period, the phrase "or, in the case of audited financial statements, prepared in accordance with the accounting convention under which the annual audited accounts of the party are customarily prepared."

(j) Section 6(d)(i) of the Agreement is modified in its entirety as follows:

"(d) Calculations; Payment Date

(i) Statement. On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations), (2) specifying (except where there are two Affected Parties) any Early Termination Amount payable and (3) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation or market data obtained in determining a Close-out Amount, the records of the party obtaining such quotation or market data will be conclusive evidence of the existence and accuracy of such quotation or market data."

(k) Section 6(e) of the Agreement is modified in its entirety as follows:

"(e) Payments on Early Termination. If an Early Termination Date occurs, the amount, if any, payable in respect of that Early Termination Date (the "Early Termination Amount") will be determined pursuant to this Section 6(e) and will be subject to any Set-off.

(i) Events of Default. If the Early Termination Date results from an Event of Default, the Early Termination Amount will be an amount equal to (1) the sum of (A) the Termination Currency Equivalent of the Close-out Amount or Close-out Amounts (whether positive or negative) determined by the Non-defaulting Party for each Terminated Transaction or group of Terminated Transactions, as the case may be, and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (2) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If the Early Termination Amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of the Early Termination Amount to the Defaulting Party.

(ii) Termination Events. If the Early Termination Date results from a Termination Event:

(1) One Affected Party. If there is one Affected Party, the Early Termination Amount will be determined in accordance with Section 6(e)(i), except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.

(2) Two Affected Parties. If there are two Affected Parties, each party will determine an amount equal to the Termination

Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an amount equal to (A) the sum of (i) one-half of the difference between the higher amount so determined (by party "X") and the lower amount so determined (by party "Y") and (ii) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.

- (iii) Adjustment for Bankruptcy. In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).
- (iv) Pre-Estimate. The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions."

- (l) The term "Termination Currency Equivalent" in Section 14 of the Agreement is hereby amended by replacing "Market Quotation or Loss (as the case may be)" with "Close-out Amount".
- (m) The following terms are added to Section 14 of the Agreement in the appropriate alphabetical position:

"Close-out Amount" means, with respect to each Terminated Transaction or each group of Terminated Transactions and a Determining Party, the amount of the losses or costs of the Determining Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Determining Party that are or would be realised under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Determining Party the economic equivalent of, (a) the material terms of that Terminated Transaction or group of Terminated Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of that Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in Section 2(a)(iii)) and (b) the option rights of the parties in respect of that Terminated Transaction or group of Terminated Transactions.

Any Close-out Amount will be determined by the Determining Party (or its agent), which will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. The Determining Party may determine a

Close-out Amount for any group of Terminated Transactions or any individual Terminated Transaction but, in the aggregate, for not less than all Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

Unpaid Amounts in respect of a Terminated Transaction or group of Terminated Transactions and legal fees and out-of-pocket expenses referred to in Section 11 are to be excluded in all determinations of Close-out Amounts.

In determining a Close-out Amount, the Determining Party may consider any relevant information, including, without limitation, one or more of the following types of information:

- (i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;
- (ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or
- (iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party's Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

The Determining Party will consider, taking into account the standards and procedures described in this definition, quotations pursuant to clause (i) above or relevant market data pursuant to clause (ii) above unless the Determining Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in clause (i), (ii) or (iii) above, the Determining Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilised. Third parties supplying quotations pursuant to clause (i) above or market data pursuant to clause (ii) above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Without duplication of amounts calculated based on information described in clause (i), (ii) or (iii) above, or other relevant information, and when it is commercially reasonable to do so, the Determining Party may in addition consider in calculating a Close-out Amount any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to a Terminated Transaction or group of Terminated Transactions (or any gain resulting from any of them).

Commercially reasonable procedures used in determining a Close-out Amount may include the following:

- (1) application to relevant market data from third parties pursuant to clause (ii) above or information from internal sources pursuant to clause (iii) above of

pricing or other valuation models that are, at the time of the determination of the Close-out Amount, used by the Determining Party in the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the Terminated Transaction or group of Terminated Transactions; and

- (2) application of different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.”

““Determining Party” means the party determining a Close-out Amount.”

““Early Termination Amount” has the meaning specified in Section 6(e).”

““Non-affected Party” means, so long as there is only one Affected Party, the other party.”

- (n) The following terms in Section 14 of the Agreement are deleted in their entirety: “Loss”, “Market Quotation”, “Reference Market-makers” and “Settlement Amount”.

If any of these terms are used in any Annex or Schedule to the Agreement or a Confirmation, the 1994 ISDA Equity Option Definitions, the 1996 ISDA Equity Derivatives Definitions, the 2002 ISDA Equity Derivatives Definitions, the 1997 ISDA Government Bond Option Definitions, the 1998 FX and Currency Option Definitions, the 1999 ISDA Credit Derivatives Definitions or any other ISDA document incorporated by reference or executed by the parties hereto, the terms will have the respective meanings ascribed to them in the standard form 1992 ISDA Master Agreement (Multicurrency-Cross Border).

## Part 6. Status of Parties

- (a) **Acknowledgements.** Party A and Party B acknowledge and agree that:
- (i) The SICAV may comprise of one or more sub-funds listed in Appendix 1 (each, a "Sub-Fund"), each consisting of a defined portfolio of assets and liabilities. The assets of each Sub-Fund shall belong exclusively to that Sub-Fund, shall be segregated from the assets of the other Sub-Funds and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other Sub-Fund and shall not be available to Party A for any such purpose.
  - (ii) Party A acknowledges that: (i) each Transaction and Confirmation to be entered into pursuant to this Agreement will be entered into with specific reference to and on behalf of the Sub-Fund named in relation thereto; and (ii) each Sub-Fund is independent of all other Sub-Funds of the SICAV and of the SICAV's non-fund assets, if any.
  - (iii) In the absence of misrepresentation or fraud, and subject to the SICAV obtaining similar assurances from each material creditor of one or more of its Sub-Funds, Party A enters into the Transactions and Confirmations with the understanding that for the satisfaction of Party B's obligations and liabilities arising under or pursuant to such Transactions and Confirmations, Party A may have recourse only to the assets of the Sub-Fund named in relation thereto, and no recourse shall be had to the general assets of the SICAV which are not Sub-Fund assets, or to the assets of any other Sub-Fund, notwithstanding any provision of any agreement between Party A and Party B that would purport to extend the liability of Party B beyond the relevant Sub-Fund, but without prejudice to any provision of applicable law.
  - (iv) Party A also acknowledges and agrees that, for purposes of this Agreement, all references to Party B, directly as "Party B" or indirectly as "a party", "Party X", the "Defaulting Party", the "Non-Defaulting Party" or otherwise shall mean and refer only to the Sub-Fund for and on behalf of which Transactions and Confirmations are being entered into and shall not be interpreted as meaning or referring to the SICAV or any other Sub-Fund of the SICAV. Party A further acknowledges and agrees that in the event that an Event of Default occurs with respect to Party B, such Event of Default shall only affect the Sub-Fund and its assets and shall not affect the SICAV or any other Sub-Fund of the SICAV or their respective assets.
  - (v) Subject to Part 6(a)(i)–(iv) above, Party B acknowledges and represents to Party A that: (A) Party B will act, operate and be administered in accordance with the organisational documents of the SICAV follow proper corporate formalities, and comply with applicable law; (B) each Sub-Fund's assets can and may be used by Party A to satisfy Party B's obligations to Party A pursuant to the Transactions entered into with Party A; and (C) Party B will not remove, withdraw, sell or transfer assets of the Sub-Fund to avoid the performance and satisfaction of Party B's obligations and liabilities to Party A.
  - (vi) All the provisions of this Agreement shall apply separately as between Party A and each Sub-Fund listed in Appendix 1 as if each such Sub-Fund were a party to a separate agreement with Party A in all respects identical with this

Agreement. This Agreement shall be construed in all respects as a series of separate agreements ("Resultant Agreements"), each agreement being between (A) Party A (as Party A) and (B) the relevant Sub-Fund (as Party B), as if each Sub-Fund were a legal person in its own right.

- (vii) For avoidance of doubt and without prejudice to the generality of Part 6(a)(i)–(vi) above, upon the designation of an Early Termination Date under a Resultant Agreement, and subject to the SICAV obtaining similar assurances from each material creditor of one or more of its Sub-Funds, Party A may not set-off or apply any sums or obligations of Party B owed to Party A under such Resultant Agreement (whether or not matured, whether or not contingent and whether or not arising, and regardless of the currency, place of payment or booking office of the sums or obligations) against any obligations of Party A to Party B under any other Resultant Agreement, and Party B may not set-off or apply any sums or obligations of Party A owed to Party B under such Resultant Agreement (whether or not matured, whether or not contingent and whether or not arising, and regardless of the currency, place of payment or booking office of the sums or obligations) against any obligations by Party B to Party A under any other Resultant Agreement.
- (viii) Subject to the SICAV obtaining similar assurances from each material creditor of one or more of its Sub-Funds, any lien, right to set off or combine accounts or other similar rights which Party A might have, whether pursuant to this Agreement or otherwise, will only apply in respect of each particular Sub-Fund separately and that the assets of one Sub-Fund will not be applied by way of lien, set off or otherwise in respect of the obligations of another Sub-Fund. Similarly, any lien, right to set off or combine accounts or other similar rights which the SICAV might have in respect of Party A, whether pursuant to this Agreement or otherwise, will only apply in respect of each particular Sub-Fund of the SICAV separately and that the assets of Party A referable to one Sub-Fund will not be applied by way of lien, set off or otherwise in respect of the obligations of Party A to another Sub-Fund.
- (ix) The occurrence of an Event of Default or Termination Event in respect of or affecting a Sub-Fund under a Resultant Agreement shall not, by that fact alone, result in the occurrence of an Event of Default or Termination Event in respect of any other Sub-Fund under any other Resultant Agreements, and for the purposes of each Resultant Agreement Sub-Funds shall not be deemed to be affiliated to each other notwithstanding that they are sub-funds of the same company.
- (x) **Compliance with the Regulations.** Each Transaction shall be subject to the Regulations and where the terms of any Transaction must contain terms prescribed by the Regulations ("prescribed terms") such prescribed terms shall be incorporated into the terms of the Transaction. For the purposes of this Part 6(a)(x), "Regulations" means the laws of Luxembourg (including delegated legislation and regulations of any competent authority).

In particular but without prejudice to the foregoing, the parties agree as follows:-

- (i) **Valuations.** The Calculation Agent shall provide, upon request of Party B and, in any event, at least on a daily basis, a reliable and verifiable valuation in respect of each Transaction, such valuation to be made in accordance with the requirements set out in the Regulations;

(ii) **Optional Termination.** So long as no Termination Event or an Event of Default (as such terms are defined in this Agreement) shall have occurred or be continuing with respect to Party B, Party B shall have the right, on any Local Business Day, at any time and upon delivery of a notice to Party A (which notice may be given by telephone) no later than 15:30pm London time, to terminate any Transaction with immediate effect at fair value in such manner as permitted from time to time under the Regulations (including where requested by Party B by effecting a further Transaction with Party A which is equal but opposite to the first mentioned Transaction in all respects except as to price). For these purposes, references to, and calculations of, "fair value" shall be as agreed between Party A and Party B as the fair value for an unwind of such a Transaction. Failing agreement, the relevant Transaction shall be terminated in accordance with (A) the provisions of Section 6(e)(ii)(1) as if (i) it were an Affected Transaction", (ii) Party B was the "sole Affected Party", and (iii) the date on which the termination notice was delivered to Party A was an "Early termination Date" in respect of the Terminated Transaction, and (B) the requirements set out in the Regulations as amended, varied, supplemented or replaced from time to time and references to "Settlement Amount" in 6(e) shall be interpreted accordingly. Party B's rights under this paragraph shall apply to each Transaction notwithstanding (1) any contrary provision in a Confirmation or (2) the absence of an express provision to this effect in any Confirmation, and for the avoidance of doubt, the occurrence of an Optional Termination pursuant to this paragraph shall not constitute, or result in, an Additional Termination Event under this Agreement.



## PART 7

### FX TRANSACTIONS AND CURRENCY OPTION TRANSACTIONS

(a) Confirmations

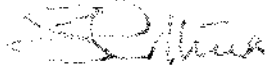
Where an FX Transaction or a Currency Option Transaction is confirmed by means of exchange of electronic messages on an electronic messaging system (i) such confirmation will constitute a "Confirmation" as referred to in this Agreement even where not so specified in the confirmation, (ii) such Confirmation will supplement, form part of, and be subject to this Agreement (unless such Confirmation expressly states otherwise) and all provisions in the Agreement will govern the Confirmation except as modified therein and (iii) the definitions and provisions contained in the 1998 ISDA FX and Currency Option Definitions (as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and The Foreign Exchange Committee) as amended and supplemented by the 1998 ISDA Euro Definitions (published by the International Swaps and Derivatives Association, Inc.) (together the "FX Definitions") will be incorporated into the Confirmation to the extent consistent with the terms of the Confirmation.

For the purpose of this Agreement, the terms "FX Transaction" and "Currency Option Transaction" shall have the meanings ascribed to them in the FX Definitions. Further, any terms used in this Part 6 but not defined herein shall have the meanings given to them in the FX Definitions.

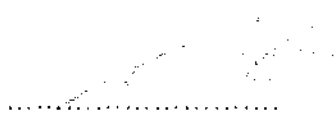
This Agreement restates, amends and supersedes the ISDA Master Agreement dated as of 9 February 2009 between Party A and Party B (such master agreement including the Schedule, the Credit Support Annex, Synthetic Equity Swaps and Synthetic Convertible Bond Swaps Addendum and Swap Master Confirmation - Total Return Swaps, Portfolio Swaps and Basket Swaps thereto, being referred to as the "Prior Agreement"). Any transaction entered into between the parties under the Prior Agreement shall be deemed to be governed by this Agreement. Any such transaction shall be deemed to constitute a Transaction and any document or other confirming evidence in respect of any such transaction shall be deemed to constitute a Confirmation for the purpose of this Agreement.

IN WITNESS WHEREOF the parties have executed this Schedule on the respective dates specified below with effect from the date specified on the first page of this document.

**UBS AG  
("Party A")**



**By:** .....  
**Name:** .....  
**Title:** Sophia Arthur  
**Date:** Director  
Traded Products Legal



**By:** .....  
**Name:** .....  
**Title:** Robert Daniel  
**Date:** Managing Director  
Traded Products  
Legal



1



**By:** .....  
**Name:** .....  
**Title:** .....  
**Date:** .....

APPENDIX 1

PARTY B

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

# ISDA<sup>®</sup>

International Swaps and Derivatives Association, Inc.

## MASTER AGREEMENT

dated as of March 29, 2019

UBS AG

and



("Party A")

(each such entity, separately  
and not jointly, "Party B")

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:

### 1. Interpretation

- (a) **Definitions.** The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

- (a) **General Conditions.**
  - (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
  - (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.
  - (iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or

brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If:—

- (1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);
- (2) X does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(e) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

### 3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:—

(a) **Basic Representations.**

- (i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;
- (ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorize such execution, delivery and performance;
- (iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organized, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction") and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

## 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party 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 such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) 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, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or



exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) 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, such 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 dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) 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; (7) 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 such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an

Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:—

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Tax Event.** Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) **Tax Event Upon Merger.** The party (the "Burdened Party") on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) **Credit Event Upon Merger.** If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(v) **Additional Termination Event.** If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

## 6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by

not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) ***Right to Terminate Following Termination Event.***

(i) ***Notice.*** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) ***Transfer to Avoid Termination Event.*** If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) ***Two Affected Parties.*** If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) ***Right to Terminate.*** If:—

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) **Calculations.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) **Payment Date.** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss," and a payment method, either the "First Method" or the "Second Method." If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method," as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default:—

(1) **First Method and Market Quotation.** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) **First Method and Loss.** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) **Second Method and Market Quotation.** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) **Second Method and Loss.** If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Pre-Estimate.* The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

## **7. Transfer**

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

## **8. Contractual Currency**

(a) *Payment in the Contractual Currency.* Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the "Contractual Currency"). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be

discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term "rate of exchange" includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

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

(d) **Evidence of Loss.** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

## 9. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

(b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) **Counterparts and Confirmations.**

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

## **10. Offices; Multibranch Parties**

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organization of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.

(b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.

(c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

## **11. Expenses**

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## **12. Notices**

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

(i) if in writing and delivered in person or by courier, on the date it is delivered;

(ii) if sent by telex, on the date the recipient's answerback is received;

(iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

- (v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

- (b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

### 13. Governing Law and Jurisdiction

- (a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

- (b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

- (i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

- (c) **Service of Process.** Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

- (d) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

### 14. Definitions

As used in this Agreement:—

**"Additional Termination Event"** has the meaning specified in Section 5(b).



**"Affected Party"** has the meaning specified in Section 5(b).

**"Affected Transactions"** means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

**"Affiliate"** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

**"Applicable Rate"** means:—

- (a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;
- (b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;
- (c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and
- (d) in all other cases, the Termination Rate.

**"Burdened Party"** has the meaning specified in Section 5(b).

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

**"Consent"** includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

**"Credit Event Upon Merger"** has the meaning specified in Section 5(b).

**"Credit Support Document"** means any agreement or instrument that is specified as such in this Agreement.

**"Credit Support Provider"** has the meaning specified in the Schedule.

**"Default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**"Defaulting Party"** has the meaning specified in Section 6(a).

**"Early Termination Date"** means the date determined in accordance with Section 6(a) or 6(b)(iv).

**"Event of Default"** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**"Illegality"** has the meaning specified in Section 5(b).

**"Indemnifiable Tax"** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having

or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

"*law*" includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and "*lawful*" and "*unlawful*" will be construed accordingly.

"*Local Business Day*" means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

"*Loss*" means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that 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 this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

"*Market Quotation*" means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

"*Non-default Rate*" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the

Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

**"Non-defaulting Party"** has the meaning specified in Section 6(a).

**"Office"** means a branch or office of a party, which may be such party's head or home office.

**"Potential Event of Default"** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**"Reference Market-makers"** means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

**"Relevant Jurisdiction"** means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

**"Scheduled Payment Date"** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**"Set-off"** means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

**"Settlement Amount"** means, with respect to a party and any Early Termination Date, the sum of:—

(a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

**"Specified Entity"** has the meaning specified in the Schedule.

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

**"Specified Transaction"** means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**"Stamp Tax"** means any stamp, registration, documentation or similar tax.

**"Tax"** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

**"Tax Event"** has the meaning specified in Section 5(b).

**"Tax Event Upon Merger"** has the meaning specified in Section 5(b).

**"Terminated Transactions"** means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

**"Termination Currency"** has the meaning specified in the Schedule.

**"Termination Currency Equivalent"** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

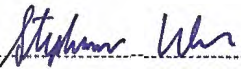
**"Termination Event"** means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

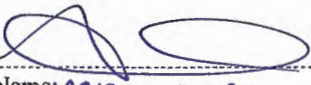
**"Termination Rate"** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

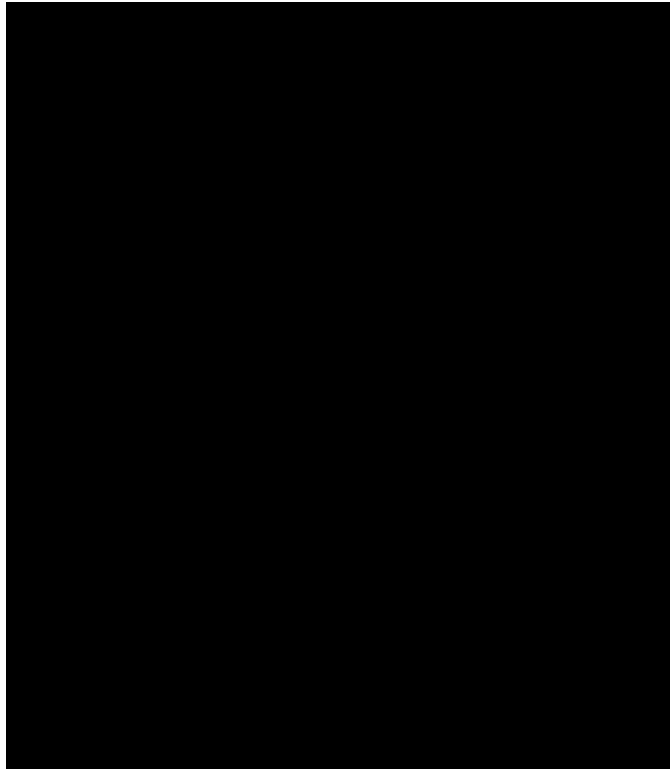
**"Unpaid Amounts"** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

UBS AG

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: **STEPHANIE WU**  
DIRECTOR

By:   
Name: **ABIGAIL CLARK**  
Title: **DIRECTOR**  
Date: **4/2/2019**



AMENDED AND RESTATED  
SCHEDULE  
to the Master Agreement  
dated as of March 29, 2019  
between

UBS AG, a banking corporation organized  
under the laws of Switzerland

and



(“Party A”)

For the avoidance of doubt, Party A and each Party B hereto intend for this ISDA Master Agreement to amend, restate, and supersede, in its entirety that certain previous ISDA Master Agreement between Party A and ExodusPoint Partners Master Fund, LP dated April 17, 2018.

It is understood and agreed by the parties that for ease of administration, this single ISDA Master Agreement is being executed so as to enable each Party B identified on Exhibit I of this ISDA Master Agreement, as such Exhibit I may be amended from time to time, to transact with Party A pursuant to the terms of this ISDA Master Agreement. The parties agree that this ISDA Master Agreement shall be treated as if it were a separate, distinct and independent agreement with respect to each Party B and Party A, as if each such applicable Party B had executed a separate agreement naming only itself as Party B. This ISDA Master Agreement shall amend, restate and supersede any earlier ISDA Master Agreement, however designated, between Party B and Party A. For purposes of this ISDA Master Agreement, the investment manager set forth alongside Party B in Exhibit I (the "Investment Manager") is acting not in its individual capacity but solely as agent for each Party B. All references to "Party B" shall refer to the relevant Party B and not to the Investment Manager. The Investment Manager shall not be liable for the performance of the obligations of any Party B hereunder. No Party B identified on Exhibit I shall have any liability under this ISDA Master Agreement for the obligations of any other entity listed on Exhibit I.

**Part 1**  
**Termination Provisions**

In this Agreement:

(a) "*Specified Entity*" means in relation to Party A for the purpose of:

Section 5(a)(v),	UBS Securities LLC
Section 5(a)(vi),	NONE
Section 5(a)(vii),	NONE
Section 5(b)(iv),	NONE

and in relation to Party B for the purpose of:

Section 5(a)(v),	NONE
Section 5(a)(vi),	NONE

Section 5(a)(vii), NONE  
Section 5(b)(iv), NONE

(b) **"Specified Transaction"** will not have the meaning specified in Section 14 of this Agreement and instead means, (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is not a Transaction under this Agreement but (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction, precious metal transaction, any transactions or obligations under any prime brokerage or centrally cleared derivative agreements, or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

It shall not be an Event of Default with respect to a party ("X") under Section 5(a)(v) unless the relevant Specified Transaction has been (or to the extent that such Specified Transaction is subject to a master agreement, all Specified Transactions under such master agreement have been) accelerated, terminated or liquidated by the non-defaulting party thereto.

- (c) The **"Cross Default"** provisions of Section 5(a)(vi) of this Agreement will not apply to either party.
- (d) **The "Credit Event Upon Merger"** provisions of 5(b)(iv) will apply to Party A and will apply to Party B.
- (e) **The "Automatic Early Termination"** provision of Section 6(a) will apply to Party A and will not apply to Party B.
- (f) **"Payments on Early Termination"**. For the purpose of Section 6(e) of this Agreement:
  - (i) Market Quotation will apply for any Interest Rate Transaction, any Qualifying FX Transaction, any Vanilla Credit Derivative Transaction, and any Liquid Equity Transaction. Close-out Amount as defined in the Attachment to this Schedule (the "Attachment"), will apply for all other transactions. For the avoidance of doubt, the terms set forth in the Attachment to this Schedule shall not apply with respect to any Interest Rate Transaction, any Qualifying FX Transaction, any Vanilla Credit Derivative Transaction, and any Liquid Equity Transaction.

For the purpose of the above:

“Interest Rate Transaction” means an Option or Swap Transaction (as defined in the 2006 ISDA Definitions) pursuant to which one party is required to make (or, pursuant to the exercise of an Option, would be required to make) periodic payments of a fixed amount and the other party is required to make (or, pursuant to the exercise of an Option, would be required to make) periodic payments of amounts calculated by applying a floating rate to a non-amortizing notional amount.

“Qualifying FX Transaction” means any FX Transaction or Currency Option Transaction (each as defined in the 1998 FX Definitions), where each of the currencies is a Standard Currency and has a maturity of not more than one year, where “Standard Currency” means any of AUD, CAD, CHF, DKK, EUR, GBP, JPY, NOK, NZD, SEK, USD.

“Vanilla Credit Derivative Transaction” means any Transaction that satisfies each of the following criteria: (a) it is identified in the related Confirmation as a “Credit Derivative Transaction” and incorporates either the 2014 Credit Derivatives Definitions or the 2003 ISDA Credit Derivative Definitions, (b) it either (i) has only a single Reference Entity and only a single Reference Obligation or (ii) relates to an industry standard corporate credit default swap index (such as CDX or iTraxx but not including ABX or MBX), (c) it is a Transaction for which the Settlement Method is Auction Settlement (and, in the case of a credit derivative transaction referencing an index, provides that either physical settlement or a combination of both cash settlement and physical settlement is the applicable fallback method, or in the case of a credit derivative transaction referencing a single-name reference entity, provides that physical settlement is the applicable fallback method); and (d) it is not a swaption for which the underlying swap transaction is a credit derivative transaction. For the avoidance of doubt, any portfolio credit derivative transaction that provides for any “tranching” or leverage will be deemed to be a Vanilla Credit Derivative Transaction so long as it relates to an industry standard corporate credit default swap index (such as CDX or iTraxx but not including ABX or MBX) and otherwise satisfies the foregoing requirements. Notwithstanding the foregoing, no Transaction will be deemed to be a Vanilla Credit Derivative Transaction if the Reference Entity for such Transaction is a special purpose entity issuing Structured Finance Securities and or if the Reference Obligation of which is itself a Structured Finance Security. For the purposes of this paragraph, a “Structured Finance Security” shall include but not be limited to a collateralised debt obligation, a collateralised loan obligation, a collateralised bond obligation, a credit linked note, a commercial or residential mortgage backed security, a security that has been issued as a result of a repackaging of cashflows or underlying collateral, or any analogous instrument, note, security or obligation.

“Liquid Equity Transaction” means (1) basic forwards, swaps, options, caps, collars, floors and swaptions on the following instruments: (A) equity securities listed on the New York Stock Exchange, American Stock Exchange or Nasdaq Stock Market, (B) listed equity securities of issuers organized under the laws of Standard Countries, excluding the United States of America, (C) regularly published securities and commodities indexes; (2) variance swaps with a tenor of five (5) years or less on the following indices: S&P 500, S&P 100, Dow Jones Eurostoxx 50 and Nasdaq Composite and (3) variance swaps with a tenor of two (2) years or less on any index of a Standard Country. For the purpose of the above, the following terms shall have the following respective meanings:



“Option Transaction” and “Shares” shall have the meaning as provided for in the 2002 Equity Derivatives Definitions (as published by the International Swaps and Derivatives Association, Inc.)

“Standard Country” shall mean any of the following: Australia, Austria, Belgium, Canada, Denmark, England, Finland, France, Germany, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland and the United States of America.

- (ii) The Second Method will apply for any Interest Rate Transaction, any Qualifying FX Transaction, any Vanilla Credit Derivative Transaction, and any Liquid Equity Transaction, and Close-out Amount shall apply for all other Transactions.

(g) ***“Termination Currency”*** means U.S. Dollars.

(h) ***“Additional Termination Event”*** will apply. If any of the following events specified in subsections (i) to (v) below occurs with respect to Party B’, such event shall constitute an Additional Termination Event (in which case the Affected Party shall be Party B). If the event specified in subsection (vi) below occurs with respect to Party A, such event shall constitute an Additional Termination Event (in which case the Affected Party shall be Party A):

- (i) ***Decline in Net Asset Value.*** (A) as of the last day of any calendar month, a 20% or greater Performance Decline in Party B's NAV Entity's (as set forth in Exhibit I) Net Asset Value compared to Party B's NAV Entity's Net Asset Value as of the last day of the preceding month, or (B) as of the last day of any calendar month, a 30% or greater Performance Decline in Party B's NAV Entity's Net Asset Value compared to Party B's NAV Entity's Net Asset Value as of the last day of the third preceding calendar month, or (C) as of the last day of any calendar month, a 50% or greater decline in Party B's NAV Entity's Net Asset Value compared to Party B's NAV Entity's Net Asset Value as of the last day of the twelfth preceding calendar month. "Performance Decline" means a decline in Net Asset Value without regard to all subscriptions, contributions, dividends, distributions, redemptions and withdrawals occurring within the relevant time.
- (ii) ***Minimum Net Asset Value.*** Starting from June 1, 2018, the Net Asset Value of Party B's NAV Entity shall be at any time equal to or less than the greater of: (x) 50% of the Net Asset Value of Party B's NAV Entity as of the last day of the previous fiscal year (as reflected in Party B's NAV Entity's annual audited financial statements for such fiscal year) (which amount was zero for purposes of the 2017 fiscal year); and (y) \$500,000,000.
- (iii) ***Failure to Deliver Net Asset Value Report.*** Party B's Reporting Party (as set forth in Exhibit I) shall fail to deliver a NAV Statement, Fund Performance Weekly Flash Report, Open Protocol Risk Report, Liquidity Breakdown Report, Stress Exposure Report, DV01 Profile Report or Administrator Transparency Report on or before the required delivery date specified in Part 3 of this Schedule, and such failure is not remedied within two Local Business Days following written notice of such failure from Party A.
- (iv) ***Change in Management.*** Both Michael Gelband and Hyung Soon Lee cease to be involved in and responsible for the management of [REDACTED] and are not replaced by one or more individuals who are reasonably acceptable to Party A (it being agreed that any such successor individual(s) will be deemed acceptable to Party A if Party A does not

object to a successor within 30 days of notice in accordance with Part 5(t) hereof).

- (v) ***Change of Investment Manager.*** The Investment Manager (as specified in Exhibit I) ceases to act as investment manager to Party B and is not replaced with (i) an Affiliate of the Investment Manager, (ii) an investment manager with substantially similar management as the Investment Manager, or (iii) another investment manager reasonably acceptable to Party A. A replacement investment manager will be deemed acceptable to Party A if Party A has been notified as to the appointment thereof in accordance with Part 5(t) hereof and has not objected to such appointment within thirty (30) calendar days of effective delivery of such notice.
- (vi) ***Ratings Downgrade.*** The long-term senior unsecured debt rating of Party A falls below: (1) Baa2 by Moody's Investors Service Inc. or a successor rating service ("Moody's"); (2) BBB by Standard & Poor's Rating Services or a successor rating service ("S&P") or (3) if both Moody's and S&P ratings are unavailable, the nearest equivalent rating which is then assigned to such indebtedness by any other nationally recognized rating service then rating such indebtedness. In the event of a split rating, the lower rating shall be determinative.

## **Part 2** **Tax Representations**

(a) ***Payer Tax Representation.*** For the purpose of Section 3(e), ***Party A and Party B*** hereby make the following representation: It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e)) to be made by it to the other party under this Agreement. In making this representation, it may rely on: (A) the accuracy of any representation made by the other party pursuant to Section 3(f); (B) the satisfaction of the agreement of the other party contained in Section 4(a)(i) or 4(a)(iii) and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii); and (C) the satisfaction of the agreement of the other party contained in Section 4(d); provided that it shall not be a breach of this representation where reliance is placed on clause (B) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

(b) ***Payee Tax Representations.*** For the purpose of Section 3(f) of this Agreement, ***Party A*** makes the following representations to Party B:

- (i) In respect of each Transaction that Party A enters into under this Agreement through an Office that is located in the U.S., or for every Transaction in which personnel of Party A located in the U.S. materially participated, Party A makes the following representation to Party B:

For US federal income tax purposes, Party A is acting as nominee on behalf of UBS Securities LLC, a person that is a "United States person" as that term is defined under Section 7701(a)(30) of the US Internal Revenue Code ("Code") and an "exempt recipient" as that term is defined in section 1.6049-4(c)(1)(ii) of the U.S. Treasury Regulations ("Regulations").

- (ii) In respect of each Transaction that Party A enters into under this Agreement through an Office that is not located in the U.S., and in which no personnel of Party A located in the U.S. materially participated, Party A makes the following representations to Party B:

(A) No payment received or to be received by Party A under this Agreement will be effectively connected with Party A's conduct of a trade or business within the U.S. It is fully eligible for the benefits of the "Business Profits" or "Industrial and Commercial Profits" provision, as the case may be, the "Interest" provision or the "Other Income" provision (if any) of the Specified Treaty with respect to any payment described in such provisions and received or to be received by it in connection with this Agreement and no such payment is attributable to a trade or business carried on by it through a permanent establishment in the Specified Jurisdiction.

If such representation applies, then:

"Specified Treaty" means, with respect to a Transaction, the tax treaty applicable between Switzerland and the United States of America.

"Specified Jurisdiction" means the United States of America.

(B) Party A is a 'non-U.S. branch of a foreign person' as that term is used in section 1.1441-4(a)(3)(ii) of the Regulations, and Party A is a 'foreign person' as that term is used in section 1.6041-4(a)(4) of the Regulations.

(c) **Payee Tax Representations.** For the purpose of Section 3(f) of this Agreement, **Party B** makes the representations set forth in Exhibit I to Party A.

**Part 3**  
**Agreement to Deliver Documents**

For the purpose of Sections 4(a) (i) and (ii) of this Agreement, each party agrees to deliver the following documents, as applicable:

(a) Tax forms, documents or certificates to be delivered are:

Each party agrees to completely, accurately and in a manner reasonably satisfactory to the other party (or any Specified Entity of the other party), and to execute, arrange for any required certification of, and deliver to the other party (or such Specified Entity) (or to such government or taxing authority as the other party (or such Specified Entity) reasonably directs), any form or document that may be required or reasonably requested in order to allow the other party (or such Specified Entity) to make a payment under this Agreement (or a Credit Support Document of the other party or a Specified Entity thereof) without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate, promptly upon the earlier of (i) reasonable demand by the other party (or such Specified Entity) and (ii) learning that the form or document is required.

<b><u>Party required to deliver document</u></b>	<b><u>Form/Document/ Certificate</u></b>	<b><u>Date by which to be delivered</u></b>
Party A	With respect to each Transaction that is entered into under this Agreement whereby Party A is acting as nominee	(i) Upon execution and delivery of this Agreement, with such form to be updated at the beginning of each succeeding three calendar year period beginning after

	on behalf of UBS Securities LLC, a person that is a “United States person” as that term is defined under Section 7701(a)(30) of the Code, a duly completed and executed U.S. Internal Revenue Service Form W-8IMY (or successor thereto) for UBS AG, together with the required schedule and a duly executed and completed U.S. Internal Revenue Service Form W-9 for UBS Securities LLC.	execution of this Agreement, or as otherwise required under then applicable Regulations; (ii) promptly upon reasonable demand by Party B; (iii) promptly upon learning that any Form W-8IMY (or any successor thereto) or W-9 has become inaccurate or incorrect; and (iv) prior to the expiration or obsolescence of any previously delivered form.
Party A	With respect to each Transaction that is entered into under this Agreement through an Office of Party A that is not located in the U.S., one duly executed and completed U.S. Internal Revenue Service Form W-8BEN-E (or any successor of such form).	(i) Upon execution and delivery of this Agreement, with such Form to be updated at the beginning of each succeeding three calendar year period beginning after execution of this Agreement, or as otherwise required under then applicable Regulations; (ii) promptly upon reasonable demand by Party B; (iii) promptly upon learning that any Form W-8BEN-E (or any successor thereto) has become inaccurate or incorrect; and (iv) prior to the expiration or obsolescence of any previously delivered form.
Party B	The appropriate duly executed and completed U.S. Internal Revenue Service Form (as specified in Exhibit I) (or any successor of such form) and any required attachments, including tax identification documents for underlying beneficial owners.	(i) Upon execution and delivery of this Agreement, with such Form to be updated as required under then applicable Regulations; (ii) promptly upon reasonable demand by Party A; (iii) promptly upon learning that any form (or any successor thereto) has become inaccurate or incorrect; and (iv) prior to the expiration or obsolescence of any previously delivered form.

(b) Other documents to be delivered are:

<b>Party required to deliver Document</b>	<b>Form/Document/Certificate</b>	<b>Date by which to be delivered</b>	<b>Covered by Section 3(d) Representation</b>
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<b>Party required to deliver Document</b>	<b>Form/Document/Certificate</b>	<b>Date by which to be delivered</b>	<b>Covered by Section 3(d) Representation</b>
Party A and Party B	Evidence of the authority and true signatures of each official or representative signing this Agreement	On or before execution of this Agreement.	YES
Party B's Reporting Entity	Copy of the Open Protocol Risk Report, Liquidity Breakdown Report, Stress Exposure Report, DV01 Profile Report and Administrator Transparency Report.	Monthly (within 20 calendar days after the end of the applicable month).	YES
Party B's Reporting Entity	Copy of the Net Asset Value report and monthly performance report of Party B's Reporting Entity as of the most recently ended calendar month provided directly from Party B's Reporting Entity's Administrator ("NAV Statement")	Monthly (within 20 calendar days after the end of the applicable month), to be delivered to SH-USRCHedgeFunds@ubs.com	NO, but shall be a fair and accurate presentation in all material respects, of the subject matter thereof.
Party B's Reporting Entity	Fund Performance Weekly Flash Report	Weekly; provided however that no such weekly estimate shall be used to determine the occurrence of an Additional Termination Event under Part 1(h)(i) or (ii).	NO, but shall be a fair and accurate presentation in all material respects, of the subject matter thereof.
Party B	Investment Manager Letter substantially in the form attached hereto as Exhibit A, with any amendments reasonably necessary and mutually agreed to reflect the circumstances of the particular Investment Manager	On or before execution of this Agreement	YES

<b>Party required to deliver Document</b>	<b>Form/Document/Certificate</b>	<b>Date by which to be delivered</b>	<b>Covered by Section 3(d) Representation</b>
Party A	Annual audited financial statement	Within 120 days of the last Local Business Day of Party A's fiscal year, provided, however, that Party A shall be deemed to have satisfied such delivery requirement by making such report available to the general public by publication thereof on its website or on the U.S. Securities and Exchange Commission EDGAR information retrieval system	YES
Party B's Reporting Entity	Annual audited financial statement	Within 120 days of the last Local Business Day of Party B's Reporting Entity's fiscal year end	YES, but solely with respect to audited financial statements, the phrase "true, accurate and complete in every material respect" in Section 3(d) shall be deleted and the phrase "fairly reflects the financial condition and results of operations of Party B" shall be inserted in lieu thereof

<b>Party required to deliver Document</b>	<b>Form/Document/Certificate</b>	<b>Date by which to be delivered</b>	<b>Covered by Section 3(d) Representation</b>
Party B	True and correct copy of the Investment Management Agreement (or equivalent authorizing documentation) authorizing the execution and delivery of this Agreement, Transactions (and confirmations thereof) and performance of its obligations thereunder by the Investment Manager	On or before execution of this Agreement	YES
Party B	True and correct copy (which has been certified by an officer) of any partnership action (or equivalent authorizing documentation), as applicable, authorizing the execution and delivery of this Agreement, Transactions (and confirmations thereof) and performance of its obligations thereunder	On or before execution of this Agreement	YES
Party B	True and correct copy of the constitutive documents of Party B (including without limitation the certificate of incorporation or formation, as applicable, of Party B and of its general partner, the limited liability agreement, operating agreement, by-laws, memorandum, articles of association or other equivalents, the partnership agreement or limited partnership agreement and limited partnership certificate, as applicable, and any other relevant document), which have been certified by an officer or the relevant public authority where on file	On or before execution of this Agreement	YES

<b>Party required to deliver Document</b>	<b>Form/Document/Certificate</b>	<b>Date by which to be delivered</b>	<b>Covered by Section 3(d) Representation</b>
Party B	True and correct copy of the prospectus, offering memorandum or other disclosure document to be delivered to prospective investors in Party B, if any	On or before execution of this Agreement	YES

The obligations of a party to deliver any document identified above in Part 3 of this Schedule shall be satisfied if the party making delivery shall have provided its counterparty with access to an internet or intranet website from which such document can be readily obtained using a commonly used web browser to download an electronic file stored in a commonly used file format containing the relevant document. For the avoidance of doubt, if any access credentials are required to retrieve such document, the relevant party making its information available as specified above shall ensure that its counterparty has the relevant access rights.

**Part 4**  
**Miscellaneous**

(a) **Addresses for Notices.** For the purposes of Section 12(a) of this Agreement:

- (i) All notices or communications to Party A with respect to a particular Transaction shall be sent per the contact information reflected in the Confirmation of that Transaction, and any other notices to Party A, including any notices pursuant to Sections 5 or 6 hereunder, shall be sent to:

Address: UBS AG  
1285 Avenue of the Americas  
New York, NY 10019  
Attention: Legal Department – Documentation Unit

With a mandatory copy to: [SH-UBSLegalNotices-Amer@ubs.com](mailto:SH-UBSLegalNotices-Amer@ubs.com)

- (ii) All notices or communications to Party B shall be sent to the address or facsimile number reflected in Exhibit I.

For legal notices, a mandatory copy should be sent via email [REDACTED]

(b) **Process Agent.** For the purpose of Section 13 (c) of this Agreement:

Party A appoints as its Process Agent: Not Applicable

Party B appoints as its Process Agent: [REDACTED]

(c) **Offices.** The provisions of Section 10(a) of this Agreement will apply to Party A and Party B.

(d) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement:



- (i) Party A is a Multibranch Party and may act through its branches in any of the following territories or countries: England and Wales, Hong Kong, United States of America, Singapore, Australia and Switzerland.
  - (ii) Party B is not a Multibranch Party.
- (e) **Calculation Agent.** The Calculation Agent is Party A, unless (1) otherwise specified in a Confirmation in relation to the relevant Transaction, or (2) an Event of Default has occurred and is continuing with respect to Party A, in which case the parties shall select a mutually agreeable independent third party which is a leading dealer for the relevant Transaction, to act as the Calculation Agent (a "Substitute Calculation Agent"). If the parties cannot agree on a Substitute Calculation Agent, then Party A and Party B shall each pick a leading dealer in the relevant market and such dealers shall choose a third leading dealer to be the Substitute Calculation Agent. Party A or the Substitute Calculation Agent shall make each calculation or determination in good faith and in a commercially reasonable manner.

Notwithstanding the foregoing, and subject to the last paragraph of this Part 4(e), if Party B in good faith has a commercially reasonable basis for disagreement with any calculation or determination made by Party A in its role as Calculation Agent, Party B may express such disagreement within **three** Local Business Days of delivery of any calculation or determination from Party A. With respect to such disagreement, Party B shall specify in reasonable detail: (i) Party B's basis for dispute, together with supporting calculations or evidence, (ii) the amount of Party B's calculation or the result of Party B's determination, (iii) in the case of a calculation the amount by which Party B's calculation differs from Party A's calculation, and in the case of a determination, if ascertainable, the amount of the difference between applying Party A's determination and applying Party B's determination (the "**Disputed Amount**") and (iv) if applicable, the amount that is not subject to dispute (the "**Undisputed Amount**").

The Undisputed Amount shall be paid or delivered, as the case may be, as scheduled for the relevant Transaction.

Party A and Party B shall negotiate in good faith to resolve the Disputed Amount as promptly as practicable. If Party A and Party B are unable to reach agreement as to the Disputed Amount within **one** Local Business Day of the date on which Party B notifies Party A of the dispute, then Party A will recalculate the amount by requesting three independent third parties which are leading dealers for the relevant Transaction to provide their respective calculations of the Disputed Amount by taking the arithmetic average of those obtained. With respect to any determination made by the Calculation Agent that is not susceptible to resolution by arithmetic averaging, Party A will request one independent third party which is a leading dealer for the relevant Transaction (the "Independent Calculation Agent") to determine whether the Calculation Agent's determination under dispute is commercially reasonable. If such leading dealer determines that the disputed determination is not commercially reasonable, such dealer shall provide its own determination.

It being understood, if no leading dealer provides the requested calculation or opines on the determination (or, if applicable, the Independent Calculation Agent does not so provide or opine) by 12:00 noon New York time on the Local Business Day that is **two** Local Business Days after the date on which Party B notifies Party A of the dispute (the "**Dispute Resolution Date**"), then the Calculation Agent's original calculations or determination will be used. Any calculation or determination made pursuant to this section by leading dealer(s) will be binding in the absence of manifest error except as provided in the last paragraph of this Part 4(e).

Party A will notify Party B of its recalculation of the Disputed Amount, and any resulting adjustments (such Disputed Amount, as adjusted pursuant hereto, the "**Adjusted Amount**"). If such notice is given prior to 2:00 p.m., New York time, on Dispute Resolution Date, the applicable party shall transfer the Adjusted Amount, if any, by 6:00 p.m., New York time, on such Dispute Resolution date. If such notice is given after 2:00 p.m., New York time, on the Dispute Resolution Date, the applicable party shall transfer the Adjusted Amount, if any, by 6:00 p.m., New York time, on the Local Business Day next succeeding the date on which such notice is given.

The costs (if any) relating to a Substitute Calculation Agent, Independent Calculation Agent, or to such polling of leading dealer(s) shall be borne equally by both parties.

Notwithstanding the previous paragraphs, where the terms of any Transaction hereunder provides for the solicitation of quotations from one or more dealers for purposes of making a calculation, selection of those dealers shall not be subject to this Part 4(e).

- (f) **Credit Support Documents.** The Credit Support Annex attached hereto is a Credit Support Document with respect to Party A and Party B for all purposes hereunder and is incorporated herein by this reference. In addition, with respect to Party B, the guarantee of any Guarantor listed on Exhibit I shall constitute an additional Credit Support Document.
- (g) **Credit Support Provider.** There shall be no Credit Support Provider with respect to Party A. The Credit Support Provider with respect to Party B shall be any applicable Guarantor listed for such party in Exhibit I hereto.
- (h) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New York.

Section 13(b) is amended by deleting in the second line of clause (i) the word "non-" and deleting the final paragraph thereof.

- (i) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will apply, except for the following groups of Transactions which shall be treated separately: (1) FX Transactions (including FX Transactions resulting from the exercise of Currency Option Transactions), (2) premium payable under Currency Option Transactions (each of (1) and (2) as defined in the 1998 FX and Currency Option Definitions) and (3) Commodity Transactions (as defined in the 2005 ISDA Commodity Definitions), in which case subparagraph (ii) of Section 2(c) of this Agreement will not apply.
- (j) "**Affiliate**" will have the meaning specified in Section 14 of this Agreement.

## **Part 5** **Other Provisions**

- (a) **Set-off.** Without affecting the provisions of the Agreement requiring the calculation of certain net payment amounts, all payments under this Agreement will be made without set-off or counterclaim; provided, however, that upon the designation of any Early Termination Date, in addition to and not in limitation of any other right or remedy (including any right to set off, counterclaim, or otherwise withhold payment or any recourse to any Credit Support Document) under applicable law the Non-defaulting Party or Non-affected Party (in either case, "X") may, without prior notice to any person, set off any sum or obligation (whether or not arising under this Agreement and whether matured or unmatured, whether or not contingent and irrespective of the currency, place of payment or booking

office of the sum or obligation) owed by the Defaulting Party or Affected Party (in either case, "Y") to X or any Affiliate of X against any sum or obligation (whether or not arising under this Agreement, whether matured or unmatured, whether or not contingent and irrespective of the currency, place of payment or booking office of the sum or obligation) owed by X or any Affiliate of X to Y and, for this purpose, may convert one currency into another at a market rate determined by X. If any sum or obligation is unascertained, X may in good faith estimate that sum or obligation and set-off in respect of that estimate, subject to X or Y, as the case may be, accounting to the other party when such sum or obligation is ascertained.

(b) ***Representations and Warranties.***

(i) ***Party A and Party B Representations.***

(A) Each applicable party represents and warrants to and for the benefit of each other applicable party as of the date hereof, and shall be deemed to represent and warrant to and for the benefit of that party as of the date of each Transaction, that:

- (1) ***No Agency.*** It is entering into this Agreement and each Transaction as principal (and not as agent or in any other capacity, fiduciary or otherwise).
- (2) ***Eligible Contract Participant.*** It is an "eligible contract participant" as that term is defined in Section 1a(18) of the Commodity Exchange Act, as amended.
- (3) ***Non-Public Information.*** In effecting a Transaction referenced to a security, it will not be aware of any material non-public information or unpublished price-sensitive information with respect to any security related to a Transaction that, under applicable securities laws, it would have to disclose in advance to a party effecting a purchase or sale with the Offeree of such security.
- (4) ***Securities Act Representations.*** If any Transaction and/or the instrument underlying a Transaction is not otherwise excluded from the coverage, or otherwise exempt from the registration requirements, of the United States Securities Act of 1933, as amended (the "Securities Act"), then each party makes the following representations, warranties and covenants with respect to such Transaction, and such representations, warranties and covenants shall remain in full force and effect whenever the offeree or buyer of the Transaction and/or the offeree or buyer of the instrument underlying the Transaction (the "Offeree") shall enter into a Transaction, or make any payment or delivery relating to a Transaction:
  - (I) Each party is entering into the Transaction for its own account as principal, and not with a view to, or for, resale, distribution or fractionalization thereof, in whole or in part.
  - (II) Each party acknowledges its understanding that the offer and sale of any Transaction with the other party is intended to be excluded from the coverage of, or otherwise exempt from registration under, the Securities Act, by virtue of Section 4(a)(2) of the Securities Act. In furtherance thereof, each party represents and warrants to the other party that (i) it has the financial ability to bear the economic risk of

its investment, including a loss of its entire investment, (ii) it is an “accredited investor” as that term is defined under Regulation D under the Securities Act, and (iii) it has the knowledge and experience of investing in instruments similar to the Transaction and is capable of evaluating the risks and merits of the Transaction and has, or has had an opportunity to request, such information as it deemed necessary to make such evaluation.

- (III) Each party understands that the Transaction has not been, and is not intended to be, registered under the Securities Act or under the securities laws of certain states and, therefore, cannot be resold, pledged, assigned or otherwise disposed of unless an exclusion from the coverage of the Securities Act, or an exemption for such resale, pledge, assignment or disposition is available. Neither party is obliged to register the Transaction or to assist the Offeree in complying with any exclusion from the coverage the Securities Act, or with any exemption from registration under the Securities Act or state securities laws.

(B) **Relationship Between Parties.** Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):

- (1) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary. It is not relying on any communication (written or verbal) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or verbal) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction.
- (2) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.
- (3) **Status of Parties.** The other party is not acting as a fiduciary for or an advisor to it in respect of that Transaction.

(ii) **Party B Representations.** Party B represents and warrants on and as of the date hereof, on the date on which it enters into a Transaction, and on and as of each date this Agreement or any Transaction remains outstanding:

- (A) **Authority.** The Investment Manager and each person acting on its behalf is duly authorized to receive any and all notices sent to Party B in respect of this Agreement and to act for and on behalf of Party B for all purposes under this Agreement including without limitation

to execute and deliver this Agreement and Confirmations, to enter into Transactions, and to give instructions (including without limitation payment instructions). This representation shall be deemed to be repeated at all relevant times.

(B) ***Compliance with Applicable Internal Policies.*** Each Transaction entered into under this Agreement will be entered into in accordance with, and will at all times comply with, applicable investment policies, guidelines or other requirements of Party B (if any, as may be adopted or amended from time to time by Party B) that may affect the due authorization or validity of any Transaction or the Agreement.

(C) (i) ***No ERISA Funds.*** The assets of Party B do not include “plan assets” within the meaning of Section 3(42) of ERISA, and Party B is not otherwise subject to Title I of ERISA or Section 4975 of the Code.

(ii) ***No Governmental Plan Funds.*** The assets of Party B do not include the assets of any “governmental plan” within the meaning of Section 3(32) of ERISA, and Party B is not otherwise subject to any law, rule, regulation, or restriction governing the investment of the assets of such plans.

(D) ***Suitability.*** Each Transaction entered into in connection with this Agreement on behalf of Party B is suitable and appropriate for Party B on the date such Transaction is entered into.

(iii) ***Country-Specific Underlier Representation and Covenants.***

(I) ***Indian transactions.*** If parties are entering into a Transaction which is or otherwise involves an offshore derivative instrument (“**ODI**”) (as such term is defined for the purposes of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, and notifications, circulars, rules and guidelines of the Securities and Exchange Board of India issued from time to time) (collectively referred to as the “**FPI Regulations**”), the representations and undertakings made by Party B in favor of Party A in a letter titled "Notice Regarding Derivative Products Linked to Indian Securities or Indices" (which may be amended/replaced from time to time) (the "**ODI Letter**") shall apply to the Transaction and references to ODI in the ODI Letter shall be construed to include the Transaction. If a representation or undertaking in the ODI Letter proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated; or if Party B fails to comply with or perform any agreement or obligation undertaken by it in the ODI Letter, it shall be an Additional Termination Event with all Transactions which are or otherwise involve an ODI (as defined in the ODI Letter) being the sole Affected Transactions, and with Party B being the sole Affected Party.

(II) ***Taiwanese transactions.*** If the parties are entering into a Transaction referencing Taiwanese underliers where the relevant Exchange is in the Republic of China, Party B represents to Party A that:

- (1) it is not entering into the Transaction for the specific benefit or account of (A) any residents of the People's Republic of China (“**PRC**”), corporations in the PRC, or corporations outside the PRC that are beneficially owned by residents of the PRC or (B) any

residents of the Republic of China (“ROC” or “Taiwan”), corporations in Taiwan, or corporations outside Taiwan that are beneficially owned by residents of Taiwan.

- (2) it will not, sell, transfer, assign, novate or otherwise dispose of the Transaction to or for the benefit or account of, or enter into any back-to-back equity derivative transaction with (i) any residents of the PRC, corporations in the PRC, or corporations outside the PRC which are beneficially owned by residents of the PRC or (ii) any residents of Taiwan, corporations in Taiwan, or corporations outside Taiwan that are beneficially owned by residents of Taiwan.
- (3) details of the Transaction (including the identity of the parties) may, (1) upon request or order by any competent authority, regulatory or enforcement organisation, governmental or otherwise, including without limitation, the stock exchange on which the underlying shares are listed, (2) as required by applicable law, rules, regulations, codes or guidelines (whether having the force of law or otherwise), be disclosed in accordance with such request, order, law, rules, regulations, codes or guidelines (whether such disclosure is to be made to third parties or otherwise). By entering into the Transaction, Party B agrees to such disclosure and releases Party A (and its subsidiaries and affiliates) from any duty of confidentiality owed to it in relation to such information.

(III) *Chinese transactions.* If the parties are entering into a Transaction referencing People’s Republic of China (“PRC”) underliers where the relevant Exchange is in the People’s Republic of China, Party B represents to Party A that:

- (1) it is not a Domestic Investor;
- (2) none of its investors are Domestic Investors.
- (3) it will not sell, transfer, assign, novate or otherwise dispose of the Transaction to, or enter into any back-to-back equity derivative transaction with any Domestic Investor;
- (4) details of the Transaction (including identity of the parties) may (a) upon request or order by any competent authority, regulatory or enforcement organisation, governmental or otherwise, including without limitation, the stock exchange on which the underlying shares are listed, (b) as required by applicable law, rules, regulations, codes or guidelines (whether having the force of law or otherwise), be disclosed in accordance with such request, order, law, rules, regulations, codes or guidelines (whether such disclosure is to be made to third parties or otherwise). By entering into the Transaction, Party B agrees to such disclosure and releases Party A (and its subsidiaries and affiliates) from any duty of confidentiality regarding such disclosure.

“**Domestic Investor**” means (i) domestic individual as defined in the Administrative Measures on Foreign

Exchange Matters for Individuals as issued by the People's Bank of China, and (ii) legal persons organized under the laws of the People's Republic of China (excluding Hong Kong, Macau and Taiwan).

(c) ***Further Agreements of Party B.***

- (i) Any amounts payable by Party A under this Agreement shall be satisfied when paid in accordance with the instructions of the Investment Manager.
- (ii) Party B is bound as principal of any Transaction entered into by the Investment Manager or General Partner or any other person representing or purporting to represent the Investment Manager or General Partner, despite any lack of capacity, power or authority on the part of the Investment Manager or General Partner or such other person.
- (iii) Party B acknowledges that the letter from the Investment Manager (the "Investment Manager's Letter") received under Part 3 hereof is a material inducement to Party A in entering into this Agreement (inclusive of any Transaction entered into hereunder), that Party A shall (in entering into this Agreement and any Transaction hereunder) rely on the representations set forth in the Investment Manager's Letter and would not enter into this Agreement or any Transaction hereunder if the Investment Manager Letter were not delivered by the Investment Manager.

(d) ***Additional Notification Requirements - Notice of Increase of Constituent Plan Investment.*** Party B will notify Party A promptly if (a) the assets of Party B include or are reasonably expected to include "plan assets" within the meaning of Section 3(42) of ERISA and the regulations thereunder or (b) Party B otherwise becomes or is reasonably expected to become subject to Title I of ERISA or Section 4975 of the Code.

(e) ***Waiver of Jury Trial.*** EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO THE OTHER PARTY'S ENTERING INTO THIS AGREEMENT.

(f) ***Consent to Recording.*** Each party (i) consents to the recording of all telephone conversations between trading, operations and marketing personnel of the parties and their Affiliates in connection with this Agreement or any potential Transaction, (ii) agrees to give notice to such personnel of it and its Affiliates that their calls will be recorded, and (iii) agrees that, in any Proceedings, it will not object to the introduction of such recordings in evidence on grounds that consent was not properly given.

(g) ***Scope of Agreement.*** Upon the effectiveness of this Agreement and unless the parties to this Agreement otherwise agree in writing, by specific reference to this Agreement, that this provision does not apply, all Derivative Transactions (as defined below) then outstanding, or which may be entered into thereafter, between the parties, including Transactions entered into by the parties through Offices, if any, listed in Part 4(d), are deemed to be Transactions governed by this Agreement and any confirmation or other confirming evidence of the Transaction is deemed to be a Confirmation.

(h) ***Agreements.*** Section 4 of this Agreement is hereby amended by the addition of Section 4(f) as follows:

"(f) ***Physical Delivery.*** In respect of any physically settled Transactions, it will, at the time of delivery, be the legal and beneficial owner, free of liens and other encumbrances, of any securities or commodities it delivers to the other party; and, in addition, with respect to any breach of this Section 4(f), Section 5(a)(ii) of this Agreement is hereby amended by replacing the words "on or before the thirtieth day" on the fifth line with the words "on or before the third calendar day."

(i) **ISDA Definitions.** *ISDA Definitions.* (i) The provisions of the 1998 FX and Currency Option Definitions (as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and the Foreign Exchange Committee) (as amended, modified or supplemented from time to time, the "FX Definitions") are incorporated into this Agreement by reference. Any capitalized terms used and not otherwise defined herein or in a Confirmation with respect to an FX Transaction or Currency Option Transaction shall have the meaning set forth in the FX Definitions. In the event of any conflict between the FX Definitions and this Agreement, this Agreement shall govern. In the event of any conflict between the FX Definitions and any other standard ISDA definitional terms incorporated into a Confirmation by reference, the FX Definitions shall govern. In the event of any conflict between the FX Definitions and the terms of a Confirmation, the Confirmation shall govern with respect to the relevant Transaction.

(ii) The provisions of the 2005 ISDA Commodity Definitions (as published by the International Swaps and Derivatives Association, Inc.) (as amended, modified or supplemented from time to time) are hereby incorporated in their entirety.

(j) **Definitions.** Section 14 is hereby amended to include the following definitions in their appropriate alphabetical order:

**"Code"** means the U.S. Internal Revenue Code of 1986, as amended, or any successor statute.

**"Derivative Transaction"** means any transaction (including an agreement with respect thereto) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, weather index transaction, bullion/precious metal transaction, base metal transaction, or forward purchase or sale of a security, commodity or other financial instrument or interest, or any other similar transaction (including any option with respect to any of these transactions) and any combination of these transactions.

**"ERISA"** means the U.S. Employee Retirement Income Security Act of 1974, as amended, or any successor statute.

**"Net Asset Value"** means Party B's Reporting Entity's total assets minus total liabilities calculated in accordance with generally accepted accounting principles and as specified in the NAV Statement.

(k) **Tax Event Upon Merger.** Section 5(b)(iii) of this Agreement is hereby amended by deleting the word "Indemnifiable" the second time it appears in the paragraph.

(l) **FX and Precious Metal Confirmations.** Unless otherwise agreed to by the parties, all FX and Currency Option Transactions entered into between the parties prior to the date of this Agreement shall be deemed to be Transactions for purposes of this Agreement. The confirmation of all FX and Currency Option Transactions via any electronic media, facsimile or writing shall constitute a "Confirmation" as referred to in this Agreement even where not so specified in the Confirmation. The party receiving the Confirmation will respond to such Confirmation within the time frames required under CFTC regulation 23.501 (as amended and supplemented from time to time), either confirming agreement thereto or requesting a correction of any error(s) contained therein. Failure by a party to respond within such time frames shall be deemed to be an affirmation of the terms



contained in such Confirmation, absent manifest error ("Deemed Acceptance"). The parties agree that any such exchange or Deemed Acceptance of an electronic transmission, web based communication or facsimile transmission shall constitute a Confirmation of such Transaction for all purposes hereunder and will supplement, form a part of, and be subject to this Agreement.

(m) **FATCA - HIRE Act.**

(a) **FATCA PROTOCOL PROVISION.** Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. "Tax" as used in Part 2(a) of this Schedule (Payer Tax Representation) and "Indemnifiable Tax" as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "FATCA Withholding Tax"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this agreement. If the parties each independently decide to adhere to any ISDA Protocol on FATCA Withholding Tax, upon effective adherence by both parties, the provisions of such Protocol shall supersede the foregoing provision.

(b) Section 871(m). The parties agree that the amendments set out in the Attachment to the ISDA 2015 Section 871(m) Protocol published by ISDA on November 2, 2015, which is available on the ISDA website ([www.isda.org](http://www.isda.org)) (the "Protocol"), will apply to this Agreement. The parties further agree that this Agreement will be deemed to be a Covered Master Agreement and that the Implementation Date will be the effective date of this Agreement as amended by the parties for the purposes of such amendments, regardless of the definitions of such terms in the Protocol.

(n) **ISDA Dodd Frank Protocols.** The parties agree that, notwithstanding anything to the contrary in the ISDA August 2012 Dodd Frank Protocol (as published by the International Swaps and Derivatives Association, Inc. on August 13, 2012) that may have previously been entered into by the parties and the ISDA March 2013 Dodd Frank Protocol Agreement (as published by the International Swaps and Derivatives Association, Inc. on March 22, 2013) that may have previously been entered into by the parties (together, the "Protocol Agreements"), this Agreement shall constitute a "Protocol Covered Agreement" for all purposes under the Protocol Agreements.

(o) **Counterparts.** This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission, by portable document ("PDF") or other electronic file contained in an email and by electronic messaging system), each of which will be deemed an original.

(p) **Prior Agreements.** This Agreement shall supersede all Agreements between the parties entered into prior to the date of execution of this Agreement governing the terms of any Derivative Transactions between the parties and all confirmations relating to such Derivative Transactions shall supplement, form part of, and be subject to this Agreement, such confirmations shall be Confirmations hereunder and such Derivative Transactions shall be Transactions hereunder.

(q) **ISDA Resolution Stay Jurisdictional Modular Protocol - Swiss Jurisdictional Module.** The terms of the Swiss Jurisdictional Module and the ISDA Resolution Stay Jurisdictional Modular Protocol (each published by the International Swaps and Derivatives Association, Inc. and together, the "**Swiss Stay Provisions**") are incorporated into and form part of this Agreement. For purposes thereof, this

Agreement shall be deemed a Covered Agreement and the terms of the Swiss Stay Provisions shall apply to this Agreement as if Party A is a Regulated Entity Counterparty and Party B is a Module Adhering Party with the Implementation Date deemed to be the date of this Agreement. In the event of any inconsistencies between this Agreement and the Swiss Stay Provisions, the Swiss Stay Provisions will prevail.

(r) **Limited Recourse.** Except as otherwise stated in the Agreement or this Schedule, or to the extent that the gross negligence or fraud of the Investment Manager contributes to or results in any liability, loss, damages, costs or expenses suffered by Party A, any amounts owed or liabilities incurred by Party B in respect of any Transaction entered into under this Agreement may be satisfied solely from the assets of Party B. Without limiting the generality of the foregoing, and except as otherwise stated above, in no event shall Party A have recourse under this Agreement, whether by set-off or otherwise, with respect to any such amounts owed or liabilities incurred to or against (i) any assets of any person or entity (including, without limitation, any person or entity whose account is under the management of the Investment Manager) other than Party B, (ii) any assets of any affiliate of Party B, or (iii) any assets of the Investment Manager or any affiliate of such Investment Manager.

(s) **General Conditions to Payment.** Without limiting the rights of a Non-defaulting Party under Section 6, the following is inserted at the end of Section 2(a)(iii):

"provided that a party's ("X") right to suspend payments due to the condition precedent set forth in Section 2(a)(iii)(1) shall only apply for a period not longer than thirty (30) calendar days after the date that X has received a Termination Request (as defined below) from the Defaulting Party ("Y").

For the purposes herein, a Termination Request shall mean a notice informing the Non-defaulting Party that it may suspend its payment or delivery obligations under Section 2(a)(i) for no longer than thirty (30) calendar days. A Termination Request may only be made and shall only be applicable at a time when the Non-defaulting Party is otherwise entitled to designate an Early Termination Date under this Agreement, and nothing herein shall limit the Non-defaulting Party's right to designate an Early Termination Date. The Termination Request shall not be effective unless delivered in the manner set forth in Section 12 of the Agreement as if it were a notice under Section 5 or 6.

(t) **Time Restrictions Related to Declaring Early Termination Date.** The party ("X") other than the Defaulting Party or the Affected Party shall be deemed to have waived its right to declare an Early Termination Date as a result of an occurrence of an Event of Default or Termination Event that occurs with respect to the other party ("Y"), and such occurrence of such Event of Default or Termination Event shall be deemed not to have occurred for purposes of this Agreement, if X has not designated an Early Termination Date with respect to such event on or before thirty (30) days following its receipt of written notice from Y as to the occurrence thereof (which notice, to be effective, must reference this provision, the thirty (30) calendar day notice period and the specific Event of Default or Termination Event); provided, however, that any such waiver shall not be deemed to be a waiver of X's right to designate an Early Termination Date with respect to another occurrence of an Event of Default or Termination Event by Y occurring as of any subsequent date.

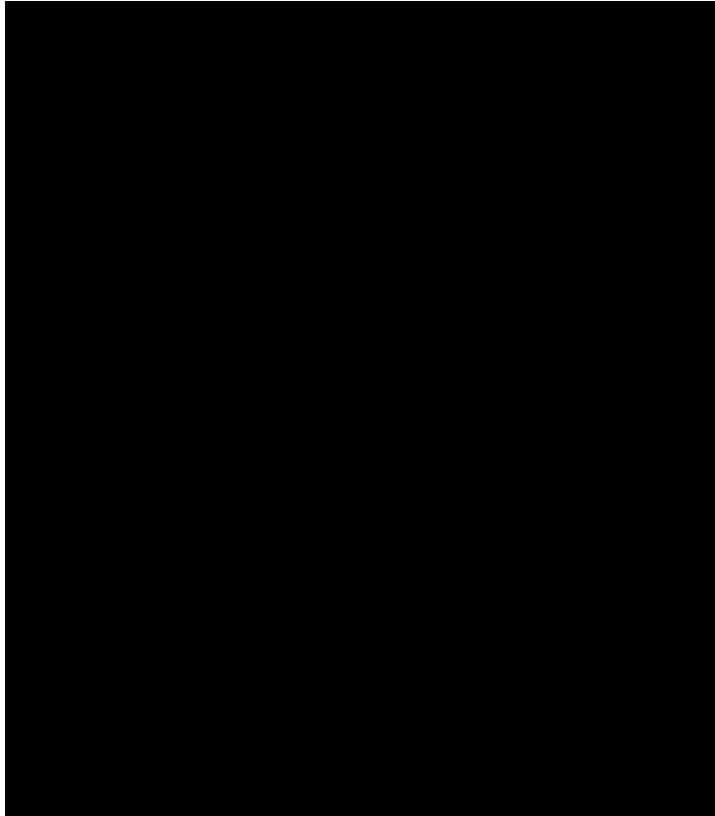
(u) **ISDA U.S. Stay Protocol.** The terms of the ISDA 2018 U.S. Resolution Stay Protocol ("ISDA U.S. Stay Protocol") are incorporated into and form a part of this Agreement, and this Agreement shall be deemed a Protocol Covered Agreement for purposes thereof. For purposes of incorporating the ISDA U.S. Stay Protocol, Party A shall be deemed to be a Regulated Entity and Party B shall be deemed to be an Adhering Party. In the event of any inconsistencies between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.

IN WITNESS WHEREOF the parties have executed this Schedule with effect from the date specified on the first page of this document.

**UBS AG**

By: Stephanie Wu  
Name:  
Title: **STEPHANIE WU**  
**DIRECTOR**

By: Abigail Clark  
Name: **ABIGAIL CLARK**  
Title: **DIRECTOR**



## EXHIBIT A

March 29, 2019

UBS AG  
Attention: Legal Department – Documentation Unit  
1285 Avenue of the Americas  
New York, NY 10019

Ladies and Gentlemen:

In connection with over-the-counter transactions to be entered into between [PARTY B] ("Client") and **UBS AG** ("UBS") under the ISDA Master Agreement dated as of March 29, 2019 (the "Master Agreement") which may include rate swap transactions, swap options, basis swaps, forward rate transactions, commodity swaps, commodity options, equity or equity index swaps, equity or equity index options, bond options, interest rate options, foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, credit protection transactions, credit swaps, credit default swaps, credit default options, total return swaps, credit spread transactions, weather index transactions, bullion/precious metal transactions, base metal transaction, or forward purchases or sales of a security, commodity or other financial instrument or interest, or any other similar transaction (including any option with respect to any of these transactions) and any combination of these transactions (collectively, "Derivative Transactions") we hereby acknowledge, represent and warrant continuously to, and covenant and agree with, UBS that:

- (a) [As of the date of the first Derivatives Transaction under the Master Agreement and at all times thereafter, we are an investment adviser registered under the Investment Advisers Act of 1940, as amended, and we are in compliance with the requirements of such Act. We are duly organized and validly existing in good standing under the laws of the jurisdiction of our organization.] / [As of the date of the first Derivatives Transaction under the Master Agreement and at all times thereafter, we are duly organized and validly existing in good standing under the laws of the jurisdiction of our organization.]
- (b) Pursuant to a management or advisory agreement with the Client, we have been duly authorized by the Client to take all requisite action on its behalf to enter into Derivative Transactions with UBS at our discretion and to execute confirmations of Derivative Transactions and master agreements covering Derivative Transactions on its behalf. You may rely on our assurance that, on the basis of such investigation as we have deemed appropriate, we are satisfied that the person or persons who signed our management or advisory agreement were themselves properly authorized by the Client. In lieu of furnishing you with the specific evidence of our authority to enter into Derivative Transactions, we request that you rely upon this letter as conclusive evidence of such authority with respect to any Derivative Transaction.
- (c) The Client is an "eligible contract participant" as that term is defined in Section 1(a)(18) of the Commodity Exchange Act, as amended. The Client is aware that it is exposed to losses with respect to Derivative Transactions which may be unlimited and which, with respect to Derivative Transactions that are options, could include the loss of its entire investment in such option. Accordingly, each time we enter into a Derivative Transaction on behalf of the Client, the Client will have the financial ability to bear the economic risk of such Derivative Transaction, and adequate means to provide for its current needs and personal or other contingencies. We have knowledge and experience in financial and business matters and are capable of evaluating the merits and risks of Derivative Transactions on behalf of the Client, and prior to entering into a Derivative Transaction on behalf of the Client, we shall determine that such Derivative Transaction is suitable and appropriate for the Client. Further, each

Transaction entered into under the Master Agreement will be entered into in accordance with, and will at all times comply with, applicable investment policies, guidelines or other requirements of Client (if any, as may be adopted or amended from time to time by Client) that may affect the due authorization or validity of any Transaction or the Master Agreement.

- (d) We acknowledge that Derivative Transactions entered into between UBS and the Client will not be registered under the Securities Act of 1933, as amended (the "Securities Act"), or under the securities laws of any state; that no federal or state agency has passed upon any prospective Derivative Transaction or made any finding or determination as to the fairness of any Derivative Transactions; and that the offer of and entry into Derivative Transactions is intended to be exempt from registration under the Securities Act. We assure you that with respect to any Derivative Transaction entered into between UBS and the Client, or any portion thereof, that may constitute a "security" under the Securities Act (a "Derivative Security") the Client will acquire its interest in Derivative Securities for its own account for investment and not with a view to, or in connection with, any distribution of such interests, and that neither we nor the Client will sell or otherwise transfer a Derivative Security without registration under the Securities Act or an exemption therefrom. The Client is an "accredited investor" as that term is defined in Rule 501 under the Securities Act.
- (e) The assets of Client do not include "plan assets" within the meaning of Section 3(42) of ERISA, and Client is not otherwise subject to Title I of ERISA or Section 4975 of the Code. Further, the assets of Client do not include the assets of any "governmental plan" within the meaning of Section 3(32) of ERISA, and Client is not otherwise subject to any law, rule, regulation or restriction governing the investment of the assets of such plans.
- (g) We will notify you promptly in the event that our business relationship with the Client is terminated or our authority to act as agent for the Client with respect to the obligations arising under (i) any Derivative Transaction which we may enter into with UBS on behalf of the Client, or (ii) the Master Agreement is terminated or modified.

**THIS LETTER AGREEMENT SHALL BE CONSTRUED UNDER AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT OF LAW PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAWS OF ANY OTHER STATE.**

We understand and acknowledge that UBS will rely on the foregoing representations, warranties, covenants and agreements when offering to enter into Derivative Transactions with our Client. We agree to notify UBS promptly at the address above, attention Legal Affairs, if at any time we discover or learn of facts at material variance with the foregoing representations and warranties. All capitalized terms contained herein but not defined herein shall have the meaning ascribed in the Master Agreement.

Very truly yours,

**[INVESTMENT MANAGER]**

**ATTACHMENT**  
**Amendments to Master Agreement**

1. The terms of Section 6(d)(i) of the Agreement are amended in their entirety as follows:

“(d) **Calculations; Payment Date.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations), (2) specifying (except where there are two Affected Parties) any Early Termination Amount payable and (3) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation or market data obtained in determining a Close-out Amount, the records of the party obtaining such quotation or market data will be conclusive evidence of the existence and accuracy of such quotation or market data.”

2. The terms of Section 6(e) of the Agreement are amended in their entirety as follows:

“(e) **Payments on Early Termination.** If an Early Termination Date occurs, the amount, if any, payable in respect of that Early Termination Date (the “Early Termination Amount”) will be determined pursuant to this Section 6(e) and will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default, the Early Termination Amount will be an amount equal to (1) the sum of (A) the Termination Currency Equivalent of the Close-out Amount or Close-out Amounts (whether positive or negative) determined by the Non-defaulting Party for each Terminated Transaction or group of Terminated Transactions, as the case may be, and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (2) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If the Early Termination Amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of the Early Termination Amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) **One Affected Party.** If there is one Affected Party, the Early Termination Amount will be determined in accordance with Section 6(e)(i), except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.

(2) **Two Affected Parties.** If there are two Affected Parties, each party will determine an amount equal to the Termination Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an amount equal to (A) the sum of (I) one-half of the difference between the higher amount so determined (by party “X”) and the lower amount so determined (by party “Y”) and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.

(3) *Mid-Market Events.* If that Termination Event is an Illegality, then the Early Termination Amount will be determined in accordance with clause (1) or (2) above, as appropriate, except that, for the purpose of determining a Close-out Amount or Close-out Amounts, the Determining Party will:-

- (A) if obtaining quotations from one or more third parties (or from any of the Determining Party's Affiliates), ask each third party or Affiliate (I) not to take account of the current creditworthiness of the Determining Party or any existing Credit Support Document and (II) to provide mid-market quotations; and
- (B) in any other case, use mid-market values without regard to the creditworthiness of the Determining Party.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Pre-Estimate.* The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions."

3. The term "**Termination Currency Equivalent**" in Section 14 of the Agreement is hereby amended by replacing "**Market Quotation or Loss (as the case may be)**" with "**Close-out Amount**".

4. The following terms are added to Section 14 of the Agreement in the appropriate alphabetical position:

*“Close-out Amount”* means, with respect to each Terminated Transaction or each group of Terminated Transactions and a Determining Party, the amount of the losses or costs of the Determining Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Determining Party that are or would be realised under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Determining Party the economic equivalent of, (a) the material terms of that Terminated Transaction or group of Terminated Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of that Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in Section 2(a)(iii)) and (b) the option rights of the parties in respect of that Terminated Transaction or group of Terminated Transactions.

Any Close-out Amount will be determined by the Determining Party (or its agent), which will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. The Determining Party may determine a Close-out Amount for any group of Terminated Transactions or any individual Terminated Transaction but, in the aggregate, for not less than all Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

Unpaid Amounts in respect of a Terminated Transaction or group of Terminated Transactions and legal fees and out-of-pocket expenses referred to in Section 11 are to be excluded in all determinations of Close-out Amounts.

In determining a Close-out Amount, the Determining Party may consider any relevant information, including, without limitation, one or more of the following types of information:—

- (i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;
- (ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or
- (iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party's Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

The Determining Party shall determine a Close-out Amount, taking into account the standards and procedures described in this definition, utilizing quotations pursuant to clause (i) above or relevant market data pursuant to clause (ii) above, without regard to any information specified in clause (iii) above, unless the Determining Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in clause (i), (ii) or (iii) above, the Determining Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilized. Third parties supplying quotations pursuant to clause (i) above or market data pursuant to clause (ii) above shall be independent third parties that are not affiliates of the parties to this Agreement and may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Without duplication of amounts calculated based on information described in clause (i), (ii) or (iii) above, or other relevant information, and when it is commercially reasonable to do so, the Determining Party may in addition consider in calculating a Close-out Amount any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to a Terminated Transaction or group of Terminated Transactions (or any gain resulting from any of them).

Commercially reasonable procedures used in determining a Close-out Amount may include the following:—

- (1) application to relevant market data from third parties pursuant to clause (ii) above or information from internal sources pursuant to clause (iii) above of pricing or other valuation models that are, at the time of the determination of a Close-out Amount, used by the Determining Party in the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the Terminated Transaction or group of Terminated Transactions; and
- (2) application of different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.”

“***Determining Party***” means the party determining a Close-out Amount.”



“*Early Termination Amount*” has the meaning specified in Section 6(e).”

“*Non-affected Party*” means, so long as there is only one Affected Party, the other party.”

5. The following terms in Section 14 of the Agreement are deleted in their entirety: “*Loss*”, “*Market Quotation*”, “*Reference Market-makers*” and “*Settlement Amount*”.

If any of these terms are used in any Annex or Schedule to the Agreement or a Confirmation, the 1994 ISDA Equity Option Definitions, the 1996 ISDA Equity Derivatives Definitions, the 2002 ISDA Equity Derivatives Definitions, the 1997 ISDA Government Bond Option Definitions, the 1998 FX and Currency Option Definitions, the 1999 ISDA Credit Derivatives Definitions or any other ISDA document incorporated by reference or executed by the parties hereto, the terms will have the respective meanings ascribed to them in the standard form 1992 ISDA Master Agreement (Multicurrency-Cross Border).

**EXHIBIT I**

Party B	Investment Manager	Guarantor	Tax Form	Guaranty	Payee Tax Representation	NAV Entity	Reporting Entity	Address
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

					<b>SECRET</b>			
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# ISDA<sup>®</sup>

International Swaps and Derivatives Association, Inc.

## 2002 MASTER AGREEMENT

dated as of February 25, 2019

UBS AG and [REDACTED]

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this 2002 Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties or otherwise effective for the purpose of confirming or evidencing those Transactions. This 2002 Master Agreement and the Schedule are together referred to as this "Master Agreement".

Accordingly, the parties agree as follows:—

### 1. Interpretation

(a) *Definitions.* The terms defined in Section 14 and elsewhere in this Master Agreement will have the meanings therein specified for the purpose of this Master Agreement.

(b) *Inconsistency.* In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement, such Confirmation will prevail for the purpose of the relevant Transaction.

(c) *Single Agreement.* All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

#### (a) *General Conditions.*

(i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.

(ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other condition specified in this Agreement to be a condition precedent for the purpose of this Section 2(a)(iii).

(b) *Change of Account.* Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the Scheduled Settlement Date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) *Netting of Payments.* If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by which the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount and payment obligation will be determined in respect of all amounts payable on the same date in the same currency in respect of those Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or any Confirmation by specifying that "Multiple Transaction Payment Netting" applies to the Transactions identified as being subject to the election (in which case clause (ii) above will not apply to such Transactions). If Multiple Transaction Payment Netting is applicable to Transactions, it will apply to those Transactions with effect from the starting date specified in the Schedule or such Confirmation, or, if a starting date is not specified in the Schedule or such Confirmation, the starting date otherwise agreed by the parties in writing. This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) *Deduction or Withholding for Tax.*

(i) *Gross-Up.* All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and

(4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) *Liability.* If:—

(1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);

(2) X does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

### 3. Representations

Each party makes the representations contained in Sections 3(a), 3(b), 3(c), 3(d), 3(e) and 3(f) and, if specified in the Schedule as applying, 3(g) to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement). If any "Additional Representation" is specified in the Schedule or any Confirmation as applying, the party or parties specified for such Additional Representation will make and, if applicable, be deemed to repeat such Additional Representation at the time or times specified for such Additional Representation.

(a) *Basic Representations.*

(i) *Status.* It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) *Powers.* It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it, any of its Credit Support Providers or any of its applicable Specified Entities any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

(g) **No Agency.** It is entering into this Agreement, including each Transaction, as principal and not as agent of any person or entity.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under clause (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply With Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organised, managed and controlled or considered to have its seat, or where an Office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction"), and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

## 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes (subject to Sections 5(c) and 6(e)(iv)) an event of default (an "Event of Default") with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) required to be made by it if such failure is not remedied on or before the first Local Business Day in the case of any such payment or the first Local Delivery Day in the case of any such delivery after, in each case, notice of such failure is given to the party;

(ii) **Breach of Agreement; Repudiation of Agreement.**

(1) Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied within 30 days after notice of such failure is given to the party; or

(2) the party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, this Master Agreement, 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);

(iii) ***Credit Support Default.***

(1) Failure by the party or any Credit Support Provider of such party 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 such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document, or any security interest granted by such party or such Credit Support Provider to the other party pursuant to any such Credit Support Document, to be in full force and effect for the purpose of this Agreement (in each case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iv) ***Misrepresentation.*** A representation (other than a representation under Section 3(e) or 3(f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) ***Default Under Specified Transaction.*** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) defaults (other than by failing to make a delivery) under a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction;

(2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment due on the last payment or exchange date of, or any payment on early termination of, a Specified Transaction (or, if there is no applicable notice requirement or grace period, such default continues for at least one Local Business Day);

(3) defaults in making any delivery due under (including any delivery due on the last delivery or exchange date of) a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, all transactions outstanding under the documentation applicable to that Specified Transaction; or

(4) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, a Specified Transaction or any credit support arrangement relating to a Specified Transaction that is, in either case, confirmed or evidenced by a document or other confirming evidence executed and delivered by that party, Credit Support Provider or Specified Entity (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross-Default.** If "Cross-Default" is specified in the Schedule as applying to the party, the occurrence or existence of:—

(1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) where the aggregate principal amount of such agreements or instruments, either alone or together with the amount, if any, referred to in clause (2) below, is not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments before it would otherwise have been due and payable; or

(2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments under such agreements or instruments on the due date for payment (after giving effect to any applicable notice requirement or grace period) in an aggregate amount, either alone or together with the amount, if any, referred to in clause (1) above, of not less than the applicable Threshold Amount;

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, 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 by it or such regulator, supervisor or similar official, or (B) 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 such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (I) 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 (II) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) 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; (7) 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 such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, reincorporates or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganisation, reincorporation or reconstitution:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes (subject to Section 5(c)) an Illegality if the event is specified in clause (i) below, a Force Majeure Event if the event is specified in clause (ii) below, a Tax Event if the event is specified in clause (iii) below, a Tax Event Upon Merger if the event is specified in clause (iv) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to clause (v) below or an Additional Termination Event if the event is specified pursuant to clause (vi) below:—

(i) **Illegality.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, due to an event or circumstance (other than any action taken by a party or, if applicable, any Credit Support Provider of such party) occurring after a Transaction is entered into, it becomes unlawful under any applicable law (including without limitation the laws of any country in which payment, delivery or compliance is required by either party or any Credit Support Provider, as the case may be), on any day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day (in each case, other than as a result of a breach by the party of Section 4(b)):—

(1) for the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction to perform any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) for such party or any Credit Support Provider of such party (which will be the Affected Party) to perform any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, to receive a payment or delivery under such Credit Support Document or to comply with any other material provision of such Credit Support Document;

(ii) **Force Majeure Event.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, by reason of force majeure or act of state occurring after a Transaction is entered into, on any day:—

(1) the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction is prevented from performing any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, from receiving a payment or delivery in respect of such Transaction or from complying with any other material provision of this Agreement relating to such Transaction (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or

impracticable for such Office so to perform, receive or comply (or it would be impossible or impracticable for such Office so to perform, receive or comply if such payment, delivery or compliance were required on that day); or

(2) such party or any Credit Support Provider of such party (which will be the Affected Party) is prevented from performing any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, from receiving a payment or delivery under such Credit Support Document or from complying with any other material provision of such Credit Support Document (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply (or it would be impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply if such payment, delivery or compliance were required on that day),

so long as the force majeure or act of state is beyond the control of such Office, such party or such Credit Support Provider, as appropriate, and such Office, party or Credit Support Provider could not, after using all reasonable efforts (which will not require such party or Credit Support Provider to incur a loss, other than immaterial, incidental expenses), overcome such prevention, impossibility or impracticability;

(iii) *Tax Event.* Due to (1) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (2) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Settlement Date (A) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (B) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 9(h)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iv) *Tax Event Upon Merger.* The party (the "Burdened Party") on the next succeeding Scheduled Settlement Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets (or any substantial part of the assets comprising the business conducted by it as of the date of this Master Agreement) to, or reorganising, reincorporating or reconstituting into or as, another entity (which will be the Affected Party) where such action does not constitute a Merger Without Assumption;

(v) *Credit Event Upon Merger.* If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, a Designated Event (as defined below) occurs with respect to such party, any Credit Support Provider of such party or any applicable Specified Entity of such party (in each case, "X") and such Designated Event does not constitute a Merger Without Assumption, and the creditworthiness of X or, if applicable, the successor, surviving or transferee entity of X, after taking into account any applicable Credit Support Document, is materially weaker immediately after the occurrence of such Designated Event than that of X immediately prior to the occurrence of such Designated Event (and, in any such event, such party or its successor, surviving or transferee entity, as appropriate, will be the Affected Party). A "Designated Event" with respect to X means that:—

(1) X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or any substantial part of the assets comprising the business conducted by X as of the

date of this Master Agreement) to, or reorganises, reincorporates or reconstitutes into or as, another entity;

(2) any person, related group of persons or entity acquires directly or indirectly the beneficial ownership of (A) equity securities having the power to elect a majority of the board of directors (or its equivalent) of X or (B) any other ownership interest enabling it to exercise control of X; or

(3) X effects any substantial change in its capital structure by means of the issuance, incurrence or guarantee of debt or the issuance of (A) preferred stock or other securities convertible into or exchangeable for debt or preferred stock or (B) in the case of entities other than corporations, any other form of ownership interest; or

(vi) **Additional Termination Event.** If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties will be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Hierarchy of Events.**

(i) An event or circumstance that constitutes or gives rise to an Illegality or a Force Majeure Event will not, for so long as that is the case, also constitute or give rise to an Event of Default under Section 5(a)(i), 5(a)(ii)(1) or 5(a)(iii)(1) insofar as such event or circumstance relates to the failure to make any payment or delivery or a failure to comply with any other material provision of this Agreement or a Credit Support Document, as the case may be.

(ii) Except in circumstances contemplated by clause (i) above, if an event or circumstance which would otherwise constitute or give rise to an Illegality or a Force Majeure Event also constitutes an Event of Default or any other Termination Event, it will be treated as an Event of Default or such other Termination Event, as the case may be, and will not constitute or give rise to an Illegality or a Force Majeure Event.

(iii) If an event or circumstance which would otherwise constitute or give rise to a Force Majeure Event also constitutes an Illegality, it will be treated as an Illegality, except as described in clause (ii) above, and not a Force Majeure Event.

(d) **Deferral of Payments and Deliveries During Waiting Period.** If an Illegality or a Force Majeure Event has occurred and is continuing with respect to a Transaction, each payment or delivery which would otherwise be required to be made under that Transaction will be deferred to, and will not be due until:—

(i) the first Local Business Day or, in the case of a delivery, the first Local Delivery Day (or the first day that would have been a Local Business Day or Local Delivery Day, as appropriate, but for the occurrence of the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event) following the end of any applicable Waiting Period in respect of that Illegality or Force Majeure Event, as the case may be; or

(ii) if earlier, the date on which the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event ceases to exist or, if such date is not a Local Business Day or, in the case of a delivery, a Local Delivery Day, the first following day that is a Local Business Day or Local Delivery Day, as appropriate.

(e) **Inability of Head or Home Office to Perform Obligations of Branch.** If (i) an Illegality or a Force Majeure Event occurs under Section 5(b)(i)(1) or 5(b)(ii)(1) and the relevant Office is not the Affected Party's head or home office, (ii) Section 10(a) applies, (iii) the other party seeks performance of the relevant obligation or

compliance with the relevant provision by the Affected Party's head or home office and (iv) the Affected Party's head or home office fails so to perform or comply due to the occurrence of an event or circumstance which would, if that head or home office were the Office through which the Affected Party makes and receives payments and deliveries with respect to the relevant Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and such failure would otherwise constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) with respect to such party, then, for so long as the relevant event or circumstance continues to exist with respect to both the Office referred to in Section 5(b)(i)(1) or 5(b)(ii)(1), as the case may be, and the Affected Party's head or home office, such failure will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1).

## 6. Early Termination; Close-Out Netting

(a) *Right to Terminate Following Event of Default.* If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

### (b) *Right to Terminate Following Termination Event.*

(i) *Notice.* If a Termination Event other than a Force Majeure Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction, and will also give the other party such other information about that Termination Event as the other party may reasonably require. If a Force Majeure Event occurs, each party will, promptly upon becoming aware of it, use all reasonable efforts to notify the other party, specifying the nature of that Force Majeure Event, and will also give the other party such other information about that Force Majeure Event as the other party may reasonably require.

(ii) *Transfer to Avoid Termination Event.* If a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, other than immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) *Two Affected Parties.* If a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice of such occurrence is given under Section 6(b)(i) to avoid that Termination Event.

(iv) ***Right to Terminate.***

(1) If:—

(A) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(B) a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there are two Affected Parties, or the Non-affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, if the relevant Termination Event is then continuing, by not more than 20 days notice to the other party, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(2) If at any time an Illegality or a Force Majeure Event has occurred and is then continuing and any applicable Waiting Period has expired:—

(A) Subject to clause (B) below, either party may, by not more than 20 days notice to the other party, designate (I) a day not earlier than the day on which such notice becomes effective as an Early Termination Date in respect of all Affected Transactions or (II) by specifying in that notice the Affected Transactions in respect of which it is designating the relevant day as an Early Termination Date, a day not earlier than two Local Business Days following the day on which such notice becomes effective as an Early Termination Date in respect of less than all Affected Transactions. Upon receipt of a notice designating an Early Termination Date in respect of less than all Affected Transactions, the other party may, by notice to the designating party, if such notice is effective on or before the day so designated, designate that same day as an Early Termination Date in respect of any or all other Affected Transactions.

(B) An Affected Party (if the Illegality or Force Majeure Event relates to performance by such party or any Credit Support Provider of such party of an obligation to make any payment or delivery under, or to compliance with any other material provision of, the relevant Credit Support Document) will only have the right to designate an Early Termination Date under Section 6(b)(iv)(2)(A) as a result of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2) following the prior designation by the other party of an Early Termination Date, pursuant to Section 6(b)(iv)(2)(A), in respect of less than all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or 6(b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 9(h)(i) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date will be determined pursuant to Sections 6(c) and 9(h)(ii).

(d) **Calculations; Payment Date.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations), (2) specifying (except where there are two Affected Parties) any Early Termination Amount payable and (3) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation or market data obtained in determining a Close-out Amount, the records of the party obtaining such quotation or market data will be conclusive evidence of the existence and accuracy of such quotation or market data.

(ii) **Payment Date.** An Early Termination Amount due in respect of any Early Termination Date will, together with any amount of interest payable pursuant to Section 9(h)(ii)(2), be payable (1) on the day on which notice of the amount payable is effective in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default and (2) on the day which is two Local Business Days after the day on which notice of the amount payable is effective (or, if there are two Affected Parties, after the day on which the statement provided pursuant to clause (i) above by the second party to provide such a statement is effective) in the case of an Early Termination Date which is designated as a result of a Termination Event.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the amount, if any, payable in respect of that Early Termination Date (the "Early Termination Amount") will be determined pursuant to this Section 6(e) and will be subject to Section 6(f).

(i) **Events of Default.** If the Early Termination Date results from an Event of Default, the Early Termination Amount will be an amount equal to (1) the sum of (A) the Termination Currency Equivalent of the Close-out Amount or Close-out Amounts (whether positive or negative) determined by the Non-defaulting Party for each Terminated Transaction or group of Terminated Transactions, as the case may be, and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (2) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If the Early Termination Amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of the Early Termination Amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) **One Affected Party.** Subject to clause (3) below, if there is one Affected Party, the Early Termination Amount will be determined in accordance with Section 6(e)(i), except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.

(2) **Two Affected Parties.** Subject to clause (3) below, if there are two Affected Parties, each party will determine an amount equal to the Termination Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an amount equal to (A) the sum of (I) one-half of the difference between the higher amount so determined (by party "X") and the lower amount so determined (by party "Y") and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.



(3) *Mid-Market Events.* If that Termination Event is an Illegality or a Force Majeure Event, then the Early Termination Amount will be determined in accordance with clause (1) or (2) above, as appropriate, except that, for the purpose of determining a Close-out Amount or Close-out Amounts, the Determining Party will:—

(A) if obtaining quotations from one or more third parties (or from any of the Determining Party's Affiliates), ask each third party or Affiliate (I) not to take account of the current creditworthiness of the Determining Party or any existing Credit Support Document and (II) to provide mid-market quotations; and

(B) in any other case, use mid-market values without regard to the creditworthiness of the Determining Party.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because Automatic Early Termination applies in respect of a party, the Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Adjustment for Illegality or Force Majeure Event.* The failure by a party or any Credit Support Provider of such party to pay, when due, any Early Termination Amount will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) if such failure is due to the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event. Such amount will (1) accrue interest and otherwise be treated as an Unpaid Amount owing to the other party if subsequently an Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions and (2) otherwise accrue interest in accordance with Section 9(h)(ii)(2).

(v) *Pre-Estimate.* The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks, and, except as otherwise provided in this Agreement, neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions.

(f) *Set-Off.* Any Early Termination Amount payable to one party (the "Payee") by the other party (the "Payer"), in circumstances where there is a Defaulting Party or where there is one Affected Party in the case where either a Credit Event Upon Merger has occurred or any other Termination Event in respect of which all outstanding Transactions are Affected Transactions has occurred, will, at the option of the Non-defaulting Party or the Non-affected Party, as the case may be ("X") (and without prior notice to the Defaulting Party or the Affected Party, as the case may be), be reduced by its set-off against any other amounts ("Other Amounts") payable by the Payee to the Payer (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party of any set-off effected under this Section 6(f).

For this purpose, either the Early Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) will be effective to create a charge or other security interest. This Section 6(f) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which any party is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise).

## 7. Transfer

Subject to Section 6(b)(ii) and to the extent permitted by applicable law, neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any Early Termination Amount payable to it by a Defaulting Party, together with any amounts payable on or with respect to that interest and any other rights associated with that interest pursuant to Sections 8, 9(h) and 11.

Any purported transfer that is not in compliance with this Section 7 will be void.

## 8. Contractual Currency

(a) *Payment in the Contractual Currency.* Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the "Contractual Currency"). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in good faith and using commercially reasonable procedures in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) *Judgments.* To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in clause (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purpose of such judgment or order and the rate of exchange at which such party is able, acting in good faith and using

commercially reasonable procedures in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party.

(c) *Separate Indemnities.* To the extent permitted by applicable law, the indemnities in this Section 8 constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) *Evidence of Loss.* For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

## 9. Miscellaneous

(a) *Entire Agreement.* This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. Each of the parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a party for fraud.

(b) *Amendments.* An amendment, modification or waiver in respect of this Agreement will only be effective if in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system.

(c) *Survival of Obligations.* Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) *Remedies Cumulative.* Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

### (e) *Counterparts and Confirmations.*

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission and by electronic messaging system), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation will be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes, by an exchange of electronic messages on an electronic messaging system or by an exchange of e-mails, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex, electronic message or e-mail constitutes a Confirmation.

(f) *No Waiver of Rights.* A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) *Headings.* The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

(h) ***Interest and Compensation.***

(i) ***Prior to Early Termination.*** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction:—

(1) ***Interest on Defaulted Payments.*** If a party defaults in the performance of any payment obligation, it will, to the extent permitted by applicable law and subject to Section 6(c), pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (3)(B) or (C) below), at the Default Rate.

(2) ***Compensation for Defaulted Deliveries.*** If a party defaults in the performance of any obligation required to be settled by delivery, it will on demand (A) compensate the other party to the extent provided for in the relevant Confirmation or elsewhere in this Agreement and (B) unless otherwise provided in the relevant Confirmation or elsewhere in this Agreement, to the extent permitted by applicable law and subject to Section 6(c), pay to the other party interest (before as well as after judgment) on an amount equal to the fair market value of that which was required to be delivered in the same currency as that amount, for the period from (and including) the originally scheduled date for delivery to (but excluding) the date of actual delivery (and excluding any period in respect of which interest or compensation in respect of that amount is due pursuant to clause (4) below), at the Default Rate. The fair market value of any obligation referred to above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party that was entitled to take delivery.

(3) ***Interest on Deferred Payments.*** If:—

(A) a party does not pay any amount that, but for Section 2(a)(iii), would have been payable, it will, to the extent permitted by applicable law and subject to Section 6(c) and clauses (B) and (C) below, pay interest (before as well as after judgment) on that amount to the other party on demand (after such amount becomes payable) in the same currency as that amount, for the period from (and including) the date the amount would, but for Section 2(a)(iii), have been payable to (but excluding) the date the amount actually becomes payable, at the Applicable Deferral Rate;

(B) a payment is deferred pursuant to Section 5(d), the party which would otherwise have been required to make that payment will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the amount of the deferred payment to the other party on demand (after such amount becomes payable) in the same currency as the deferred payment, for the period from (and including) the date the amount would, but for Section 5(d), have been payable to (but excluding) the earlier of the date the payment is no longer deferred pursuant to Section 5(d) and the date during the deferral period upon which an Event of Default or Potential Event of Default with respect to that party occurs, at the Applicable Deferral Rate; or

(C) a party fails to make any payment due to the occurrence of an Illegality or a Force Majeure Event (after giving effect to any deferral period contemplated by clause (B) above), it will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as the event or circumstance giving rise to that Illegality or Force Majeure Event

continues and no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the date the party fails to make the payment due to the occurrence of the relevant Illegality or Force Majeure Event (or, if later, the date the payment is no longer deferred pursuant to Section 5(d)) to (but excluding) the earlier of the date the event or circumstance giving rise to that Illegality or Force Majeure Event ceases to exist and the date during the period upon which an Event of Default or Potential Event of Default with respect to that party occurs (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (B) above), at the Applicable Deferral Rate.

(4) *Compensation for Deferred Deliveries. If:—*

(A) a party does not perform any obligation that, but for Section 2(a)(iii), would have been required to be settled by delivery;

(B) a delivery is deferred pursuant to Section 5(d); or

(C) a party fails to make a delivery due to the occurrence of an Illegality or a Force Majeure Event at a time when any applicable Waiting Period has expired,

the party required (or that would otherwise have been required) to make the delivery will, to the extent permitted by applicable law and subject to Section 6(c), compensate and pay interest to the other party on demand (after, in the case of clauses (A) and (B) above, such delivery is required) if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

(ii) *Early Termination. Upon the occurrence or effective designation of an Early Termination Date in respect of a Transaction:—*

(1) *Unpaid Amounts.* For the purpose of determining an Unpaid Amount in respect of the relevant Transaction, and to the extent permitted by applicable law, interest will accrue on the amount of any payment obligation or the amount equal to the fair market value of any obligation required to be settled by delivery included in such determination in the same currency as that amount, for the period from (and including) the date the relevant obligation was (or would have been but for Section 2(a)(iii) or 5(d)) required to have been performed to (but excluding) the relevant Early Termination Date, at the Applicable Close-out Rate.

(2) *Interest on Early Termination Amounts.* If an Early Termination Amount is due in respect of such Early Termination Date, that amount will, to the extent permitted by applicable law, be paid together with interest (before as well as after judgment) on that amount in the Termination Currency, for the period from (and including) such Early Termination Date to (but excluding) the date the amount is paid, at the Applicable Close-out Rate.

(iii) *Interest Calculation.* Any interest pursuant to this Section 9(h) will be calculated on the basis of daily compounding and the actual number of days elapsed.

## 10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to and agrees with the other party that, notwithstanding the place of booking or its jurisdiction of incorporation or organisation, its obligations are the same in terms of recourse against it as if it had entered into the Transaction through its head or home office, except that a party will not have recourse to the head or home office of the other party in respect of any payment or delivery deferred pursuant to Section 5(d) for so long as the payment or delivery is so deferred. This representation and agreement will be deemed to be repeated by each party on each date on which the parties enter into a Transaction.

(b) If a party is specified as a Multibranch Party in the Schedule, such party may, subject to clause (c) below, enter into a Transaction through, book a Transaction in and make and receive payments and deliveries with respect to a Transaction through any Office listed in respect of that party in the Schedule (but not any other Office unless otherwise agreed by the parties in writing).

(c) The Office through which a party enters into a Transaction will be the Office specified for that party in the relevant Confirmation or as otherwise agreed by the parties in writing, and, if an Office for that party is not specified in the Confirmation or otherwise agreed by the parties in writing, its head or home office. Unless the parties otherwise agree in writing, the Office through which a party enters into a Transaction will also be the Office in which it books the Transaction and the Office through which it makes and receives payments and deliveries with respect to the Transaction. Subject to Section 6(b)(ii), neither party may change the Office in which it books the Transaction or the Office through which it makes and receives payments or deliveries with respect to a Transaction without the prior written consent of the other party.

## 11. Expenses

A Defaulting Party will on demand indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, execution fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 12. Notices

(a) *Effectiveness.* Any notice or other communication in respect of this Agreement may be given in any manner described below (except that a notice or other communication under Section 5 or 6 may not be given by electronic messaging system or e-mail) to the address or number or in accordance with the electronic messaging system or e-mail details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered or its delivery is attempted;
- (v) if sent by electronic messaging system, on the date it is received; or

- (vi) if sent by e-mail, on the date it is delivered,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication will be deemed given and effective on the first following day that is a Local Business Day.

(b) *Change of Details.* Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system or e-mail details at which notices or other communications are to be given to it.

### 13. Governing Law and Jurisdiction

(a) *Governing Law.* This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) *Jurisdiction.* With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Agreement ("Proceedings"), each party irrevocably:—

- (i) submits:—

(1) if this Agreement is expressed to be governed by English law, to (A) the non-exclusive jurisdiction of the English courts if the Proceedings do not involve a Convention Court and (B) the exclusive jurisdiction of the English courts if the Proceedings do involve a Convention Court; or

(2) if this Agreement is expressed to be governed by the laws of the State of New York, to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City;

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party; and

(iii) agrees, to the extent permitted by applicable law, that the bringing of Proceedings in any one or more jurisdictions will not preclude the bringing of Proceedings in any other jurisdiction.

(c) *Service of Process.* Each party irrevocably appoints the Process Agent, if any, specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12(a)(i), 12(a)(iii) or 12(a)(iv). Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by applicable law.

(d) *Waiver of Immunities.* Each party irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

#### 14. Definitions

As used in this Agreement:—

**“Additional Representation”** has the meaning specified in Section 3.

**“Additional Termination Event”** has the meaning specified in Section 5(b).

**“Affected Party”** has the meaning specified in Section 5(b).

**“Affected Transactions”** means (a) with respect to any Termination Event consisting of an Illegality, Force Majeure Event, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event (which, in the case of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2), means all Transactions unless the relevant Credit Support Document references only certain Transactions, in which case those Transactions and, if the relevant Credit Support Document constitutes a Confirmation for a Transaction, that Transaction) and (b) with respect to any other Termination Event, all Transactions.

**“Affiliate”** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

**“Agreement”** has the meaning specified in Section 1(c).

**“Applicable Close-out Rate”** means:—

(a) in respect of the determination of an Unpaid Amount:—

(i) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(ii) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate;

(iii) in respect of obligations deferred pursuant to Section 5(d), if there is no Defaulting Party and for so long as the deferral period continues, the Applicable Deferral Rate; and

(iv) in all other cases following the occurrence of a Termination Event (except where interest accrues pursuant to clause (iii) above), the Applicable Deferral Rate; and

(b) in respect of an Early Termination Amount:—

(i) for the period from (and including) the relevant Early Termination Date to (but excluding) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable:—

(1) if the Early Termination Amount is payable by a Defaulting Party, the Default Rate;

(2) if the Early Termination Amount is payable by a Non-defaulting Party, the Non-default Rate; and

(3) in all other cases, the Applicable Deferral Rate; and



(ii) for the period from (and including) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable to (but excluding) the date of actual payment:—

(1) if a party fails to pay the Early Termination Amount due to the occurrence of an event or circumstance which would, if it occurred with respect to a payment or delivery under a Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and for so long as the Early Termination Amount remains unpaid due to the continuing existence of such event or circumstance, the Applicable Deferral Rate;

(2) if the Early Termination Amount is payable by a Defaulting Party (but excluding any period in respect of which clause (1) above applies), the Default Rate;

(3) if the Early Termination Amount is payable by a Non-defaulting Party (but excluding any period in respect of which clause (1) above applies), the Non-default Rate; and

(4) in all other cases, the Termination Rate.

*“Applicable Deferral Rate”* means:—

(a) for the purpose of Section 9(h)(i)(3)(A), the rate certified by the relevant payer to be a rate offered to the payer by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market;

(b) for purposes of Section 9(h)(i)(3)(B) and clause (a)(iii) of the definition of Applicable Close-out Rate, the rate certified by the relevant payer to be a rate offered to prime banks by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer after consultation with the other party, if practicable, for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market; and

(c) for purposes of Section 9(h)(i)(3)(C) and clauses (a)(iv), (b)(i)(3) and (b)(ii)(1) of the definition of Applicable Close-out Rate, a rate equal to the arithmetic mean of the rate determined pursuant to clause (a) above and a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount.

*“Automatic Early Termination”* has the meaning specified in Section 6(a).

*“Burdened Party”* has the meaning specified in Section 5(b)(iv).

*“Change in Tax Law”* means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs after the parties enter into the relevant Transaction.

*“Close-out Amount”* means, with respect to each Terminated Transaction or each group of Terminated Transactions and a Determining Party, the amount of the losses or costs of the Determining Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Determining Party that are or would be realised under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Determining Party the economic equivalent of, (a) the material terms of that Terminated Transaction or group of Terminated Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of that Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in

Section 2(a)(iii) and (b) the option rights of the parties in respect of that Terminated Transaction or group of Terminated Transactions.

Any Close-out Amount will be determined by the Determining Party (or its agent), which will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. The Determining Party may determine a Close-out Amount for any group of Terminated Transactions or any individual Terminated Transaction but, in the aggregate, for not less than all Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

Unpaid Amounts in respect of a Terminated Transaction or group of Terminated Transactions and legal fees and out-of-pocket expenses referred to in Section 11 are to be excluded in all determinations of Close-out Amounts.

In determining a Close-out Amount, the Determining Party may consider any relevant information, including, without limitation, one or more of the following types of information:—

(i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;

(ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or

(iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party's Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

The Determining Party will consider, taking into account the standards and procedures described in this definition, quotations pursuant to clause (i) above or relevant market data pursuant to clause (ii) above unless the Determining Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in clause (i), (ii) or (iii) above, the Determining Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilised. Third parties supplying quotations pursuant to clause (i) above or market data pursuant to clause (ii) above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Without duplication of amounts calculated based on information described in clause (i), (ii) or (iii) above, or other relevant information, and when it is commercially reasonable to do so, the Determining Party may in addition consider in calculating a Close-out Amount any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to a Terminated Transaction or group of Terminated Transactions (or any gain resulting from any of them).

Commercially reasonable procedures used in determining a Close-out Amount may include the following:—

(1) application to relevant market data from third parties pursuant to clause (ii) above or information from internal sources pursuant to clause (iii) above of pricing or other valuation models that are, at the time of the determination of the Close-out Amount, used by the Determining Party in the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the Terminated Transaction or group of Terminated Transactions; and

(2) application of different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.

**"Confirmation"** has the meaning specified in the preamble.

**"consent"** includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

**"Contractual Currency"** has the meaning specified in Section 8(a).

**"Convention Court"** means any court which is bound to apply to the Proceedings either Article 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters or Article 17 of the 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

**"Credit Event Upon Merger"** has the meaning specified in Section 5(b).

**"Credit Support Document"** means any agreement or instrument that is specified as such in this Agreement.

**"Credit Support Provider"** has the meaning specified in the Schedule.

**"Cross-Default"** means the event specified in Section 5(a)(vi).

**"Default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**"Defaulting Party"** has the meaning specified in Section 6(a).

**"Designated Event"** has the meaning specified in Section 5(b)(v).

**"Determining Party"** means the party determining a Close-out Amount.

**"Early Termination Amount"** has the meaning specified in Section 6(e).

**"Early Termination Date"** means the date determined in accordance with Section 6(a) or 6(b)(iv).

**"electronic messages"** does not include e-mails but does include documents expressed in markup languages, and **"electronic messaging system"** will be construed accordingly.

**"English law"** means the law of England and Wales, and **"English"** will be construed accordingly.

**"Event of Default"** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**"Force Majeure Event"** has the meaning specified in Section 5(b).

**"General Business Day"** means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits).

**"Illegality"** has the meaning specified in Section 5(b).

**"Indemnifiable Tax"** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

**"law"** includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority), and **"unlawful"** will be construed accordingly.

**"Local Business Day"** means (a) in relation to any obligation under Section 2(a)(i), a General Business Day in the place or places specified in the relevant Confirmation and a day on which a relevant settlement system is open or operating as specified in the relevant Confirmation or, if a place or a settlement system is not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) for the purpose of determining when a Waiting Period expires, a General Business Day in the place where the event or circumstance that constitutes or gives rise to the Illegality or Force Majeure Event, as the case may be, occurs, (c) in relation to any other payment, a General Business Day in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment and, if that currency does not have a single recognised principal financial centre, a day on which the settlement system necessary to accomplish such payment is open, (d) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), a General Business Day (or a day that would have been a General Business Day but for the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event) in the place specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (e) in relation to Section 5(a)(v)(2), a General Business Day in the relevant locations for performance with respect to such Specified Transaction.

**"Local Delivery Day"** means, for purposes of Sections 5(a)(i) and 5(d), a day on which settlement systems necessary to accomplish the relevant delivery are generally open for business so that the delivery is capable of being accomplished in accordance with customary market practice, in the place specified in the relevant Confirmation or, if not so specified, in a location as determined in accordance with customary market practice for the relevant delivery.

**"Master Agreement"** has the meaning specified in the preamble.

**"Merger Without Assumption"** means the event specified in Section 5(a)(viii).

**"Multiple Transaction Payment Netting"** has the meaning specified in Section 2(c).

**"Non-affected Party"** means, so long as there is only one Affected Party, the other party.

**"Non-default Rate"** means the rate certified by the Non-defaulting Party to be a rate offered to the Non-defaulting Party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the Non-defaulting Party for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market.

**"Non-defaulting Party"** has the meaning specified in Section 6(a).

**"Office"** means a branch or office of a party, which may be such party's head or home office.

**"Other Amounts"** has the meaning specified in Section 6(f).

**"Payee"** has the meaning specified in Section 6(f).

**"Payer"** has the meaning specified in Section 6(f).

**"Potential Event of Default"** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**"Proceedings"** has the meaning specified in Section 13(b).

**"Process Agent"** has the meaning specified in the Schedule.

**"rate of exchange"** includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

**"Relevant Jurisdiction"** means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

**"Schedule"** has the meaning specified in the preamble.

**"Scheduled Settlement Date"** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**"Specified Entity"** has the meaning specified in the Schedule.

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

**"Specified Transaction"** means, subject to the Schedule, (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is not a Transaction under this Agreement but (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**"Stamp Tax"** means any stamp, registration, documentation or similar tax.

**"Stamp Tax Jurisdiction"** has the meaning specified in Section 4(e).

**"Tax"** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

**"Tax Event"** has the meaning specified in Section 5(b).

**"Tax Event Upon Merger"** has the meaning specified in Section 5(b).

**"Terminated Transactions"** means, with respect to any Early Termination Date, (a) if resulting from an Illegality or a Force Majeure Event, all Affected Transactions specified in the notice given pursuant to Section 6(b)(iv), (b) if resulting from any other Termination Event, all Affected Transactions and (c) if resulting from an Event of Default, all Transactions in effect either immediately before the effectiveness of the notice designating that Early Termination Date or, if Automatic Early Termination applies, immediately before that Early Termination Date.

**"Termination Currency"** means (a) if a Termination Currency is specified in the Schedule and that currency is freely available, that currency, and (b) otherwise, euro if this Agreement is expressed to be governed by English law or United States Dollars if this Agreement is expressed to be governed by the laws of the State of New York.

**"Termination Currency Equivalent"** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Close-out Amount is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

**"Termination Event"** means an Illegality, a Force Majeure Event, a Tax Event, a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

**"Termination Rate"** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

**"Threshold Amount"** means the amount, if any, specified as such in the Schedule.

**"Transaction"** has the meaning specified in the preamble.

**"Unpaid Amounts"** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii) or due but for Section 5(d)) to such party under Section 2(a)(i) or 2(d)(i)(4) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date, (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii) or 5(d)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered and (c) if the Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions, any Early Termination Amount due prior to such Early Termination Date and which remains unpaid as of such Early Termination Date, in each case together with any amount of interest accrued or other

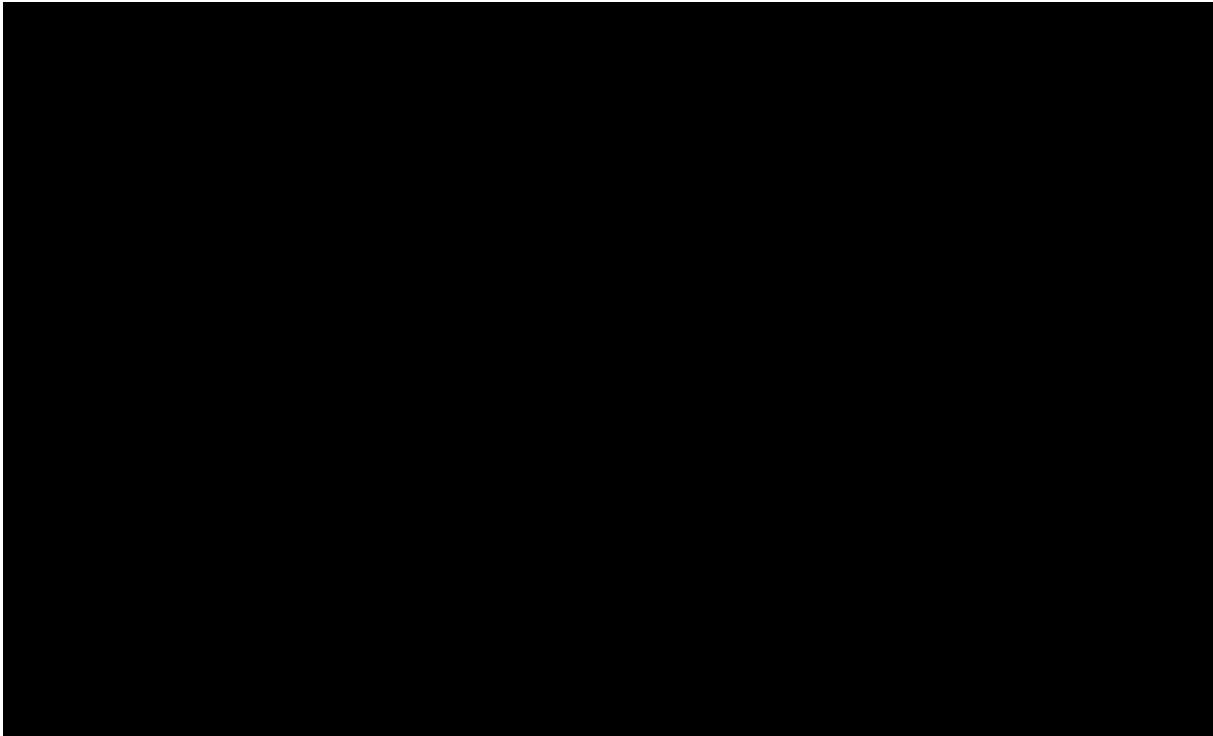
compensation in respect of that obligation or deferred obligation, as the case may be, pursuant to Section 9(h)(i)(1) or (2), as appropriate. The fair market value of any obligation referred to in clause (b) above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it will be the average of the Termination Currency Equivalents of the fair market values so determined by both parties.

***“Waiting Period”*** means:—

(a) in respect of an event or circumstance under Section 5(b)(i), other than in the case of Section 5(b)(i)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of three Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance; and

(b) in respect of an event or circumstance under Section 5(b)(ii), other than in the case of Section 5(b)(ii)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of eight Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.



**SCHEDULE**  
**to the**  
**2002 Master Agreement**  
**dated as of February 25, 2019**  
**between**

**UBS AG,**  
a banking corporation organized  
under the laws of Switzerland  
**("Party A")**

and

[REDACTED]  
[REDACTED]  
[REDACTED]  
**("Party B")**

**Part 1**  
**Termination Provisions**

In this Agreement:

(a) "*Specified Entity*" means in relation to Party A for the purpose of:

Section 5(a)(v),	UBS Securities LLC
Section 5(a)(vi),	NONE
Section 5(a)(vii),	NONE
Section 5(b)(v),	NONE

and in relation to Party B for the purpose of:

Section 5(a)(v),	NONE
Section 5(a)(vi),	NONE
Section 5(a)(vii),	NONE
Section 5(b)(v),	NONE



- (b) **"Specified Transaction"** will have the meaning in Section 14 of this Agreement with the addition of the following after "weather index transaction" on the tenth line: "precious metal transaction, letters of credit reimbursement obligation, and any transactions or obligations under any prime brokerage or centrally cleared derivative agreements".
- (c) The **"Cross Default"** provisions of Section 5(a)(vi) of this Agreement, as modified below, will apply to Party A and to Party B. Section 5(a)(vi) of this Agreement is hereby amended by the addition of the following at the end thereof:

“provided, however, that notwithstanding the foregoing, an Event of Default shall not occur under (2) above if, as demonstrated to the reasonable satisfaction of the other party, (a) the failure to pay referred to in (2) is a failure to pay caused by an error or omission of an administrative or operational nature; and (b) funds were available to such party to enable it to make the relevant payment when due; and (c) such relevant payment is made within three Local Business Days following receipt of written notice from an interested party of such failure to pay.”

Additionally, Section 5(a)(vi)(1) of this Agreement is hereby amended by deleting in the seventh line thereof the words, “or becoming capable at such time of being declared.”

If such provisions apply:

**"Specified Indebtedness"** shall mean any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of any Specified Transaction (except that, for this purpose only, the words "and any other entity" shall be substituted for the words "and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party)" where they appear in the definition of Specified Transaction).

For the purposes of determining whether the Threshold Amount has been reached or exceeded, in relation to agreements or instruments that in good faith are generally considered derivative instruments, the portion attributable to Specified Indebtedness shall be calculated using their mark-to-market value (without regard to any collateral or margin) and if governed by a master agreement by using the amount that becomes, or would become, payable under such agreement as a result of the liquidation or termination of such agreement, as estimated by the Non-Defaulting Party in good faith and a commercially reasonable manner.

**"Threshold Amount"** means:

- (i) with respect to Party A, an amount equal to 3% of shareholders' equity (howsoever described) of Party A as shown on the most recent annual audited financial statements of Party A, and
  - (ii) with respect to Party B, the lesser of U.S. \$10 million (or the equivalent in any other currency or currencies) or an amount equal to 3% of the Net Asset Value of Party B, as shown on the most recent annual audited financial statements of Party B.
- (d) **The "Credit Event Upon Merger"** provisions of Section 5(b)(v) will not apply to Party A or Party B.
  - (e) **The "Automatic Early Termination"** provision of Section 6(a) will not apply to Party A and will not apply to Party B.

- (f) **"Termination Currency"** means one of the currencies in which payments are required to be made pursuant to a Confirmation in respect of a Terminated Transaction selected by the Non-defaulting Party or the non-Affected Party, as the case may be, or, in the circumstances where there are two Affected Parties, as agreed between the parties or, failing such agreement as aforesaid, or if the currency so selected is not freely available, the Termination Currency shall be U.S. Dollars.
- (g) **"Additional Termination Event"** will apply. If any of the following events occurs with respect to Party B, such event shall constitute an Additional Termination Event (in which case the Affected Party shall be Party B):
- (i) **Decline in Net Asset Value.** The Net Asset Value of Party B as of any date (the "Test Date") has declined by: (A) 20% or greater from Party B's Net Asset Value as of the first Local Business Day of the calendar month immediately preceding the Test Date, or (B) 30% or greater from Party B's Net Asset Value as of the first Local Business Day of the third calendar month immediately preceding the Test Date, or (C) 40% or greater from Party B's Net Asset Value as of the first Local Business Day of the 12<sup>th</sup> calendar month immediately preceding the Test Date.
  - (ii) **Minimum Net Asset Value.** The Net Asset Value of Party B shall be at any time equal to or less than the greater of: (x) 50% of the Net Asset Value of Party B as of the last day of the previous fiscal year (as reflected in Party B's annual audited financial statements for such fiscal year); and (y) 22.5 million U.S. Dollars.
  - (iii) **Failure to Deliver Net Asset Value Report.** Party B shall fail to deliver a written report of its Net Asset Value and performance ("Net Asset Value Report") on or before the required delivery date specified in Part 3 of this Schedule, and such failure is not remedied within one Local Business Day following notice from Party A.

## Part 2

### Tax Representations

(a) ***Payer Tax Representation.*** For the purpose of Section 3(e), *Party A and Party B* hereby make the following representation: It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 9(h) to be made by it to the other party under this Agreement. In making this representation, it may rely on: (A) the accuracy of any representation made by the other party pursuant to Section 3(f); (B) the satisfaction of the agreement of the other party contained in Section 4(a)(i) or 4(a)(iii) and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii); and (C) the satisfaction of the agreement of the other party contained in Section 4(d); provided that it shall not be a breach of this representation where reliance is placed on clause (B) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

(b) ***Payee Tax Representations.*** For the purpose of Section 3(f) of this Agreement, *Party A* makes the following representations to Party B:

(i) In respect of each Transaction that Party A enters into under this Agreement through an Office that is located in the U.S., or for every Transaction in which personnel of Party A located in the U.S. materially participated, Party A makes the following representation to Party B:

For US federal income tax purposes, Party A is acting as nominee on behalf of UBS Securities LLC, a person that is a "United States person" as that term is defined under Section 7701(a)(30) of the US Internal Revenue Code ("Code") and an "exempt recipient" as that term is defined in section 1.6049-4(c)(1)(ii) of the U.S. Treasury Regulations ("Regulations").

(ii) In respect of each Transaction that Party A enters into under this Agreement through an Office that is not located in the U.S., and in which no personnel of Party A located in the U.S. materially participated, Party A makes the following representations to Party B:

(A) No payment received or to be received by Party A under this Agreement will be effectively connected with Party A's conduct of a trade or business within the U.S. It is fully eligible for the benefits of the "Business Profits" or "Industrial and Commercial Profits" provision, as the case may be, the "Interest" provision or the "Other Income" provision (if any) of the Specified Treaty with respect to any payment described in such provisions and received or to be received by it in connection with this Agreement and no such payment is attributable to a trade or business carried on by it through a permanent establishment in the Specified Jurisdiction.

If such representation applies, then:

"Specified Treaty" means, with respect to a Transaction, the tax treaty applicable between Switzerland and the United States of America.

"Specified Jurisdiction" means the United States of America.

(B) Party A is a 'non-U.S. branch of a foreign person' as that term is used in section 1.1441-4(a)(3)(ii) of the Regulations, and Party A is a 'foreign person' as that term is used in section 1.6041-4(a)(4) of the Regulations.

(c) *Payee Tax Representations.* For the purpose of Section 3(f) of this Agreement, *Party B* makes the following representation to Party A:

(i) Party B is a U.S. person as that term is defined in Section 7701(a)(30).

(ii) It is fully eligible for the benefits of the "Business Profits" or "Industrial and Commercial Profits" provision, as the case may be, the "Interest" provision or the "Other Income" provision (if any) of the Specified Treaty with respect to any payment described in such provisions and received or to be received by it in connection with this Agreement and no such payment is attributable to a trade or business carried on by it through a permanent establishment in the Specified Jurisdiction. Each payment received or to be received by it in connection with this Agreement (other than interest under Section 2(e), 6(d)(ii) and 6(e)) qualifies as "Business Profits," "Industrial and Commercial Profits," "Interest" or "Other Income" under the Specified Treaty.

If such representation applies, then:

"Specified Treaty" means, with respect to a Transaction, the tax treaty applicable between the United States of America and the United Kingdom, Switzerland, or Australia as appropriate.

“Specified Jurisdiction” means the United Kingdom, Switzerland, or Australia as appropriate.

**Part 3**

**Agreement to Deliver Documents**

For the purpose of Sections 4(a) (i) and (ii) of this Agreement, each party agrees to deliver the following documents, as applicable:

(a) Tax forms, documents or certificates to be delivered are:

Each party agrees to complete, accurately and in a manner reasonably satisfactory to the other party (or any Specified Entity of the other party), and to execute, arrange for any required certification of, and deliver to the other party (or such Specified Entity) (or to such government or taxing authority as the other party (or such Specified Entity) reasonably directs), any form or document that may be required or reasonably requested in order to allow the other party (or such Specified Entity) to make a payment under this Agreement (or a Credit Support Document of the other party or a Specified Entity thereof) without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate, promptly upon the earlier of (i) reasonable demand by the other party (or such Specified Entity) and (ii) learning that the form or document is required.

<u>Party required to deliver document</u>	<u>Form/Document/Certificate</u>	<u>Date by which to be delivered</u>
Party A	With respect to each Transaction that is entered into under this Agreement whereby Party A is acting as nominee on behalf of UBS Securities LLC, a person that is a “United States person” as that term is defined under Section 7701(a)(30) of the Code, a duly completed and executed U.S. Internal Revenue Service Form W-8IMY (or successor thereto) for UBS AG, together with the required schedule and a duly executed and completed U.S. Internal Revenue Service Form W-9 for UBS Securities LLC.	(i) Upon execution and delivery of this Agreement, with such form to be updated at the beginning of each succeeding three calendar year period beginning after execution of this Agreement, or as otherwise required under then applicable Regulations; (ii) promptly upon reasonable demand by Party B; (iii) promptly upon learning that any Form W-8IMY (or any successor thereto) or W-9 has become inaccurate or incorrect; and (iv) prior to the expiration or obsolescence of any previously delivered form.
Party A	With respect to each Transaction that is entered into under this Agreement through an Office of Party A that is not located in the U.S., one duly	(i) Upon execution and delivery of this Agreement, with such Form to be updated at the beginning of each succeeding three calendar year period beginning after execution of this Agreement, or as

	executed and completed U.S. Internal Revenue Service Form W-8BEN-E (or any successor of such form).	otherwise required under then applicable Regulations; (ii) promptly upon reasonable demand by Party B; (iii) promptly upon learning that any Form W-8BEN-E (or any successor thereto) has become inaccurate or incorrect; and (iv) prior to the expiration or obsolescence of any previously delivered form .
Party B	A duly completed and executed U.S. Internal Revenue Service Form W-9 (or any successor of such form).	(i) Upon execution and delivery of this Agreement, (ii) promptly upon reasonable demand by Party A, (iii) promptly upon learning that any such Form previously provided by Party B has become inaccurate or incorrect, and (iv) prior to the expiration or obsolescence of any previously delivered form.

(b) Other documents to be delivered are:

Party required to deliver	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
Document			
Party A and Party B	Evidence of the authority and true signatures of each official or representative signing this Agreement	On or before execution of this Agreement.	YES

Party required to deliver	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
Document			
Party A	Annual audited financial statement	Within 120 days of the last Local Business Day of Party A's fiscal year, provided, however, that Party A shall be deemed to have satisfied such delivery requirement by making such report available to the general public by publication thereof on its website or on the U.S. Securities and Exchange Commission EDGAR information retrieval system	YES
Party B	Copy of the Net Asset Value Report of Party B as of the most recently ended calendar month	Monthly (within 15 Business Days after the end of the applicable month) and upon reasonable request by Party A on the Local Business Day after the date such report is requested, to be delivered to <u>SH-USRCHedgeFunds@ubs.com</u>	YES

<b>Party required to deliver</b>	<b>Form/Document/Certificate</b>	<b>Date by which to be delivered</b>	<b>Covered by Section 3(d) Representation</b>
<b>Document</b>			
Party B	Annual audited financial statement	Within 120 days of the last Local Business Day of Party B's fiscal year	YES, but solely with respect to audited financial statements, the phrase "true, accurate and complete in every material respect" in Section 3(d) shall be deleted and the phrase "fairly reflects the financial condition and results of operations of Party B" shall be inserted in lieu thereof
Party B	True and correct copy (which has been certified by an officer) of any board resolution or partnership action (or equivalent authorizing documentation), as applicable, authorizing the execution and delivery of this Agreement, Transactions (and confirmations thereof) and performance of its obligations thereunder	On or before execution of this Agreement	YES

<b>Party required to deliver</b>	<b>Form/Document/Certificate</b>	<b>Date by which to be delivered</b>	<b>Covered by Section 3(d) Representation</b>
<b>Document</b>			
Party B	True and correct copy of the constitutive documents of Party B (including without limitation the certificate of incorporation or formation, as applicable, of Party B, in each case as applicable, the limited liability agreement, operating agreement, by-laws, memorandum, articles of association or other equivalents, the partnership agreement or limited partnership agreement and limited partnership certificate, as applicable, and any other relevant document), which have been certified by an officer or the relevant public authority where on file	On or before execution of this Agreement	YES

**Part 4**

**Miscellaneous**

(a) ***Addresses for Notices.*** For the purposes of Section 12(a) of this Agreement:

- (i) All notices or communications to Party A with respect to a particular Transaction shall be sent per the contact information reflected in the Confirmation of that Transaction, and any other notices to Party A, including any notices pursuant to Sections 5 or 6 hereunder, shall be sent to:

Address: UBS AG  
1285 Avenue of the Americas  
New York, NY 10019  
Attention: Legal Department – Documentation Unit



With a mandatory copy to: [SH-UBSLegalNotices-Amer@ubs.com](mailto:SH-UBSLegalNotices-Amer@ubs.com)

- (ii) All notices or communications to Party B shall be sent to the address reflected below:

Address: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

- (b) **Process Agent.** For the purpose of Section 13 (c) of this Agreement:

Party A appoints as its Process Agent: Not Applicable  
[REDACTED]

- (c) **Offices.** The provisions of Section 10(a) of this Agreement will apply to Party A and Party B.

- (d) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement:

(i) Party A is a Multibranch Party and may act through its branches in any of the following territories or countries: England and Wales, Hong Kong, United States of America, Singapore, Australia and Switzerland.

(ii) Party B is not a Multibranch Party.

- (e) **Calculation Agent.** The Calculation Agent is Party A, unless (1) otherwise specified in a Confirmation in relation to the relevant Transaction, or (2) an Event of Default has occurred and is continuing with respect to Party A, in which case the parties shall select a mutually agreeable independent third party which is a leading dealer for the relevant Transaction, to act as Calculation Agent (a "Substitute Calculation Agent"). If the parties cannot agree on a Substitute Calculation Agent, then Party A and Party B shall each pick a leading dealer in the relevant market and such dealers shall choose a third leading dealer to be the Substitute Calculation Agent. Party A or the Substitute Calculation Agent shall make each calculation in good faith and in a commercially reasonable manner.

- (f) **Credit Support Documents.** The Credit Support Annex attached hereto is a Credit Support Document with respect to Party A and Party B for all purposes hereunder and is incorporated herein by this reference.

- (g) **Credit Support Provider.** NOT APPLICABLE.

- (h) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New York.

- (i) **Netting of Payments.** Multiple Transaction Payment Netting will not apply for the purpose of Section 2(c) of this Agreement, except that Multiple Transaction Payment Netting will apply for the purpose of Section 2(c) of this Agreement for the following groups of Transactions, which shall be treated separately: (1) FX Transactions (including FX Transactions resulting from the exercise of Currency Option Transactions); (2) premium payable under Currency Option Transactions (each of (1) and (2) as defined in the 1998 ISDA FX and Currency Option Definitions); and (3) Commodity Transactions (as defined in the 2005 ISDA Commodity Definitions) starting from the date of this Agreement.
- (j) **"Affiliate"** will have the meaning specified in Section 14 of this Agreement.
- (k) **Absence of Litigation.** For the purpose of Section 3(c):
- "Specified Entity"** means in relation to Party A, any Affiliate of Party A.
- "Specified Entity"** means in relation to Party B, any Affiliate of Party B.
- (l) **No Agency.** The provisions of Section 3(g) will apply to this Agreement.
- (m) **Additional Representations** will apply. For the purpose of Section 3 of this Agreement, the following will constitute Additional Representations:
- (i) **Party A and Party B Representations.**
- (A) Each applicable party represents and warrants to and for the benefit of each other applicable party as of the date hereof, and shall be deemed to represent and warrant to and for the benefit of that party as of the date of each Transaction, that:
- (1) **Eligible Contract Participant.** It is an "eligible contract participant" as that term is defined in Section 1a(18) of the Commodity Exchange Act, as amended.
- (2) **Non-Public Information.** In effecting a Transaction referenced to a security, it will not be aware of any material non-public information or unpublished price-sensitive information with respect to any security related to a Transaction that, under applicable securities laws, it would have to disclose in advance to a party effecting a purchase or sale with the Offeree of such security.
- (3) **Securities Act Representations.** If any Transaction and/or the instrument underlying a Transaction is not otherwise excluded from the coverage, or otherwise exempt from the registration requirements, of the United States Securities Act of 1933, as amended (the "Securities Act"), then each party makes the following representations, warranties and covenants with respect to such Transaction, and such representations, warranties and covenants shall remain in full force and effect whenever the offeree or buyer of the Transaction and/or the offeree or buyer of the instrument underlying the Transaction (the "Offeree") shall enter into a Transaction, or make any payment or delivery relating to a Transaction:
- (I) Each party is entering into the Transaction for its own account as principal, and not with a view to, or for, resale, distribution or

fractionalization thereof, in whole or in part.

- (II) Each party acknowledges its understanding that the offer and sale of any Transaction with the other party is intended to be excluded from the coverage of, or otherwise exempt from registration under, the Securities Act, by virtue of Section 4(a)(2) of the Securities Act. In furtherance thereof, each party represents and warrants to the other party that (i) it has the financial ability to bear the economic risk of its investment, including a loss of its entire investment, (ii) it is an “accredited investor” as that term is defined under Regulation D under the Securities Act, and (iii) it has the knowledge and experience of investing in instruments similar to the Transaction and is capable of evaluating the risks and merits of the Transaction and has, or has had an opportunity to request, such information as it deemed necessary to make such evaluation.
- (III) Each party understands that the Transaction has not been, and is not intended to be, registered under the Securities Act or under the securities laws of certain states and, therefore, cannot be resold, pledged, assigned or otherwise disposed of unless an exclusion from the coverage of the Securities Act, or an exemption for such resale, pledge, assignment or disposition is available. Neither party is obliged to register the Transaction or to assist the Offeree in complying with any exclusion from the coverage the Securities Act, or with any exemption from registration under the Securities Act or state securities laws.

(B) *Relationship Between Parties.* Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):

- (1) *Non-Reliance.* It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such adviser as it has deemed necessary. It is not relying on any communication (written or verbal) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or verbal) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction.
- (2) *Assessment and Understanding.* It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.
- (3) *Status of Parties.* The other party is not acting as a fiduciary for or an adviser

to it in respect of that Transaction.

(ii) **Party B Representations.** Party B represents and warrants on and as of the date hereof, on the date on which it enters into a Transaction, and on and as of each date this Agreement or any Transaction remains outstanding:

(A) *[Reserved]*

(B) **Compliance with Applicable Internal Policies.** Each Transaction entered into under this Agreement will be entered into in accordance with, and will at all times comply with, applicable investment policies, guidelines or other requirements of Party B (if any, as may be adopted or amended from time to time by Party B) that may affect the due authorization or validity of any Transaction or the Agreement.

(C) (i) **No ERISA Funds.** The assets of Party B do not include "plan assets" within the meaning of Section 3(42) of ERISA, and Party B is not otherwise subject to Title I of ERISA or Section 4975 of the Code.

(ii) **No Governmental Plan Funds.** The assets of Party B do not include the assets of any "governmental plan" within the meaning of Section 3(32) of ERISA, and Party B is not otherwise subject to any law, rule, regulation, or restriction governing the investment of the assets of such plans.

(D) **Suitability.** Each Transaction entered into in connection with this Agreement on behalf of Party B is suitable and appropriate for Party B on the date such Transaction is entered into.

(iii) **Country-Specific Underlier Representation and Covenants.**

(I) **Indian transactions.** If parties are entering into a Transaction which is or otherwise involves an offshore derivative instrument ("ODI") (as such term is defined for the purposes of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, and notifications, circulars, rules and guidelines of the Securities and Exchange Board of India issued from time to time) (collectively referred to as the "FPI Regulations"), the representations and undertakings made by Party B in favor of Party A in a letter titled "Notice Regarding Derivative Products Linked to Indian Securities or Indices" (which may be amended/replaced from time to time) (the "ODI Letter") shall apply to the Transaction and references to ODI in the ODI Letter shall be construed to include the Transaction. If a representation or undertaking in the ODI Letter proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated; or if Party B fails to comply with or perform any agreement or obligation undertaken by it in the ODI Letter, it shall be an Additional Termination Event with all Transactions which are or otherwise involve an ODI (as defined in the ODI Letter) being the sole Affected Transactions, and with Party B being the sole Affected Party.

(II) **Taiwanese transactions.** If the parties are entering into a Transaction referencing Taiwanese underliers where the relevant Exchange is in the Republic of China, Party B represents to Party A that:

- (1) it is not entering into the Transaction for the specific benefit or account of (A) any residents of the People's Republic of China ("PRC"), corporations in the PRC, or corporations outside the PRC that are beneficially owned by residents of the PRC or (B) any residents of the Republic of China ("ROC" or "Taiwan"), corporations in Taiwan, or corporations outside Taiwan that are beneficially owned by residents of Taiwan.
- (2) it will not, sell, transfer, assign, novate or otherwise dispose of the Transaction to or for the benefit or account of, or enter into any back-to-back equity derivative transaction with (i) any residents of the PRC, corporations in the PRC, or corporations outside the PRC which are beneficially owned by residents of the PRC or (ii) any residents of Taiwan, corporations in Taiwan, or corporations outside Taiwan that are beneficially owned by residents of Taiwan.
- (3) details of the Transaction (including the identity of the parties) may, (1) upon request or order by any competent authority, regulatory or enforcement organisation, governmental or otherwise, including without limitation, the stock exchange on which the underlying shares are listed, (2) as required by applicable law, rules, regulations, codes or guidelines (whether having the force of law or otherwise), be disclosed in accordance with such request, order, law, rules, regulations, codes or guidelines (whether such disclosure is to be made to third parties or otherwise). By entering into the Transaction, Party B agrees to such disclosure and releases Party A (and its subsidiaries and affiliates) from any duty of confidentiality owed to it in relation to such information.

(III) *Chinese transactions.* If the parties are entering into a Transaction referencing People's Republic of China ("PRC") underliers where the relevant Exchange is in the People's Republic of China, Party B represents to Party A that:

- (1) it is not a Domestic Investor;
- (2) none of its investors are Domestic Investors.
- (3) it will not sell, transfer, assign, novate or otherwise dispose of the Transaction to, or enter into any back-to-back equity derivative transaction with any Domestic Investor;
- (4) details of the Transaction (including identity of the parties) may (a) upon request or order by any competent authority, regulatory or enforcement organisation, governmental or otherwise, including without limitation, the stock exchange on which the underlying shares are listed, (b) as required by applicable law, rules, regulations, codes or guidelines (whether having the force of law or otherwise), be disclosed in accordance with such request, order, law, rules, regulations, codes or guidelines (whether such disclosure is to be made to third parties or otherwise). By entering into the Transaction,

Party B agrees to such disclosure and releases Party A (and its subsidiaries and affiliates) from any duty of confidentiality regarding such disclosure.

**"Domestic Investor"** means (i) domestic individual as defined in the Administrative Measures on Foreign Exchange Matters for Individuals as issued by the People's Bank of China, and (ii) legal persons organized under the laws of the People's Republic of China (excluding Hong Kong, Macau and Taiwan).

- (n) **Consent to Recording.** Each party (i) consents to the recording of all telephone conversations between trading, operations and marketing personnel of the parties and their Affiliates in connection with this Agreement or any potential Transaction, (ii) agrees to give notice to such personnel of it and its Affiliates that their calls will be recorded, and (iii) agrees that, in any Proceedings, it will not object to the introduction of such recordings in evidence on grounds that consent was not properly given.

#### **Part 5** **Other Provisions**

- (a) **Scope of Agreement.** Upon the effectiveness of this Agreement and unless the parties to this Agreement otherwise agree in writing, by specific reference to this Agreement, that this provision does not apply, all Derivative Transactions (as defined below) then outstanding, or which may be entered into thereafter, between the parties, including Transactions entered into by the parties through Offices, if any, listed in Part 4(d), are deemed to be Transactions governed by this Agreement and any confirmation or other confirming evidence of the Transaction is deemed to be a Confirmation.
- (b) **Intentionally Omitted.**
- (c) **Failure to Pay or Deliver / Default Under Specified Transaction.** Sections 5(a)(i) and 5(a)(v)(2) of this Agreement are amended by inserting the following at the end of both provisions:

"Notwithstanding the foregoing, an Event of Default shall not have occurred if a party (the "Subject Party") has failed to perform its obligation to make any payment or delivery (a "Specified Failure") and, as demonstrated to the reasonable satisfaction of the other party on or before the first Local Business Day or first Local Delivery Day (as applicable) after notice of such failure is given to the party: (a) such Specified Failure was caused by an error or omission of an administrative or operational nature (an "Excusable Failure") and (b) other than such Excusable Failure, the Subject Party has taken all steps necessary for it to take in order to cause such delivery or payment, as the case may be, to be made and, but for the Excusable Failure, is in all other respect capable of making delivery or payment, as the case may be on the scheduled delivery or payment date relating to such Specified Failure, and provided such relevant payment or delivery is made within three Local Business Days or Local Delivery Days (as applicable) after notice of such failure to pay is given to the party."

- (d) **Additional Notification Requirements. Notice of Increase of Constituent Plan Investment.** Party B will notify Party A immediately if (a) the assets of Party B include or are reasonably expected to include "plan assets" within the meaning of Section 3(42) of ERISA and the regulations thereunder or (b) Party B otherwise becomes or is reasonably expected to become subject to Title I of ERISA or Section 4975 of the Code.

(e) **Bankruptcy.** Section 5(a)(vii) of this Agreement is amended by replacing "15" with "30" on lines eighteen and twenty five.

(f) **Set-Off.**

Section 6(f) is amended by the addition of: "(or any other amounts whether or not arising under this Agreement, matured, contingent and irrespective of the currency, place of payment or booking of the obligation)" on the first line immediately after "Amount", and "or its Affiliates if it is the Non-defaulting Party or Non-affected Party" immediately after both instances of "party" on the first line.

(g) **Waiver of Jury Trial.** EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO THE OTHER PARTY'S ENTERING INTO THIS AGREEMENT.

(h) **2002 Master Agreement Protocol.** The parties agree that the definitions and provisions contained in Annexes 1 to 18 and Section 6 of the 2002 Master Agreement Protocol published by the International Swaps and Derivatives Association, Inc., on 15th July 2003 are incorporated into and will supplement and form part of this Agreement. References in those definitions and provisions to any "ISDA 2002 Master Agreement" or "2002 Master" will be deemed to be references to this Agreement.

(i) **ISDA Definitions.**

(i) The provisions of the 1998 FX and Currency Option Definitions (as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and the Foreign Exchange Committee) (as amended, modified or supplemented from time to time); and

(ii) The provisions of the 2005 ISDA Commodity Definitions (as published by the International Swaps and Derivatives Association, Inc.) (as amended, modified or supplemented from time to time) are hereby incorporated in their entirety.

(j) **FX and Precious Metal Confirmations.** For each FX Transaction, Currency Option Transaction, Bullion Transaction and Bullion Option Transaction entered into hereunder, Party A shall promptly send to Party B a Confirmation, via electronic transmission, web-based communication or facsimile transmission. Party B agrees to respond to such Confirmation by close of business the next Local Business Day after receipt of such Confirmation, either confirming agreement thereto or requesting a correction of any error(s) contained therein. Failure by Party B to respond within such period shall not affect the validity or enforceability of such Transaction and shall be deemed to be an affirmation of the terms contained in such Confirmation, absent manifest error ("Deemed Acceptance"). The parties agree that any such exchange or Deemed Acceptance of an electronic transmission, web-based communication or facsimile transmission shall constitute a Confirmation of such Transaction for all purposes hereunder.

(k) **Agreements.** Section 4 of this Agreement is hereby amended by the addition of Section 4(f) as follows:

"(f) **Physical Delivery.** In respect of any physically settled Transactions, it will, at the time of delivery, be the legal and beneficial owner, free of liens and other encumbrances, of any securities or commodities it delivers to the other party; and, in addition, with respect to any breach of this Section 4(f), Section 5(a)(ii) of this Agreement is hereby amended by the insertion of a period after

"Agreement" the second time it appears in the paragraph and the deletion of the remainder of the Section."

- (l) **Definitions.** Section 14 is hereby amended to include the following definitions in their appropriate alphabetical order:

"**Code**" means the U.S. Internal Revenue Code of 1986, as amended, or any successor statute.

"**Derivative Transaction**" means any transaction (including an agreement with respect thereto) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, weather index transaction, bullion/precious metal transaction, base metal transaction, or forward purchase or sale of a security, commodity or other financial instrument or interest, or any other similar transaction (including any option with respect to any of these transactions) and any combination of these transactions.

"**ERISA**" means the U.S. Employee Retirement Income Security Act of 1974, as amended, or any successor statute.

"**Net Asset Value**" means the result in U.S. Dollars of subtracting the total value of all liabilities (including but not limited to the aggregate mark-to-market value of all trading positions constituting liabilities) from the total value of all assets (including but not limited to cash, deposit accounts and instruments, securities, and the aggregate mark-to-market value of all trading positions constituting assets). For purposes of this computation, amounts denominated in a currency other than U.S. Dollars shall be converted to U.S. Dollars at the spot rate for such currency prevailing on the date of determination of the Net Asset Value.

For purposes of the above computations, inter-company transactions between Party B and any affiliate of Party B which result in a change to Party B's value shall not be considered an asset.

- (m) **FATCA - HIRE Act.**

(a) **FATCA PROTOCOL PROVISION.** Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. "Tax" as used in Part 2(a) of this Schedule (Payer Tax Representation) and "Indemnifiable Tax" as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "FATCA Withholding Tax"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this agreement. If the parties each independently decide to adhere to any ISDA Protocol on FATCA Withholding Tax, upon effective adherence by both parties, the provisions of such Protocol shall supersede the foregoing provision.

(b) **Section 871(m).** The parties agree that the amendments set out in the Attachment to the ISDA 2015 Section 871(m) Protocol published by ISDA on November 2, 2015, which is available on the



ISDA website ([www.isda.org](http://www.isda.org)) (the "Protocol"), will apply to this Agreement. The parties further agree that this Agreement will be deemed to be a Covered Master Agreement and that the Implementation Date will be the effective date of this Agreement as amended by the parties for the purposes of such amendments, regardless of the definitions of such terms in the Protocol.

- (n) ***ISDA Dodd Frank Protocols.*** The parties agree that, notwithstanding anything to the contrary in the ISDA August 2012 Dodd Frank Protocol (as published by the International Swaps and Derivatives Association, Inc. on August 13, 2012) that may have previously been entered into by the parties and the March 2013 Dodd Frank Protocol Agreement (as published by the International Swaps and Derivatives Association, Inc. on March 22, 2013) that may have previously been entered into by the parties (together, the "Protocol Agreements"), this Agreement shall constitute a "Protocol Covered Agreement" for all purposes under the Protocol Agreements.
- (o) ***Counterparts.*** This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission, by portable document ("PDF") or other electronic file contained in an email and by electronic messaging system), each of which will be deemed an original.
- (p) ***Prior Agreements.*** This Agreement shall supersede all Agreements between the parties entered into prior to the date of execution of this Agreement governing the terms of any Derivative Transactions between the parties and all confirmations relating to such Derivative Transactions shall supplement, form part of, and be subject to this Agreement, such confirmations shall be Confirmations hereunder and such Derivative Transactions shall be Transactions hereunder.
- (q) ***ISDA Resolution Stay Jurisdictional Modular Protocol - Swiss Jurisdictional Module.*** The terms of the Swiss Jurisdictional Module and the ISDA Resolution Stay Jurisdictional Modular Protocol (each published by the International Swaps and Derivatives Association, Inc. and together, the "Swiss Stay Provisions") are incorporated into and form part of this Agreement. For purposes thereof, this Agreement shall be deemed a Covered Agreement and the terms of the Swiss Stay Provisions shall apply to this Agreement as if Party A is a Regulated Entity Counterparty and Party B is a Module Adhering Party with the Implementation Date deemed to be the date of this Agreement. In the event of any inconsistencies between this Agreement and the Swiss Stay Provisions, the Swiss Stay Provisions will prevail.
- (r) ***Limited Recourse.*** Except as otherwise stated in the Agreement or this Schedule, or to the extent that the gross negligence, illegal activity, bad faith, willful misconduct, or fraudulent behavior of any third party contributes to or results in any liability, loss, damages, costs or expenses suffered by Party A, any amounts owed or liabilities incurred by Party B in respect of any Transaction entered into under this Agreement may be satisfied solely from the assets of Party B. Without limiting the generality of the foregoing, and except as otherwise stated above, in no event shall Party A have recourse under this Agreement, whether by set-off or otherwise, with respect to any such amounts owed or liabilities incurred to or against (i) any assets of any person or entity other than Party B, or (ii) any assets of any affiliate of Party B.
- (s) ***Recognition of U.S. Special Resolution Regimes.*** If Party B: (i) is not domiciled or incorporated in the United States, including any State; and not organized under the laws of the United States or any State; and (ii) does not have its principal place of business located in the United States, including any State; and (iii) is not a U.S. branch or U.S. agency, the following provisions shall apply:

In the event that Party A becomes subject to a proceeding under the FDI Act or the OLA (together, the "U.S. Special Resolution Regimes"), the transfer of this Agreement, and any interest and obligation in or under, and any property securing, this Agreement, from Party A will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any interest and obligation in or under, and any property securing, the Agreement, were governed by the laws of the United States or a State of the United States; and

In the event that Party A or an Affiliate of Party A becomes subject to a proceeding under a U.S. Special Resolution Regime, any Default Right with respect to this Agreement that may be exercised against Party A are permitted to be exercised to no greater extent than such Default Right could be exercised under such U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a State of the United States.

**Affiliate** as used in this clause (s) and clause (t) only has the meaning given in section 2(k) of the Bank Holding Company Act (12 U.S.C. 1841(k)) and section 225.2(a) of the Board's Regulation Y (12 CFR 225.2(a)).

**Default Right** as used in this clause (s) and clause (t) means, any:

(a) right of a party, whether contractual or otherwise (including, without limitation, rights incorporated by reference to any other contract, agreement, or document, and rights afforded by statute, civil code, regulation, and common law), to liquidate, terminate, cancel, rescind, or accelerate such agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure), suspend, delay, or defer payment or performance thereunder, or modify the obligations of a party thereunder, or any similar rights; and

(b) right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral, or any similar amount, that entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure;

*provided that* the term "Default Right" in respect of clause (t) only does not include any right under a contract that allows a party to terminate the contract on demand or at its option at a specified time, or from time to time, without the need to show cause.

References to the "exercise" of a Default Right or the entitlement "to exercise" a Default Right shall include the automatic or deemed exercise of a Default Right.

**FDI Act** means the Federal Deposit Insurance Act and the regulations promulgated thereunder.

**OLA** means Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

**State** means any state, commonwealth, territory, or possession of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

(t) **Limitation on Exercise of Certain Default Rights Related to an Affiliate's Entry Into Insolvency Proceedings.**

Notwithstanding anything to the contrary in this Agreement or any other agreement, the parties expressly acknowledge and agree that Party B shall not be permitted to exercise any Default Right with respect to this Agreement that is related, directly or indirectly, to an Affiliate of Party A becoming subject to an Insolvency Proceeding.

**Insolvency Proceeding** means a receivership, insolvency, liquidation, resolution, or similar proceeding.

(u) ***Delivery vs. Payment Settlement for Foreign Exchange Transactions.*** All payment obligations in connection with FX Transactions, Currency Option Transactions, cross-currency swaps or any other contract or Transaction, however described, subject to this Agreement involving concurrent or substantially concurrent payment obligations of the parties in different currencies (together the "***Subject Transactions***") may, at the election of Party A, be settled on a "delivery vs. payment" basis. As used herein, "delivery vs. payment" means that in connection with any payment obligation arising out of a Subject Transaction payable by Party A to Party B (the "***Party A Payment Obligations***") on a Settlement Date (as such term is defined in the 1998 FX Definitions, and/or as set forth in the relevant trade confirmation), Party A may require Party B to perform its Subject Transaction payment obligations to Party A prior to Party A performing the Party A Payment Obligations.

The parties further agree that in connection with the settlement of each Subject Transaction subject to such election: (a) Party A reserves the right to confirm receipt of the applicable currency from

Party B (such confirmation, a "receipt confirmation") prior to Party A performing the Party A Payment Obligations, (b) until the receipt confirmation occurs, Party A may refrain from performing the Party A Payment Obligations, (c) any failure of Party A to meet its obligations thereunder prior to a receipt confirmation shall not be deemed a Potential Event of Default or Event of Default with respect to Party A; and (d) Party A will not be obligated to pay compensation for any Subject Transaction not settling on the Settlement Date.

- (v) General Conditions to Payment. Without limiting the rights of a Non-defaulting Party under Section 6, the following is inserted at the end of Section 2(a)(iii):

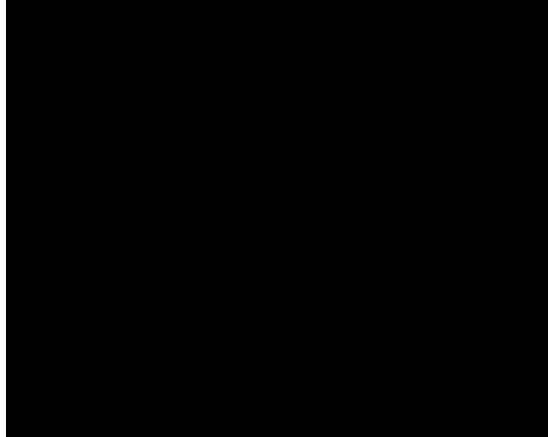
"provided that a party's right to suspend payments due to the condition precedent set forth in Section 2(a)(iii)(1) with respect to an Event of Default or Potential Event of Default shall only apply for a period not longer than 60 days after the Non-defaulting Party has received a Termination Request (as defined below) from the Defaulting Party and provided further that the Defaulting Party shall promptly provide the Non-defaulting Party with such material information as it may reasonably request during such period.

For the purposes herein, a "Termination Request" shall mean a notice requesting that the Non-defaulting Party suspend its payment or delivery obligations under Section 2(a)(i) for no longer than 60 days. A Termination Request may only be made and shall only be applicable at a time when the Non-defaulting Party is otherwise entitled to designate an Early Termination Date under this Agreement, and nothing herein shall limit the Non-defaulting Party's right to designate an Early Termination Date. Such Termination Request may only be delivered to the Non-Defaulting Party after the Non-Defaulting Party does not make a payment or delivery when due under Section 2(a)(i) by reason of the condition precedent set forth in Section 2(a)(iii)(1) not being satisfied. The Termination Request shall not be effective unless delivered in the manner set forth in Section 12 of the Agreement as if it was a notice under Section 5 or 6."

IN WITNESS WHEREOF the parties have executed this Schedule with effect from the date specified on the first page of this document.

UBS AG

By: *Nahyan Chowdhury*  
Name: Nahyan Chowdhury  
Title: Director



By: *Abigail Clark*  
Name: ABIGAIL CLARK  
Title: DIRECTOR

# ISDA<sup>®</sup>

International Swaps and Derivatives Association, Inc.

## 2002 MASTER AGREEMENT

dated as of .....August 8, 2019

..... **UBS AG** ..... and 

have entered and/or anticipate entering into one or more transactions (each a “Transaction”) that are or will be governed by this 2002 Master Agreement, which includes the schedule (the “Schedule”), and the documents and other confirming evidence (each a “Confirmation”) exchanged between the parties or otherwise effective for the purpose of confirming or evidencing those Transactions. This 2002 Master Agreement and the Schedule are together referred to as this “Master Agreement”.

Accordingly, the parties agree as follows:-

### 1. Interpretation

(a) **Definitions.** The terms defined in Section 14 and elsewhere in this Master Agreement will have the meanings therein specified for the purpose of this Master Agreement.

(b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement, such Confirmation will prevail for the purpose of the relevant Transaction.

(c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this “Agreement”), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

#### (a) General Conditions.

(i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.

(ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other condition specified in this Agreement to be a condition precedent for the purpose of this Section 2(a)(iii).

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the Scheduled Settlement Date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting of Payments.** If on any date amounts would otherwise be payable:-

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by which the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount and payment obligation will be determined in respect of all amounts payable on the same date in the same currency in respect of those Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or any Confirmation by specifying that "Multiple Transaction Payment Netting" applies to the Transactions identified as being subject to the election (in which case clause (ii) above will not apply to such Transactions). If Multiple Transaction Payment Netting is applicable to Transactions, it will apply to those Transactions with effect from the starting date specified in the Schedule or such Confirmation, or, if a starting date is not specified in the Schedule or such Confirmation, the starting date otherwise agreed by the parties in writing. This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:-

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and

(4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:-

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If:-

(1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);

(2) X does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

### 3. Representations

Each party makes the representations contained in Sections 3(a), 3(b), 3(c), 3(d), 3(e) and 3(f) and, if specified in the Schedule as applying, 3(g) to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement). If any "Additional Representation" is specified in the Schedule or any Confirmation as applying, the party or parties specified for such Additional Representation will make and, if applicable, be deemed to repeat such Additional Representation at the time or times specified for such Additional Representation.

(a) **Basic Representations.**

(i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;



(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it, any of its Credit Support Providers or any of its applicable Specified Entities any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

(g) **No Agency.** It is entering into this Agreement, including each Transaction, as principal and not as agent of any person or entity.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:-

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under clause (iii) below, to such government or taxing authority as the other party reasonably directs:-

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply With Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organised, managed and controlled or considered to have its seat, or where an Office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction"), and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

## 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes (subject to Sections 5(c) and 6(e)(iv)) an event of default (an "Event of Default") with respect to such party:-

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) required to be made by it if such failure is not remedied on or before the first Local Business Day in the case of any such payment or the first Local Delivery Day in the case of any such delivery after, in each case, notice of such failure is given to the party;

(ii) **Breach of Agreement; Repudiation of Agreement.**

(1) Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied within 30 days after notice of such failure is given to the party; or

(2) the party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, this Master Agreement, 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);

(iii) ***Credit Support Default.***

(1) Failure by the party or any Credit Support Provider of such party 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 such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document, or any security interest granted by such party or such Credit Support Provider to the other party pursuant to any such Credit Support Document, to be in full force and effect for the purpose of this Agreement (in each case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iv) ***Misrepresentation.*** A representation (other than a representation under Section 3(e) or 3(f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) ***Default Under Specified Transaction.*** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:-

(1) defaults (other than by failing to make a delivery) under a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction;

(2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment due on the last payment or exchange date of, or any payment on early termination of, a Specified Transaction (or, if there is no applicable notice requirement or grace period, such default continues for at least one Local Business Day);

(3) defaults in making any delivery due under (including any delivery due on the last delivery or exchange date of) a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, all transactions outstanding under the documentation applicable to that Specified Transaction; or

(4) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, a Specified Transaction or any credit support arrangement relating to a Specified Transaction that is, in either case, confirmed or evidenced by a document or other confirming evidence executed and delivered by that party, Credit Support Provider or Specified Entity (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross-Default.** If “Cross-Default” is specified in the Schedule as applying to the party, the occurrence or existence of:-

(1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) where the aggregate principal amount of such agreements or instruments, either alone or together with the amount, if any, referred to in clause (2) below, is not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments before it would otherwise have been due and payable; or

(2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments under such agreements or instruments on the due date for payment (after giving effect to any applicable notice requirement or grace period) in an aggregate amount, either alone or together with the amount, if any, referred to in clause (1) above, of not less than the applicable Threshold Amount;

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:-

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, 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 by it or such regulator, supervisor or similar official, or (B) 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 such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (I) 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 (II) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) 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; (7) 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 such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, reincorporates or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganisation, reincorporation or reconstitution:-

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes (subject to Section 5(c)) an Illegality if the event is specified in clause (i) below, a Force Majeure Event if the event is specified in clause (ii) below, a Tax Event if the event is specified in clause (iii) below, a Tax Event Upon Merger if the event is specified in clause (iv) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to clause (v) below or an Additional Termination Event if the event is specified pursuant to clause (vi) below:-

(i) **Illegality.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, due to an event or circumstance (other than any action taken by a party or, if applicable, any Credit Support Provider of such party) occurring after a Transaction is entered into, it becomes unlawful under any applicable law (including without limitation the laws of any country in which payment, delivery or compliance is required by either party or any Credit Support Provider, as the case may be), on any day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day (in each case, other than as a result of a breach by the party of Section 4(b)):-

(1) for the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction to perform any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) for such party or any Credit Support Provider of such party (which will be the Affected Party) to perform any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, to receive a payment or delivery under such Credit Support Document or to comply with any other material provision of such Credit Support Document;

(ii) **Force Majeure Event.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, by reason of force majeure or act of state occurring after a Transaction is entered into, on any day:-

(1) the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction is prevented from performing any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, from receiving a payment or delivery in respect of such Transaction or from complying with any other material provision of this Agreement relating to such Transaction (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or

impracticable for such Office so to perform, receive or comply (or it would be impossible or impracticable for such Office so to perform, receive or comply if such payment, delivery or compliance were required on that day); or

(2) such party or any Credit Support Provider of such party (which will be the Affected Party) is prevented from performing any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, from receiving a payment or delivery under such Credit Support Document or from complying with any other material provision of such Credit Support Document (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply (or it would be impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply if such payment, delivery or compliance were required on that day),

so long as the force majeure or act of state is beyond the control of such Office, such party or such Credit Support Provider, as appropriate, and such Office, party or Credit Support Provider could not, after using all reasonable efforts (which will not require such party or Credit Support Provider to incur a loss, other than immaterial, incidental expenses), overcome such prevention, impossibility or impracticability;

(iii) **Tax Event.** Due to (1) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (2) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Settlement Date (A) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (B) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 9(h)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iv) **Tax Event Upon Merger.** The party (the “Burdened Party”) on the next succeeding Scheduled Settlement Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets (or any substantial part of the assets comprising the business conducted by it as of the date of this Master Agreement) to, or reorganising, reincorporating or reconstituting into or as, another entity (which will be the Affected Party) where such action does not constitute a Merger Without Assumption;

(v) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, a Designated Event (as defined below) occurs with respect to such party, any Credit Support Provider of such party or any applicable Specified Entity of such party (in each case, “X”) and such Designated Event does not constitute a Merger Without Assumption, and the creditworthiness of X or, if applicable, the successor, surviving or transferee entity of X, after taking into account any applicable Credit Support Document, is materially weaker immediately after the occurrence of such Designated Event than that of X immediately prior to the occurrence of such Designated Event (and, in any such event, such party or its successor, surviving or transferee entity, as appropriate, will be the Affected Party). A “Designated Event” with respect to X means that:-

(1) X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or any substantial part of the assets comprising the business conducted by X as of the

date of this Master Agreement) to, or reorganises, reincorporates or reconstitutes into or as, another entity;

(2) any person, related group of persons or entity acquires directly or indirectly the beneficial ownership of (A) equity securities having the power to elect a majority of the board of directors (or its equivalent) of X or (B) any other ownership interest enabling it to exercise control of X; or

(3) X effects any substantial change in its capital structure by means of the issuance, incurrence or guarantee of debt or the issuance of (A) preferred stock or other securities convertible into or exchangeable for debt or preferred stock or (B) in the case of entities other than corporations, any other form of ownership interest; or

(vi) **Additional Termination Event.** If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties will be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Hierarchy of Events.**

(i) An event or circumstance that constitutes or gives rise to an Illegality or a Force Majeure Event will not, for so long as that is the case, also constitute or give rise to an Event of Default under Section 5(a)(i), 5(a)(ii)(1) or 5(a)(iii)(1) insofar as such event or circumstance relates to the failure to make any payment or delivery or a failure to comply with any other material provision of this Agreement or a Credit Support Document, as the case may be.

(ii) Except in circumstances contemplated by clause (i) above, if an event or circumstance which would otherwise constitute or give rise to an Illegality or a Force Majeure Event also constitutes an Event of Default or any other Termination Event, it will be treated as an Event of Default or such other Termination Event, as the case may be, and will not constitute or give rise to an Illegality or a Force Majeure Event.

(iii) If an event or circumstance which would otherwise constitute or give rise to a Force Majeure Event also constitutes an Illegality, it will be treated as an Illegality, except as described in clause (ii) above, and not a Force Majeure Event.

(d) **Deferral of Payments and Deliveries During Waiting Period.** If an Illegality or a Force Majeure Event has occurred and is continuing with respect to a Transaction, each payment or delivery which would otherwise be required to be made under that Transaction will be deferred to, and will not be due until:-

(i) the first Local Business Day or, in the case of a delivery, the first Local Delivery Day (or the first day that would have been a Local Business Day or Local Delivery Day, as appropriate, but for the occurrence of the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event) following the end of any applicable Waiting Period in respect of that Illegality or Force Majeure Event, as the case may be; or

(ii) if earlier, the date on which the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event ceases to exist or, if such date is not a Local Business Day or, in the case of a delivery, a Local Delivery Day, the first following day that is a Local Business Day or Local Delivery Day, as appropriate.

(e) **Inability of Head or Home Office to Perform Obligations of Branch.** If (i) an Illegality or a Force Majeure Event occurs under Section 5(b)(i)(1) or 5(b)(ii)(1) and the relevant Office is not the Affected Party's head or home office, (ii) Section 10(a) applies, (iii) the other party seeks performance of the relevant obligation or

compliance with the relevant provision by the Affected Party's head or home office and (iv) the Affected Party's head or home office fails so to perform or comply due to the occurrence of an event or circumstance which would, if that head or home office were the Office through which the Affected Party makes and receives payments and deliveries with respect to the relevant Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and such failure would otherwise constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) with respect to such party, then, for so long as the relevant event or circumstance continues to exist with respect to both the Office referred to in Section 5(b)(i)(1) or 5(b)(ii)(1), as the case may be, and the Affected Party's head or home office, such failure will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1).

## 6. Early Termination; Close-Out Netting

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

### (b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event other than a Force Majeure Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction, and will also give the other party such other information about that Termination Event as the other party may reasonably require. If a Force Majeure Event occurs, each party will, promptly upon becoming aware of it, use all reasonable efforts to notify the other party, specifying the nature of that Force Majeure Event, and will also give the other party such other information about that Force Majeure Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, other than immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice of such occurrence is given under Section 6(b)(i) to avoid that Termination Event.



(iv) ***Right to Terminate.***

(1) **If:-**

(A) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(B) a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there are two Affected Parties, or the Non-affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, if the relevant Termination Event is then continuing, by not more than 20 days notice to the other party, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(2) **If at any time an Illegality or a Force Majeure Event has occurred and is then continuing and any applicable Waiting Period has expired:-**

(A) Subject to clause (B) below, either party may, by not more than 20 days notice to the other party, designate (I) a day not earlier than the day on which such notice becomes effective as an Early Termination Date in respect of all Affected Transactions or (II) by specifying in that notice the Affected Transactions in respect of which it is designating the relevant day as an Early Termination Date, a day not earlier than two Local Business Days following the day on which such notice becomes effective as an Early Termination Date in respect of less than all Affected Transactions. Upon receipt of a notice designating an Early Termination Date in respect of less than all Affected Transactions, the other party may, by notice to the designating party, if such notice is effective on or before the day so designated, designate that same day as an Early Termination Date in respect of any or all other Affected Transactions.

(B) An Affected Party (if the Illegality or Force Majeure Event relates to performance by such party or any Credit Support Provider of such party of an obligation to make any payment or delivery under, or to compliance with any other material provision of, the relevant Credit Support Document) will only have the right to designate an Early Termination Date under Section 6(b)(iv)(2)(A) as a result of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2) following the prior designation by the other party of an Early Termination Date, pursuant to Section 6(b)(iv)(2)(A), in respect of less than all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or 6(b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 9(h)(i) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date will be determined pursuant to Sections 6(e) and 9(h)(ii).

(d) **Calculations; Payment Date.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations), (2) specifying (except where there are two Affected Parties) any Early Termination Amount payable and (3) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation or market data obtained in determining a Close-out Amount, the records of the party obtaining such quotation or market data will be conclusive evidence of the existence and accuracy of such quotation or market data.

(ii) **Payment Date.** An Early Termination Amount due in respect of any Early Termination Date will, together with any amount of interest payable pursuant to Section 9(h)(ii)(2), be payable (1) on the day on which notice of the amount payable is effective in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default and (2) on the day which is two Local Business Days after the day on which notice of the amount payable is effective (or, if there are two Affected Parties, after the day on which the statement provided pursuant to clause (i) above by the second party to provide such a statement is effective) in the case of an Early Termination Date which is designated as a result of a Termination Event.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the amount, if any, payable in respect of that Early Termination Date (the "Early Termination Amount") will be determined pursuant to this Section 6(e) and will be subject to Section 6(f).

(i) **Events of Default.** If the Early Termination Date results from an Event of Default, the Early Termination Amount will be an amount equal to (1) the sum of (A) the Termination Currency Equivalent of the Close-out Amount or Close-out Amounts (whether positive or negative) determined by the Non-defaulting Party for each Terminated Transaction or group of Terminated Transactions, as the case may be, and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (2) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If the Early Termination Amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of the Early Termination Amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:-

(1) **One Affected Party.** Subject to clause (3) below, if there is one Affected Party, the Early Termination Amount will be determined in accordance with Section 6(e)(i), except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.

(2) **Two Affected Parties.** Subject to clause (3) below, if there are two Affected Parties, each party will determine an amount equal to the Termination Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an amount equal to (A) the sum of (I) one-half of the difference between the higher amount so determined (by party "X") and the lower amount so determined (by party "Y") and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.

(3) *Mid-Market Events.* If that Termination Event is an Illegality or a Force Majeure Event, then the Early Termination Amount will be determined in accordance with clause (1) or (2) above, as appropriate, except that, for the purpose of determining a Close-out Amount or Close-out Amounts, the Determining Party will:-

(A) if obtaining quotations from one or more third parties (or from any of the Determining Party's Affiliates), ask each third party or Affiliate (I) not to take account of the current creditworthiness of the Determining Party or any existing Credit Support Document and (II) to provide mid-market quotations; and

(B) in any other case, use mid-market values without regard to the creditworthiness of the Determining Party.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because Automatic Early Termination applies in respect of a party, the Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Adjustment for Illegality or Force Majeure Event.* The failure by a party or any Credit Support Provider of such party to pay, when due, any Early Termination Amount will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) if such failure is due to the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event. Such amount will (1) accrue interest and otherwise be treated as an Unpaid Amount owing to the other party if subsequently an Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions and (2) otherwise accrue interest in accordance with Section 9(h)(ii)(2).

(v) *Pre-Estimate.* The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks, and, except as otherwise provided in this Agreement, neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions.

(f) *Set-Off.* Any Early Termination Amount payable to one party (the "Payee") by the other party (the "Payer"), in circumstances where there is a Defaulting Party or where there is one Affected Party in the case where either a Credit Event Upon Merger has occurred or any other Termination Event in respect of which all outstanding Transactions are Affected Transactions has occurred, will, at the option of the Non-defaulting Party or the Non-affected Party, as the case may be ("X") (and without prior notice to the Defaulting Party or the Affected Party, as the case may be), be reduced by its set-off against any other amounts ("Other Amounts") payable by the Payee to the Payer (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party of any set-off effected under this Section 6(f).

For this purpose, either the Early Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) will be effective to create a charge or other security interest. This Section 6(f) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which any party is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise).

## 7. Transfer

Subject to Section 6(b)(ii) and to the extent permitted by applicable law, neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:-

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any Early Termination Amount payable to it by a Defaulting Party, together with any amounts payable on or with respect to that interest and any other rights associated with that interest pursuant to Sections 8, 9(h) and 11.

Any purported transfer that is not in compliance with this Section 7 will be void.

## 8. Contractual Currency

(a) **Payment in the Contractual Currency.** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the "Contractual Currency"). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in good faith and using commercially reasonable procedures in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in clause (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purpose of such judgment or order and the rate of exchange at which such party is able, acting in good faith and using

commercially reasonable procedures in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party.

(c) **Separate Indemnities.** To the extent permitted by applicable law, the indemnities in this Section 8 constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) **Evidence of Loss.** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

## 9. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. Each of the parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a party for fraud.

(b) **Amendments.** An amendment, modification or waiver in respect of this Agreement will only be effective if in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) **Counterparts and Confirmations.**

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission and by electronic messaging system), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation will be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes, by an exchange of electronic messages on an electronic messaging system or by an exchange of e-mails, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex, electronic message or e-mail constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

(h) ***Interest and Compensation.***

(i) ***Prior to Early Termination.*** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction:-

(1) ***Interest on Defaulted Payments.*** If a party defaults in the performance of any payment obligation, it will, to the extent permitted by applicable law and subject to Section 6(c), pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (3)(B) or (A) below), at the Default Rate.

(2) ***Compensation for Defaulted Deliveries.*** If a party defaults in the performance of any obligation required to be settled by delivery, it will on demand (A) compensate the other party to the extent provided for in the relevant Confirmation or elsewhere in this Agreement and (B) unless otherwise provided in the relevant Confirmation or elsewhere in this Agreement, to the extent permitted by applicable law and subject to Section 6(c), pay to the other party interest (before as well as after judgment) on an amount equal to the fair market value of that which was required to be delivered in the same currency as that amount, for the period from (and including) the originally scheduled date for delivery to (but excluding) the date of actual delivery (and excluding any period in respect of which interest or compensation in respect of that amount is due pursuant to clause (4) below), at the Default Rate. The fair market value of any obligation referred to above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party that was entitled to take delivery.

(3) ***Interest on Deferred Payments. If:-***

(A) a party does not pay any amount that, but for Section 2(a)(iii), would have been payable, it will, to the extent permitted by applicable law and subject to Section 6(c) and clauses (B) and (C) below, pay interest (before as well as after judgment) on that amount to the other party on demand (after such amount becomes payable) in the same currency as that amount, for the period from (and including) the date the amount would, but for Section 2(a)(iii), have been payable to (but excluding) the date the amount actually becomes payable, at the Applicable Deferral Rate;

(B) a payment is deferred pursuant to Section 5(d), the party which would otherwise have been required to make that payment will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the amount of the deferred payment to the other party on demand (after such amount becomes payable) in the same currency as the deferred payment, for the period from (and including) the date the amount would, but for Section 5(d), have been payable to (but excluding) the earlier of the date the payment is no longer deferred pursuant to Section 5(d) and the date during the deferral period upon which an Event of Default or Potential Event of Default with respect to that party occurs, at the Applicable Deferral Rate; or

(C) a party fails to make any payment due to the occurrence of an Illegality or a Force Majeure Event (after giving effect to any deferral period contemplated by clause (B) above), it will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as the event or circumstance giving rise to that Illegality or Force Majeure Event

continues and no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the date the party fails to make the payment due to the occurrence of the relevant Illegality or Force Majeure Event (or, if later, the date the payment is no longer deferred pursuant to Section 5(d)) to (but excluding) the earlier of the date the event or circumstance giving rise to that Illegality or Force Majeure Event ceases to exist and the date during the period upon which an Event of Default or Potential Event of Default with respect to that party occurs (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (B) above), at the Applicable Deferral Rate.

(4) *Compensation for Deferred Deliveries.* If:-

(A) a party does not perform any obligation that, but for Section 2(a)(iii), would have been required to be settled by delivery;

(B) a delivery is deferred pursuant to Section 5(d); or

(C) a party fails to make a delivery due to the occurrence of an Illegality or a Force Majeure Event at a time when any applicable Waiting Period has expired,

the party required (or that would otherwise have been required) to make the delivery will, to the extent permitted by applicable law and subject to Section 6(c), compensate and pay interest to the other party on demand (after, in the case of clauses (A) and (B) above, such delivery is required) if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

(ii) **Early Termination.** Upon the occurrence or effective designation of an Early Termination Date in respect of a Transaction:-

(1) *Unpaid Amounts.* For the purpose of determining an Unpaid Amount in respect of the relevant Transaction, and to the extent permitted by applicable law, interest will accrue on the amount of any payment obligation or the amount equal to the fair market value of any obligation required to be settled by delivery included in such determination in the same currency as that amount, for the period from (and including) the date the relevant obligation was (or would have been but for Section 2(a)(iii) or 5(d)) required to have been performed to (but excluding) the relevant Early Termination Date, at the Applicable Close-out Rate.

(2) *Interest on Early Termination Amounts.* If an Early Termination Amount is due in respect of such Early Termination Date, that amount will, to the extent permitted by applicable law, be paid together with interest (before as well as after judgment) on that amount in the Termination Currency, for the period from (and including) such Early Termination Date to (but excluding) the date the amount is paid, at the Applicable Close-out Rate.

(iii) **Interest Calculation.** Any interest pursuant to this Section 9(h) will be calculated on the basis of daily compounding and the actual number of days elapsed.

## 10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to and agrees with the other party that, notwithstanding the place of booking or its jurisdiction of incorporation or organisation, its obligations are the same in terms of recourse against it as if it had entered into the Transaction through its head or home office, except that a party will not have recourse to the head or home office of the other party in respect of any payment or delivery deferred pursuant to Section 5(d) for so long as the payment or delivery is so deferred. This representation and agreement will be deemed to be repeated by each party on each date on which the parties enter into a Transaction.

(b) If a party is specified as a Multibranch Party in the Schedule, such party may, subject to clause (c) below, enter into a Transaction through, book a Transaction in and make and receive payments and deliveries with respect to a Transaction through any Office listed in respect of that party in the Schedule (but not any other Office unless otherwise agreed by the parties in writing).

(c) The Office through which a party enters into a Transaction will be the Office specified for that party in the relevant Confirmation or as otherwise agreed by the parties in writing, and, if an Office for that party is not specified in the Confirmation or otherwise agreed by the parties in writing, its head or home office. Unless the parties otherwise agree in writing, the Office through which a party enters into a Transaction will also be the Office in which it books the Transaction and the Office through which it makes and receives payments and deliveries with respect to the Transaction. Subject to Section 6(b)(ii), neither party may change the Office in which it books the Transaction or the Office through which it makes and receives payments or deliveries with respect to a Transaction without the prior written consent of the other party.

## 11. Expenses

A Defaulting Party will on demand indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, execution fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 12. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner described below (except that a notice or other communication under Section 5 or 6 may not be given by electronic messaging system or e-mail) to the address or number or in accordance with the electronic messaging system or e-mail details provided (see the Schedule) and will be deemed effective as indicated:-

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered or its delivery is attempted;
- (v) if sent by electronic messaging system, on the date it is received; or



- (vi) if sent by e-mail, on the date it is delivered,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication will be deemed given and effective on the first following day that is a Local Business Day.

- (b) **Change of Details.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system or e-mail details at which notices or other communications are to be given to it.

### 13. Governing Law and Jurisdiction

- (a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

- (b) **Jurisdiction.** With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Agreement (“Proceedings”), each party irrevocably:-

- (i) submits:-

- (1) if this Agreement is expressed to be governed by English law, to (A) the non-exclusive jurisdiction of the English courts if the Proceedings do not involve a Convention Court and (B) the exclusive jurisdiction of the English courts if the Proceedings do involve a Convention Court; or

- (2) if this Agreement is expressed to be governed by the laws of the State of New York, to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City;

- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party; and

- (iii) agrees, to the extent permitted by applicable law, that the bringing of Proceedings in any one or more jurisdictions will not preclude the bringing of Proceedings in any other jurisdiction.

- (c) **Service of Process.** Each party irrevocably appoints the Process Agent, if any, specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party’s Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12(a)(i), 12(a)(iii) or 12(a)(iv). Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by applicable law.

- (d) **Waiver of Immunities.** Each party irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

## 14. Definitions

As used in this Agreement:-

**“Additional Representation”** has the meaning specified in Section 3.

**“Additional Termination Event”** has the meaning specified in

Section 5(b). **“Affected Party”** has the meaning specified in Section 5(b).

**“Affected Transactions”** means (a) with respect to any Termination Event consisting of an Illegality, Force Majeure Event, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event (which, in the case of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2), means all Transactions unless the relevant Credit Support Document references only certain Transactions, in which case those Transactions and, if the relevant Credit Support Document constitutes a Confirmation for a Transaction, that Transaction) and (b) with respect to any other Termination Event, all Transactions.

**“Affiliate”** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

**“Agreement”** has the meaning specified in Section 1(c).

**“Applicable Close-out Rate”** means:-

(a) in respect of the determination of an Unpaid Amount:-

(i) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(ii) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate;

(iii) in respect of obligations deferred pursuant to Section 5(d), if there is no Defaulting Party and for so long as the deferral period continues, the Applicable Deferral Rate; and

(iv) in all other cases following the occurrence of a Termination Event (except where interest accrues pursuant to clause (iii) above), the Applicable Deferral Rate; and

(b) in respect of an Early Termination Amount:-

(i) for the period from (and including) the relevant Early Termination Date to (but excluding) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable:-

(1) if the Early Termination Amount is payable by a Defaulting Party, the Default Rate;

(2) if the Early Termination Amount is payable by a Non-defaulting Party, the Non-default Rate; and

(3) in all other cases, the Applicable Deferral Rate; and

(ii) for the period from (and including) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable to (but excluding) the date of actual payment:-

(1) if a party fails to pay the Early Termination Amount due to the occurrence of an event or circumstance which would, if it occurred with respect to a payment or delivery under a Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and for so long as the Early Termination Amount remains unpaid due to the continuing existence of such event or circumstance, the Applicable Deferral Rate;

(2) if the Early Termination Amount is payable by a Defaulting Party (but excluding any period in respect of which clause (1) above applies), the Default Rate;

(3) if the Early Termination Amount is payable by a Non-defaulting Party (but excluding any period in respect of which clause (1) above applies), the Non-default Rate; and

(4) in all other cases, the Termination Rate.

**“Applicable Deferral Rate”** means:-

(a) for the purpose of Section 9(h)(i)(3)(A), the rate certified by the relevant payer to be a rate offered to the payer by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market;

(b) for purposes of Section 9(h)(i)(3)(B) and clause (a)(iii) of the definition of Applicable Close-out Rate, the rate certified by the relevant payer to be a rate offered to prime banks by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer after consultation with the other party, if practicable, for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market; and

(c) for purposes of Section 9(h)(i)(3)(C) and clauses (a)(iv), (b)(i)(3) and (b)(ii)(1) of the definition of Applicable Close-out Rate, a rate equal to the arithmetic mean of the rate determined pursuant to clause (a) above and a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount.

**“Automatic Early Termination”** has the meaning specified in Section 6(a).

**“Burdened Party”** has the meaning specified in Section 5(b)(iv).

**“Change in Tax Law”** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs after the parties enter into the relevant Transaction.

**“Close-out Amount”** means, with respect to each Terminated Transaction or each group of Terminated Transactions and a Determining Party, the amount of the losses or costs of the Determining Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Determining Party that are or would be realised under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Determining Party the economic equivalent of, (a) the material terms of that Terminated Transaction or group of Terminated Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of that Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in

Section 2(a)(iii)) and (b) the option rights of the parties in respect of that Terminated Transaction or group of Terminated Transactions.

Any Close-out Amount will be determined by the Determining Party (or its agent), which will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. The Determining Party may determine a Close-out Amount for any group of Terminated Transactions or any individual Terminated Transaction but, in the aggregate, for not less than all Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

Unpaid Amounts in respect of a Terminated Transaction or group of Terminated Transactions and legal fees and out-of-pocket expenses referred to in Section 11 are to be excluded in all determinations of Close-out Amounts.

In determining a Close-out Amount, the Determining Party may consider any relevant information, including, without limitation, one or more of the following types of information:-

- (i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;
- (ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or
- (iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party's Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

The Determining Party will consider, taking into account the standards and procedures described in this definition, quotations pursuant to clause (i) above or relevant market data pursuant to clause (ii) above unless the Determining Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in clause (i), (ii) or (iii) above, the Determining Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilised. Third parties supplying quotations pursuant to clause (i) above or market data pursuant to clause (ii) above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Without duplication of amounts calculated based on information described in clause (i), (ii) or (iii) above, or other relevant information, and when it is commercially reasonable to do so, the Determining Party may in addition consider in calculating a Close-out Amount any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to a Terminated Transaction or group of Terminated Transactions (or any gain resulting from any of them).

Commercially reasonable procedures used in determining a Close-out Amount may include the following:-

- (1) application to relevant market data from third parties pursuant to clause (ii) above or information from internal sources pursuant to clause (iii) above of pricing or other valuation models that are, at the time of the determination of the Close-out Amount, used by the Determining Party in the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the Terminated Transaction or group of Terminated Transactions; and

(2) application of different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.

**“Confirmation”** has the meaning specified in the preamble.

**“consent”** includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

**“Contractual Currency”** has the meaning specified in Section 8(a).

**“Convention Court”** means any court which is bound to apply to the Proceedings either Article 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters or Article 17 of the 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

**“Credit Event Upon Merger”** has the meaning specified in Section 5(b).

**“Credit Support Document”** means any agreement or instrument that is specified as such in this Agreement.

**“Credit Support Provider”** has the meaning specified in the Schedule.

**“Cross-Default”** means the event specified in Section 5(a)(vi).

**“Default Rate”** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**“Defaulting Party”** has the meaning specified in Section 6(a).

**“Designated Event”** has the meaning specified in Section 5(b)(v).

**“Determining Party”** means the party determining a Close-out Amount.

**“Early Termination Amount”** has the meaning specified in Section 6(e).

**“Early Termination Date”** means the date determined in accordance with Section 6(a) or 6(b)(iv).

**“electronic messages”** does not include e-mails but does include documents expressed in markup languages, and **“electronic messaging system”** will be construed accordingly.

**“English law”** means the law of England and Wales, and **“English”** will be construed accordingly.

**“Event of Default”** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**“Force Majeure Event”** has the meaning specified in Section 5(b).

**“General Business Day”** means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits).

**“Illegality”** has the meaning specified in Section 5(b).

**“Indemnifiable Tax”** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

**“law”** includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority), and **“unlawful”** will be construed accordingly.

**“Local Business Day”** means (a) in relation to any obligation under Section 2(a)(i), a General Business Day in the place or places specified in the relevant Confirmation and a day on which a relevant settlement system is open or operating as specified in the relevant Confirmation or, if a place or a settlement system is not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) for the purpose of determining when a Waiting Period expires, a General Business Day in the place where the event or circumstance that constitutes or gives rise to the Illegality or Force Majeure Event, as the case may be, occurs, (c) in relation to any other payment, a General Business Day in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment and, if that currency does not have a single recognised principal financial centre, a day on which the settlement system necessary to accomplish such payment is open, (d) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), a General Business Day (or a day that would have been a General Business Day but for the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event) in the place specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (e) in relation to Section 5(a)(v)(2), a General Business Day in the relevant locations for performance with respect to such Specified Transaction.

**“Local Delivery Day”** means, for purposes of Sections 5(a)(i) and 5(d), a day on which settlement systems necessary to accomplish the relevant delivery are generally open for business so that the delivery is capable of being accomplished in accordance with customary market practice, in the place specified in the relevant Confirmation or, if not so specified, in a location as determined in accordance with customary market practice for the relevant delivery.

**“Master Agreement”** has the meaning specified in the preamble.

**“Merger Without Assumption”** means the event specified in Section 5(a)(viii).

**“Multiple Transaction Payment Netting”** has the meaning specified in Section 2(c).

**“Non-affected Party”** means, so long as there is only one Affected Party, the other party.

**“Non-default Rate”** means the rate certified by the Non-defaulting Party to be a rate offered to the Non-defaulting Party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the Non-defaulting Party for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market.

**“Non-defaulting Party”** has the meaning specified in Section 6(a).

**“Office”** means a branch or office of a party, which may be such party’s head or home office.

**“Other Amounts”** has the meaning specified in Section 6(f).

**“Payee”** has the meaning specified in Section 6(f).

**“Payer”** has the meaning specified in Section 6(f).

**“Potential Event of Default”** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**“Proceedings”** has the meaning specified in Section 13(b).

**“Process Agent”** has the meaning specified in the Schedule.

**“rate of exchange”** includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

**“Relevant Jurisdiction”** means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

**“Schedule”** has the meaning specified in the preamble.

**“Scheduled Settlement Date”** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**“Specified Entity”** has the meaning specified in the Schedule.

**“Specified Indebtedness”** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

**“Specified Transaction”** means, subject to the Schedule, (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is not a Transaction under this Agreement but (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**“Stamp Tax”** means any stamp, registration, documentation or similar tax.

**“Stamp Tax Jurisdiction”** has the meaning specified in Section 4(e).

**“Tax”** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

**“Tax Event”** has the meaning specified in Section 5(b).

**“Tax Event Upon Merger”** has the meaning specified in Section 5(b).

**“Terminated Transactions”** means, with respect to any Early Termination Date, (a) if resulting from an Illegality or a Force Majeure Event, all Affected Transactions specified in the notice given pursuant to Section 6(b)(iv), (b) if resulting from any other Termination Event, all Affected Transactions and (c) if resulting from an Event of Default, all Transactions in effect either immediately before the effectiveness of the notice designating that Early Termination Date or, if Automatic Early Termination applies, immediately before that Early Termination Date.

**“Termination Currency”** means (a) if a Termination Currency is specified in the Schedule and that currency is freely available, that currency, and (b) otherwise, euro if this Agreement is expressed to be governed by English law or United States Dollars if this Agreement is expressed to be governed by the laws of the State of New York.

**“Termination Currency Equivalent”** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the “Other Currency”), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Close-out Amount is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

**“Termination Event”** means an Illegality, a Force Majeure Event, a Tax Event, a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

**“Termination Rate”** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

**“Threshold Amount”** means the amount, if any, specified as such in the Schedule.

**“Transaction”** has the meaning specified in the preamble.

**“Unpaid Amounts”** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii) or due but for Section 5(d)) to such party under Section 2(a)(i) or 2(d)(i)(4) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date, (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii) or 5(d)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered and (c) if the Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions, any Early Termination Amount due prior to such Early Termination Date and which remains unpaid as of such Early Termination Date, in each case together with any amount of interest accrued or other



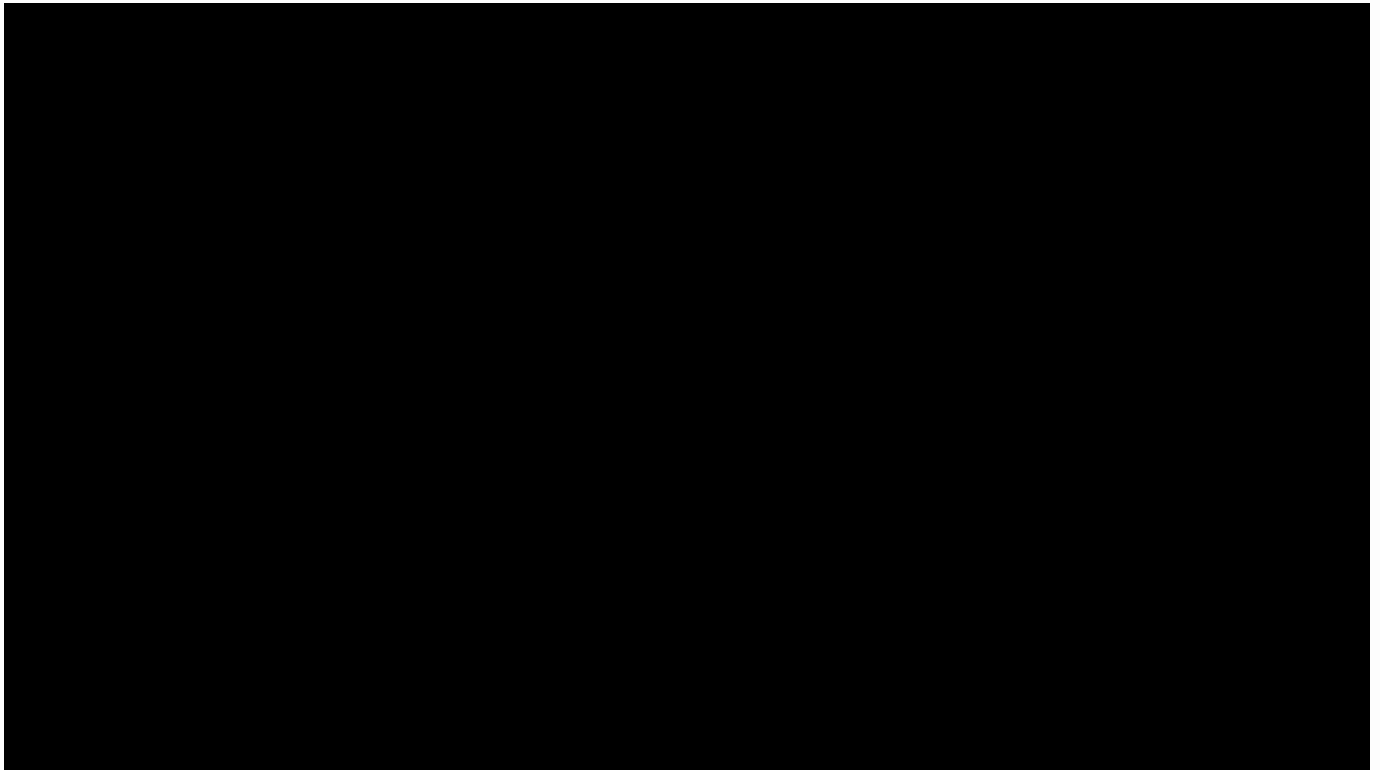
compensation in respect of that obligation or deferred obligation, as the case may be, pursuant to Section 9(h)(ii)(1) or (2), as appropriate. The fair market value of any obligation referred to in clause (b) above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it will be the average of the Termination Currency Equivalents of the fair market values so determined by both parties.

**“Waiting Period”** means:-

(a) in respect of an event or circumstance under Section 5(b)(i), other than in the case of Section 5(b)(i)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of three Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance; and

(b) in respect of an event or circumstance under Section 5(b)(ii), other than in the case of Section 5(b)(ii)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of eight Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.



**SCHEDULE**  
**to the ISDA 2002 Master Agreement**  
**dated as of August 8, 2019**  
**between**

UBS AG, a banking corporation organized  
under the laws of Switzerland

and

[REDACTED]  
[REDACTED]  
[REDACTED]

(“Party A”)

(“Party B”)

**Part 1**  
**Termination Provisions**

In this Agreement:

(a) “**Specified Entity**” means in relation to Party A for the purpose of:

Section 5(a)(v),	UBS Securities LLC
Section 5(a)(vi),	NONE
Section 5(a)(vii),	NONE
Section 5(b)(iv),	NONE

and in relation to Party B for the purpose of:

Section 5(a)(v),	NONE
Section 5(a)(vi),	NONE
Section 5(a)(vii),	NONE
Section 5(b)(iv),	NONE

(b) “**Specified Transaction**” will have the meaning in Section 14 of this Agreement with the addition of the following after “weather index transaction” on the tenth line: “precious metal transaction, letters of credit reimbursement obligation, and any transactions or obligations under any prime brokerage or centrally cleared derivative agreements.”

(c) The “**Cross Default**” provisions of Section 5(a)(vi) of this Agreement will apply to Party A and to Party B; Section 5(a)(vi) of this Agreement is hereby amended by the addition of the following at the end thereof:

“*provided, however, that notwithstanding the foregoing, an Event of Default shall not occur under (2) above if, as demonstrated to the reasonable satisfaction of the other party, (a) the failure to pay referred to in (2) is a failure to pay caused by an error or omission of an administrative or operational nature; and (b) funds were available to such party to enable it to make the relevant payment when due; and (c) such relevant payment is made within three Local Business Days following receipt of written notice from an interested party of such failure to pay.*”

Additionally, Section 5(a)(vi) of this Agreement is hereby amended by deleting in the seventh line thereof the words, “or becoming capable at such time of being declared.”

If such provisions apply:

**“Specified Indebtedness”** means any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of any Specified Transaction (except that, for this purpose only, the words “and any other entity” shall be substituted for the words “and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party)” where they appear in the definition of Specified Transaction).

For the purposes of determining whether the Threshold Amount has been reached or exceeded, in relation to agreements or instruments that in good faith are generally considered derivative instruments, the portion attributable to Specified Indebtedness shall be calculated using their mark-to-market value (without regard to any collateral or margin) and if governed by a master agreement by using the amount that becomes, or would become, payable under such agreement as a result of the liquidation or termination of such agreement, as estimated by the Non-Defaulting Party in good faith and a commercially reasonable manner.

**“Threshold Amount”** means:

- (i) with respect to Party A, an amount equal to 3% of shareholders’ equity (howsoever described) of Party A as shown on the most recent annual audited financial statements of Party A, and
  - (ii) with respect to Party B, 3% of the Net Asset Value of Party B, as shown on the most recent annual audited financial statements of Party B.
- (d) **The “Credit Event Upon Merger”** provisions of Section 5(b)(v) will apply to Party A and Party B.
- (e) **The “Automatic Early Termination”** provision of Section 6(a) will apply to Party A and will not apply to Party B.
- (f) **“Termination Currency”** means United States Dollars (“USD”).
- (g) **“Additional Termination Event”** will apply. If any of the following events occurs with respect to Party B, such event shall constitute an Additional Termination Event (in which case the Affected Party shall be Party B):
- (i) **Decline in Net Asset Value.** (A) a 20% or greater decline in Party B’s Net Asset Value compared to Party B’s Net Asset Value as of the last Local Business Day of the preceding month (exclusive of contributions, subscriptions, redemptions and withdrawals) or (B) a 40% or greater decline in Party B’s Net Asset Value compared to Party B’s Net Asset Value as of the last Local Business Day of the twelfth preceding month.
  - (ii) **Minimum Net Asset Value.** The Net Asset Value of Party B declines below USD 125,000,000.
  - (iii) **Failure to Deliver Net Asset Value Report.** Party B shall fail to deliver a written report of its Net Asset Value and a calculation of the percentage change in Party B’s Net Asset Value (exclusive of shareholder redemptions, withdrawals, subscriptions, contributions and similar items (however described)) (collectively **“Net Asset Value Report”**) on or

before the second day after notice by Party A of a failure to deliver the report by following the required delivery date specified in Part 3 of this Schedule.

- (iv) **Change in Management.** Aaron Sosnick, John Singer and Vadim Khidekel shall cease to be actively involved in and responsible for the day-to-day management of the Investment Advisor, and a replacement reasonably acceptable to Party A is not promptly appointed.
- (v) **Change of Investment Advisor.** [REDACTED] (“Investment Advisor”) ceases to be the investment manager of Party B and a replacement reasonably acceptable to Party A is not promptly appointed.
- (h) **Fish or Cut Bait.** Notwithstanding anything in Section 9(f) of the Agreement to the contrary, if upon the occurrence of a Subject Event (as defined below), an Event of Default or Termination Event, as applicable has not been declared with respect to such Subject Event within 30 calendar days of the date on which the Non-defaulting Party or non-Affected Party (as applicable, “X”) receives written notice from the Defaulting Party or Affected Party (as applicable, “Y”) of the relevant Subject Event (which notice must expressly reference this provision, the 30 calendar day notice period and the specific Subject Event in order to be effective) X shall have no further right to declare an Event of Default or Termination Event, as applicable, with respect to such Subject Event, and the Subject Event shall be deemed to be no longer continuing.

“**Subject Event**” means a Termination Event or Event of Default.

## **Part 2** **Tax Representations**

- (a) **Payer Tax Representation.** For the purpose of Section 3(e), **Party A and Party B** hereby make the following representation: It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e)) to be made by it to the other party under this Agreement. In making this representation, it may rely on: (i) the accuracy of any representation made by the other party pursuant to Section 3(f); (ii) the satisfaction of the agreement of the other party contained in Section 4(a)(i) or 4(a)(iii) and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii); and (iii) the satisfaction of the agreement of the other party contained in Section 4(d); *provided* that it shall not be a breach of this representation where reliance is placed on clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.
- (b) **Payee Tax Representations.** For the purpose of Section 3(f) of this Agreement, **Party A** makes the following representations to Party B:
  - (i) In respect of each Transaction that Party A enters into under this Agreement through an Office that is located in the U.S., or for every Transaction in which personnel of Party A located in the U.S. materially participated, Party A makes the following representation to Party B:

For US federal income tax purposes, it is acting as nominee on behalf of UBS Securities LLC, a person that is a “United States person” as that term is defined under Section

7701(a)(30) of the US Internal Revenue Code (“**Code**”) and an “exempt recipient” as that term is defined in section 1.6049-4(c)(1)(ii) of the U.S. Treasury Regulations (“**Regulations**”).

(ii) In respect of each Transaction that Party A enters into under this Agreement through an Office that is not located in the U.S., and in which no personnel of Party A located in the U.S. materially participated, Party A makes the following representations to Party B:

(A) No payment received or to be received by it under this Agreement will be effectively connected with its conduct of a trade or business within the U.S. It is fully eligible for the benefits of the “Business Profits” or “Industrial and Commercial Profits” provision, as the case may be, the “Interest” provision or the “Other Income” provision (if any) of the Specified Treaty with respect to any payment described in such provisions and received or to be received by it in connection with this Agreement and no such payment is attributable to a trade or business carried on by it through a permanent establishment in the Specified Jurisdiction.

If such representation applies, then:

“*Specified Treaty*” means, with respect to a Transaction, the tax treaty applicable between Switzerland and the United States of America.

“*Specified Jurisdiction*” means the United States of America.

(B) It is a ‘non-U.S. branch of a foreign person’ as that term is used in section 1.1441-4(a)(3)(ii) of the Regulations, and it is a ‘foreign person’ as that term is used in section 1.6041-4(a)(4) of the Regulations.

(c) ***Payee Tax Representations.*** For the purpose of Section 3(f) of this Agreement, ***Party B*** makes the following representation to Party A:

(i) It is organized under the laws of the British Virgin Islands.

(ii) It is a “non-U.S. branch of a foreign person” as that term is used in United States Treasury Regulation Section 1.1441-4(a)(3)(ii) and it is a “foreign person” as that term is used in United States Treasury Regulation Section 1.6041-4(a)(4).

### **Part 3** **Agreement to Deliver Documents**

For the purpose of Sections 4(a) (i) and (ii) of this Agreement, each party agrees to deliver the following documents, as applicable:

(a) Tax forms, documents or certificates to be delivered are:

Each party agrees to complete, execute and deliver to the other party (or to such government or taxing authority as the other party reasonably directs), any tax form or related document that may be required or reasonably requested in order to allow the other party to make a payment under this Agreement (or a Credit Support Document of the other party) without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate.

<b>Party required to deliver document</b>	<b>Form/Document/Certificate</b>	<b>Date by which to be delivered</b>
Party A	With respect to each Transaction that is entered into under this Agreement whereby Party A is acting as nominee on behalf of UBS Securities LLC, a person that is a "United States person" as that term is defined under Section 7701(a)(30) of the Code, a duly completed and executed U.S. Internal Revenue Service Form W-8IMY (or successor thereto) for UBS AG, together with the required schedule and a duly executed and completed U.S. Internal Revenue Service Form W-9 for UBS Securities LLC.	(i) Upon execution and delivery of this Agreement, with such form to be updated at the beginning of each succeeding three calendar year period beginning after execution of this Agreement, or as otherwise required under then applicable Regulations; (ii) promptly upon reasonable demand by Party B; (iii) promptly upon learning that any Form W-8IMY (or any successor thereto) or W-9 has become inaccurate or incorrect; and (iv) prior to the expiration or obsolescence of any previously delivered form.
Party A	With respect to each Transaction that is entered into under this Agreement through an Office of Party A that is not located in the U.S., one duly executed and completed U.S. Internal Revenue Service Form W-8BEN-E (or any successor of such form).	(i) Upon execution and delivery of this Agreement, with such Form to be updated at the beginning of each succeeding three calendar year period beginning after execution of this Agreement, or as otherwise required under then applicable Regulations; (ii) promptly upon reasonable demand by Party B; (iii) promptly upon learning that any Form W-8BEN-E (or any successor thereto) has become inaccurate or incorrect; and (iv) prior to the expiration or obsolescence of any previously delivered form.
Party B	The appropriate duly executed and completed U.S. Internal Revenue Service Form W-8 (or any successor of such form).	(i) Upon execution and delivery of this Agreement; (ii) promptly upon reasonable demand by Party A and (iii) promptly upon learning that any form (or any successor thereto) has become inaccurate or incorrect.

(b) Other documents to be delivered are:

<b>Party required to deliver document</b>	<b>Form/Document/Certificate</b>	<b>Date by which to be delivered</b>	<b>Covered by Section 3(d) Representation</b>
Party A and Party B	Evidence of the authority and true signatures of each official or representative signing this Agreement	On or before execution of this Agreement	Yes

<b>Party required to deliver document</b>	<b>Form/Document/Certificate</b>	<b>Date by which to be delivered</b>	<b>Covered by Section 3(d) Representation</b>
Party B	The risk report which is regularly provided to all of Party B's outside investors on a monthly basis in the same form previously provided to Party B's outside investors; <i>provided</i> that Party A agrees that it will not declare an Additional Termination Event based on any estimate of Net Asset Value contained in such information. However, if Party B no longer provides such information to outside investors, Party B will verbally provide Party A with the following risk information: gross market exposure, net market exposure, geographic and sector breakdowns, and portfolio liquidity, in every case consistent with the manner in which such information was provided to outside investors.	Upon request	No
Party B	Investment Advisor letter	On or before execution of this Agreement	Yes
Party A	Annual audited financial statement	Within 120 days of the last Local Business Day of Party A's fiscal year; <i>provided, however,</i> that Party A shall be deemed to have satisfied such delivery requirement by making such report available to the general public by publication thereof on its website or on the U.S. Securities and Exchange Commission EDGAR information retrieval system	Yes
Party B	Annual audited financial statement	Within 120 days of the last Local Business Day of Party B's fiscal year	Yes
Party B	Written Net Asset Value Report of Party B as of the most recently ended calendar month.	Monthly (within 30 days after the end of the applicable month) to be delivered to SH-USRCHedgeFunds@ubs.com	Yes

<b>Party required to deliver document</b>	<b>Form/Document/Certificate</b>	<b>Date by which to be delivered</b>	<b>Covered by Section 3(d) Representation</b>
Party B	True and correct copy of the Investment Management Agreement (or equivalent authorizing documentation) authorizing the execution and delivery of this Agreement, Transactions (and confirmations thereof) and performance of its obligations thereunder by the Investment Advisor.	On or before execution of this Agreement	Yes
Party B	True and correct copy of any board resolution or partnership action (or equivalent authorizing documentation), as applicable, authorizing the execution and delivery of this Agreement, Transactions (and confirmations thereof) and performance of its obligations thereunder	On or before execution of this Agreement	Yes
Party B	True and correct copy of the constitutive documents of Party B (including without limitation the certificate of incorporation or formation, as applicable, the limited liability agreement, operating agreement, by-laws, memorandum, articles of association or other equivalents, the partnership agreement or limited partnership agreement and limited partnership certificate, as applicable, and any other relevant document), which has been certified by an officer or the relevant public authority where on file.	On or before execution of this Agreement	Yes
Party B	True and correct copy of the prospectus, offering memorandum or other disclosure document to be delivered to prospective investors in Party B	On or before execution of this Agreement	Yes
Party B	Credit Support Document described in Part 4(f)	On or before execution of this Agreement	Yes

**Part 4**  
**Miscellaneous**

- (a) *Addresses for Notices.* For the purposes of Section 12(a) of this Agreement:
- (i) All notices or communications to Party A with respect to a particular Transaction shall be sent per the contact information reflected in the Confirmation of that Transaction, and any other notices to Party A, including any notices pursuant to Sections 5 or 6 hereunder, shall be sent to:



Address: UBS AG  
1285 Avenue of the Americas  
New York, NY 10019  
Attention: Legal Department – Documentation Unit

With a mandatory copy to:

SH-UBSLegalNotices-Amer@ubs.com and SH-USRCHedgeFunds@ubs.com

- (ii) All notices or communications to Party B shall be sent care of the [REDACTED] to the address reflected below:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

- (b) **Process Agent.** For the purpose of Section 13 (c) of this Agreement:

- (i) Party A appoints as its Process Agent: Not Applicable  
(ii) Party B appoints as its Process Agent: [REDACTED]

- (c) **Offices.** The provisions of Section 10(a) of this Agreement will apply to Party A and Party B.

- (d) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement:

- (i) Party A is a Multibranch Party and may act through its branches in any of the following territories or countries: England and Wales, Hong Kong, United States of America, Singapore, Australia and Switzerland.  
(ii) Party B is not a Multibranch Party.

- (e) **Calculation Agent.** Calculation Agent is Party A, unless (i) otherwise specified in a Confirmation in relation to the relevant Transaction or (ii) an Event of Default has occurred and is continuing with respect to Party A, in which case the parties shall select a mutually agreeable independent third party which is a leading dealer for the relevant Transaction, to act as Calculation Agent (a “**Substitute Calculation Agent**”). If the parties cannot agree on a Substitute Calculation Agent, then Party A and Party B shall each pick a leading dealer in the relevant market and such dealers shall choose a third leading dealer to be the Substitute Calculation Agent. Party A or the Substitute Calculation Agent shall make each calculation in good faith and in a commercially reasonable manner.

Notwithstanding the foregoing, and subject to the last paragraph of this Part 4(e), if Party B in good faith has a commercially reasonable basis for disagreement with any calculation or determination made by Party A in its role as Calculation Agent, Party B may express such disagreement within two (2) Local Business Days’ of receipt of any calculation or determination from Party A. With respect to a disagreement, Party B shall specify in reasonable detail: (i) Party

B's basis for dispute, together with supporting calculations or evidence, (ii) the amount of Party B's calculation or the result of Party B's determination, (iii) in the case of a calculation the amount by which Party B's calculation differs from Party A's calculation, and in the case of a determination, if ascertainable, the amount of the difference between applying the Party A's determination and applying Party B's determination (the "**Disputed Amount**") and (iv) if applicable, the amount that is not subject to dispute (the "**Undisputed Amount**").

The Undisputed Amount shall be paid or delivered, as the case may, as scheduled for the relevant Transaction. Party A and Party B shall negotiate in good faith to resolve the Disputed Amount as promptly as practicable. If Party A and Party B are unable to reach agreement as to the Disputed Amount within two Local Business Day of the date on which Party B notifies Party A of the dispute, then Party A will recalculate the amount by requesting three independent third parties which are leading dealers for the relevant Transaction to provide their respective calculations of the Disputed Amount by taking the arithmetic average of those obtained. With respect to any determination made by the Calculation Agent that is not susceptible to resolution by arithmetic averaging, Party A will request one independent third party which is a leading dealer for the relevant Transaction (the "**Independent Calculation Agent**") to determine whether the Calculation Agent's determination under dispute is commercially reasonable. If such leading dealer determines that the disputed determination is commercially reasonable, then the Calculation Agent's original determination shall apply. If such leading dealer determines that the disputed determination is not commercially reasonable, such dealer shall provide its own determination.

It being understood, if no leading dealer provides the requested calculation or opines on the determination (or, if applicable, the Independent Calculation Agent does not so provide or opine) by 12:00 noon New York time on the Local Business Day that is three Local Business Days after the date on which Party B notifies Party A of the dispute (the "**Dispute Resolution Date**"), then the Calculation Agent's original calculations or determinations will be used. Any calculation or determination made pursuant to this section by leading dealer(s) will be binding in the absence of manifest error except as provided in the last paragraph of this Part 4(e). Party A will notify Party B of its recalculation of the Disputed Amount, and any resulting adjustments (such Disputed Amount, as adjusted pursuant hereto, the "**Adjusted Amount**"). If such notice is given prior to 11:00am, New York time, on Dispute Resolution Date, the applicable party shall transfer the Adjusted Amount, if any, by 6:00 p.m., New York time, on such Dispute Resolution Date. If such notice is given after 11:00 a.m., New York time on the Dispute Resolution Date, the applicable party shall transfer the Adjusted Amount, if any, by 6:00 p.m., New York time, on the Local Business Day next succeeding the date on which such notice is given. The costs (if any) relating to a Substitute Calculation Agent, Independent Calculation Agent or to such polling of leading dealer(s) shall be borne equally by both parties. Notwithstanding the previous paragraphs, where the terms of any Transaction hereunder provides for the solicitation of quotations from one or more dealers for purposes of making a calculation, selection of those dealers shall not be subject to this Part 4(e).

- (f) **Credit Support Documents.** The Credit Support Annex attached hereto is a Credit Support Document with respect Party A and Party B for all purposes hereunder and is incorporated herein by this reference.
- (g) **Credit Support Provider.** Not applicable.
- (h) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New York.

- (i) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will apply, except for the following groups of Transactions which shall be treated separately: (A) FX Transactions (including FX Transactions resulting from the exercise of Currency Option Transactions), (B) premium payable under Currency Option Transactions (each of (A) and (B) as defined in the 1998 FX and Currency Option Definitions) and (C) Commodity Transactions (as defined in the 2005 ISDA Commodity Definitions), in which case subparagraph (ii) of Section 2(c) of this Agreement will not apply.
- (j) “*Affiliate*” will have the meaning specified in Section 14 of this Agreement; *provided* that for purposes of this Agreement, Party B shall be deemed to have no affiliates
- (k) **Absence of Litigation.** For the purpose of Section 3(c):
  - (i) “*Specified Entity*” means in relation to Party A, any Affiliate of Party A.
  - (ii) “*Specified Entity*” means in relation to Party B, none.

**Part 5**  
**Other Provisions**

(a) ***Representations and Warranties.***

(i) ***Party A and Party B Representations.***

- (A) Each applicable party represents and warrants to and for the benefit of each other applicable party as of the date hereof, and shall be deemed to represent and warrant to and for the benefit of that party as of the date of each Transaction, that:
  - (1) ***No Agency.*** It is entering into this Agreement and each Transaction as principal (and not as agent or in any other capacity, fiduciary or otherwise).
  - (2) ***Eligible Contract Participant.*** It is an “eligible contract participant” as that term is defined in Section 1a(18) of the Commodity Exchange Act, as amended.
  - (3) ***Non-Public Information.*** In effecting a Transaction referenced to a security, it will not be aware of any material non-public information or unpublished price-sensitive information with respect to any security related to a Transaction that, under applicable securities laws, it would have to disclose in advance to a party effecting a purchase or sale with the Offeree of such security.
  - (4) ***Securities Act Representations.*** If any Transaction and/or the instrument underlying a Transaction is not otherwise excluded from the coverage, or otherwise exempt from the registration requirements, of the United States Securities Act of 1933, as amended (the “**Securities Act**”), then each party makes the following representations, warranties and covenants with respect to such Transaction, and such representations, warranties and covenants shall remain in full force and effect whenever the offeree or

buyer of the Transaction and/or the offeree or buyer of the instrument underlying the Transaction (the “Offeree”) shall enter into a Transaction, or make any payment or delivery relating to a Transaction:

- (I) Each party is entering into the Transaction for its own account as principal, and not with a view to, or for, resale, distribution or fractionalization thereof, in whole or in part.
  - (II) Each party acknowledges its understanding that the offer and sale of any Transaction with the other party is intended to be excluded from the coverage of, or otherwise exempt from registration under, the Securities Act, by virtue of Section 4(a)(2) of the Securities Act. In furtherance thereof, each party represents and warrants to the other party that (i) it has the financial ability to bear the economic risk of its investment, including a loss of its entire investment, (ii) it is an “accredited investor” as that term is defined under Regulation D under the Securities Act, and (iii) it has the knowledge and experience of investing in instruments similar to the Transaction and is capable of evaluating the risks and merits of the Transaction and has, or has had an opportunity to request, such information as it deemed necessary to make such evaluation.
  - (III) Each party understands that the Transaction has not been, and is not intended to be, registered under the Securities Act or under the securities laws of certain states and, therefore, cannot be resold, pledged, assigned or otherwise disposed of unless an exclusion from the coverage of the Securities Act, or an exemption for such resale, pledge, assignment or disposition is available. Neither party is obliged to register the Transaction or to assist the Offeree in complying with any exclusion from the coverage the Securities Act, or with any exemption from registration under the Securities Act or state securities laws.
- (B) ***Relationship Between Parties.*** Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):
- (1) ***Non-Reliance.*** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or verbal) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or verbal) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction.

- (2) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.
    - (3) **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction.
  - (ii) **Party B Representations.** Party B represents and warrants on and as of the date hereof, on the date on which it enters into a Transaction, and on and as of each date this Agreement or any Transaction remains outstanding:
    - (A) **Manager's Authority.** The Investment Advisor and each person acting on its behalf is duly authorized to receive any and all notices sent to Party B in respect of this Agreement and to act for and on behalf of Party B for all purposes under this Agreement including without limitation to execute and deliver Confirmations, to enter into Transactions, and to give instructions (including without limitation payment instructions). This representation shall be deemed to be repeated at all relevant times.
    - (B) [Reserved]
    - (C) **No ERISA Funds.** The assets of Party B do not include "plan assets" within the meaning of Section 3(42) of ERISA, and Party B is not otherwise subject to Title I of ERISA or Section 4975 of the Code; and
    - (D) **No Governmental Plan Funds.** The assets of Party B do not include the assets of any "governmental plan" within the meaning of Section 3(32) of ERISA, and Party B is not otherwise subject to any law, rule, regulation, or restriction governing the investment of the assets of such plans.
    - (E) [Reserved]
  - (iii) **Country-Specific Underlier Representation and Covenants.**
    - (A) **Indian Transactions.** If parties are entering into a Transaction which is or otherwise involves an offshore derivative instrument ("**ODI**") (as such term is defined for the purposes of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, and notifications, circulars, rules and guidelines of the Securities and Exchange Board of India issued from time to time) (collectively referred to as the "**FPI Regulations**"), the representations and undertakings made by Party B in favor of Party A in a letter titled "Notice Regarding Derivative Products Linked to Indian Securities or Indices" (which may be amended/replaced from time to time) (the "**ODI Letter**") shall apply to the Transaction and references to ODI in the ODI Letter shall be construed to include the Transaction. If a representation or undertaking in the ODI Letter proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated; or if Party B fails to comply with or perform any agreement or obligation undertaken by it in the ODI Letter, it shall be an Additional Termination Event with all Transactions which

are or otherwise involve an ODI (as defined in the ODI Letter) being the sole Affected Transactions, and with Party B being the sole Affected Party.

(B) ***Taiwanese Transactions.*** If the parties are entering into a Transaction referencing Taiwanese underliers where the relevant Exchange is in the Republic of China, Party B represents to Party A that:

- (1) it is not entering into the Transaction for the specific benefit or account of (I) any residents of the People's Republic of China ("PRC"), corporations in the PRC, or corporations outside the PRC that are beneficially owned by residents of the PRC or (II) any residents of the Republic of China ("ROC" or "Taiwan"), corporations in Taiwan, or corporations outside Taiwan that are beneficially owned by residents of Taiwan.
- (2) it will not, sell, transfer, assign, novate or otherwise dispose of the Transaction to or for the benefit or account of, or enter into any back-to-back equity derivative transaction with (I) any residents of the PRC, corporations in the PRC, or corporations outside the PRC which are beneficially owned by residents of the PRC or (II) any residents of Taiwan, corporations in Taiwan, or corporations outside Taiwan that are beneficially owned by residents of Taiwan.
- (3) details of the Transaction (including the identity of the parties) may, (I) upon request or order by any competent authority, regulatory or enforcement organisation, governmental or otherwise, including without limitation, the stock exchange on which the underlying shares are listed, (II) as required by applicable law, rules, regulations, codes or guidelines (whether having the force of law or otherwise), be disclosed in accordance with such request, order, law, rules, regulations, codes or guidelines (whether such disclosure is to be made to third parties or otherwise). By entering into the Transaction, Party B agrees to such disclosure and releases Party A (and its subsidiaries and affiliates) from any duty of confidentiality owed to it in relation to such information.

(C) ***Chinese Transactions.*** If the parties are entering into a Transaction referencing PRC underliers where the relevant Exchange is in the PRC, Party B represents to Party A that:

- (1) it is not a Domestic Investor;
- (2) none of its investors are Domestic Investors.
- (3) it will not sell, transfer, assign, novate or otherwise dispose of the Transaction to, or enter into any back-to-back equity derivative transaction with any Domestic Investor;
- (4) details of the Transaction (including identity of the parties) may (I) upon request or order by any competent authority, regulatory or enforcement organisation, governmental or otherwise, including without limitation, the stock exchange on which the underlying shares are listed, (II) as

required by applicable law, rules, regulations, codes or guidelines (whether having the force of law or otherwise), be disclosed in accordance with such request, order, law, rules, regulations, codes or guidelines (whether such disclosure is to be made to third parties or otherwise). By entering into the Transaction, Party B agrees to such disclosure and releases Party A (and its subsidiaries and affiliates) from any duty of confidentiality regarding such disclosure.

“*Domestic Investor*” means (i) domestic individual as defined in the Administrative Measures on Foreign Exchange Matters for Individuals as issued by the People’s Bank of China, and (ii) legal persons organized under the laws of the PRC (excluding Hong Kong, Macau and Taiwan).

(b) ***Further Agreements of Party B.***

- (i) Any amounts payable by Party A under this Agreement shall be satisfied when paid in accordance with the instructions of the Investment Advisor.
- (ii) Party B is bound as principal of any Transaction entered into by the Investment Advisor or any other person representing or purporting to represent the Investment Advisor, despite any lack of capacity, power or authority on the part of the Investment Advisor or such other person, unless Party A has received written notification from Party B that such Investment Advisor’s authority has been terminated
- (iii) Party B acknowledges that the letter from the Investment Advisor (the “Investment Advisor’s Letter”) received under Part 3 hereof is a material inducement to Party A in entering into this Agreement (inclusive of any Transaction entered into hereunder), that Party A shall (in entering into this Agreement and any Transaction hereunder) rely on the representations set forth in the Investment Advisor’s Letter and would not enter into this Agreement or any Transaction hereunder if the Investment Advisor Letter were not delivered by the Investment Advisor.

(c) ***Failure to Pay or Deliver / Default Under Specified Transaction.*** Sections 5(a)(i) and 5(a)(v)(2) of this Agreement are amended by inserting the following at the end of both provisions:

“Notwithstanding the foregoing, an Event of Default shall not have occurred if a party (the “**Subject Party**”) has failed to perform its obligation to make any payment or delivery (a “**Specified Failure**”) and, as demonstrated to the reasonable satisfaction of the other party on or before the first Local Business Day or first Local Delivery Day (as applicable) after notice of such failure is given to the party: (a) such Specified Failure was caused by an error or omission of an administrative or operational nature (an “**Excusable Failure**”) and (b) other than such Excusable Failure, the Subject Party has taken all steps necessary for it to take in order to cause such delivery or payment, as the case may be, to be made and, but for the Excusable Failure, is in all other respect capable of making delivery or payment, as the case may be on the scheduled delivery or payment date relating to such Specified Failure, and provided such relevant payment or delivery is made within three Local Business Days or Local Delivery Days (as applicable) after notice of such failure to pay is given to the party.”

(d) [Reserved]

(e) Set-Off. Section 6(f) is amended by the addition of:

“(or any other amounts whether or not arising under this Agreement, matured , contingent and irrespective of the currency, place of payment or booking of the obligation )” on the first line immediately after “Amount”, and “or its Affiliates if it is the Non-defaulting Party or Non-affected Party” immediately after both instances of “party” on the first line.

- (f) ***Waiver of Jury Trial.*** EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO THE OTHER PARTY’S ENTERING INTO THIS AGREEMENT.
- (g) ***2002 Master Agreement Protocol.*** The parties agree that the definitions and provisions contained in Annexes 1 to 18 and Section 6 of the 2002 Master Agreement Protocol published by the International Swaps and Derivatives Association, Inc., on 15th July 2003 are incorporated into and will supplement and form part of this Agreement. References in those definitions and provisions to any “ISDA 2002 Master Agreement” or “2002 Master” will be deemed to be references to this Agreement.
- (h) ***Consent to Recording.*** Each party (i) consents to the recording of all telephone conversations between trading, operations and marketing personnel of the parties and their Affiliates in connection with this Agreement or any potential Transaction, (ii) agrees to give notice to such personnel of it and its Affiliates that their calls will be recorded, and (iii) agrees that, in any Proceedings, it will not object to the introduction of such recordings in evidence on grounds that consent was not properly given.
- (i) ***Scope of Agreement.*** Upon the effectiveness of this Agreement and unless the parties to this Agreement otherwise agree in writing, by specific reference to this Agreement, that this provision does not apply, all Derivative Transactions (as defined below) then outstanding, or which may be entered into thereafter, between the parties, including Transactions entered into by the parties through Offices, if any, listed in Part 4(d), are deemed to be Transactions governed by this Agreement and any confirmation or other confirming evidence of the Transaction is deemed to be a Confirmation.
- (j) ***Agreements.*** Section 4 of this Agreement is hereby amended by the addition of Section 4(f) as follows:  
  
“(f) ***Physical Delivery.*** In respect of any physically settled Transactions, it will, at the time of delivery, be the legal and beneficial owner, free of liens and other encumbrances, of any securities or commodities it delivers to the other party; and, in addition, with respect to any breach of this Section 4(f), Section 5(a)(ii) of this Agreement is hereby amended by the insertion of a period after “Agreement” the second time it appears in the paragraph and the deletion of the remainder of the Section.”
- (k) ***ISDA Definitions.*** (i) The provisions of the 1998 FX and Currency Option Definitions (as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and the Foreign Exchange Committee) (as amended, modified or supplemented from time to time); and (ii) The provisions of the 2005 ISDA Commodity Definitions (as published by the International Swaps and Derivatives Association, Inc.) (as amended, modified or supplemented from time to time) are hereby incorporated in their entirety.



- (l) **Definitions.** Section 14 is hereby amended to include the following definitions in their appropriate alphabetical order:

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended, or any successor statute.

“**Derivative Transaction**” means any transaction (including an agreement with respect thereto) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, weather index transaction, bullion/precious metal transaction, base metal transaction, or forward purchase or sale of a security, commodity or other financial instrument or interest, or any other similar transaction (including any option with respect to any of these transactions) and any combination of these transactions.

“**ERISA**” means the U.S. Employee Retirement Income Security Act of 1974, as amended, or any successor statute.

“**Net Asset Value**” means the result in U.S. Dollars of subtracting the total value of all liabilities (including but not limited to the aggregate mark-to-market value of all trading positions constituting liabilities) from the total value of all assets (including but not limited to cash, deposit accounts and instruments, securities, and the aggregate mark-to-market value of all trading positions constituting assets). For purposes of this computation, amounts denominated in a currency other than U.S. Dollars shall be converted to U.S. Dollars at the spot rate for such currency prevailing on the date of determination of the Net Asset Value.

For purposes of the above computations, inter-company transactions between Party B and any affiliate of Party B which result in a change to Party B’s value shall not be considered an asset.

- (m) **Tax Event Upon Merger.** Section 5(b)(iii) of this Agreement is hereby amended by deleting the word “Indemnifiable” the second time it appears in the paragraph.
- (n) **FX and Precious Metal Confirmations.** For each FX Transaction, Currency Option Transaction, Bullion Transaction and Bullion Option Transaction entered into hereunder, Party A shall promptly send to Party B a Confirmation, via electronic transmission, web-based communication or facsimile transmission. Party B agrees to respond to such Confirmation by close of business the next Local Business Day after receipt of such Confirmation, either confirming agreement thereto or requesting a correction of any error(s) contained therein. Failure by Party B to respond within such period shall not affect the validity or enforceability of such Transaction and shall be deemed to be an affirmation of the terms contained in such Confirmation, absent manifest error (“Deemed Acceptance”). The parties agree that any such exchange or Deemed Acceptance of an electronic transmission, web-based communication or facsimile transmission shall constitute a Confirmation of such Transaction for all purposes hereunder.
- (o) **FATCA - HIRE Act.**
- (i) **Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act.** Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. “Tax” as used in Part 2(a) of this Schedule (Payer Tax Representation) and

“Indemnifiable Tax” as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the Code, any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “**FATCA Withholding Tax**”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this agreement. If the parties each independently decide to adhere to any ISDA Protocol on FATCA Withholding Tax, upon effective adherence by both parties, the provisions of such Protocol shall supersede the foregoing provision.

- (ii) **Section 871(m)**. The parties agree that the amendments set out in the Attachment to the ISDA 2015 Section 871(m) Protocol published by ISDA on November 2, 2015, which is available on the ISDA website ([www.isda.org](http://www.isda.org)) (the “**Protocol**”), will apply to this Agreement. The parties further agree that this Agreement will be deemed to be a Covered Master Agreement and that the Implementation Date will be the effective date of this Agreement as amended by the parties for the purposes of such amendments, regardless of the definitions of such terms in the Protocol.
- (p) **ISDA Dodd Frank Protocols**. The parties agree that, notwithstanding anything to the contrary in the ISDA August 2012 Dodd Frank Protocol (as published by the International Swaps and Derivatives Association, Inc. on August 13, 2012) that may have previously been entered into by the parties and the March 2013 Dodd Frank Protocol Agreement (as published by the International Swaps and Derivatives Association, Inc. on March 22, 2013) that may have previously been entered into by the parties (together, the “**Protocol Agreements**”), this Agreement shall constitute a “Protocol Covered Agreement” for all purposes under the Protocol Agreements.
- (q) **Prior Agreements**. This Agreement shall supersede all Agreements between the parties entered into prior to the date of execution of this Agreement governing the terms of any Derivative Transactions between the parties and all confirmations relating to such Derivative Transactions shall supplement, form part of, and be subject to this Agreement, such confirmations shall be Confirmations hereunder and such Derivative Transactions shall be Transactions hereunder.
- (r) **Counterparts**. This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission, by portable document (“**PDF**”) or other electronic file contained in an email and by electronic messaging system), each of which will be deemed an original.
- (s) **Delivery vs. Payment Settlement for Foreign Exchange Transactions**. All payment obligations in connection with Subject Transactions may, at the election of Party A, be settled on a “delivery vs. payment” basis. As used herein, “delivery vs. payment” means that in connection with any payment obligation arising out of a Subject Transaction payable by Party A to Party B (the “**Party A Payment Obligations**”) on a Settlement Date (as such term is defined in the 1998 FX Definitions, and/or as set forth in the relevant trade confirmation), Party A may require Party B to perform its Subject Transaction payment obligations to Party A prior to Party A performing the Party A Payment Obligations.

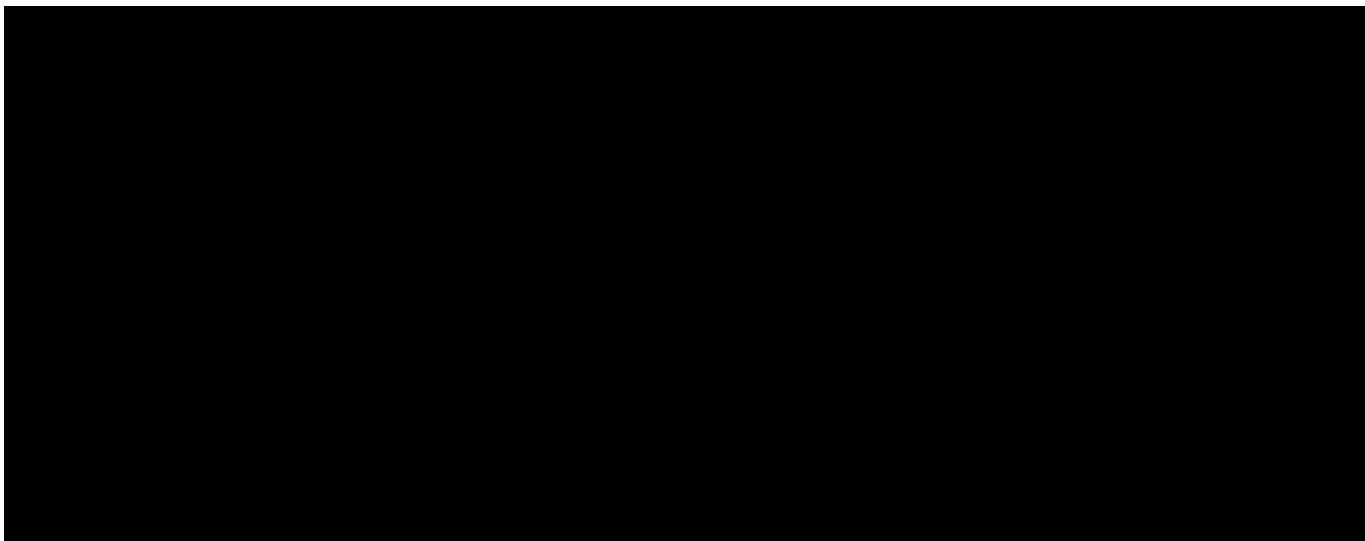
The parties further agree that in connection with the settlement of each Subject Transaction subject to such election: (a) Party A reserves the right to confirm receipt of the applicable currency from Party B (such confirmation, a “receipt confirmation”) prior to Party A performing the Party A Payment Obligations, (b) until the receipt confirmation occurs, Party A may refrain from performing the Party A Payment Obligations, (c) any failure of Party A to meet its obligations thereunder prior to a receipt confirmation shall not be deemed a Potential Event of Default or Event of Default with respect to Party A; and (d) Party A will not be obligated to pay compensation for any Subject Transaction not settling on the Settlement Date.

“**Subject Transactions**” means FX Transactions, Currency Option Transactions, cross-currency swaps or any other contract or Transaction between Party B and a third party for settlement by Party A, however described, subject to this Agreement involving concurrent or substantially concurrent payment obligations of the parties in different currencies.

- (t) **ISDA Resolution Stay Jurisdictional Modular Protocol - Swiss Jurisdictional Module.** The terms of the Swiss Jurisdictional Module and the ISDA Resolution Stay Jurisdictional Modular Protocol (each published by the International Swaps and Derivatives Association, Inc. and together, the “**Swiss Stay Provisions**”) are incorporated into and form part of this Agreement. For purposes thereof, this Agreement shall be deemed a Covered Agreement and the terms of the Swiss Stay Provisions shall apply to this Agreement as if Party A is a Regulated Entity Counterparty and Party B is a Module Adhering Party with the Implementation Date deemed to be the date of this Agreement. In the event of any inconsistencies between this Agreement and the Swiss Stay Provisions, the Swiss Stay Provisions will prevail.
- (u) **Recognition of U.S. Special Resolution Regimes.** The terms of the ISDA 2018 U.S. Resolution Stay Protocol (“**ISDA U.S. Stay Protocol**”) are incorporated into and form a part of this Agreement, and this Agreement shall be deemed a Protocol Covered Agreement for purposes thereof. For purposes of incorporating the ISDA U.S. Stay Protocol, UBS AG shall be deemed to be a Regulated Entity and [REDACTED] shall be deemed to be an Adhering Party. In the event of any inconsistencies between this Agreement and the ISDA U.S. Stay Protocol, the ISDA U.S. Stay Protocol will prevail.
- (v) **Limited Recourse.** Except for the gross negligence, willful misconduct, or fraudulent behavior of Party B or the Investment Advisor results in any amounts owed or liabilities incurred by Party B in respect of any Transaction entered into under this Agreement may be satisfied solely from the assets of Party B. Without limiting the generality of the foregoing, and except as otherwise stated above, in no event shall Party A have recourse under this Agreement, whether by set-off or otherwise, with respect to any such amounts owed or liabilities incurred to or against (i) any assets of any person or entity (including, without limitation, any person or entity whose account is under the management of the Investment Advisor) other than Party B, (ii) any assets of any affiliate of Party B, or (iii) any assets of the Investment Advisor or any affiliate of such Investment Advisor.

[signatures follow on the next page]

IN WITNESS WHEREOF the parties have executed this Schedule with effect from the date specified on the first page of this document.



# ISDA<sup>®</sup>

International Swaps and Derivatives Association, Inc.

## 2002 MASTER AGREEMENT

9 October 2019

dated as of .....

UBS AG

and 

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this 2002 Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties or otherwise effective for the purpose of confirming or evidencing those Transactions. This 2002 Master Agreement and the Schedule are together referred to as this "Master Agreement".

Accordingly, the parties agree as follows:—

### 1. Interpretation

- (a) **Definitions.** The terms defined in Section 14 and elsewhere in this Master Agreement will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement, such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

- (a) **General Conditions.**
  - (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
  - (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other condition specified in this Agreement to be a condition precedent for the purpose of this Section 2(a)(iii).

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the Scheduled Settlement Date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting of Payments.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by which the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount and payment obligation will be determined in respect of all amounts payable on the same date in the same currency in respect of those Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or any Confirmation by specifying that "Multiple Transaction Payment Netting" applies to the Transactions identified as being subject to the election (in which case clause (ii) above will not apply to such Transactions). If Multiple Transaction Payment Netting is applicable to Transactions, it will apply to those Transactions with effect from the starting date specified in the Schedule or such Confirmation, or, if a starting date is not specified in the Schedule or such Confirmation, the starting date otherwise agreed by the parties in writing. This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and

(4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If:—

(1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);

(2) X does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

### 3. Representations

Each party makes the representations contained in Sections 3(a), 3(b), 3(c), 3(d), 3(e) and 3(f) and, if specified in the Schedule as applying, 3(g) to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement). If any "Additional Representation" is specified in the Schedule or any Confirmation as applying, the party or parties specified for such Additional Representation will make and, if applicable, be deemed to repeat such Additional Representation at the time or times specified for such Additional Representation.

(a) **Basic Representations.**

(i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it, any of its Credit Support Providers or any of its applicable Specified Entities any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

(g) **No Agency.** It is entering into this Agreement, including each Transaction, as principal and not as agent of any person or entity.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under clause (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and



(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply With Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organised, managed and controlled or considered to have its seat, or where an Office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction"), and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

## 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes (subject to Sections 5(c) and 6(e)(iv)) an event of default (an "Event of Default") with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) required to be made by it if such failure is not remedied on or before the first Local Business Day in the case of any such payment or the first Local Delivery Day in the case of any such delivery after, in each case, notice of such failure is given to the party;

(ii) **Breach of Agreement; Repudiation of Agreement.**

(1) Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied within 30 days after notice of such failure is given to the party; or

(2) the party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, this Master Agreement, 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);

(iii) ***Credit Support Default.***

(1) Failure by the party or any Credit Support Provider of such party 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 such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document, or any security interest granted by such party or such Credit Support Provider to the other party pursuant to any such Credit Support Document, to be in full force and effect for the purpose of this Agreement (in each case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iv) ***Misrepresentation.*** A representation (other than a representation under Section 3(e) or 3(f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) ***Default Under Specified Transaction.*** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) defaults (other than by failing to make a delivery) under a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction;

(2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment due on the last payment or exchange date of, or any payment on early termination of, a Specified Transaction (or, if there is no applicable notice requirement or grace period, such default continues for at least one Local Business Day);

(3) defaults in making any delivery due under (including any delivery due on the last delivery or exchange date of) a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, all transactions outstanding under the documentation applicable to that Specified Transaction; or

(4) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, a Specified Transaction or any credit support arrangement relating to a Specified Transaction that is, in either case, confirmed or evidenced by a document or other confirming evidence executed and delivered by that party, Credit Support Provider or Specified Entity (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross-Default** If "Cross-Default" is specified in the Schedule as applying to the party, the occurrence or existence of:—

(1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) where the aggregate principal amount of such agreements or instruments, either alone or together with the amount, if any, referred to in clause (2) below, is not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments before it would otherwise have been due and payable; or

(2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments under such agreements or instruments on the due date for payment (after giving effect to any applicable notice requirement or grace period) in an aggregate amount, either alone or together with the amount, if any, referred to in clause (1) above, of not less than the applicable Threshold Amount;

(vii) **Bankruptcy**. The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, 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 by it or such regulator, supervisor or similar official, or (B) 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 such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (I) 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 (II) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) 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; (7) 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 such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, reincorporates or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganisation, reincorporation or reconstitution:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes (subject to Section 5(c)) an Illegality if the event is specified in clause (i) below, a Force Majeure Event if the event is specified in clause (ii) below, a Tax Event if the event is specified in clause (iii) below, a Tax Event Upon Merger if the event is specified in clause (iv) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to clause (v) below or an Additional Termination Event if the event is specified pursuant to clause (vi) below:—

(i) **Illegality.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, due to an event or circumstance (other than any action taken by a party or, if applicable, any Credit Support Provider of such party) occurring after a Transaction is entered into, it becomes unlawful under any applicable law (including without limitation the laws of any country in which payment, delivery or compliance is required by either party or any Credit Support Provider, as the case may be), on any day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day (in each case, other than as a result of a breach by the party of Section 4(b)):—

(1) for the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction to perform any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) for such party or any Credit Support Provider of such party (which will be the Affected Party) to perform any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, to receive a payment or delivery under such Credit Support Document or to comply with any other material provision of such Credit Support Document;

(ii) **Force Majeure Event.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, by reason of force majeure or act of state occurring after a Transaction is entered into, on any day:—

(1) the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction is prevented from performing any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, from receiving a payment or delivery in respect of such Transaction or from complying with any other material provision of this Agreement relating to such Transaction (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or

impracticable for such Office so to perform, receive or comply (or it would be impossible or impracticable for such Office so to perform, receive or comply if such payment, delivery or compliance were required on that day); or

(2) such party or any Credit Support Provider of such party (which will be the Affected Party) is prevented from performing any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, from receiving a payment or delivery under such Credit Support Document or from complying with any other material provision of such Credit Support Document (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply (or it would be impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply if such payment, delivery or compliance were required on that day),

so long as the force majeure or act of state is beyond the control of such Office, such party or such Credit Support Provider, as appropriate, and such Office, party or Credit Support Provider could not, after using all reasonable efforts (which will not require such party or Credit Support Provider to incur a loss, other than immaterial, incidental expenses), overcome such prevention, impossibility or impracticability;

(iii) **Tax Event.** Due to (1) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (2) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Settlement Date (A) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (B) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 9(h)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iv) **Tax Event Upon Merger.** The party (the "Burdened Party") on the next succeeding Scheduled Settlement Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets (or any substantial part of the assets comprising the business conducted by it as of the date of this Master Agreement) to, or reorganising, reincorporating or reconstituting into or as, another entity (which will be the Affected Party) where such action does not constitute a Merger Without Assumption;

(v) **Credit Event Upon Merger.** If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, a Designated Event (as defined below) occurs with respect to such party, any Credit Support Provider of such party or any applicable Specified Entity of such party (in each case, "X") and such Designated Event does not constitute a Merger Without Assumption, and the creditworthiness of X or, if applicable, the successor, surviving or transferee entity of X, after taking into account any applicable Credit Support Document, is materially weaker immediately after the occurrence of such Designated Event than that of X immediately prior to the occurrence of such Designated Event (and, in any such event, such party or its successor, surviving or transferee entity, as appropriate, will be the Affected Party). A "Designated Event" with respect to X means that:—

(1) X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or any substantial part of the assets comprising the business conducted by X as of the

date of this Master Agreement) to, or reorganises, reincorporates or reconstitutes into or as, another entity;

(2) any person, related group of persons or entity acquires directly or indirectly the beneficial ownership of (A) equity securities having the power to elect a majority of the board of directors (or its equivalent) of X or (B) any other ownership interest enabling it to exercise control of X; or

(3) X effects any substantial change in its capital structure by means of the issuance, incurrence or guarantee of debt or the issuance of (A) preferred stock or other securities convertible into or exchangeable for debt or preferred stock or (B) in the case of entities other than corporations, any other form of ownership interest; or

(vi) **Additional Termination Event.** If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties will be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Hierarchy of Events.**

(i) An event or circumstance that constitutes or gives rise to an Illegality or a Force Majeure Event will not, for so long as that is the case, also constitute or give rise to an Event of Default under Section 5(a)(i), 5(a)(ii)(1) or 5(a)(iii)(1) insofar as such event or circumstance relates to the failure to make any payment or delivery or a failure to comply with any other material provision of this Agreement or a Credit Support Document, as the case may be.

(ii) Except in circumstances contemplated by clause (i) above, if an event or circumstance which would otherwise constitute or give rise to an Illegality or a Force Majeure Event also constitutes an Event of Default or any other Termination Event, it will be treated as an Event of Default or such other Termination Event, as the case may be, and will not constitute or give rise to an Illegality or a Force Majeure Event.

(iii) If an event or circumstance which would otherwise constitute or give rise to a Force Majeure Event also constitutes an Illegality, it will be treated as an Illegality, except as described in clause (ii) above, and not a Force Majeure Event.

(d) **Deferral of Payments and Deliveries During Waiting Period.** If an Illegality or a Force Majeure Event has occurred and is continuing with respect to a Transaction, each payment or delivery which would otherwise be required to be made under that Transaction will be deferred to, and will not be due until:—

(i) the first Local Business Day or, in the case of a delivery, the first Local Delivery Day (or the first day that would have been a Local Business Day or Local Delivery Day, as appropriate, but for the occurrence of the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event) following the end of any applicable Waiting Period in respect of that Illegality or Force Majeure Event, as the case may be; or

(ii) if earlier, the date on which the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event ceases to exist or, if such date is not a Local Business Day or, in the case of a delivery, a Local Delivery Day, the first following day that is a Local Business Day or Local Delivery Day, as appropriate.

(e) **Inability of Head or Home Office to Perform Obligations of Branch.** If (i) an Illegality or a Force Majeure Event occurs under Section 5(b)(i)(1) or 5(b)(ii)(1) and the relevant Office is not the Affected Party's head or home office, (ii) Section 10(a) applies, (iii) the other party seeks performance of the relevant obligation or

compliance with the relevant provision by the Affected Party's head or home office and (iv) the Affected Party's head or home office fails so to perform or comply due to the occurrence of an event or circumstance which would, if that head or home office were the Office through which the Affected Party makes and receives payments and deliveries with respect to the relevant Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and such failure would otherwise constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) with respect to such party, then, for so long as the relevant event or circumstance continues to exist with respect to both the Office referred to in Section 5(b)(i)(1) or 5(b)(ii)(1), as the case may be, and the Affected Party's head or home office, such failure will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1).

## 6. Early Termination; Close-Out Netting

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

### (b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event other than a Force Majeure Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction, and will also give the other party such other information about that Termination Event as the other party may reasonably require. If a Force Majeure Event occurs, each party will, promptly upon becoming aware of it, use all reasonable efforts to notify the other party, specifying the nature of that Force Majeure Event, and will also give the other party such other information about that Force Majeure Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, other than immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice of such occurrence is given under Section 6(b)(i) to avoid that Termination Event.

(iv) ***Right to Terminate.***

(1) If:—

(A) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(B) a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there are two Affected Parties, or the Non-affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, if the relevant Termination Event is then continuing, by not more than 20 days notice to the other party, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(2) If at any time an Illegality or a Force Majeure Event has occurred and is then continuing and any applicable Waiting Period has expired:—

(A) Subject to clause (B) below, either party may, by not more than 20 days notice to the other party, designate (I) a day not earlier than the day on which such notice becomes effective as an Early Termination Date in respect of all Affected Transactions or (II) by specifying in that notice the Affected Transactions in respect of which it is designating the relevant day as an Early Termination Date, a day not earlier than two Local Business Days following the day on which such notice becomes effective as an Early Termination Date in respect of less than all Affected Transactions. Upon receipt of a notice designating an Early Termination Date in respect of less than all Affected Transactions, the other party may, by notice to the designating party, if such notice is effective on or before the day so designated, designate that same day as an Early Termination Date in respect of any or all other Affected Transactions.

(B) An Affected Party (if the Illegality or Force Majeure Event relates to performance by such party or any Credit Support Provider of such party of an obligation to make any payment or delivery under, or to compliance with any other material provision of, the relevant Credit Support Document) will only have the right to designate an Early Termination Date under Section 6(b)(iv)(2)(A) as a result of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2) following the prior designation by the other party of an Early Termination Date, pursuant to Section 6(b)(iv)(2)(A), in respect of less than all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or 6(b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 9(h)(i) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date will be determined pursuant to Sections 6(e) and 9(h)(ii).



(d) **Calculations; Payment Date.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (I) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations), (2) specifying (except where there are two Affected Parties) any Early Termination Amount payable and (3) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation or market data obtained in determining a Close-out Amount, the records of the party obtaining such quotation or market data will be conclusive evidence of the existence and accuracy of such quotation or market data.

(ii) **Payment Date.** An Early Termination Amount due in respect of any Early Termination Date will, together with any amount of interest payable pursuant to Section 9(h)(ii)(2), be payable (1) on the day on which notice of the amount payable is effective in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default and (2) on the day which is two Local Business Days after the day on which notice of the amount payable is effective (or, if there are two Affected Parties, after the day on which the statement provided pursuant to clause (i) above by the second party to provide such a statement is effective) in the case of an Early Termination Date which is designated as a result of a Termination Event.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the amount, if any, payable in respect of that Early Termination Date (the "Early Termination Amount") will be determined pursuant to this Section 6(e) and will be subject to Section 6(f).

(i) **Events of Default.** If the Early Termination Date results from an Event of Default, the Early Termination Amount will be an amount equal to (1) the sum of (A) the Termination Currency Equivalent of the Close-out Amount or Close-out Amounts (whether positive or negative) determined by the Non-defaulting Party for each Terminated Transaction or group of Terminated Transactions, as the case may be, and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (2) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If the Early Termination Amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of the Early Termination Amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) **One Affected Party.** Subject to clause (3) below, if there is one Affected Party, the Early Termination Amount will be determined in accordance with Section 6(e)(i), except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.

(2) **Two Affected Parties.** Subject to clause (3) below, if there are two Affected Parties, each party will determine an amount equal to the Termination Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an amount equal to (A) the sum of (I) one-half of the difference between the higher amount so determined (by party "X") and the lower amount so determined (by party "Y") and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.

(3) *Mid-Market Events.* If that Termination Event is an Illegality or a Force Majeure Event, then the Early Termination Amount will be determined in accordance with clause (1) or (2) above, as appropriate, except that, for the purpose of determining a Close-out Amount or Close-out Amounts, the Determining Party will:—

(A) if obtaining quotations from one or more third parties (or from any of the Determining Party's Affiliates), ask each third party or Affiliate (I) not to take account of the current creditworthiness of the Determining Party or any existing Credit Support Document and (II) to provide mid-market quotations; and

(B) in any other case, use mid-market values without regard to the creditworthiness of the Determining Party.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because Automatic Early Termination applies in respect of a party, the Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Adjustment for Illegality or Force Majeure Event.* The failure by a party or any Credit Support Provider of such party to pay, when due, any Early Termination Amount will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) if such failure is due to the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event. Such amount will (1) accrue interest and otherwise be treated as an Unpaid Amount owing to the other party if subsequently an Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions and (2) otherwise accrue interest in accordance with Section 9(h)(ii)(2).

(v) *Pre-Estimate.* The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks, and, except as otherwise provided in this Agreement, neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions.

(f) *Set-Off.* Any Early Termination Amount payable to one party (the "Payee") by the other party (the "Payer"), in circumstances where there is a Defaulting Party or where there is one Affected Party in the case where either a Credit Event Upon Merger has occurred or any other Termination Event in respect of which all outstanding Transactions are Affected Transactions has occurred, will, at the option of the Non-defaulting Party or the Non-affected Party, as the case may be ("X") (and without prior notice to the Defaulting Party or the Affected Party, as the case may be), be reduced by its set-off against any other amounts ("Other Amounts") payable by the Payee to the Payer (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party of any set-off effected under this Section 6(f).

For this purpose, either the Early Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) will be effective to create a charge or other security interest. This Section 6(f) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which any party is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise).

## 7. Transfer

Subject to Section 6(b)(ii) and to the extent permitted by applicable law, neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any Early Termination Amount payable to it by a Defaulting Party, together with any amounts payable on or with respect to that interest and any other rights associated with that interest pursuant to Sections 8, 9(h) and 11.

Any purported transfer that is not in compliance with this Section 7 will be void.

## 8. Contractual Currency

(a) **Payment in the Contractual Currency.** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the “Contractual Currency”). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in good faith and using commercially reasonable procedures in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in clause (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purpose of such judgment or order and the rate of exchange at which such party is able, acting in good faith and using

commercially reasonable procedures in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party.

(c) **Separate Indemnities.** To the extent permitted by applicable law, the indemnities in this Section 8 constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) **Evidence of Loss.** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

## 9. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. Each of the parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a party for fraud.

(b) **Amendments.** An amendment, modification or waiver in respect of this Agreement will only be effective if in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) **Counterparts and Confirmations.**

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission and by electronic messaging system), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation will be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes, by an exchange of electronic messages on an electronic messaging system or by an exchange of e-mails, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex, electronic message or e-mail constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

(h) ***Interest and Compensation.***

(i) ***Prior to Early Termination.*** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction:—

(1) ***Interest on Defaulted Payments.*** If a party defaults in the performance of any payment obligation, it will, to the extent permitted by applicable law and subject to Section 6(c), pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (3)(B) or (C) below), at the Default Rate.

(2) ***Compensation for Defaulted Deliveries.*** If a party defaults in the performance of any obligation required to be settled by delivery, it will on demand (A) compensate the other party to the extent provided for in the relevant Confirmation or elsewhere in this Agreement and (B) unless otherwise provided in the relevant Confirmation or elsewhere in this Agreement, to the extent permitted by applicable law and subject to Section 6(c), pay to the other party interest (before as well as after judgment) on an amount equal to the fair market value of that which was required to be delivered in the same currency as that amount, for the period from (and including) the originally scheduled date for delivery to (but excluding) the date of actual delivery (and excluding any period in respect of which interest or compensation in respect of that amount is due pursuant to clause (4) below), at the Default Rate. The fair market value of any obligation referred to above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party that was entitled to take delivery.

(3) ***Interest on Deferred Payments.*** If:—

(A) a party does not pay any amount that, but for Section 2(a)(iii), would have been payable, it will, to the extent permitted by applicable law and subject to Section 6(c) and clauses (B) and (C) below, pay interest (before as well as after judgment) on that amount to the other party on demand (after such amount becomes payable) in the same currency as that amount, for the period from (and including) the date the amount would, but for Section 2(a)(iii), have been payable to (but excluding) the date the amount actually becomes payable, at the Applicable Deferral Rate;

(B) a payment is deferred pursuant to Section 5(d), the party which would otherwise have been required to make that payment will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the amount of the deferred payment to the other party on demand (after such amount becomes payable) in the same currency as the deferred payment, for the period from (and including) the date the amount would, but for Section 5(d), have been payable to (but excluding) the earlier of the date the payment is no longer deferred pursuant to Section 5(d) and the date during the deferral period upon which an Event of Default or Potential Event of Default with respect to that party occurs, at the Applicable Deferral Rate; or

(C) a party fails to make any payment due to the occurrence of an Illegality or a Force Majeure Event (after giving effect to any deferral period contemplated by clause (B) above), it will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as the event or circumstance giving rise to that Illegality or Force Majeure Event

continues and no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the date the party fails to make the payment due to the occurrence of the relevant Illegality or Force Majeure Event (or, if later, the date the payment is no longer deferred pursuant to Section 5(d)) to (but excluding) the earlier of the date the event or circumstance giving rise to that Illegality or Force Majeure Event ceases to exist and the date during the period upon which an Event of Default or Potential Event of Default with respect to that party occurs (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (B) above), at the Applicable Deferral Rate.

(4) *Compensation for Deferred Deliveries.* If:—

(A) a party does not perform any obligation that, but for Section 2(a)(iii), would have been required to be settled by delivery;

(B) a delivery is deferred pursuant to Section 5(d); or

(C) a party fails to make a delivery due to the occurrence of an Illegality or a Force Majeure Event at a time when any applicable Waiting Period has expired,

the party required (or that would otherwise have been required) to make the delivery will, to the extent permitted by applicable law and subject to Section 6(c), compensate and pay interest to the other party on demand (after, in the case of clauses (A) and (B) above, such delivery is required) if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

(ii) *Early Termination.* Upon the occurrence or effective designation of an Early Termination Date in respect of a Transaction:—

(1) *Unpaid Amounts.* For the purpose of determining an Unpaid Amount in respect of the relevant Transaction, and to the extent permitted by applicable law, interest will accrue on the amount of any payment obligation or the amount equal to the fair market value of any obligation required to be settled by delivery included in such determination in the same currency as that amount, for the period from (and including) the date the relevant obligation was (or would have been but for Section 2(a)(iii) or 5(d)) required to have been performed to (but excluding) the relevant Early Termination Date, at the Applicable Close-out Rate.

(2) *Interest on Early Termination Amounts.* If an Early Termination Amount is due in respect of such Early Termination Date, that amount will, to the extent permitted by applicable law, be paid together with interest (before as well as after judgment) on that amount in the Termination Currency, for the period from (and including) such Early Termination Date to (but excluding) the date the amount is paid, at the Applicable Close-out Rate.

(iii) *Interest Calculation.* Any interest pursuant to this Section 9(h) will be calculated on the basis of daily compounding and the actual number of days elapsed.

## 10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to and agrees with the other party that, notwithstanding the place of booking or its jurisdiction of incorporation or organisation, its obligations are the same in terms of recourse against it as if it had entered into the Transaction through its head or home office, except that a party will not have recourse to the head or home office of the other party in respect of any payment or delivery deferred pursuant to Section 5(d) for so long as the payment or delivery is so deferred. This representation and agreement will be deemed to be repeated by each party on each date on which the parties enter into a Transaction.

(b) If a party is specified as a Multibranch Party in the Schedule, such party may, subject to clause (c) below, enter into a Transaction through, book a Transaction in and make and receive payments and deliveries with respect to a Transaction through any Office listed in respect of that party in the Schedule (but not any other Office unless otherwise agreed by the parties in writing).

(c) The Office through which a party enters into a Transaction will be the Office specified for that party in the relevant Confirmation or as otherwise agreed by the parties in writing, and, if an Office for that party is not specified in the Confirmation or otherwise agreed by the parties in writing, its head or home office. Unless the parties otherwise agree in writing, the Office through which a party enters into a Transaction will also be the Office in which it books the Transaction and the Office through which it makes and receives payments and deliveries with respect to the Transaction. Subject to Section 6(b)(ii), neither party may change the Office in which it books the Transaction or the Office through which it makes and receives payments or deliveries with respect to a Transaction without the prior written consent of the other party.

## 11. Expenses

A Defaulting Party will on demand indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, execution fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 12. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner described below (except that a notice or other communication under Section 5 or 6 may not be given by electronic messaging system or e-mail) to the address or number or in accordance with the electronic messaging system or e-mail details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered or its delivery is attempted;
- (v) if sent by electronic messaging system, on the date it is received; or

- (vi) if sent by e-mail, on the date it is delivered,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication will be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Details.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system or e-mail details at which notices or other communications are to be given to it.

### 13. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Agreement ("Proceedings"), each party irrevocably:—

- (i) submits:—

(1) if this Agreement is expressed to be governed by English law, to (A) the non-exclusive jurisdiction of the English courts if the Proceedings do not involve a Convention Court and (B) the exclusive jurisdiction of the English courts if the Proceedings do involve a Convention Court; or

(2) if this Agreement is expressed to be governed by the laws of the State of New York, to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City;

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party; and

(iii) agrees, to the extent permitted by applicable law, that the bringing of Proceedings in any one or more jurisdictions will not preclude the bringing of Proceedings in any other jurisdiction.

(c) **Service of Process.** Each party irrevocably appoints the Process Agent, if any, specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12(a)(i), 12(a)(iii) or 12(a)(iv). Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by applicable law.

(d) **Waiver of Immunities.** Each party irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.



#### 14. Definitions

As used in this Agreement:—

**"Additional Representation"** has the meaning specified in Section 3.

**"Additional Termination Event"** has the meaning specified in Section 5(b).

**"Affected Party"** has the meaning specified in Section 5(b).

**"Affected Transactions"** means (a) with respect to any Termination Event consisting of an Illegality, Force Majeure Event, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event (which, in the case of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2), means all Transactions unless the relevant Credit Support Document references only certain Transactions, in which case those Transactions and, if the relevant Credit Support Document constitutes a Confirmation for a Transaction, that Transaction) and (b) with respect to any other Termination Event, all Transactions.

**"Affiliate"** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

**"Agreement"** has the meaning specified in Section 1(c).

**"Applicable Close-out Rate"** means:—

- (a) in respect of the determination of an Unpaid Amount:—
  - (i) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;
  - (ii) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate;
  - (iii) in respect of obligations deferred pursuant to Section 5(d), if there is no Defaulting Party and for so long as the deferral period continues, the Applicable Deferral Rate; and
  - (iv) in all other cases following the occurrence of a Termination Event (except where interest accrues pursuant to clause (iii) above), the Applicable Deferral Rate; and
- (b) in respect of an Early Termination Amount:—
  - (i) for the period from (and including) the relevant Early Termination Date to (but excluding) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable:—
    - (1) if the Early Termination Amount is payable by a Defaulting Party, the Default Rate;
    - (2) if the Early Termination Amount is payable by a Non-defaulting Party, the Non-default Rate; and
    - (3) in all other cases, the Applicable Deferral Rate; and

(ii) for the period from (and including) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable to (but excluding) the date of actual payment:—

(1) if a party fails to pay the Early Termination Amount due to the occurrence of an event or circumstance which would, if it occurred with respect to a payment or delivery under a Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and for so long as the Early Termination Amount remains unpaid due to the continuing existence of such event or circumstance, the Applicable Deferral Rate;

(2) if the Early Termination Amount is payable by a Defaulting Party (but excluding any period in respect of which clause (1) above applies), the Default Rate;

(3) if the Early Termination Amount is payable by a Non-defaulting Party (but excluding any period in respect of which clause (1) above applies), the Non-default Rate; and

(4) in all other cases, the Termination Rate.

**“Applicable Deferral Rate”** means:—

(a) for the purpose of Section 9(h)(i)(3)(A), the rate certified by the relevant payer to be a rate offered to the payer by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market;

(b) for purposes of Section 9(h)(i)(3)(B) and clause (a)(iii) of the definition of Applicable Close-out Rate, the rate certified by the relevant payer to be a rate offered to prime banks by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer after consultation with the other party, if practicable, for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market; and

(c) for purposes of Section 9(h)(i)(3)(C) and clauses (a)(iv), (b)(i)(3) and (b)(ii)(1) of the definition of Applicable Close-out Rate, a rate equal to the arithmetic mean of the rate determined pursuant to clause (a) above and a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount.

**“Automatic Early Termination”** has the meaning specified in Section 6(a).

**“Burdened Party”** has the meaning specified in Section 5(b)(iv).

**“Change in Tax Law”** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs after the parties enter into the relevant Transaction.

**“Close-out Amount”** means, with respect to each Terminated Transaction or each group of Terminated Transactions and a Determining Party, the amount of the losses or costs of the Determining Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Determining Party that are or would be realised under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Determining Party the economic equivalent of, (a) the material terms of that Terminated Transaction or group of Terminated Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of that Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in

Section 2(a)(iii)) and (b) the option rights of the parties in respect of that Terminated Transaction or group of Terminated Transactions.

Any Close-out Amount will be determined by the Determining Party (or its agent), which will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. The Determining Party may determine a Close-out Amount for any group of Terminated Transactions or any individual Terminated Transaction but, in the aggregate, for not less than all Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

Unpaid Amounts in respect of a Terminated Transaction or group of Terminated Transactions and legal fees and out-of-pocket expenses referred to in Section 11 are to be excluded in all determinations of Close-out Amounts.

In determining a Close-out Amount, the Determining Party may consider any relevant information, including, without limitation, one or more of the following types of information:—

(i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;

(ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or

(iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party's Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

The Determining Party will consider, taking into account the standards and procedures described in this definition, quotations pursuant to clause (i) above or relevant market data pursuant to clause (ii) above unless the Determining Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in clause (i), (ii) or (iii) above, the Determining Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilised. Third parties supplying quotations pursuant to clause (i) above or market data pursuant to clause (ii) above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Without duplication of amounts calculated based on information described in clause (i), (ii) or (iii) above, or other relevant information, and when it is commercially reasonable to do so, the Determining Party may in addition consider in calculating a Close-out Amount any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to a Terminated Transaction or group of Terminated Transactions (or any gain resulting from any of them).

Commercially reasonable procedures used in determining a Close-out Amount may include the following:—

(1) application to relevant market data from third parties pursuant to clause (ii) above or information from internal sources pursuant to clause (iii) above of pricing or other valuation models that are, at the time of the determination of the Close-out Amount, used by the Determining Party in the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the Terminated Transaction or group of Terminated Transactions; and

(2) application of different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.

**"Confirmation"** has the meaning specified in the preamble.

**"consent"** includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

**"Contractual Currency"** has the meaning specified in Section 8(a).

**"Convention Court"** means any court which is bound to apply to the Proceedings either Article 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters or Article 17 of the 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

**"Credit Event Upon Merger"** has the meaning specified in Section 5(b).

**"Credit Support Document"** means any agreement or instrument that is specified as such in this Agreement.

**"Credit Support Provider"** has the meaning specified in the Schedule.

**"Cross-Default"** means the event specified in Section 5(a)(vi).

**"Default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**"Defaulting Party"** has the meaning specified in Section 6(a).

**"Designated Event"** has the meaning specified in Section 5(b)(v).

**"Determining Party"** means the party determining a Close-out Amount.

**"Early Termination Amount"** has the meaning specified in Section 6(e).

**"Early Termination Date"** means the date determined in accordance with Section 6(a) or 6(b)(iv).

**"electronic messages"** does not include e-mails but does include documents expressed in markup languages, and **"electronic messaging system"** will be construed accordingly.

**"English law"** means the law of England and Wales, and **"English"** will be construed accordingly.

**"Event of Default"** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**"Force Majeure Event"** has the meaning specified in Section 5(b).

**"General Business Day"** means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits).

**"Illegality"** has the meaning specified in Section 5(b).

**"Indemnifiable Tax"** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

**"law"** includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority), and **"unlawful"** will be construed accordingly.

**"Local Business Day"** means (a) in relation to any obligation under Section 2(a)(i), a General Business Day in the place or places specified in the relevant Confirmation and a day on which a relevant settlement system is open or operating as specified in the relevant Confirmation or, if a place or a settlement system is not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) for the purpose of determining when a Waiting Period expires, a General Business Day in the place where the event or circumstance that constitutes or gives rise to the Illegality or Force Majeure Event, as the case may be, occurs, (c) in relation to any other payment, a General Business Day in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment and, if that currency does not have a single recognised principal financial centre, a day on which the settlement system necessary to accomplish such payment is open, (d) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), a General Business Day (or a day that would have been a General Business Day but for the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event) in the place specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (e) in relation to Section 5(a)(v)(2), a General Business Day in the relevant locations for performance with respect to such Specified Transaction.

**"Local Delivery Day"** means, for purposes of Sections 5(a)(i) and 5(d), a day on which settlement systems necessary to accomplish the relevant delivery are generally open for business so that the delivery is capable of being accomplished in accordance with customary market practice, in the place specified in the relevant Confirmation or, if not so specified, in a location as determined in accordance with customary market practice for the relevant delivery.

**"Master Agreement"** has the meaning specified in the preamble.

**"Merger Without Assumption"** means the event specified in Section 5(a)(viii).

**"Multiple Transaction Payment Netting"** has the meaning specified in Section 2(c).

**"Non-affected Party"** means, so long as there is only one Affected Party, the other party.

**"Non-default Rate"** means the rate certified by the Non-defaulting Party to be a rate offered to the Non-defaulting Party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the Non-defaulting Party for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market.

**"Non-defaulting Party"** has the meaning specified in Section 6(a).

**"Office"** means a branch or office of a party, which may be such party's head or home office.

**"Other Amounts"** has the meaning specified in Section 6(f).

**"Payee"** has the meaning specified in Section 6(f).

**"Payer"** has the meaning specified in Section 6(f).

**"Potential Event of Default"** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**"Proceedings"** has the meaning specified in Section 13(b).

**"Process Agent"** has the meaning specified in the Schedule.

**"rate of exchange"** includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

**"Relevant Jurisdiction"** means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

**"Schedule"** has the meaning specified in the preamble.

**"Scheduled Settlement Date"** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**"Specified Entity"** has the meaning specified in the Schedule.

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

**"Specified Transaction"** means, subject to the Schedule, (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is not a Transaction under this Agreement but (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**"Stamp Tax"** means any stamp, registration, documentation or similar tax.

**"Stamp Tax Jurisdiction"** has the meaning specified in Section 4(e).

**"Tax"** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

**"Tax Event"** has the meaning specified in Section 5(b).

**"Tax Event Upon Merger"** has the meaning specified in Section 5(b).

**"Terminated Transactions"** means, with respect to any Early Termination Date, (a) if resulting from an Illegality or a Force Majeure Event, all Affected Transactions specified in the notice given pursuant to Section 6(b)(iv), (b) if resulting from any other Termination Event, all Affected Transactions and (c) if resulting from an Event of Default, all Transactions in effect either immediately before the effectiveness of the notice designating that Early Termination Date or, if Automatic Early Termination applies, immediately before that Early Termination Date.

**"Termination Currency"** means (a) if a Termination Currency is specified in the Schedule and that currency is freely available, that currency, and (b) otherwise, euro if this Agreement is expressed to be governed by English law or United States Dollars if this Agreement is expressed to be governed by the laws of the State of New York.

**"Termination Currency Equivalent"** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Close-out Amount is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

**"Termination Event"** means an Illegality, a Force Majeure Event, a Tax Event, a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

**"Termination Rate"** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

**"Threshold Amount"** means the amount, if any, specified as such in the Schedule.

**"Transaction"** has the meaning specified in the preamble.

**"Unpaid Amounts"** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii) or due but for Section 5(d)) to such party under Section 2(a)(i) or 2(d)(i)(4) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date, (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii) or 5(d)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered and (c) if the Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions, any Early Termination Amount due prior to such Early Termination Date and which remains unpaid as of such Early Termination Date, in each case together with any amount of interest accrued or other

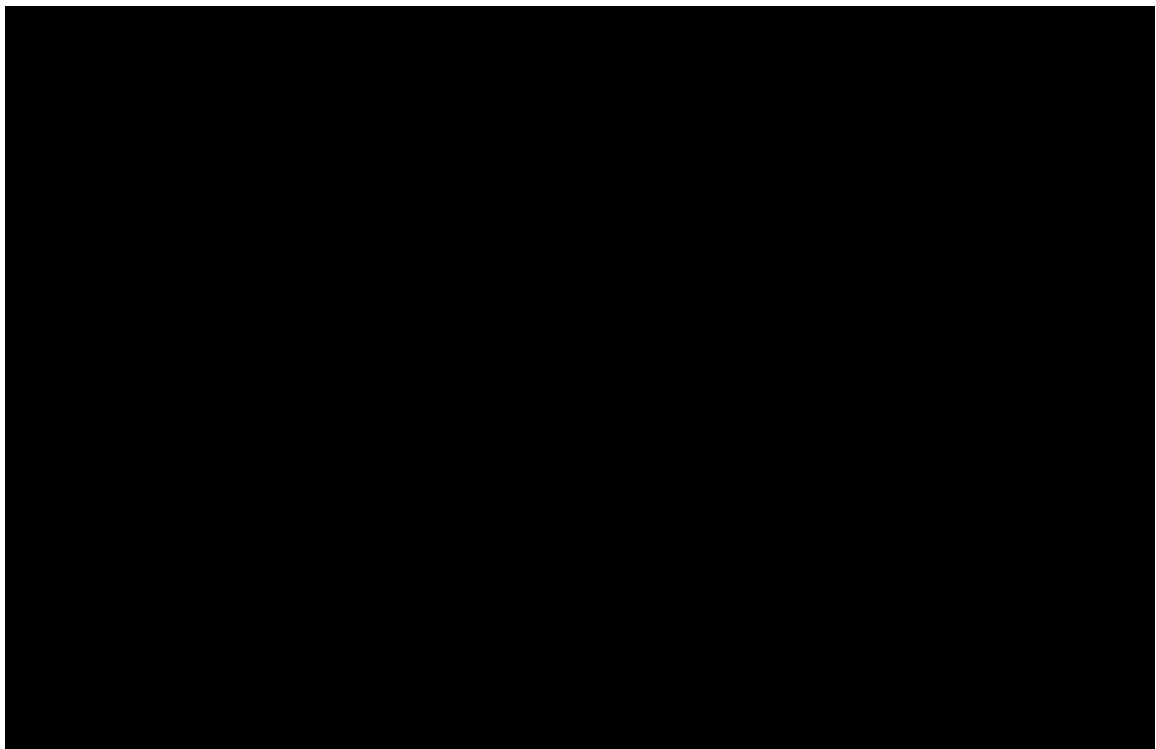
compensation in respect of that obligation or deferred obligation, as the case may be, pursuant to Section 9(h)(ii)(1) or (2), as appropriate. The fair market value of any obligation referred to in clause (b) above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it will be the average of the Termination Currency Equivalents of the fair market values so determined by both parties.

*“Waiting Period”* means:—

(a) in respect of an event or circumstance under Section 5(b)(i), other than in the case of Section 5(b)(i)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of three Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance; and

(b) in respect of an event or circumstance under Section 5(b)(ii), other than in the case of Section 5(b)(ii)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of eight Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.





Execution Version

SCHEDULE  
to the  
2002 Master Agreement  
dated as of 9 October 2019  
between

UBS AG  
("Party A")  
a bank organised under the laws of  
Switzerland

and

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
("Party B")

Part 1  
Termination Provisions

(a) "Specified Entity" means:

(i) in relation to Party A for the purpose of:

Section 5(a)(v) of this Agreement,	none,
Section 5(a)(vi) of this Agreement,	none,
Section 5(a)(vii) of this Agreement,	none,
Section 5(b)(v) of this Agreement,	none; and

(ii) in relation to Party B for the purpose of:

Section 5(a)(v) of this Agreement,	the Investment Manager,
Section 5(a)(vi) of this Agreement,	the Investment Manager,
Section 5(a)(vii) of this Agreement,	the Investment Manager,
Section 5(b)(v) of this Agreement,	none

(b) *Specified Transaction* will have the meaning specified in Section 14 of this Agreement with the addition of the following after "weather index transaction" on the eleventh line: "precious metal transaction, letters of credit reimbursement obligation, indebtedness for borrowed money (whether or not evidenced by a note or similar instrument) and any amounts payable under any prime brokerage or centrally cleared derivative agreements".

(c) The *Cross Default* provisions of Section 5(a)(vi) of this Agreement, as modified below, will apply to Party A and to Party B. Section 5(a)(vi) of this Agreement is hereby amended by the addition of the following at the end thereof:

"provided, however, that notwithstanding the foregoing, an Event of Default shall not occur under either (1) or (2) above if, as demonstrated to the reasonable satisfaction of the other party, (a) the event or condition referred to in (1) or the failure to pay referred to in (2) is a failure to pay caused by an error or omission of an administrative or operational nature; and (b) funds were available to such party to enable it to make the relevant payment when due; and (c) such relevant payment is made within three General Business Days following receipt of written notice from an interested party of such failure to pay."

*"Specified Indebtedness"* means any obligation (whether present or future, contingent or otherwise as principal or surety or otherwise) for the payment or repayment of any money

For the purposes of calculating the amount of Specified Indebtedness under Section 5(a)(vi), amounts in relation to agreements or instruments that in good faith are generally considered derivative instruments shall be calculated using their mark-to-market value (and not using any notional amount) and if governed by a master agreement by using the amount that becomes, or would become, payable under such agreement as a result of the liquidation or termination of such agreement.

## Execution Version

**"Threshold Amount"** means:

- (i) in relation to Party A, or any Credit Support Provider or Specified Entity of Party A: an amount equal to 3% of shareholders equity (howsoever described) of UBS AG as shown on the most recent annual audited financial statements of UBS AG; and
  - (ii) in relation to Party B, or any Credit Support Provider or Specified Entity of Party B: the lesser of United States Dollars ("**USD**") 10,000,000 (or the equivalent in any other currency or currencies) or an amount equal to 3% of Net Asset Value (as defined in Part 5 below) of Party B, or the relevant Credit Support Provider or Specified Entity of Party B.
- (d) The **Credit Event Upon Merger** provisions of Section 5(b)(v) of this Agreement will not apply to both Party A and Party B
- (e) The **Automatic Early Termination** provision of Section 6(a) of this Agreement will apply to Party A and will not apply to Party B.
- (f) **"Termination Currency"** means one of the currencies in which payments are required to be made pursuant to a Confirmation in respect of a Terminated Transaction selected by the Non-defaulting Party or the non-Affected Party, as the case may be, or, in the circumstances where there are two Affected Parties, as agreed between the parties or, failing such agreement as aforesaid, or if the currency so selected is not freely available, the Termination Currency shall be USD.
- (g) **Additional Termination Event** will apply. The following shall constitute Additional Termination Events. Upon the occurrence of any one of the events or circumstances specified below, Party B shall be the Affected Party and all Transactions shall be Affected Transactions:
- (A) **Decline in Net Asset Value**
    - (i) a 20% or greater decline in Party B's Net Asset Value compared to Party B's Net Asset Value on any business day within the immediately preceding month; or (ii) a 30% or greater decline in Party B's Net Asset Value compared to Party B's Net Asset Value on any business day within the preceding three months; or (iii) a 40% or greater decline in Party B's Net Asset Value compared to Party B's Net Asset Value on any business day within the preceding twelve months.
  - (B) **Minimum Net Asset Value.** The Net Asset Value of Party B at any time after the signing of this Agreement is equal to or less than 70% of the higher of (i) USD 15 million; or (ii) the highest Party B's Net Asset Value published in any of its annual financial statements.
  - (C) **Change of Investment Manager.** [REDACTED] ceases to be the Investment Manager (as defined in the Management Agreement entered into between Party B and the Investment Manager (the "Management Agreement") and (a) the Investment Manager shall not have been replaced by (i) an Affiliate of the Investment Manager or (ii) another person or entity approved by Party A (such approval not to be unreasonably withheld);
  - (D) **Change in Management.** Either Yang LIU or Yan YANG cease to be actively involved in the management of the assets of Party B (as reasonably determined by Party A).
  - (E) **Failure to deliver Net Asset Value statements.** Party B fails to deliver a statement of its Net Asset Value on or before the second Local Business Day following the required delivery date specified in Part 3 of this Schedule.
  - (F) **Loss of Licence.** The Investment Manager loses or fails to obtain a renewal of, or is given notice of the removal or potential removal of, any necessary licence from the Hong Kong Securities and Futures Commission.

## Execution Version

### Part 2 Tax Representations

- (a) ***Payer Tax Representations.*** For the purpose of Section 3(e) of this Agreement, Party A and Party B each makes the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 9(h) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, **PROVIDED** that it shall not be a breach of this representation where reliance is placed on sub-clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position

- (b) ***Payee Tax Representations.*** For the purpose of Section 3(f) of this Agreement, Party A and Party B make no representations.

## Execution Version

### Part 3 Agreement to Deliver Documents

For the purposes of Sections 3(d), 4(a)(i) and (ii) of this Agreement, each party agrees to supply the following documents:

(a) Tax forms, documents or certificates to be delivered are:

None.

(b) Other documents to be delivered are:

<b>PARTY REQUIRED TO DELIVER DOCUMENT:</b>	<b>FORM/DOCUMENT/ CERTIFICATE:</b>	<b>DATE BY WHICH TO BE DELIVERED:</b>	<b>COVERED BY SECTION 3(D) REPRESENTATION:</b>
Party A and Party B	Evidence of the authority and true signatures of each official or representative signing this Agreement or, as the case may be, a Confirmation, on its behalf.	On or before execution of this Agreement and each Confirmation forming a part of this Agreement.	Yes
Party B	Copy of the resolution of Party B's Board of Directors (or equivalent authorising documentation) authorising the execution and delivery of this Agreement and each Confirmation and performance of its obligations hereunder.	On or before execution of this Agreement.	Yes
Party B	Copies of Memorandum and Articles of Association of Party B, and Certificate of Incorporation (or equivalent constitutive documents).	On or before execution of this Agreement.	Yes
Party B	Annual audited financial statements	As soon as practicable but in any event within 180 days of the end of each financial year	Yes
Party B	Net Asset Value and Net Asset Value per Share to be provided by an independent third party.	Within 15 days of the last Local Business Day in each calendar month	Yes

**Execution Version**

Party B	(i) Copy of the monthly investment report prepared by the Investment Manager and sent to investors which includes performance commentary / attribution (ii) A monthly summary of the risk profile of the Fund, including, but not limited to: Level of Gearing, liquidity, portfolio analysis (sector / position diversification, concentration, duration), VaR analysis, stress analysis unencumbered cash, fund liquidity	Within 15 days of the last Local Business Day in each calendar month	Yes
Party B	Intra-month disclosure on Net Asset Value and Net Asset Value per Share	Upon request of Party A	Yes
Party B	Private Placement Memorandum of Party B	On or before execution of this Agreement.	Yes
Party B	Investment Management Agreement.	On or before execution of this Agreement.	Yes
Party B	Letter of Process Agent of Party B confirming acceptance of appointment.	On or before execution of this Agreement.	Yes
Party B	Any other information which Party A may reasonably request from Party B from time to time	Upon request of Party A	Yes

**Execution Version**

**Part 4  
Miscellaneous**

- (a) Notices or communications to Party A shall, with respect to a particular Transaction, be sent to the address or facsimile number specified in the Confirmation for the relevant Transaction, and any notice for the purposes of Sections 5 or 6 of this Agreement shall be sent to the address, specified below:

Address: UBS AG, Hong Kong Branch,  
52/F, Two International Finance Centre, Central, Hong Kong  
Attention: Legal Department  
Telephone: +852 2971 8888  
Facsimile: +852 2971 8779

with a copy to

Address: UBS AG, London Branch,  
5 Broadgate, London, EC2M 2QS  
Attention: Legal Department  
Telephone: +44 20 7567 8000  
Facsimile: +44 20 7567 4406 / +44 7568 9257

Address for notices or communications to Party B shall be sent to the address, telex number or facsimile number specified below:

Address: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

- (b) **Process Agent.** For the purpose of Section 13(c) of this Agreement: In respect of Party A: Not applicable. In respect of Party B, Party B appoints as its Process Agent:

[REDACTED]  
[REDACTED]  
[REDACTED]

- (c) **Offices.** The provisions of Section 10(a) of this Agreement will apply to Party A and Party B.

- (d) **Multibranch Party.** For the purpose of Section 10(b) of this Agreement:

Party A is a Multibranch Party and may act through its branches in any of the following territories or countries:

Australia, England and Wales, Hong Kong, Singapore and Switzerland.

Party B is not a Multibranch Party.

- (e) **Calculation Agent.** The Calculation Agent is Party A, unless otherwise specified in a Confirmation in relation to the relevant Transaction, provided that if an Event of Default has occurred and so long as it is continuing with respect to Party A, then a mutually acceptable leading dealer in the relevant market may act as the Calculation Agent (the "Substitute Calculation Agent"), whose fees and expenses (if any) shall be borne equally by both Party A and Party B. If Party A and Party B are unable to agree within 2 Local Business Days on a Substitute Calculation Agent, Party A and Party B shall each select an independent third party that would qualify as a leading dealer in the relevant market (a "Dealer") and such two Dealers jointly shall appoint within 2 Local Business Days on a third Dealer who shall be the Substitute Calculation Agent. The Substitute Calculation Agent shall have no liability or responsibility to the parties for any error or omission in making any determination or calculation in connection with this Agreement and all the calculations and determinations by the Substitute Calculation Agent shall be binding absent manifest error.

## Execution Version

All determinations and calculations by the Calculation Agent shall be made in good faith and in a commercially reasonable manner. If Party A cures the relevant Event of Default before Party B designates an Early Termination Date in accordance with Section 6(a) of this Agreement, and no other Event of Default has occurred (and not been cured) by such time, then Party A shall recommence acting as the Calculation Agent provided that nothing herein shall affect any calculations already produced by any Substitute Calculation Agent duly appointed in accordance with this provision.

- (f) **Credit Support Document.** Details of any Credit Support Document in relation to Party A and Party B: not applicable.
- (g) **Credit Support Provider.** Credit Support Provider means in relation to Party A and Party B: not applicable.
- (h) **Governing Law.** This Agreement and any non-contractual obligations arising out of or in connection with it or with the subject matter of this contract shall be governed by, and construed in accordance with, English law.
- (i) **Jurisdiction.** Section 13(b)(i) is hereby replaced in its entirety as follows:
  - (i) to (A) the non-exclusive jurisdiction of the English courts if the Proceedings do not involve a Convention Court. Notwithstanding the foregoing, both parties shall retain the right to bring proceedings against the other (aa) in any other court of competent jurisdiction; and (bb) concurrently in more than one jurisdiction and (B) the exclusive jurisdiction of the English courts if the Proceedings do involve a Convention Court and each party agrees that such courts may hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Agreement, including without limitation disputes arising out of or in connection with the existence, creation, validity, effect, interpretation performance and/or termination of the legal relationships established by this Agreement and any disputes arising out of any non-contractual obligations arising out of or in connection with this Agreement

Any Affiliate of Party A performing obligations under or in connection with this Agreement shall be entitled to the benefits of and shall be subject to the terms of Part 4(h) and (i) of this Agreement.

- (j) **Netting of Payments.** Multiple Transaction Payment Netting will not apply for the purpose of Section 2(c) of this Agreement, except that Multiple Transaction Payment Netting will apply for the purpose of Section 2(c) of this Agreement for the following groups of Transactions, which shall be treated separately: (1) FX Transactions (including FX Transactions resulting from the exercise of Currency Option Transactions); (2) premium payable under Currency Option Transactions (each of (1) and (2) as defined in the 1998 ISDA FX and Currency Option Definitions); and (3) Commodity Transactions (as defined in the 2005 ISDA Commodity Definitions) starting from the date of this Agreement.
- (k) **Affiliate** will have the meaning specified in Section 14 of this Agreement.
- (l) **Absence of Litigation.** For the purpose of Section 3(c):
  - "Specified Entity"** means in relation to Party A, any Affiliate of Party A.
  - "Specified Entity"** means in relation to Party B, any Affiliate of Party B.
- (m) **No Agency.** The provisions of Section 3(g) will apply to this Agreement.
- (n) **Additional Representation** will apply. For the purpose of Section 3 of this Agreement, the following will constitute an Additional Representation:
  - Relationship Between Parties.** Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):
    - (i) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based

### Execution Version

upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction, it being understood that information and explanations related to the terms and conditions of a Transaction will not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party will be deemed to be an assurance or guarantee as to the expected results of that Transaction.

- (ii) *Assessment and Understanding.* It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.
- (iii) *Status of Parties.* The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction.

References in this clause to a "party" shall, in the case of UBS AG and where the context so allows, include reference to any Affiliate of UBS AG.

- (o) *Recording of Conversations.* Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings.



**Execution Version**

**Part 5  
Other Provisions**

- (a) **Scope of Agreement.** Upon the effectiveness of this Agreement and unless the parties to this Agreement otherwise agree in writing, by specific reference to this Agreement, that this provision does not apply, all Derivative Transactions (as defined below) then outstanding, or which may be entered into thereafter, between the parties, including Transactions entered into by the parties through Offices, if any, listed in Part 4(d), are deemed to be Transactions governed by this Agreement and any confirmation or other confirming evidence of the Transaction is deemed to be a Confirmation

**"Derivative Transaction"** means any transaction (including an agreement with respect thereto) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, weather index transaction, bullion/precious metal transaction, base metal transaction, or forward purchase or sale of a security, commodity or other financial instrument or interest, or any other similar transaction (including any option with respect to any of these transactions) and any combination of these transactions.

- (b) **ISDA Definitions.** (i) The provisions of the 1998 FX and Currency Option Definitions (as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and the Foreign Exchange Committee) (the "1998 FX Definitions") are hereby incorporated in their entirety and shall apply to any FX Transaction or Currency Option Transaction as defined in Section 1.12 and Section 1.5, respectively, of Article 1 of the 1998 FX Definitions (each an "FX Transaction" or "Currency Option Transaction", respectively) entered into by the parties hereto (unless, in relation to a particular FX Transaction or Currency Option Transaction, as otherwise specified in the relevant Confirmation); and

(ii) The provisions of the 2005 ISDA Commodity Definitions (as published by the International Swaps and Derivatives Association, Inc.) (the "Commodity Definitions") are hereby incorporated in their entirety and shall apply to any Transaction as defined in Section 1.1 of Article 1 of the Commodity Definitions (each a "Commodity Transaction") entered into by the parties hereto (unless, in relation to a particular Commodity Transaction, as otherwise specified in the relevant Confirmation) .

- (c) **Failure to Pay or Deliver / Default Under Specified Transaction.**

(i) In relation to Party B only, Section 5(a)(i) is deleted in its entirety and replaced by the following:

- (1) **Failure to Pay or Deliver.** Failure by Party B to make, when due, any payment under this Agreement and/or any delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) required to be made by it and with respect to 2(a)(i), Party B does not comply with the Grace Period Procedure."

(ii) In relation to Party B only, Section 5(a)(v)(2) is deleted in its entirety and replaced by the following:

- (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment due on the last payment or exchange date of, or any payment on early termination of, a Specified Transaction

- (d) **Bankruptcy.** Section 5(a)(vii) of this Agreement is amended by replacing "15" with "30" on lines sixteen and twenty-three.

- (e) **Set-Off.** Section 6(f) is amended by the addition of:

"(or any other amounts whether or not arising under this Agreement, matured, contingent and irrespective of the currency, place of payment or booking of the obligation)" on the first line immediately after "Amount",

and

"or its Affiliates if it is the Non-defaulting Party or Non-affected Party" immediately after both instances of

## Execution Version

"party" on the first line.

- (f) **Waiver Of Jury Trial.** Each party hereby irrevocably waives any and all right to trial by jury in any suit, action or proceeding arising out of or relating to this agreement or any transaction and acknowledges that this waiver is a material inducement to the other party's entering into this agreement.
- (g) **2002 Master Agreement Protocol.** The parties agree that the definitions and provisions contained in Annexes 1 to 18 and Section 6 of the 2002 Master Agreement Protocol published by the International Swaps and Derivatives Association, Inc., on 15th July 2003 are incorporated into and will supplement and form part of this Agreement. References in those definitions and provisions to any "ISDA 2002 Master Agreement" or "2002 Master" will be deemed to be references to this Agreement.
- (h) **Further Representation of Party B.** In addition to its representations under Section 3, Party B represents to Party A (which representations will be deemed to be repeated by Party B on each date on which any Transaction subsists) that:
  - (i) It has appointed the Investment Manager to act as its agent for all purposes under this Agreement (including, without limitation, for the purpose of entering into Transactions on its behalf) (each such Transaction an "Agency Transaction");
  - (ii) Any person (including, without limitation, the Investment Manager and any person representing or purporting to represent the Investment Manager) signing the Agreement, any Confirmation and any such person entering into any Transaction, is duly authorised to do so on behalf of Party B;
  - (iii) Each Transaction entered into in connection with this Agreement by the Investment Manager is suitable and appropriate and in accordance with the investment objectives and guidelines for Party B on the date such Transaction is entered into; and
  - (iv) The execution, delivery and performance by the Investment Manager on behalf of Party B does not conflict with any law or regulation applicable to the Investment Manager, any provision of the constituent documents of the Investment Manager, any order or judgment of any court or other agency of government applicable to the Investment Manager, or any of the assets of the Investment Manager, or any contractual restriction binding on or affecting the Investment Manager, or any assets of the Investment Manager.
- (i) **Further Agreements of Party B.** In addition to its agreements under Section 4, Party B agrees with Party A that, so long as either party has or may have any obligations under this Agreement:
  - (i) Any amounts payable by Party A under this Agreement shall be deemed satisfied when paid by Party A to the Investment Manager.
  - (ii) Party B shall be bound as principal of any Agency Transaction entered into by the Investment Manager or any other person representing or purporting to represent the Investment Manager notwithstanding any lack of power or authority on the part of the Investment Manager or such other person.
- (j) **Notice of Termination of Investment Manager Relationship.** Party B shall notify Party A within one Local Business Day in the event that:
  - (i) the Investment Manager's business relationship with Party B is terminated; or
  - (iii) Either Yang LIU or Yan YANG cease to be actively involved in and responsible for the management of the assets of Party B (as reasonably determined by Party A)
- (k) **Notice of Loss of Licence.** Party B shall notify Party A within one Local Business Day if the Investment Manager loses or fails to obtain a renewal of, or is given notice of the removal or potential removal of, any necessary licence from the Hong Kong Securities and Futures Commission.
- (l) **Notice of Decline in Net Asset Value.** Party B shall notify Party A within one Local Business Day if there occurs at any time a decline in Party B's Net Asset Value (as existing on the last day of any calendar month

## Execution Version

(such date, "X")) of 15% or greater within one calendar month of X.

- (m) **Notice of Minimum Net Asset Value.** Party B shall notify Party A within one Local Business Day if the Net Asset Value of Party B at any time after the signing of this Agreement is equal to or less than 80% of the higher of (i) USD 15 million; or (ii) the highest Party B's Net Asset Value published in any of its annual financial statements.
- (n) **Reliance on Notices.** Except as otherwise stated herein, each party may rely upon any oral or written notices and instructions reasonably believed to be originated from the other party or its duly authorised agent (including, for Party B, the Investment Manager) and does not incur any liability to the other party in acting in accordance with those notices and instructions.
- (o) **Termination Notice.** Section 6(b)(i) of this Agreement is modified by the addition of the words "and in any event within one Local Business Day," after the words "promptly upon becoming aware of it," in the first and second lines thereof.
- (p) **Break clause for Transactions.** Either party may, by giving 3 Local Business Days' notice to the other party, designate an Early Termination Date for any Transaction on each anniversary of the trade date of that Transaction, in which case the Transaction is Cash-Settled under Article 17 of the ISDA 2000 Definitions, using Cash Price Settlement Method and Quotation Rate of Mid.
- (q) **Definitions.** Section 14 is hereby amended to include the following definition in its appropriate alphabetical position:

**"Business Day"** means unless otherwise specified, for payments and deliveries, a day on which the primary settlement system for that payment or delivery is open for normal business, including a day on which the relevant banks or settlement system would have been open for business but for an action taken by a Governmental Authority less than 1 month prior to that day;

**"Customer Business Day"** means a day in which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in the Customer Business Day City. In any event, a day on which the relevant banks or settlement system would have been open for business but for an action taken by a Governmental Authority less than 1 month prior to that day, will be a Customer Business Day;

**"Customer Business Day City"** means Hong Kong;

**"Failure Notice"** means, in relation to Party B's obligation under Section 2(a)(i), a notice of Party B's failure to satisfy payment or delivery under Section 2(a)(i), which Party A has either used reasonable efforts to despatch to the fax and email addresses or otherwise delivered to Party B or to the Investment Manager

**"Grace Period Procedure"** is the procedure that Party B complies with in relation to a failure contemplated by Section 5(a)(i) if, and only if,

- (i) following Party A's issue of a Failure Notice in relation to such failure,
- (x) if the Failure Notice was issued between 7 a.m. and 5 p.m. (inclusive, and in the Customer Business Day City) on a Customer Business Day, within three hours of Party A issuing a Failure Notice,
- (y) if the Failure Notice was issued after 5 p.m. (in the Customer Business Day City) on a Customer Business Day, or other than on a Customer Business Day, by 10 a.m. on the following Customer Business Day, or
- (z) if the Failure Notice was issued before 7 a.m. (in Customer Business Day City) on a Customer Business Day, by 10 a.m. on that Customer Business Day),

Party B demonstrates to Party A's reasonable satisfaction that such failure was due entirely to an error or omission of an administrative or operational nature, and that, at all times between the time at which the relevant transfer was due and the time of such actual transfer, assets was available for Party B to make the relevant transfer by such time, and that a reputable bank or broker has received from Party B an irrevocable

## Execution Version

instruction to make a transfer of assets that is freely available to Party B in an account of Party B's name on the books of that bank or broker, so as to remedy such failure within the applicable time period under (ii) below; and

- (ii) having so demonstrated, Party B makes the relevant transfer by,
- (xx) where (x) above applies, Close of Business on the Business Day that Party A issued the Failure Notice, or
- (yy) where (y) above applies, Close of Business on the Business Day after Party A issued the Failure Notice, or
- (zz) where (z) above applies, Close of Business on the Business Day that Party A issued the Failure Notice.

Close of Business means 5pm.

"**Governmental Authority**" means any government, any state or other political subdivision and any entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

"**Investment Manager**" means [REDACTED] or any successor affiliated entity

"**Level of Gearing**" means the result of dividing the aggregate absolute mark-to-market value of all trading positions that Party B has outstanding at any time (whether long or short and regardless of whether they are pair trades) by the Net Asset Value. For the purposes of this computation, amount denominated in a currency other than United States Dollars shall be converted to United States Dollars at the spot rate prevailing on the date of such calculation.

"**Net Asset Value**" means the result in USD of subtracting the total value of all liabilities (including but not limited to the aggregate mark-to-market value of all trading positions constituting liabilities) from the total value of all assets (including but not limited to cash, deposit accounts and instruments, securities, and the aggregate mark-to-market value of all trading positions constituting assets). For purposes of this computation, amounts denominated in a currency other than USD shall be converted to USD at the spot rate for such currency prevailing on the date of such calculation.

"**Net Asset Value per Share**" means, with respect to Party B, the Net Asset Value of Party B on any particular date divided by the number of shares of Party B in issue on such date

- (r) **Indian transactions.** If parties are entering into a Transaction which is or otherwise involves an offshore derivative instrument ("ODI") (as such term is defined for the purposes of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2014, and notifications, circulars, rules and guidelines of the Securities and Exchange Board of India issued from time to time) (collectively referred to as the "FPI Regulations"), the representations and undertakings made by Party B in favour of UBS AG in a letter titled "Notice Regarding Derivative Products Linked to Indian Securities or Indices" (which may be amended/replaced from time to time) (the "ODI Letter") shall apply to the Transaction and references to ODI in the Letter shall be construed to include the Transaction. If a representation or undertaking in the ODI Letter proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated; or if Party B fails to comply with or perform any agreement or obligation undertaken by it in the ODI Letter, it shall be an Additional Termination Event with all Transactions which are or otherwise involve an ODI (as defined in the ODI Letter) being the sole Affected Transactions, and with Party B being the sole Affected Party.
- (s) **Taiwanese transactions.** If the parties are entering into a Transaction referencing Taiwanese underliers where the relevant Exchange (as defined in the 2002 ISDA Equity Derivatives Definitions) is in the Republic of China, Party B represents to Party A that:
  - (i) It is not entering into this Transaction for the specific benefit or account of (A) any residents of the People's Republic of China ("PRC"), corporations in the PRC, or corporations outside the PRC that are beneficially owned by residents of the PRC or (B) any residents of the Republic of China ("ROC" or "Taiwan"), corporations in Taiwan, or corporations outside Taiwan that are beneficially owned

## Execution Version

by residents of Taiwan.

- (ii) It will not sell, transfer, assign, novate or otherwise dispose of the Transaction to or for the specific benefit or account of, or enter into any back-to-back equity derivative transaction with, (i) any residents of the PRC, corporations in the PRC, or corporations outside the PRC which are beneficially owned by residents of the PRC or (ii) any residents of Taiwan, corporations in Taiwan, or corporations outside Taiwan which are beneficially owned by residents of Taiwan.
  - (iii) Details of the Transaction (including the identity of Party B) may, (1) upon request or order by any competent authority, regulatory or enforcement organisation, governmental or otherwise, including without limitation, the stock exchange on which the underlying shares are listed, (2) as required by applicable law, rules, regulations, codes or guidelines (whether having the force of law or otherwise), be disclosed in accordance with such request, order, law, rules, regulations, codes or guidelines (whether such disclosure is to be made to third parties or otherwise). By entering into the Transaction, Party B agrees to such disclosure and releases Party A and its subsidiaries and affiliates from any duty of confidentiality owed to it in relation to such information.
- (t) **Chinese transactions.** If the parties are entering into a Transaction under this Agreement referencing People's Republic of China ("PRC") underliers where the relevant Exchange (as defined in the 2002 ISDA Equity Derivatives Definitions) is in the People's Republic of China, Party B represents to Party A that:
- (i) it is not a Domestic Investor;
  - (ii) none of its investors are Domestic Investors;
  - (iii) it will not sell, transfer, assign, novate or otherwise dispose of the Transaction to, or enter into any back-to-back equity derivative transaction with, any Domestic Investor;
  - (iv) details of this Transaction (including identity of the parties) may (a) upon request or order by any competent authority, regulatory or enforcement organisation, governmental or otherwise, including the stock exchange on which the underlying shares are listed, (b) as required by applicable law, rules, regulations, codes or guidelines (whether having the force of law or otherwise), be disclosed in accordance with such request, order, law, rules, regulations, codes or guidelines (whether such disclosure is to be made to third parties or otherwise). By entering into this Transaction, each party agrees to such disclosure and releases the other (and its subsidiaries and affiliates) from any duty of confidentiality regarding such disclosure
- "Domestic Investor"** means (i) domestic individual as defined in the Administrative Measures on Foreign Exchange Matters for Individuals as issued by the People's Bank of China, and (ii) legal persons organized under the laws of the People's Republic of China (excluding Hong Kong, Macau and Taiwan)
- (u) **Consent to Disclosure.** Party B consents to Party A effecting such disclosure as Party A may deem appropriate to enable Party A to transfer, disclose or otherwise process Party B's records and information, to process and execute Party B's instructions, or in pursuance of Party A's or Party B's commercial interest, to any of its head office, branches, Affiliates, professional advisers, agents or third party service providers ("intended recipient"). For the avoidance of doubt, Party B's consent to disclosure includes the right on the part of Party A to allow access to any intended recipient of Party B information, to the records and information of Party A by any means.
- (v) **Foreign Account Tax Compliance Act and HIRE Act.**
- (i) **FATCA PROTOCOL PROVISION** "Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. "Tax" as used in Part 2(a) of this Schedule (Payer Tax Representation) and "Indemnifiable Tax" as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "FATCA Withholding Tax"). For the

### Execution Version

avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this agreement. If the parties each independently decide to adhere to any ISDA Protocol on FATCA Withholding Tax, upon effective adherence by both parties, the provisions of such Protocol shall supersede the foregoing provision.

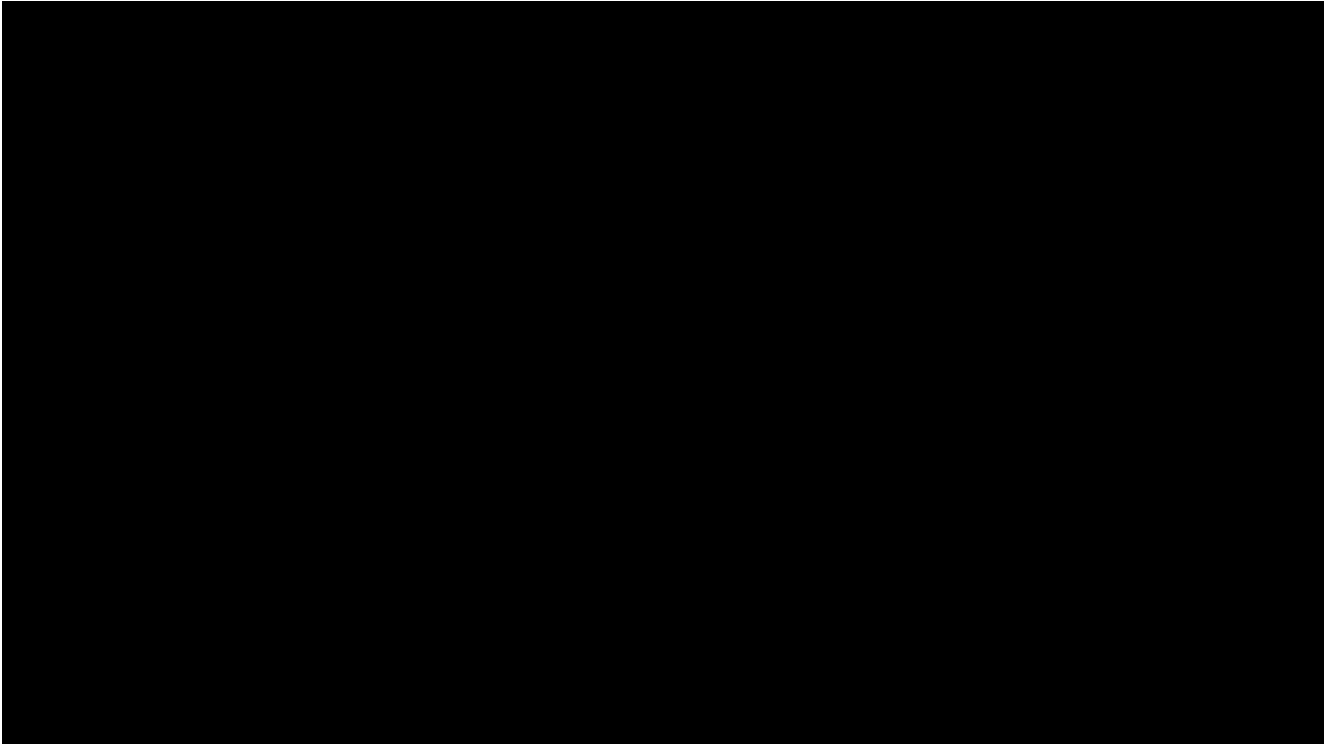
- (ii) **Section 871(m)**. The parties agree that the amendments set out in the Attachment to the ISDA 2015 Section 871(m) Protocol published by ISDA on November 2, 2015, which is available on the ISDA website ([www.isda.org](http://www.isda.org)) (the "Protocol"), will apply to this Agreement. The parties further agree that this Agreement will be deemed to be a Covered Master Agreement and that the Implementation Date will be the effective date of this Agreement as amended by the parties for the purposes of such amendments, regardless of the definitions of such terms in the Protocol.

### (w) **ISDA Resolution Stay Jurisdictional Modular Protocol – Swiss Jurisdictional Module.**

The terms of the Swiss Jurisdictional Module and the ISDA Resolution Stay Jurisdictional Modular Protocol (each published by the International Swaps and Derivatives Association, Inc. and together, the "**Swiss Stay Provisions**") are incorporated into and form part of this Agreement. For purposes thereof, this Agreement shall be deemed a Covered Agreement and the terms of the Swiss Stay Provisions shall apply to this Agreement as if Party A is a Regulated Entity Counterparty and Party B is a Module Adhering Party with the Implementation Date deemed to be the date of this Agreement. In the event of any inconsistencies between this Agreement and the Swiss Stay Provisions, the Swiss Stay Provisions will prevail.

**Execution Version**

**IN WITNESS WHEREOF** the parties have executed this Schedule on the respective dates specified below with effect from the date specified on the first page of this document.





UBS AG  
Global Financing Services  
5 Broadgate  
London EC2M 2QS  
Tel. +44-20-7567-8000

[www.ubs.com/gfsterns](http://www.ubs.com/gfsterns)

# Global financing services agreement

## GFS Elections

GFS Agreement Date: ..... **11 June** ..... 2020



Edition: 1.1 June 2020

For more information visit [www.ubs.com/gfsterns](http://www.ubs.com/gfsterns)



# About us

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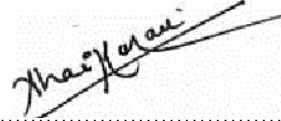
## Us

### UBS AG

(Us, Party A or UBS)



By: **Dennis De-Coninck**  
Name: **Director**  
Date: **Global Client Documentation**



By: **Sharika Nair**  
Name: **Executive Director**  
Date: **Global Client Documentation**

### CONTACT DETAILS

5 Broadgate,  
London EC2M 2QS,  
United Kingdom  
+44 20 7567 8000

#### GFS Operations

email: [ol-ipb-am@ubs.com](mailto:ol-ipb-am@ubs.com)  
phone: +44 20 7568 9445  
attention: Account Manager

#### GFS Legal

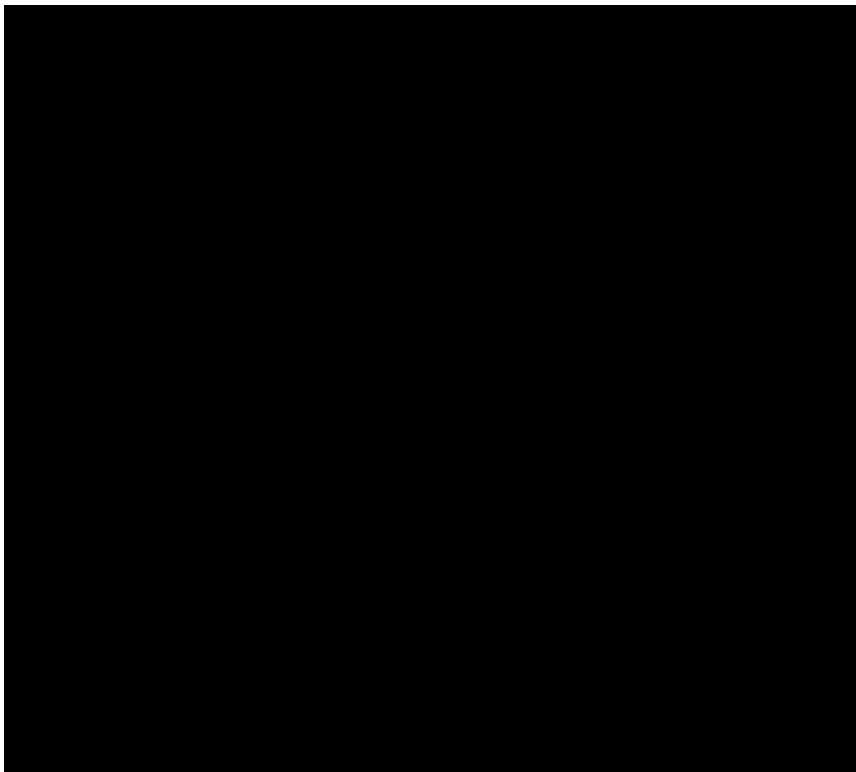
email: [ol-legal-london-gfs@ubs.com](mailto:ol-legal-london-gfs@ubs.com)  
attention: Sales & Trading Legal - GFS

We may update our contact details from time to time at [www.ubs.com/gfsterns](http://www.ubs.com/gfsterns).

# About you

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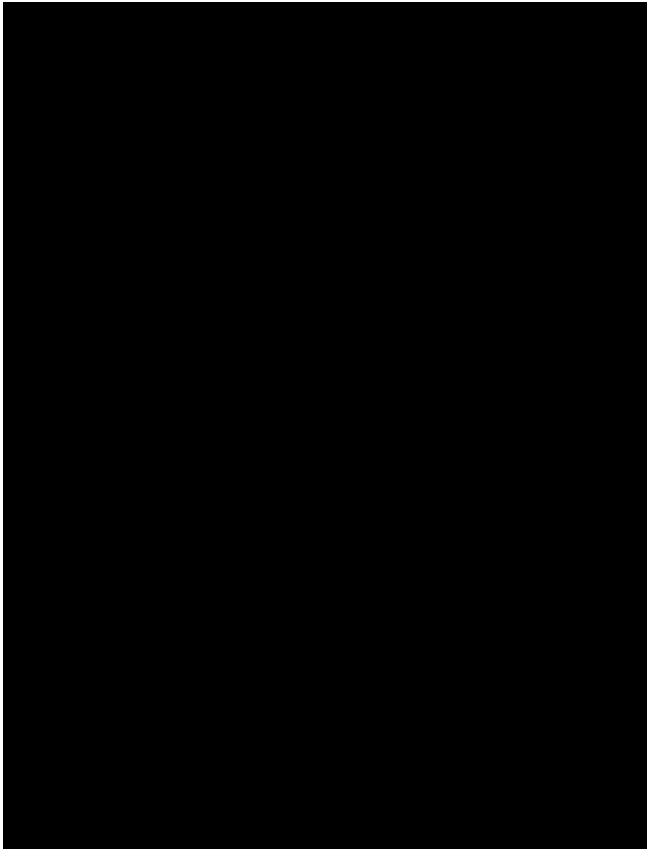
You



# Your agents

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Investment Manager



# GFS Agreement

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**GFS Agreement:** The parties agree to be bound by the edition specified below of our global financing services general terms, as published at [www.ubs.com/gfsterns](http://www.ubs.com/gfsterns), and modified by this agreement (together the **GFS Agreement**), with an effective date of the GFS Agreement Date.

<b>GFS Agreement Date</b>	As specified on the front page of this agreement.
<b>GFS General Terms edition</b>	1.1 September 2019.
<b>Other Master Agreements</b>	None.
<b>GFS Operating Terms</b>	Please also see our global financing services operating terms which are published from time to time at <a href="http://www.ubs.com/gfsterns">www.ubs.com/gfsterns</a> .

## GFS Services

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<b>Money-market service</b>	Does not apply.
<b>Automatic returns service</b>	Applies.

## GFS Transactions

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<b>Loans</b>	Applies.
<b>Exchange-traded derivatives</b>	Does not apply.
<b>Outperformance transactions</b>	Applies.

## GFS risk and cost management

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<b>Security</b>	Applies.
<b>Limited Recourse</b>	Applies.
<b>Base Currency</b>	US Dollars.
<b>Minimum Call</b>	Zero.
<b>Notification Time</b>	1pm London time.
<b>Valuation Date Location</b>	For both parties: London.
<b>Rights of use</b>	Applies. The Transfer Limit will be calculated as follows: $140\% * MAX[100\% * Securities Loan Exposure, Indebtedness]$ Where on any day: <b>Indebtedness</b> means $((105\% * Securities Loan Exposure) - Bank Account Balance + OTC IM)$ <b>Securities Loan Exposure</b> means the mark-to-market value in the Base Currency of outstanding securities loans we have made to you under the GFS Agreement. <b>Bank Account Balance</b> means the aggregate value in the Base Currency of your Bank Account and your IM Account, expressed as a positive if owed to you. <b>Base Currency</b> means the base currency specified as such in the GFS Agreement. <b>OTC IM</b> means the net balance of all initial margin attributable to your OTC derivatives from time to time.

## Other terms

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<b>Failure to pay or deliver as a result of Operational Errors</b>	The following will be added before the semicolon at the end of the <b>Failure to pay or deliver</b> Event of Default in the GFS Terms: "provided that it will not be an Event of Default if: (a) within three hours of our notice to you, you have satisfied us that: (i) the failure was caused by an administrative or operational error; (ii) at all times you had sufficient assets available to you to make the necessary delivery or payment; (iii) you have irrevocably instructed a reputable financial institution to make the payment or delivery on your behalf, by the close of business on the following
--	--

- Business Day; and
- (iv) the necessary payment or delivery is made by that time.
- (b) A Failure Notice will be effective:
  - (i) when received, if delivered during ordinary business hours on a Business Day; and
  - (ii) as of the open of business on the following Business Day, in any other case.”

# Swap Agreement

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## General

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### Swap Agreement

The parties agree to be bound by the edition specified below of our GFS ISDA terms (published at [www.ubs.com/gfsterns](http://www.ubs.com/gfsterns)), as modified by this agreement (the **Swap Agreement**) with an effective date of the GFS Agreement Date. The Swap Agreement will supersede all prior agreements between us governing any Derivative Transactions between us. All confirmations relating to any such Derivative Transactions will be Confirmations for the purpose of this Swap Agreement.

### GFS ISDA Terms edition

1.2 September 2019

## Part 1

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### Cross acceleration

**Party A Threshold Amount:** Part 1(c)(ii)(A) is deleted in its entirety and replaced by the following:

**Part A:** For Party A, an amount equal to 3% of shareholders equity as shown in its most recent annual audited financial statements;

**Party B Threshold Amount:** The Threshold Amount for Party B under Section 5(a)(vi) will be the higher of \$10 million or 3% of shareholders' equity of Party B.

### Additional Termination Events

The following will be an Additional Termination Event under Section 5(b)(vi) for Party B:

**Investment Manager events:** the Investment Manager ceases to be Party B's investment manager and is not promptly replaced by a substitute reasonably acceptable to Party A.

## Part 3

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### Documents for delivery

Set out in Annex A.

### Agreement to deliver documents

Part 3(a) (**Agreement to deliver documents**) is removed in its entirety and replaced with the following:

"Each party must supply the tax forms, documents or certificates set out in Section 4(a) and the "documents for delivery" specified in the GFS Elections, each of which (other than the tax forms and 'Other information') will be covered by the Section 3(d) Representation. "

## Part 5

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### Portfolio reconciliation

**Portfolio Reconciliation Agent:** Party A appoints Tri-Optima's Tri-Resolve platform as its third party service provider.

#### Portfolio reconciliation process status

- (a) **Portfolio Data Receiving Entity:** Party B
- (b) **Portfolio Data Sending Entity:** Party A

#### Communications

- (a) **Party A:** Portfolio reconciliations team: [portrecs-emir-regula@ubs.com](mailto:portrecs-emir-regula@ubs.com)
- (b) **Party B:** [aomc@airain.gg](mailto:aomc@airain.gg)

### Break Clause for Transactions

Part 5 (j) (**Break Clause for Transactions**) is removed in its entirety.

### Accuracy of Specified Information

The following additional provision is added at the end of Part 5:

- (n) **Accuracy of Specified Information.** For the purposes of 3(d) of this Agreement, the following shall be added immediately prior to the period at the end thereof:

“or, in the case of audited or unaudited financial statements, a fair presentation of the financial condition of the relevant party.”

## Definitions

Part 5(a)(ii) (**Net Asset Value**) is removed in its entirety.

## Part 6

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### Indian transactions

Part 6(a) (**Indian transactions**) is removed in its entirety and replaced with the following:

- (a) **Restricted Markets.** Party B acknowledges and agrees that it may not transact with Party A any over-the-counter derivatives transaction that references a security listed on any securities exchange located in India (each such transaction a **Restricted Market Transaction**) without first agreeing with Party A terms specific to those markets, including representations and warranties, reasonably requested by Party A at such time to enable it to comply with local market regulations. If Counterparty transacts with Party A prior to the written agreement of such local market terms, this shall constitute the occurrence of an Additional Termination Event with such Restricted Market Transactions as the sole Affected Transactions and with Party B as the sole Affected Party. For the avoidance of doubt, entry into the transaction prior to a written agreement of such local terms shall not be deemed to constitute any waiver by Party A of the occurrence of that Additional Termination Event. ”

## Credit support annex

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The Credit Support Annex set out in the GFS ISDA terms applies without amendment.

## Portfolio swap master confirmation

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The portfolio swap master confirmation set out in the GFS ISDA terms applies without amendment.

# Annex A: Documents for delivery

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<b>Delivering Party</b>	<b>Document</b>	<b>Due date for delivery</b>
Each party	<b>Authority:</b> Evidence of the authority and true signatures of each person signing this Agreement on its behalf.	At execution of this Agreement.
Party B	<b>Resolutions:</b> Evidence of Party B's corporate resolution to enter into and perform this Agreement and each Transaction.	At execution of this Agreement.
Party B	<b>Service agreement</b> granting Investment Manager investment management authority and any amendment thereto or restatement thereof.	At execution of this Agreement.
Party B	<b>Other information:</b> Any other information which Party A may reasonably request from time to time.	Upon request of Party A.



# Prime brokerage disclosure annex

The Financial Conduct Authority's Client Asset Sourcebook (**CASS**) requires us to summarise the key provisions of the GFS Agreement by which you have given us your consent to use your Custody Securities. This annex is for information only, is not legally binding and is not part of the Agreement. All references in this Annex to clauses are to clauses in the GFS General Terms.

## 1 Summary of our rights to use your Securities

(a) **General right:** Where we have the right to use your Securities (as denoted in this document), we may do so as follows:

- (i) **Right to transfer:** We may transfer Custody Securities having a value not exceeding the Transfer Limit from your Custody Account to the Transfer Account on any day.
- (ii) **Transfer Limit:** We must ensure that the value of Transferred Securities does not exceed the Transfer Limit. If it does on any day for any reason we must remedy the situation before the end of the same Business Day.
- (iii) **Event of Default:** For so long as we are subject to an existing Event of Default, the Transfer Limit will be nil.
- (iv) **Title:** Full legal and beneficial title to Transferred Securities will pass to us. The Custody Terms will not apply to them.
- (v) **Manufactured payments:** Following an Income record date for any Transferred Securities, we will promptly credit your GFS Accounts with Equivalent Income after deducting any Taxes.
- (vi) **Hong Kong transactions:** Where we use Hong Kong Securities, you authorise us as borrower to comply with the HKIRD and the Hong Kong Stamp Duty Ordinance requirements described in clause 39(g) and you must provide us with any information we request to assist in our reporting obligations.

(b) **Return:** We must return your Securities as follows:

- (i) **Meaning of return:** In this clause to "return" Transferred Securities to you means to debit them from the Transfer Account and credit Equivalent Securities by title transfer to your Custody Account, free from competing interests.
- (ii) **Our obligation to return securities**
  - (A) We may return Transferred Securities to you at any time.
  - (B) We must return Transferred Securities (selected by us) to you whenever necessary to comply with the Transfer Limit.
  - (C) We must use our reasonable efforts to return specific Transferred Securities to you upon your request.
  - (D) You must allow us at least the standard settlement time after your request to return Transferred Securities to you.
- (iii) **Non-return:** If we fail to deliver Equivalent Transferred Securities to you and you incur costs and expenses by way of interest or overdraft or as a direct result of buying in equivalent securities, on your request we will pay you an amount equal to those incurred costs (unless they arise from your negligence or wilful default).
- (iv) **Suspension, etc.:** Where the Transferred Securities have been suspended or delisted, we may, and at your request will pay you their fair value in satisfaction of our obligation

to return Equivalent Securities.

## 2 Key risks where we use your Securities

- (a) **Unsecured creditor risk:** When we transfer your Custody Securities to the Transfer Account they become our property. You will only have an unsecured claim against us for delivery of equivalent Securities. In our bankruptcy, you will be an unsecured creditor, but you may be able to set your claim off against your liabilities to us.
- (b) **Redelivery risk:** In certain market conditions we may not be able to readily obtain Equivalent Securities to deliver to you. You may therefore be unable to take certain actions in relation to those Securities.

## 3 Definitions

The following are the definitions on which our right to use your Custody Securities are based:

**Bank Account:** The bank accounts we establish to record your cash balances in difference currencies, as specified in your GFS Agreement.

**Business Day:** For payments and deliveries, a day on which the primary settlement system for that payment or delivery is open for normal business.

**Custody Account:** Any account we establish which is expressed to be subject to the Custody Terms.

**Custody Securities:** Securities credited for the time being to any Custody Account.

**Custody Terms:** The terms set out in the custody service section of the GFS General Terms as modified by your GFS Agreement.

**Equivalent:** For cash, an equal amount of cash; for securities, other securities that are fungible with them (or, following any corporate event relating to the issuer, assets due to a holder who had validly participated in that event).

**Event of Default:** It will be an Event of Default for us if we are subject to Bankruptcy (as defined in the ISDA Master Agreement).

**GFS Accounts:** Any Custody Accounts and Bank Accounts we establish in your name under your GFS Agreement.

**Income:** All Interest, dividends or other distributions (whether in cash or in kind) paid or made on any transaction.

**Securities:** Your Custody Securities and your rights against us relating to any Transferred Securities or Outperformance Securities.

**Taxes:** Any present or future tax or withholding (including interest and penalties) imposed by any taxing authority in respect of any payments under the GFS Agreement.

**Transfer Account:** The account we establish to hold Transferred Securities, as specified in the GFS Agreement.

**Transferred Securities:** Securities credited to the Transfer Account for the time being.

**Transfer Limit:** the Transfer Limit set out in this document.

## 4 Clause List

Our rights to use your Securities are in Clauses 30 and 31. Definitions are in Clause 57.

(Multicurrency—Cross Border)

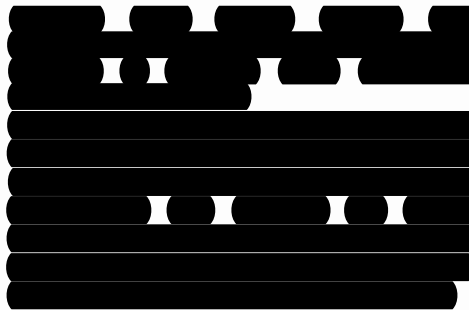
# ISDA<sup>®</sup>

International Swap Dealers Association, Inc.

## MASTER AGREEMENT

dated as of 2 December 2009

UBS AG



..... and .....  
have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:—

**1. Interpretation**

- (a) **Definitions.** The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

**2. Obligations**

- (a) **General Conditions.**
  - (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
  - (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

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(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If—

- (1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);
- (2) X does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(e) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

### 3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:—

(a) **Basic Representations.**

- (i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;
- (ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;
- (iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
- (v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to

equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated,

organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction") and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

## 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party 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 such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) 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, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however

described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) 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, such 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 dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) 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; (7) 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 such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event

Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:—

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Tax Event.** Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) **Tax Event Upon Merger.** The party (the “Burdened Party”) on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, such party (“X”), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(v) **Additional Termination Event.** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.



## 6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

### (b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

### (iv) **Right to Terminate. If:—**

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then

continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) **Effect of Designation.**

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) **Calculations.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) **Payment Date.** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default:—

(1) **First Method and Market Quotation.** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) **First Method and Loss.** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) **Second Method and Market Quotation.** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the

Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) *Termination Events.* If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Pre-Estimate.* The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

## 7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that: —

- (a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and
- (b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

## 8. Contractual Currency

(a) *Payment in the Contractual Currency.* Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the "Contractual Currency"). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) *Judgments.* To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term "rate of exchange" includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

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

(d) *Evidence of Loss.* For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

## 9. Miscellaneous

(a) *Entire Agreement.* This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

(b) *Amendments.* No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

(c) *Survival of Obligations.* Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) *Remedies Cumulative.* Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

### (e) *Counterparts and Confirmations.*

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) *No Waiver of Rights.* A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) *Headings.* The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

## 10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.

(b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.

(c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

## 11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document

to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 12. Notices

(a) *Effectiveness.* Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) *Change of Addresses.* Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

## 13. Governing Law and Jurisdiction

(a) *Governing Law.* This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) *Jurisdiction.* With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

- (i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and
- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or reenactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) *Service of Process.* Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any

reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) *Waiver of Immunities.* Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

#### 14. Definitions

As used in this Agreement:—

*"Additional Termination Event"* has the meaning specified in Section 5(b).

*"Affected Party"* has the meaning specified in Section 5(b).

*"Affected Transactions"* means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

*"Affiliate"* means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

*"Applicable Rate"* means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

*"Burdened Party"* has the meaning specified in Section 5(b).

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

*"consent"* includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

*"Credit Event Upon Merger"* has the meaning specified in Section 5(b).

*"Credit Support Document"* means any agreement or instrument that is specified as such in this Agreement.

*"Credit Support Provider"* has the meaning specified in the Schedule.

*"Default Rate"* means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**"Defaulting Party"** has the meaning specified in Section 6(a).

**"Early Termination Date"** means the date determined in accordance with Section 6(a) or 6(b)(iv).

**"Event of Default"** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**"Illegality"** has the meaning specified in Section 5(b).

**"Indemnifiable Tax"** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

**"law"** includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and **"lawful"** and **"unlawful"** will be construed accordingly.

**"Local Business Day"** means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

**"Loss"** means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that 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 this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

**"Market Quotation"** means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have



been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

**"Non-default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

**"Non-defaulting Party"** has the meaning specified in Section 6(a).

**"Office"** means a branch or office of a party, which may be such party's head or home office.

**"Potential Event of Default"** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**"Reference Market-makers"** means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

**"Relevant Jurisdiction"** means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

**"Scheduled Payment Date"** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**"Set-off"** means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

**"Settlement Amount"** means, with respect to a party and any Early Termination Date, the sum of:—

(a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

**"Specified Entity"** has the meaning specified in the Schedule.

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

**"Specified Transaction"** means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**"Stamp Tax"** means any stamp, registration, documentation or similar tax.

**"Tax"** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

**"Tax Event"** has the meaning specified in Section 5(b).

**"Tax Event Upon Merger"** has the meaning specified in Section 5(b).

**"Terminated Transactions"** means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

**"Termination Currency"** has the meaning specified in the Schedule.

**"Termination Currency Equivalent"** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

**"Termination Event"** means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

**"Termination Rate"** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

**"Unpaid Amounts"** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market

value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.



**SCHEDULE  
to the  
Master Agreement  
dated as of 2 December 2009  
between**

UBS AG

and

[REDACTED]

("Party A")

("Party B")

The parties recognise and agree that, this Umbrella ISDA Master Agreement, (the "Umbrella Agreement") takes effect as a separate agreement (each the "Agreement") between Party A and Party B. Each Sub-Trust's obligations are separate and distinct from those of each other Sub-Trust. Each reference in this Umbrella Agreement to Party B shall be a reference to Party B acting through a given Sub-Trust, individually and not jointly with any other Sub-Trust. Notwithstanding anything in this Umbrella Agreement to the contrary, each of the parties agrees that, for all purposes, Transactions entered into between the parties, where Party B has entered into such Transactions on behalf of any given Sub-Trust (as specified in the relevant Confirmation) shall be treated as if they had been entered into under a separate Master Agreement to Transactions entered into by Party B on behalf of each other Sub-Trust.

**Part 1  
Termination Provisions**

(a) **"Specified Entity"** means:

(i) for Party A for the purpose of:

Section 5(a)(v) of this Agreement,	UBS Securities LLC and UBS Limited,
Section 5(a)(vi) of this Agreement,	none,
Section 5(a)(vii) of this Agreement,	none,
Section 5(b)(iv) of this Agreement	none; and

(ii) for Party B for the purpose of:

Section 5(a)(v) of this Agreement,	none,
Section 5(a)(vi) of this Agreement,	none,
Section 5(a)(vii) of this Agreement,	none,
Section 5(b)(iv) of this Agreement	none.

(b) **"Specified Transaction"** will have the meaning specified in Section 14 of this Agreement and shall also mean repurchase agreements, reverse repurchase agreements, securities lending agreements, forward contracts, precious metals transactions, letters of credit reimbursement obligations, indebtedness for borrowed money (whether or not evidenced by a note or similar instrument) and any amounts payable under exchange traded derivative agreements now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party).

- (c) The "**Cross Default**" provisions of Section 5(a)(vi) of this Agreement apply to Party A and to Party B with the addition of the following at the end:

"however, an Event of Default does not occur under either (1) or (2) above if such party demonstrates to the reasonable satisfaction of the other that (a) the event or condition referred to in (1) or the failure to pay referred to in (2) is, or is due to, a failure to pay caused by an error or omission of an administrative or operational nature; (b) funds were available to such party to enable it to make the relevant payment when due; and (c) the relevant payment is made within three Local Business Days following receipt of written notice from an interested party of the failure to pay."

"**Specified Indebtedness**" means any obligation (whether present or future, contingent or otherwise as principal or surety or otherwise) for the payment or repayment of any money.

"**Threshold Amount**" means:

- (i) for Party A: an amount equal to 2% of shareholders' equity (however described) of Party A as shown on the most recent annual audited financial statements of Party A; and
- (ii) for Party B, or any Credit Support Provider or Specified Entity of Party B: the lesser of USD 10,000,000 (or the equivalent in other currencies) and an amount equal to 2% of Net Asset Value (as defined in Part 5 below) of the Sub-Trust.

- (d) The "**Credit Event Upon Merger**" provisions of Section 5(b)(iv) of this Agreement will apply to Party A and Party B.
- (e) The "**Automatic Early Termination**" provision of Section 6(a) of this Agreement applies to Party A and does not apply to Party B.
- (f) **Payments on Early Termination** for the purpose of Section 6(e) of this Agreement: (i) Loss applies; and (ii) the Second Method applies.
- (g) "**Termination Currency**" means a currency in which payments are required to be made under a Confirmation for a Terminated Transaction, that is selected by the Non-defaulting Party or non-Affected Party, or, if there are two Affected Parties, as agreed between the parties or, failing agreement or if the currency selected is not freely available, the Termination Currency is U.S. Dollars.
- (h) **Additional Termination Event.** The following are Additional Termination Events for which Party B is the Affected Party.
- (A) **Decline in Net Asset Value.** The Sub-Trust's Net Asset Value (as at the last day of any calendar month (such date, "X")) declines by (i) 10% or greater within one calendar month of X, or (ii) 40% or greater within 12 calendar months of X;
  - (B) **Change of Adviser.** [REDACTED] (an "Investment Adviser") ceases to be an investment adviser to Party B and is not replaced by an investment advisor reasonably acceptable to Party A (acting in good faith and in a commercially reasonable manner) within 30 days thereafter;
  - (C) **Change in Management.** Ian Wace and Anthony Clake cease to be actively involved in and responsible for the management of the assets of Party B (as reasonably determined by Party A) and are not replaced within 30 days thereafter by an individual or individuals acceptable to Party A (acting in good faith and a commercially reasonable manner);
  - (D) **Failure to Deliver Net Asset Value Statement.** Party B fails to deliver a statement of its Net Asset Value or its monthly investment report on or before the third Local Business Day of Party A notifying Party B (whether in

writing or orally) of Party B's failure to provide the report on the required delivery date specified in Part 3 of this Schedule; and

- (E) ***Change in Regulatory Status.*** The Investment Adviser ceases to be regulated by a recognized regulatory body in a FATF (Financial Action Task Force) country.

**Part 2**  
**Tax Representations**

- (a) **Payer Tax Representations.** For the purpose of Section 3(e) of this Agreement, Party A and Party B each make the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, **PROVIDED THAT** It is not a breach of this representation where reliance is placed on sub-clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

- (b) **Payee Tax Representations.** For the purpose of Section 3(f) of this Agreement, Party A and Party B make no representations.

**Part 3**  
**Agreement to Deliver Documents**

For the purposes of Sections 3(d), 4(a)(i) and (ii) of this Agreement, each party agrees to supply the following documents:

<b>PARTY REQUIRED TO DELIVER DOCUMENT:</b>	<b>FORM/DOCUMENT/ CERTIFICATE:</b>	<b>DATE BY WHICH TO BE DELIVERED:</b>	<b>COVERED BY SECTION 3(d) REPRESENTATION:</b>
Party A and Party B	Evidence of the authority and true signatures of each official or representative signing this Agreement or Confirmation on its behalf.	On or before execution of this Agreement and each Confirmation forming a part of this Agreement.	Yes
Party B	Evidence reasonably satisfactory to Party A authorising Party B's execution of this Agreement and each Confirmation and performance of Party B's obligations.	On or before execution of this Agreement.	Yes
Party B	Annual Audited Financial Statements	As soon as practicable but in any event within 180 days of the end of each financial year	Yes
Party B	Copy of the monthly investment report prepared by the Investment Adviser relating to the Sub-Trust and sent to investors, to include NAV information, performance commentary/attribution, and summary portfolio information	Within 15 days of the last Local Business Day in each calendar month	Yes
Party B	Confirmation of the NAV of the Sub-Trust to be provided directly from Party B's Administrator	Within 15 days of the last Local Business Day in each calendar month	Yes
Party B	Any other information which Party A may reasonably request from Party B from time to time	Upon request of Party A	Yes



**Part 4  
Miscellaneous**

- (a) **Address for Notices.** For the purpose of Section 12(a) of this Agreement:

Address for notices or communications to Party A:

For a particular Transaction, the address, telex number or facsimile number specified in the Confirmation and for any other notice the address specified below:

Address: 100 Liverpool Street, London EC2M 2RH  
Attention: Documentation Unit / Legal Department  
Facsimile no: +44 20 7567 4406 / +44 20 7568 9257  
Telephone no: +44 20 7567 8000

Address for notices or communications to Party B:

Address: [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

With a copy to:

[REDACTED]  
[REDACTED]  
[REDACTED]

- (b) **Process Agent.** For the purpose of Section 13(c) of this Agreement: For Party A: not applicable. For Party B: [REDACTED]
- (c) **Offices.** The provisions of Section 10(a) of this Agreement apply to Party A and Party B.
- (d) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement:  
Party A is a Multibranch Party and may act through its branches in any of the following territories or countries:  
England and Wales, Australia, Hong Kong, Singapore, and Switzerland.  
Party B is not a Multibranch Party.
- (e) **Calculation Agent.** The Calculation Agent is Party A, unless otherwise specified in the Confirmation for the relevant Transaction.
- (f) **Credit Support Document.** Details of any Credit Support Document for Party A and Party B: not applicable.
- (g) **Credit Support Provider.** Credit Support Provider means for Party A and Party B, not applicable.
- (h) **Governing Law.** This Agreement is governed by and must be construed in accordance with English law.

- (l) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement applies except for FX and Currency Option Transactions where subparagraph (ii) of Section 2(c) does not apply. Payments in FX and Currency Option Transactions are netted with payments in other FX and Currency Option Transactions in the same currency but not with Transactions other than FX and Currency Option Transactions.
- (j) **"Affiliate"** has the meaning specified in Section 14 of this Agreement.

**Part 5**  
**Other Provisions**

- (a) **Set-off.** Without affecting the provisions of the Agreement requiring the calculation of certain net payment amounts, all payments under this Agreement will be made without set-off or counterclaim; provided, however, that any amount (the "Early Termination Amount") payable to one party (the Payee) by the other party (the Payer) under Section 6(e). In circumstances where there is a Defaulting Party or an Affected Party, will, at the option of the party ("X") other than the Defaulting Party or the Affected Party (and without prior notice to the Defaulting Party of the Affected Party), be reduced by its set-off against any amount(s) (the "Other Agreement Amount") payable (whether at such time or in the future or upon the occurrence of a contingency) by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement(s) between the Payee and the Payer or instrument(s) or undertaking(s) issued or executed by one party to, or in favour of, the other party (and the Other Agreement Amount will be discharged promptly and in all respects to the extent it is so set-off). X will give notice to the other party of any set-off effected under this Part 5(a).

For this purpose, either the Early Termination Amount or the Other Agreement Amount (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Part 5(a) shall be effective to create a charge or other security interest. This Part 5(a) shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

- (b) **Representations.** Section 3(a) of this Agreement is hereby amended by the deletion of "and" at the end of Section 3(a)(iv); the substitution of the word "; and" for the full stop at the end of Section 3(a)(v) and the addition of Section 3(a)(vi) as follows:

"(vi) **No Agency.** It is entering into this Agreement and each Transaction as principal (and not as agent or in any other capacity, fiduciary or otherwise)."

- (c) **Waiver Of Jury Trial.** Each party waives, to the fullest extent permitted by law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this agreement or any credit support document or any transaction. Each party (i) certifies that no representative, agent or attorney of the other party or any credit support provider has represented, expressly or otherwise, that the other party would not seek to enforce this waiver in the event of any such suit, action or proceeding and (ii) acknowledges that it and the other party have entered into this agreement and any credit support document, as applicable, in reliance on, among other things, the mutual waivers and certifications in this section.
- (d) **Consent to Recording.** Each Party (i) consents to the recording of all telephone conversations between trading, operations and marketing personnel of the parties and their Affiliates in connection with this Agreement or any potential Transaction; (ii) agrees to give notice to such personnel of it and its Affiliates that their calls will be recorded; and (iii) agrees that in any Proceedings, it will not object to the introduction of such recordings in evidence on the ground that consent was not properly given.
- (e) **Scope of Agreement.** Upon the effectiveness of this Agreement and unless the parties to this Agreement otherwise agree in writing, by specific reference to this Agreement, that this provision does not apply, all Derivative Transactions (as defined below) then outstanding, or which may be entered into thereafter, between the parties,

including Transactions entered into by the parties through Offices, if any, listed in Part 4(d), are deemed to be Transactions governed by this Agreement and any confirmation or other confirming evidence of the Transaction is deemed to be a Confirmation.

'Derivative Transaction' means any transaction (including an agreement with respect thereto) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, weather index transaction, bullion/precious metal transaction, base metal transaction, or forward purchase or sale of a security, commodity or other financial instrument or interest, or any other similar transaction (including any option with respect to any of these transactions) and any combination of these transactions.

**ISDA Definitions.** (i) The provisions of the 1998 FX and Currency Option Definitions (as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and the Foreign Exchange Committee) (the "1998 FX Definitions") are hereby incorporated in their entirety and shall apply to any FX Transaction or Currency Option Transaction as defined in Section 1.12 and Section 1.5, respectively, of Article 1 of the 1998 FX Definitions (each an "FX Transaction" or "Currency Option Transaction", respectively) entered into by the parties hereto (unless, in relation to a particular FX Transaction or Currency Option Transaction, as otherwise specified in the relevant Confirmation); and

(ii) The provisions of the 2005 ISDA Commodity Definitions (as published by the International Swaps and Derivatives Association, Inc.) (the "Commodity Definitions") are hereby incorporated in their entirety and shall apply to any Transaction as defined in Section 1.1 of Article 1 of the Commodity Definitions (each a "Commodity Transaction") entered into by the parties hereto (unless, in relation to a particular Commodity Transaction, as otherwise specified in the relevant Confirmation).

(f) **Relationship between the Parties.** This Agreement is amended by the addition of Section 15 as follows:

**"15. Relationship between the Parties.**

Each party is deemed to represent to the other party on the date on which it enters into a Transaction (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):

(a) **Non Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgement and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction.

(b) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.

(c) **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction."

References in this clause to a "party", for UBS AG and where the context allows, includes any Affiliate of UBS AG.

(g) **Prior Agreements.** This Agreement supersedes all Agreements between the parties entered into prior to the execution of this Agreement governing any Specified Transaction between the parties and all confirmations for those Specified Transactions supplement, form part of, and are subject to this Agreement, such confirmations are Confirmations and such Specified Transactions are Transactions. For the purposes of this provision the definition of Specified Transaction is as defined in Section 14 of the Master Agreement, amended by the deletion of the words ", subject to the schedule," from the first line and "this Agreement or" from the final line.

(h) **Agreements.** Section 4 of this Agreement is amended by the addition of Section 4(f) as follows:

"(f) **Physical Delivery.** In respect of any physically settled Transactions, it will, at the time of delivery, be the legal and beneficial owner, free of liens and other encumbrances, of any securities or commodities it delivers to the other party; and, in addition, with respect to any breach of this Section 4(f), Section 5(a)(ii) of this Agreement is amended by the insertion of a full stop after "Agreement" on the fifth line and the deletion of the remainder of the Section."

(i) **Failure to Pay or Deliver.** For Party B only, Section 5(a)(i) is deleted in its entirety and replaced by:

Failure to Pay or Deliver. Failure by Party B to make, when due, any payment under this Agreement or any delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the first Local Business Day after notice of such failure is given to the party."

(j) **Further Representation of Party B.** In addition to its representations under Section 3, Party B represents to Party A (which representations are deemed to be repeated by Party B on each date on which any Transaction exists) that:

(i) It has appointed an Investment Adviser and/or [REDACTED] and/or [REDACTED] to act as its agent under this Agreement (including, without limitation, for the purpose of entering into Transactions on its behalf) (each such Transaction an "Agency Transaction"); and

(ii) Any person (including, without limitation, an Investment Adviser and/or [REDACTED] and/or [REDACTED] and any person representing or reasonably believed by Party A to represent an Investment Adviser and/or [REDACTED] and/or [REDACTED] signing the Agreement or any Confirmation, and any such person entering into any Transaction, is authorised to do so on behalf of Party B.

(k) **Further Agreements of Party B.** In addition to its agreements under Section 4, Party B agrees with Party A that, so long as either party has or may have any obligations under this Agreement:

(i) Any amounts payable by Party A under this Agreement are deemed satisfied when paid to an account as instructed by an Investment Adviser and/or [REDACTED]

(ii) Party B is bound as principal of any Agency Transaction entered into by an Investment Adviser and/or [REDACTED] or any other person representing or reasonably believed by Party A to represent an Investment Adviser and/or [REDACTED] and/or [REDACTED] despite any lack of power or authority on the part of an Investment Adviser and/or [REDACTED] and/or [REDACTED] or such other person.

- (l) **Reliance on Notices.** Except as otherwise stated herein, each party may rely upon any oral or written notices and instructions reasonably believed to be originated from the other party or its duly authorised agent (including, for Party B, an Investment Adviser) and does not incur any liability to the other party in acting in accordance with those notices and instructions.
- (m) **Termination Notice.** Section 6(b)(i) of this Agreement is modified by the addition of the words "and in any event within one Local Business Day," after the words "promptly upon becoming aware of it," in the first and second lines thereof.
- (n) **Delivery of notices under Sections 5 and 6 by fax.** Section 12(a) of this Agreement is amended by the deletion of the words "facsimile transmission or" in the third line of the first paragraph of that section.
- (o) **Definitions.** Section 14 is amended to include the following definition in its appropriate alphabetical position:

**'Master Declaration'** means the declaration of trust dated [ ] relating to [ ] as amended, and as supplemented by any supplemental deed thereto relating to the Sub-Trust.

**'Net Asset Value'** or **'NAV'** means with respect to the Sub-Trust, as applicable, the net asset value of the Sub-Trust calculated in accordance with the Master Declaration.

- (p) **Break clause for Transactions.** Party A may, by giving 3 Local Business Days' notice to Party B, designate an Early Termination Date for any Transaction on each anniversary of the trade date of that Transaction, in which case the Transaction is Cash-Settled under Section 17 of the ISDA 2000 Definitions, using Cash Price Settlement Method and Quotation Rate of Mid.
- (q) **Indian transactions**

For any Transaction that references a share listed on a stock exchange in India (an "Indian Transaction"), Party B is deemed to acknowledge, represent, warrant and undertake to Party A that:

1. Party B and the Investment Adviser are not (i) a Person resident in India as such term is used in the Foreign Exchange Management Act, 1999; (ii) a non-resident Indian ("NRI"), a person of Indian origin ("PIO") or an overseas corporate body ("OCB") as such terms are used in the Foreign Exchange Management (Deposit) Regulations 2000 as notified by the Reserve Bank of India; (iii) an entity or a person that is not regulated as such term is used in the Securities and Exchange Board of India (Foreign Institutional Investors Amendment) Regulations, 2004, or (iv) any other entity or person in violation of the Indian exchange control regulations and/or any applicable laws and regulations in India (each, a "Restricted Entity");
2. Party B and the Investment Adviser are not entering into the Indian Transaction as nominee or agent of, or pursuant to or in connection with any back-to-back transaction with a Restricted Entity;
3. Party B and the Investment Adviser will not, directly or indirectly, sell, transfer, assign, novate or otherwise dispose of the legal or beneficial ownership in any Indian Transaction to or as nominee or agent of any Restricted Entity;

4. Party B and the Investment Adviser consent to provide to Party A or directly to any Indian governmental or regulatory authority any information regarding Party B and the Investment Adviser, and/or Party B's and the Investment Adviser's shareholders/investors and/or the Indian Transaction as required under applicable Indian regulations and/or as requested by an Indian governmental or regulatory authority; and
5. Party B and the Investment Adviser further agree to provide to Party A, or directly to the relevant Indian governmental or regulatory authority, on a timely basis, such additional information that is deemed necessary or appropriate in order for Party A to comply with any applicable Indian regulations and/or as requested by any Indian governmental or regulatory authority.

(r) **Chinese transactions**

For any Transaction that references a share listed on a stock exchange in People's Republic of China ("PRC"), and Party B represents to Party A that:

- (1) it is not entering into the Transaction for, or pursuant to or in connection with any back-to back transaction with any Domestic Investor.
- (2) it will not, directly or indirectly, sell, transfer, assign, novate or otherwise dispose of the Transaction, directly or indirectly, to or for any Domestic Investor.
- (3) details of the Transaction (including identity of the parties) may (a) upon request or order by any competent authority, regulatory or enforcement organisation, governmental or otherwise, including without limitation, the stock exchange on which the underlying shares are listed, (b) as required by applicable law, rules, regulations, codes or guidelines (whether having the force of law or otherwise), be disclosed in accordance with such request, order, law, rules, regulations, codes or guidelines (whether such disclosure is to be made to third parties or otherwise). By entering into the Transaction, Party B agrees to such disclosure and releases Party A (and its subsidiaries and affiliates) from any duty of confidentiality regarding such disclosure.

"Domestic Investor" means (i) domestic individual as defined in the Administrative Measures on Foreign Exchange Matters for Individuals as issued by the People's Bank of China, and (ii) legal persons organized under the laws of the People's Republic of China (excluding Hong Kong, Macau and Taiwan).

- (s) **Restricted Markets.** Party B acknowledges and agrees that it may not transact with Party A any over-the-counter derivatives transaction (including any transaction that would otherwise be a Synthetic Transaction governed by the Addendum to this Master Agreement entitled "Synthetic Equity Swaps and Synthetic Convertible Bond Swaps") that references a security listed on any securities exchange located in Taiwan, without first agreeing with Party A terms specific to those markets, including representations and warranties reasonably required by Party A to enable it to comply with local market regulations.

(t) **Limitation of Liability**

Party A acknowledges and agrees that the Trustee has entered into this Agreement solely in its capacity as trustee of the Sub-Trust and acknowledges that each Transaction entered into pursuant to this Agreement is entered into by or on behalf of the Trustee with specific reference to and in its capacity as trustee of the Sub-Trust.

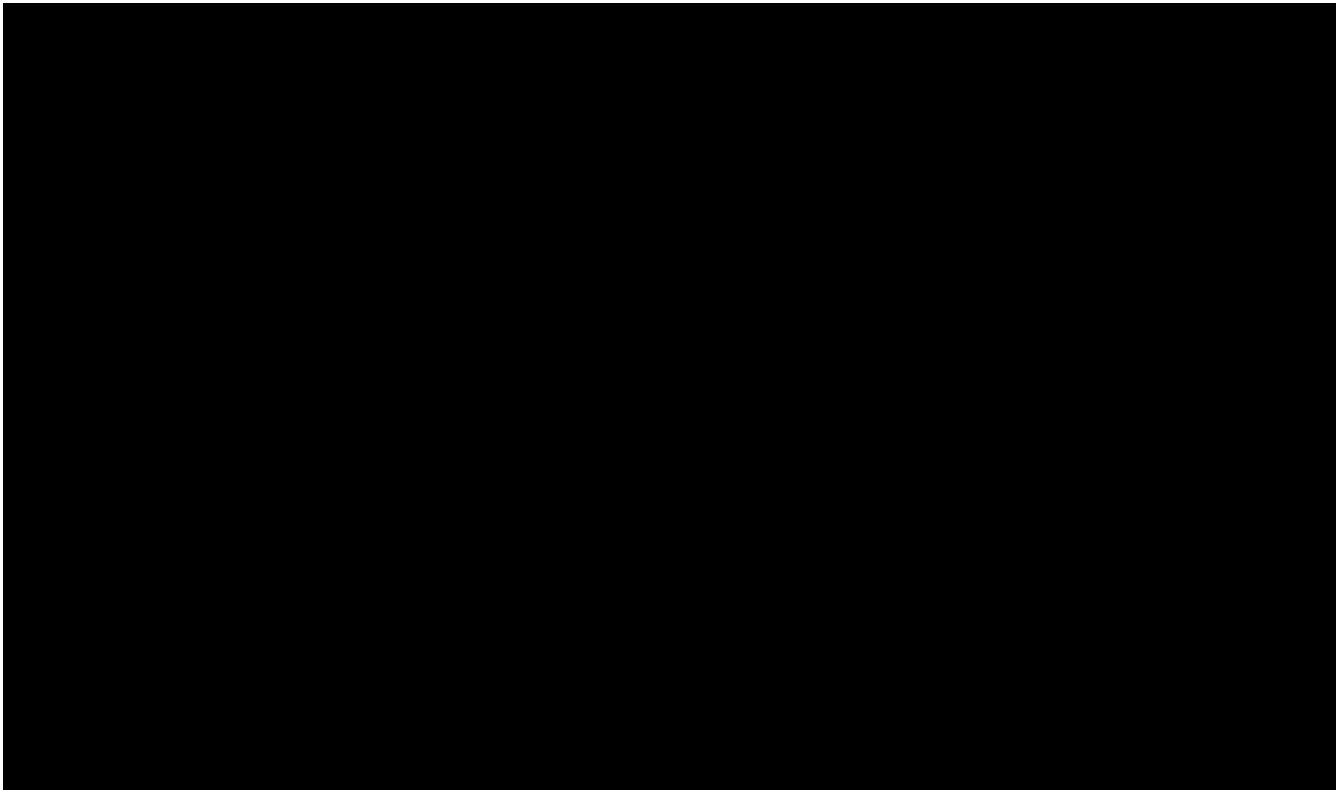
In respect of the Trustee's liability pursuant to and/or under this Agreement, Party A shall have recourse only to the assets held by, to the order of, or on behalf of the Trustee in its capacity as trustee of the Sub-Trust (including the relevant share of any assets held by the Trustee in its capacity as trustee of the Sub-Trust jointly with another person or with the Trustee acting in another capacity) from time to time, and upon exhaustion of the assets of the Sub-Trust, the claim of Party A shall be fully satisfied by the payment of such amounts as are available to be paid

to Party A from such assets and thereupon such claim shall be extinguished and Party A shall, in respect of such claim, have no further recourse against the Sub-Trust or Trustee; provided that Party A may have recourse against the assets of the Trustee where the Trustee is liable to Party A for any amount pursuant to this Agreement (whether by way of loss caused to Party A or otherwise) and the Trustee is, pursuant to the terms of the Master Declaration or applicable law, not indemnified or eligible for indemnification out of the assets referable to the Sub-Trust in relation to such liability.

Party B agrees that any amounts owed by the Trustee (acting solely in its capacity as trustee of the Sub-Trust) to Party A (including amounts owed pursuant to this Agreement) may be set-off against any amounts owed by Party A to the Trustee (acting solely in its capacity as trustee of the Sub-Trust). The Trustee represents that it has full power and authority to agree this provision in respect of assets held by it, to its order or on its behalf in its capacity as trustee of the Sub-Trust, pursuant to the terms of the Master Declaration.

An Event of Default under Section 5(a)(vii) occurs in relation to Party B, if and only if, an event specified in that sub-section occurs in relation to the Sub-Trust, as if instances of "party" in that sub-section were instances of "Sub-Trust". For the avoidance of doubt, all other references to a party to this Agreement, party "X", party "Y", the "Defaulting Party", the "Affected Party", the "Non-defaulting Party", the "Non-Affected Party" or otherwise shall be references to UBS AG or the Trustee acting solely in its capacity as trustee of the Sub-Trust, as appropriate."

**IN WITNESS WHEREOF** the parties have executed this Schedule on the respective dates specified below with effect from the date specified on the first page of this document.







(Multicurrency—Cross Border)

# ISDA®

International Swap Dealers Association, Inc.

## MASTER AGREEMENT

dated as of 21 April 2011

UBS AG  
("PARTY A")

A BANK ORGANISED UNDER THE LAWS OF  
SWITZERLAND

[REDACTED]

..... and .....  
have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:—

### 1. Interpretation

- (a) **Definitions.** The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

- (a) **General Conditions.**
  - (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
  - (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.
  - (iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If:—

- (1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);
- (2) X does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(e) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

### 3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:—

(a) **Basic Representations.**

- (i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;
- (ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;
- (iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
- (v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:—

- (i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;
- (ii) any other documents specified in the Schedule or any Confirmation; and
- (iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated,

organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located (“Stamp Tax Jurisdiction”) and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party’s execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

## 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an “Event of Default”) with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party 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 such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) 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, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If “Cross Default” is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however

described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) 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, such 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 dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) 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; (7) 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 such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event

Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:—

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Tax Event.** Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) **Tax Event Upon Merger.** The party (the “Burdened Party”) on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, such party (“X”), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(v) **Additional Termination Event.** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.



## 6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the “Defaulting Party”) has occurred and is then continuing, the other party (the “Non-defaulting Party”) may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, “Automatic Early Termination” is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) **Right to Terminate.** If:—

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then

continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) ***Calculations.***

(i) ***Statement.*** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) ***Payment Date.*** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) ***Payments on Early Termination.*** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) ***Events of Default.*** If the Early Termination Date results from an Event of Default:—

(1) ***First Method and Market Quotation.*** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) ***First Method and Loss.*** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) ***Second Method and Market Quotation.*** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the

Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount (“X”) and the Settlement Amount of the party with the lower Settlement Amount (“Y”) and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss (“X”) and the Loss of the party with the lower Loss (“Y”).

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) **Adjustment for Bankruptcy.** In circumstances where an Early Termination Date occurs because “Automatic Early Termination” applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate.** The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

## 7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that: —

- (a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and
- (b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

## 8. Contractual Currency

(a) **Payment in the Contractual Currency.** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the “Contractual Currency”). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term “rate of exchange” includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

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

(d) **Evidence of Loss.** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

## 9. Miscellaneous

- (a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.
- (b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.
- (c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.
- (d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.
- (e) **Counterparts and Confirmations.**
- (i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
  - (ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.
- (f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.
- (g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

## 10. Offices; Multibranch Parties

- (a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.
- (b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.
- (c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

## 11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document

to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 12. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

## 13. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

- (i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and
- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or reenactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Service of Process.** Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any

reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

#### **14. Definitions**

As used in this Agreement:—

**“Additional Termination Event”** has the meaning specified in Section 5(b).

**“Affected Party”** has the meaning specified in Section 5(b).

**“Affected Transactions”** means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

**“Affiliate”** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

**“Applicable Rate”** means:—

- (a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;
- (b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;
- (c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and
- (d) in all other cases, the Termination Rate.

**“Burdened Party”** has the meaning specified in Section 5(b).

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

**“consent”** includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

**“Credit Event Upon Merger”** has the meaning specified in Section 5(b).

**“Credit Support Document”** means any agreement or instrument that is specified as such in this Agreement.

**“Credit Support Provider”** has the meaning specified in the Schedule.

**“Default Rate”** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**“Defaulting Party”** has the meaning specified in Section 6(a).

**“Early Termination Date”** means the date determined in accordance with Section 6(a) or 6(b)(iv).

**“Event of Default”** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**“Illegality”** has the meaning specified in Section 5(b).

**“Indemnifiable Tax”** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

**“law”** includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and **“lawful”** and **“unlawful”** will be construed accordingly.

**“Local Business Day”** means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

**“Loss”** means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that 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 this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

**“Market Quotation”** means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the “Replacement Transaction”) that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have



been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

**“Non-default Rate”** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

**“Non-defaulting Party”** has the meaning specified in Section 6(a).

**“Office”** means a branch or office of a party, which may be such party's head or home office.

**“Potential Event of Default”** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**“Reference Market-makers”** means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

**“Relevant Jurisdiction”** means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

**“Scheduled Payment Date”** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**“Set-off”** means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

**“Settlement Amount”** means, with respect to a party and any Early Termination Date, the sum of:—

(a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

**“Specified Entity”** has the meaning specified in the Schedule.

**“Specified Indebtedness”** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

**“Specified Transaction”** means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**“Stamp Tax”** means any stamp, registration, documentation or similar tax.

**“Tax”** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

**“Tax Event”** has the meaning specified in Section 5(b).

**“Tax Event Upon Merger”** has the meaning specified in Section 5(b).

**“Terminated Transactions”** means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if “Automatic Early Termination” applies, immediately before that Early Termination Date).

**“Termination Currency”** has the meaning specified in the Schedule.

**“Termination Currency Equivalent”** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the “Other Currency”), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

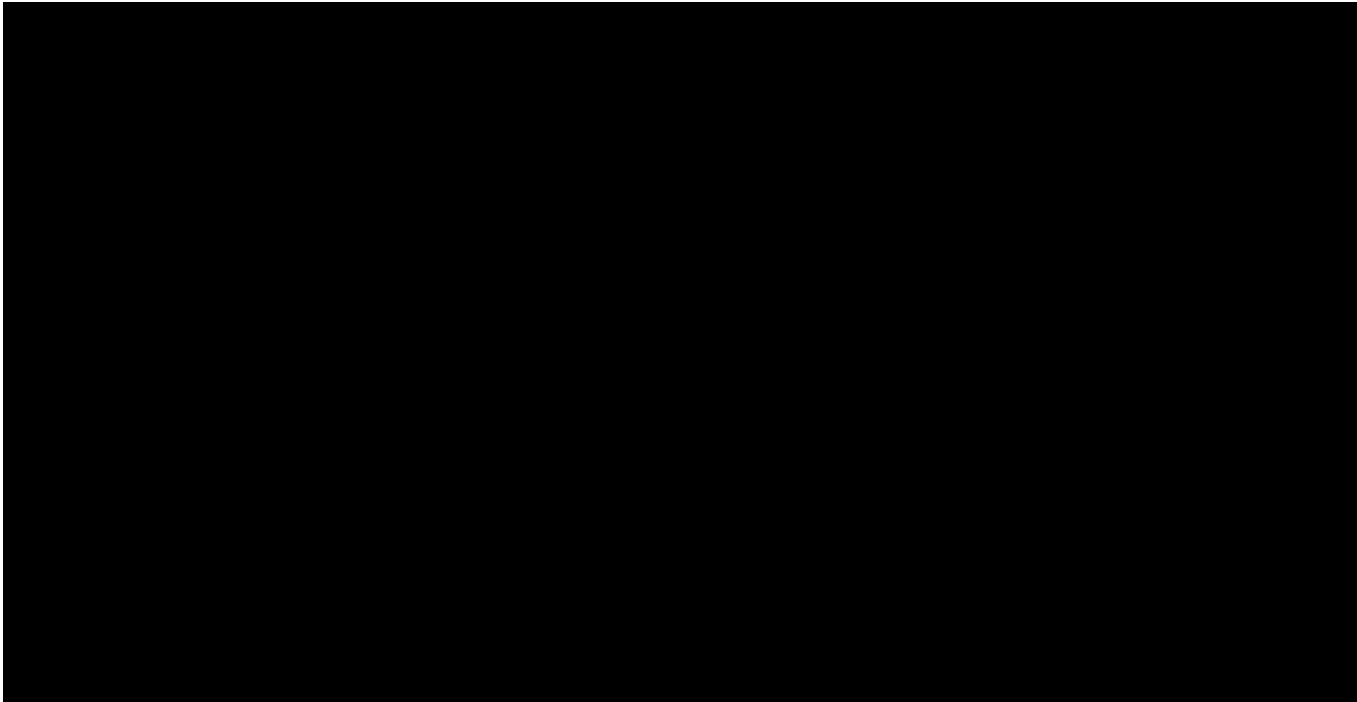
**“Termination Event”** means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

**“Termination Rate”** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

**“Unpaid Amounts”** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market

value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.



**SCHEDULE  
to the  
Master Agreement  
dated as of 21 April 2011  
between**

**UBS AG  
("Party A")**

**and**

**a bank organised under the laws of  
Switzerland**

[REDACTED]

**Part 1  
Termination Provisions**

- (a) **"Specified Entity"** means:
- (i) in relation to Party A for the purpose of:  
  
Section 5(a)(v) of this Agreement, UBS Limited,  
Section 5(a)(vi) of this Agreement, none,  
Section 5(a)(vii) of this Agreement, none,  
Section 5(b)(iv) of this Agreement none; and
  - (ii) in relation to Party B for the purpose of:  
  
Section 5(a)(v) of this Agreement, none,  
Section 5(a)(vi) of this Agreement, none,  
Section 5(a)(vii) of this Agreement, none,  
Section 5(b)(iv) of this Agreement, none.
- (b) **"Specified Transaction"** will have the meaning specified in Section 14 of this Agreement and shall also mean securities lending agreements and exchange traded derivatives now existing or hereafter entered into between one party to this Agreement and the other party to this Agreement.
- (c) The **"Cross Default"** provisions of Section 5(a)(vi) of this Agreement, as modified below, will apply to Party A and to Party B. Section 5(a)(vi) of this Agreement is hereby amended by the deletion in the seventh line thereof the words ", or becoming capable at such time of being declared,"; and the addition of the following at the end thereof:

"provided, however, that notwithstanding the foregoing, an Event of Default shall not occur under either (1) or (2) above if, as demonstrated to the reasonable satisfaction of the other party, (a) the event or condition referred to in (1) or the failure to pay referred to in (2) is a failure to pay caused by an error or omission of an administrative or operational nature; and (b) funds were available to such party to enable it to make the relevant payment when due; and (c) such relevant payment is made within three Business Days following receipt of written notice from an interested party of such failure to pay."

**"Specified Indebtedness"** will have the meaning specified in Section 14 of this Agreement.

**"Threshold Amount"** means:

- (i) in relation to Party A, 3% of shareholders equity (howsoever described) of Party A as shown on the most recent annual audited financial statements of Party A; and
  - (ii) in relation to Party B, 3% of the net asset value of Party B, as shown on the most recent annual audited financial statements of Party B.
- (d) The **"Credit Event Upon Merger"** provisions of Section 5(b)(iv) of this Agreement will apply to both Party A and Party B. Section 5(b)(iv) of this Agreement is hereby amended by the substitution of the following therefore:

(iv) **Credit Event Upon Merger.** A Designated Event (as defined below) occurs with respect to a party, any Credit Support Provider of the party or any applicable Specified Entity of the party (any such party or entity, "X"), and such Designated Event does not constitute an event described in Section 5(a)(viii) but the creditworthiness of X, or, if applicable, the resulting, surviving, or transferee entity of X, as the case may be, is materially weaker than that of X immediately prior to such action (and in such event X or such resulting, surviving or transferee entity of X will be the Affected Party). For the purposes hereof, a Designated Event shall mean that, after the date of this Agreement:

- (1) X 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,
- (2) another entity transfers all or substantially all its assets to, or reorganizes, incorporates, reincorporates or reconstitutes into or as X, or
- (3) any Person or group of related Persons acquires directly or indirectly the beneficial ownership of equity securities having the power to elect a majority of the board of directors of X or otherwise acquires directly or indirectly the power to control the policy making decisions of X."

- (e) The "**Automatic Early Termination**" provision of Section 6(a) of this Agreement will not apply to Party A and will not apply to Party B; provided, however, where the Event of Default is specified in section 5(a)(vii)(1), (3), (4), (5), (6) or to the extent analogous thereto, (8), and is governed by a system of laws which does not permit termination to take place upon or after the occurrence of the relevant Event of Default in accordance with the terms of this Agreement, then the Automatic Early Termination provisions of Section 6(a) will apply to Party A and will apply to Party B.
- (f) "**Termination Currency**" means one of the currencies in which payments are required to be made pursuant to a Confirmation in respect of a Terminated Transaction selected by the Non-defaulting Party or the non-Affected Party, as the case may be, or, in the circumstances where there are two Affected Parties, as agreed between the parties or, failing such agreement as aforesaid, or if the currency so selected is not freely available, the Termination Currency shall be Euro.
- (g) **Additional Termination Event.** The following are Additional Termination Events for which Party B is the Affected Party.

**Change of Investment Manager.** [REDACTED] (the "Investment Manager") ceases to be the Investment Manager to Party B and is not replaced by (a) [REDACTED] or an appropriately authorised Affiliate of [REDACTED] or (b) an investment manager reasonably acceptable to Party A.

**Part 2**  
**Tax Representations**

- (a) ***Payer Tax Representations.*** For the purpose of Section 3(e) of this Agreement, Party A and Party B each makes the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, **PROVIDED that** it shall not be a breach of this representation where reliance is placed on sub-clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

- (b) ***Payee Tax Representations.*** For the purpose of Section 3(f) of this Agreement, Party A and Party B make no representations.

**Part 3**  
**Agreement to Deliver Documents**

For the purposes of Sections 3(d), 4(a)(i) and (ii) of this Agreement, each party agrees to supply the following documents:

(a) Tax forms, documents or certificates to be delivered are:

Each party agrees to complete, accurately and in a manner reasonably satisfactory to the other party, and to execute, arrange for any required certification of, and deliver to the other party (or to such government or taxing authority as the other party reasonably directs), any form or document that may be required or reasonably requested in order to allow the other party to make a payment under this Agreement without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate, promptly upon the earlier of (i) reasonable demand by the other party and (ii) learning that the form or document is required.

(b) Other documents to be delivered are:

<b>PARTY REQUIRED TO DELIVER DOCUMENT:</b>	<b>FORM/DOCUMENT/ CERTIFICATE.</b>	<b>DATE BY WHICH TO BE DELIVERED</b>	<b>COVERED BY SECTION 3(D) REPRESENTATION</b>
Party A and the SICAV	Evidence reasonably satisfactory to the other party of the authority and true signatures of each agent, official or representative signing this Agreement or, as the case may be, a Confirmation, on its behalf.	On or before execution of this Agreement and each Confirmation, if requested, forming a part of this Agreement.	Yes
The SICAV	Evidence reasonably satisfactory to Party A authorising Party B's entry into this Agreement and each Confirmation and performance of Party B's obligations.	On or before execution of this Agreement.	Yes
The SICAV	Annual Audited Financial Statements of each Party B	As soon as practicable but in any event within 120 days of the end of each financial year	Yes



The SICAV

Up to date copy of Prospectus (with CSSF visa attached) and articles of incorporation of Party B (as may be amended from time to time).

On or before execution of this agreement.

Yes

**Part 4  
Miscellaneous**

- (a) **Address for Notices.** For the purpose of Section 12(a) of this Agreement:

Address for notices or communications to Party A shall, with respect to a particular Transaction, be sent to the address, telex number or facsimile number specified in the Confirmation for the relevant Transaction, and any notice for the purposes of Sections 5 or 6 of this Agreement shall be sent to the address, telex number or facsimile specified below:

Address: UBS AG, 100 Liverpool Street, London EC2M 2RH  
Attention: Credit Risk Control - Documentation Unit / Legal Department  
Facsimile n°: +44 207 567 4406 / +44 171 568 9247  
Telephone n°: +44 207 567 8000

Address for notices or communications to Party B shall be sent to the address, telex number or facsimile number specified below:

Address: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

- (b) **Process Agent.** For the purpose of Section 13(c) of this Agreement: In respect of Party A: Not applicable.

Party B: each Party B appoints as its Process Agent in [REDACTED]  
[REDACTED]

- (c) **Offices.** The provisions of Section 10(a) of this Agreement will apply to Party A and Party B.

- (d) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement:

Party A is a Multibranch Party and may act through its branches in any of the following territories or countries:

England and Wales, United States of America and Switzerland.

Party B is not a Multibranch Party.

(e) **Calculation Agent.** The Calculation Agent is Party A, unless otherwise specified in a Confirmation in relation to the relevant Transaction. The Calculation Agent is responsible for making all determinations for each Transaction under this agreement that are not expressed to be the responsibility of an identified party. The Calculation Agent must make all determinations in good faith and a commercially reasonable manner. If Party B disputes any determination or a failure to make a determination (other than a determination relating to subsections 1.14(a), (b) or (c) of the 2003 ISDA Credit Derivatives Definitions):

(i) Party A and Party B must pay each other any and all undisputed amounts when due; and

(ii) Party A must appoint a leading independent dealer to act as substitute Calculation Agent in place of Party A ("Substitute Calculation Agent") for the disputed determination.

The Substitute Calculation Agent cannot be an affiliate of Party A or Party B. If the Substitute Calculation Agent considers that the determination of Party A is not reasonable, the determination of the Substitute Calculation Agent replaces the determination of Party A. Unless there is a clear error, the determination of the Substitute Calculation Agent is binding and conclusive. Party B and Party A must pay any costs of the Substitute Calculation Agent equally. Party B and Party A waive any claim they might otherwise have against the Substitute Calculation Agent for errors or omissions made in good faith in making any determination.

(f) **Credit Support Document.** Details of any Credit Support Document in relation to Party A and Party B: Not applicable.

(g) **Credit Support Provider.** Credit Support Provider means in relation to Party A and Party B: Not applicable.

(h) **Governing Law.** This Agreement and any non-contractual obligations arising out of or in relation to the Agreement will be governed by, and construed in accordance with, English law.

(i) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will apply in respect of all Transactions; however, (b) at such time as Party B can operationally make net payments across FX and Currency Option Transactions in respect of amounts payable on the same date and in the same currency and notifies Party A of this, then subparagraph (ii) of Section 2(c) will not apply for that Party B in respect of FX and Currency Option Transactions. Party B agrees to notify Party A when it operationally has the capability to make net payments across FX and Currency Option Transactions..

(j) **"Affiliate"** will have the meaning specified in Section 14 of this Agreement.

**Part 5**  
**Other Provisions**

- (a) **Section 6 of this Agreement is hereby amended by the addition of Section 6(f) as follows:**

**“Set-off**

(f) Set-off. Any amount (the "Early Termination Amount") payable to one party (the Payee) by the other party (the Payer) under Section 6(e), in circumstances where there is a Defaulting Party or one Affected Party in the case where a Termination Event under Section 5(b)(iv) or Section 5(b)(v) has occurred, will, at the option of the party ("X") other than the Defaulting Party or the Affected Party (and without prior notice to the Defaulting Party or the Affected Party), be reduced by its set-off against any amount(s) (the "Other Agreement Amount") payable (whether at such time or in the future upon the occurrence of contingency) by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreements(s) between the Payee and Payer or instrument(s) or undertaking(s) issued or executed by one party to, or in favour of, the other party (and Other Agreement Amount will be discharged promptly and in all respect to the extent it is so set-off). X will give notice to the other party of any set-off effected under this Section 6(f).

For this purpose, either the Early Termination Amount or the Other Agreement Amount (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) shall be effective to create a charge or other security interest. This Section 6(f) shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise)”

- (b) ***Waiver Of Jury Trial.*** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this agreement or any credit support document or any transaction. Each party (i) certifies that no representative, agent or attorney of the other party or any credit support provider has represented, expressly or otherwise, that such other party would not seek to enforce the foregoing waiver in the event of any such suit, action or proceeding and (ii) acknowledges that it and the other party have entered into this agreement and any credit support document, as applicable, in reliance on, among other things, the mutual waivers and certifications in this section.

- (c) **Consent to Recording.** Each Party (i) consents for itself and on behalf of its agents, delegates or Affiliates to the recording of all telephone conversations between trading, operations and marketing personnel of the relevant persons in connection with this Agreement or any potential Transaction; (ii) agrees to give notice to its personnel and its agents, delegates or Affiliates that their calls will be recorded; and (iii) agrees that in any Proceedings, it will not object to the introduction of such recordings in evidence on the ground that consent was not properly given.
- (d) **Relationship between the Parties.** This Agreement is hereby amended by the addition of a new Section 15 as follows:

"15. **Relationship between the Parties.**

Each party will be deemed to represent to the other party on the date on which it enters into a Transaction (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):

(a) **Non Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgement and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction.

(b) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.

(c) **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction."

References in this clause to a "party" shall, in the case of UBS AG and where the context so allows, include reference to any Affiliate of UBS AG.

- (e) **Scope of Agreement.** Upon the effectiveness of this Agreement and unless the parties to this Agreement otherwise agree in writing, by specific reference to this Agreement, that this provision does not apply, all Derivative Transactions (as defined below) then outstanding, or which may be entered into thereafter, between the parties, including Transactions entered into by the parties through Offices, if any, listed in Part 4(d), are deemed to be Transactions governed by this Agreement and any confirmation or other confirming evidence of the Transaction is deemed to be a Confirmation.

'Derivative Transaction' means any transaction (including an agreement with respect thereto) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, weather index transaction, bullion/precious metal transaction, base metal transaction, or forward purchase or sale of a security, commodity or other financial instrument or interest, or any other similar transaction (including any option with respect to any of these transactions) and any combination of these transactions.

- (f) **Agreements.** Section 4 of this Agreement is hereby amended by the addition of Section 4(f) as follows:

"(f) **Physical Delivery.** In respect of any physically settled Transactions, it will, at the time of delivery, be (in the case of Party A) the legal and beneficial owner and (in the case of Party B) the beneficial owner, free of liens and other encumbrances, of any securities or commodities it delivers to the other party; and, in addition, with respect to any breach of this Section 4(f), Section 5(a)(ii) of this Agreement is hereby amended by the insertion of a full stop after "Agreement" on the fifth line and the deletion of the remainder of the Section."

- (g) **Further Representation of Party B.** In addition to its representations under Section 3, Party B represents to Party A (which representations are deemed to be repeated by Party B on each date on which any Transaction exists) that:

- (i) the Investment Manager has been appointed to act as Party B's agent for all purposes under this Agreement (including, without limitation, for the purpose of entering into Transactions on its behalf); and
- (ii) any person (including, without limitation, the Investment Manager and any person representing or reasonably believed by Party A to represent the Investment Manager) signing the Agreement or any Confirmation on behalf of Party B, and any such person entering into any Transaction on behalf of Party B, is authorised to do so on behalf of Party B.

- (h) **Further Agreements of Party B.** In addition to its agreements under Section 4, Party B agrees with Party A that, so long as either party has or may have any obligations under this Agreement:

- (i) Any amounts payable by Party A under this Agreement are deemed satisfied when paid to an account as instructed by the Investment Manager; and
- (ii) Each Party B is bound as principal of any Transaction entered into through the Investment Manager or any other person representing or reasonably believed by Party A to represent the Investment Manager, despite any lack of power or authority on the part of the Investment Manager or such other person.

(i) Accuracy of Information. Section 3(d) is hereby amended by adding in the third line thereof after the word “respect” and before the period, the phrase “or, in the case of audited financial statements, prepared in accordance with the accounting convention under which the annual audited accounts of the party are customarily prepared.”

(j) Section 6(d)(i) of the Agreement is modified in its entirety as follows:

“(d) Calculations; Payment Date

(i) Statement. On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations), (2) specifying (except where there are two Affected Parties) any Early Termination Amount payable and (3) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation or market data obtained in determining a Close-out Amount, the records of the party obtaining such quotation or market data will be conclusive evidence of the existence and accuracy of such quotation or market data.”

(k) Section 6(e) of the Agreement is modified in its entirety as follows:

“(e) Payments on Early Termination. If an Early Termination Date occurs, the amount, if any, payable in respect of that Early Termination Date (the “Early Termination Amount”) will be determined pursuant to this Section 6(e) and will be subject to any Set-off.

(i) Events of Default. If the Early Termination Date results from an Event of Default, the Early Termination Amount will be an amount equal to (1) the sum of (A) the Termination Currency Equivalent of the Close-out Amount or Close-out Amounts (whether positive or negative) determined by the Non-defaulting Party for each Terminated Transaction or group of Terminated Transactions, as the case may be, and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (2) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If the Early Termination Amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of the Early Termination Amount to the Defaulting Party.

(ii) Termination Events. If the Early Termination Date results from a Termination Event:

(1) One Affected Party. If there is one Affected Party, the Early Termination Amount will be determined in accordance with Section 6(e)(i), except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.

(2) Two Affected Parties. If there are two Affected Parties, each party will determine an amount equal to the Termination

Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an amount equal to (A) the sum of (I) one-half of the difference between the higher amount so determined (by party "X") and the lower amount so determined (by party "Y") and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.

- (iii) Adjustment for Bankruptcy. In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).
- (iv) Pre-Estimate. The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions."

- (l) The term "Termination Currency Equivalent" in Section 14 of the Agreement is hereby amended by replacing "Market Quotation or Loss (as the case may be)" with "Close-out Amount".
- (m) The following terms are added to Section 14 of the Agreement in the appropriate alphabetical position:

"Close-out Amount" means, with respect to each Terminated Transaction or each group of Terminated Transactions and a Determining Party, the amount of the losses or costs of the Determining Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Determining Party that are or would be realised under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Determining Party the economic equivalent of, (a) the material terms of that Terminated Transaction or group of Terminated Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of that Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in Section 2(a)(iii)) and (b) the option rights of the parties in respect of that Terminated Transaction or group of Terminated Transactions.

Any Close-out Amount will be determined by the Determining Party (or its agent), which will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. The Determining Party may determine a



Close-out Amount for any group of Terminated Transactions or any individual Terminated Transaction but, in the aggregate, for not less than all Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

Unpaid Amounts in respect of a Terminated Transaction or group of Terminated Transactions and legal fees and out-of-pocket expenses referred to in Section 11 are to be excluded in all determinations of Close-out Amounts.

In determining a Close-out Amount, the Determining Party may consider any relevant information, including, without limitation, one or more of the following types of information:

- (i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;
- (ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or
- (iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party's Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

The Determining Party will consider, taking into account the standards and procedures described in this definition, quotations pursuant to clause (i) above or relevant market data pursuant to clause (ii) above unless the Determining Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in clause (i), (ii) or (iii) above, the Determining Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilised. Third parties supplying quotations pursuant to clause (i) above or market data pursuant to clause (ii) above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Without duplication of amounts calculated based on information described in clause (i), (ii) or (iii) above, or other relevant information, and when it is commercially reasonable to do so, the Determining Party may in addition consider in calculating a Close-out Amount any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to a Terminated Transaction or group of Terminated Transactions (or any gain resulting from any of them).

Commercially reasonable procedures used in determining a Close-out Amount may include the following:

- (1) application to relevant market data from third parties pursuant to clause (ii) above or information from internal sources pursuant to clause (iii) above of

pricing or other valuation models that are, at the time of the determination of the Close-out Amount, used by the Determining Party in the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the Terminated Transaction or group of Terminated Transactions; and

- (2) application of different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.”

““Determining Party” means the party determining a Close-out Amount.”

““Early Termination Amount” has the meaning specified in Section 6(e).”

““Non-affected Party” means, so long as there is only one Affected Party, the other party.”

- (n) The following terms in Section 14 of the Agreement are deleted in their entirety: “Loss”, “Market Quotation”, “Reference Market-makers” and “Settlement Amount”.

If any of these terms are used in any Annex or Schedule to the Agreement or a Confirmation, the 1994 ISDA Equity Option Definitions, the 1996 ISDA Equity Derivatives Definitions, the 2002 ISDA Equity Derivatives Definitions, the 1997 ISDA Government Bond Option Definitions, the 1998 FX and Currency Option Definitions, the 1999 ISDA Credit Derivatives Definitions or any other ISDA document incorporated by reference or executed by the parties hereto, the terms will have the respective meanings ascribed to them in the standard form 1992 ISDA Master Agreement (Multicurrency-Cross Border).

## Part 6. Status of Parties

(a) **Acknowledgements.** Party A and Party B acknowledge and agree that:

- (i) The SICAV may comprise of one or more sub-funds listed in Appendix 1 (each, a "Sub-Fund"), each consisting of a defined portfolio of assets and liabilities. The assets of each Sub-Fund shall belong exclusively to that Sub-Fund, shall be segregated from the assets of the other Sub-Funds and shall not be used to discharge directly or indirectly the liabilities of, or claims against, any other Sub-Fund and shall not be available to Party A for any such purpose.
- (ii) Party A acknowledges that: (i) each Transaction and Confirmation to be entered into pursuant to this Agreement will be entered into with specific reference to and on behalf of the Sub-Fund named in relation thereto; and (ii) each Sub-Fund is independent of all other Sub-Funds of the SICAV and of the SICAV's non-fund assets, if any.
- (iii) In the absence of misrepresentation or fraud, and subject to the SICAV obtaining similar assurances from each material creditor of one or more of its Sub-Funds, Party A enters into the Transactions and Confirmations with the understanding that for the satisfaction of Party B's obligations and liabilities arising under or pursuant to such Transactions and Confirmations, Party A may have recourse only to the assets of the Sub-Fund named in relation thereto, and no recourse shall be had to the general assets of the SICAV which are not Sub-Fund assets, or to the assets of any other Sub-Fund, notwithstanding any provision of any agreement between Party A and Party B that would purport to extend the liability of Party B beyond the relevant Sub-Fund, but without prejudice to any provision of applicable law.
- (iv) Party A also acknowledges and agrees that, for purposes of this Agreement, all references to Party B, directly as "Party B" or indirectly as "a party", "Party X", the "Defaulting Party", the "Non-Defaulting Party" or otherwise shall mean and refer only to the Sub-Fund for and on behalf of which Transactions and Confirmations are being entered into and shall not be interpreted as meaning or referring to the SICAV or any other Sub-Fund of the SICAV. Party A further acknowledges and agrees that in the event that an Event of Default occurs with respect to Party B, such Event of Default shall only affect the Sub-Fund and its assets and shall not affect the SICAV or any other Sub-Fund of the SICAV or their respective assets.
- (v) Subject to Part 6(a)(i)–(iv) above, Party B acknowledges and represents to Party A that: (A) Party B will act, operate and be administered in accordance with the organisational documents of the SICAV follow proper corporate formalities, and comply with applicable law; (B) each Sub-Fund's assets can and may be used by Party A to satisfy Party B's obligations to Party A pursuant to the Transactions entered into with Party A; and (C) Party B will not remove, withdraw, sell or transfer assets of the Sub-Fund to avoid the performance and satisfaction of Party B's obligations and liabilities to Party A.
- (vi) All the provisions of this Agreement shall apply separately as between Party A and each Sub-Fund listed in Appendix 1 as if each such Sub-Fund were a party to a separate agreement with Party A in all respects identical with this

Agreement. This Agreement shall be construed in all respects as a series of separate agreements ("Resultant Agreements"), each agreement being between (A) Party A (as Party A) and (B) the relevant Sub-Fund (as Party B), as if each Sub-Fund were a legal person in its own right.

- (vii) For avoidance of doubt and without prejudice to the generality of Part 6(a)(i)–(vi) above, upon the designation of an Early Termination Date under a Resultant Agreement, and subject to the SICAV obtaining similar assurances from each material creditor of one or more of its Sub-Funds, Party A may not set-off or apply any sums or obligations of Party B owed to Party A under such Resultant Agreement (whether or not matured, whether or not contingent and whether or not arising, and regardless of the currency, place of payment or booking office of the sums or obligations) against any obligations of Party A to Party B under any other Resultant Agreement, and Party B may not set-off or apply any sums or obligations of Party A owed to Party B under such Resultant Agreement (whether or not matured, whether or not contingent and whether or not arising, and regardless of the currency, place of payment or booking office of the sums or obligations) against any obligations by Party B to Party A under any other Resultant Agreement.
- (viii) Subject to the SICAV obtaining similar assurances from each material creditor of one or more of its Sub-Funds, any lien, right to set off or combine accounts or other similar rights which Party A might have, whether pursuant to this Agreement or otherwise, will only apply in respect of each particular Sub-Fund separately and that the assets of one Sub-Fund will not be applied by way of lien, set off or otherwise in respect of the obligations of another Sub-Fund. Similarly, any lien, right to set off or combine accounts or other similar rights which the SICAV might have in respect of Party A, whether pursuant to this Agreement or otherwise, will only apply in respect of each particular Sub-Fund of the SICAV separately and that the assets of Party A referable to one Sub-Fund will not be applied by way of lien, set off or otherwise in respect of the obligations of Party A to another Sub-Fund.
- (ix) The occurrence of an Event of Default or Termination Event in respect of or affecting a Sub-Fund under a Resultant Agreement shall not, by that fact alone, result in the occurrence of an Event of Default or Termination Event in respect of any other Sub-Fund under any other Resultant Agreements, and for the purposes of each Resultant Agreement Sub-Funds shall not be deemed to be affiliated to each other notwithstanding that they are sub-funds of the same company.
- (x) **Compliance with the Regulations.** Each Transaction shall be subject to the Regulations and where the terms of any Transaction must contain terms prescribed by the Regulations ("prescribed terms") such prescribed terms shall be incorporated into the terms of the Transaction. For the purposes of this Part 6(a)(x), "Regulations" means the laws of Luxembourg (including delegated legislation and regulations of any competent authority).

In particular but without prejudice to the foregoing, the parties agree as follows:-

- (i) **Valuations.** The Calculation Agent shall provide, upon request of Party B and, in any event, at least on a daily basis, a reliable and verifiable valuation in respect of each Transaction, such valuation to be made in accordance with the requirements set out in the Regulations;

(ii) **Optional Termination.** So long as no Termination Event or an Event of Default (as such terms are defined in this Agreement) shall have occurred or be continuing with respect to Party B, Party B shall have the right, on any Local Business Day, at any time and upon delivery of a notice to Party A (which notice may be given by telephone) no later than 15:30pm London time, to terminate any Transaction with immediate effect at fair value in such manner as permitted from time to time under the Regulations (including where requested by Party B by effecting a further Transaction with Party A which is equal but opposite to the first mentioned Transaction in all respects except as to price). For these purposes, references to, and calculations of, "fair value" shall be as agreed between Party A and Party B as the fair value for an unwind of such a Transaction. Failing agreement, the relevant Transaction shall be terminated in accordance with (A) the provisions of Section 6(e)(ii)(1) as if (i) it were an Affected Transaction", (ii) Party B was the "sole Affected Party", and (iii) the date on which the termination notice was delivered to Party A was an "Early termination Date" in respect of the Terminated Transaction, and (B) the requirements set out in the Regulations as amended, varied, supplemented or replaced from time to time and references to "Settlement Amount" in 6(e) shall be interpreted accordingly. Party B's rights under this paragraph shall apply to each Transaction notwithstanding (1) any contrary provision in a Confirmation or (2) the absence of an express provision to this effect in any Confirmation, and for the avoidance of doubt, the occurrence of an Optional Termination pursuant to this paragraph shall not constitute, or result in, an Additional Termination Event under this Agreement.

## PART 7

### FX TRANSACTIONS AND CURRENCY OPTION TRANSACTIONS

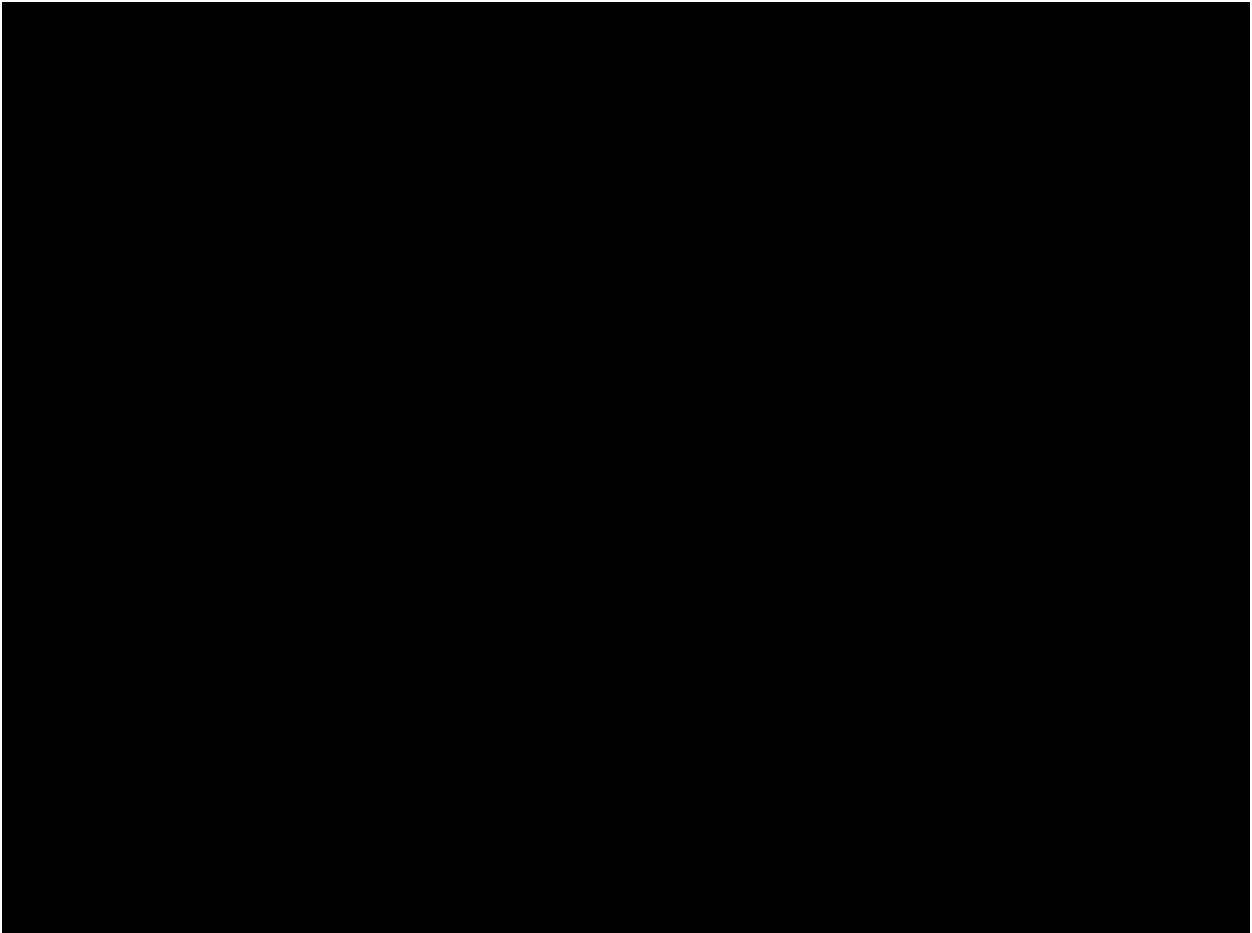
(a) Confirmations

Where an FX Transaction or a Currency Option Transaction is confirmed by means of exchange of electronic messages on an electronic messaging system (i) such confirmation will constitute a "Confirmation" as referred to in this Agreement even where not so specified in the confirmation, (ii) such Confirmation will supplement, form part of, and be subject to this Agreement (unless such Confirmation expressly states otherwise) and all provisions in the Agreement will govern the Confirmation except as modified therein and (iii) the definitions and provisions contained in the 1998 ISDA FX and Currency Option Definitions (as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and The Foreign Exchange Committee) as amended and supplemented by the 1998 ISDA Euro Definitions (published by the International Swaps and Derivatives Association, Inc.) (together the "FX Definitions") will be incorporated into the Confirmation to the extent consistent with the terms of the Confirmation.

For the purpose of this Agreement, the terms "FX Transaction" and "Currency Option Transaction" shall have the meanings ascribed to them in the FX Definitions. Further, any terms used in this Part 6 but not defined herein shall have the meanings given to them in the FX Definitions.

This Agreement restates, amends and supersedes the ISDA Master Agreement dated as of 9 February 2009 between Party A and Party B (such master agreement including the Schedule, the Credit Support Annex, Synthetic Equity Swaps and Synthetic Convertible Bond Swaps Addendum and Swap Master Confirmation - Total Return Swaps, Portfolio Swaps and Basket Swaps thereto, being referred to as the "Prior Agreement"). Any transaction entered into between the parties under the Prior Agreement shall be deemed to be governed by this Agreement. Any such transaction shall be deemed to constitute a Transaction and any document or other confirming evidence in respect of any such transaction shall be deemed to constitute a Confirmation for the purpose of this Agreement.

**IN WITNESS WHEREOF** the parties have executed this Schedule on the respective dates specified below with effect from the date specified on the first page of this document.



APPENDIX 1

PARTY B

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



(Multicurrency — Cross Border)

# ISDA<sup>®</sup>

International Swap Dealers Association, Inc.

## MASTER AGREEMENT

dated as of September 15, 2017

..... UBS AG

..... and .....

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows: —

### 1. Interpretation

- (a) **Definitions.** The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

#### (a) General Conditions.

- (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
- (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.
- (iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If: —

- (1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);
- (2) X does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

- (e) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

**3. Representations**

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:—

(a) **Basic Representations.**

- (i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;
- (ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;
- (iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
- (v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

#### 4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated,

organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction") and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

#### 5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party 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 such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) 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, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however

described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party: —

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) 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, such 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 dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) 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; (7) 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 such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer: —

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event

Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:—

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party): —

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Tax Event.** Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) **Tax Event Upon Merger.** The party (the "Burdened Party") on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) **Credit Event Upon Merger.** If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(v) **Additional Termination Event.** If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

## 6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) **Right to Terminate.** If: —

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then



continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) **Effect of Designation.**

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) **Calculations.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) **Payment Date.** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default: —

(1) **First Method and Market Quotation.** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) **First Method and Loss.** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) **Second Method and Market Quotation.** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the

Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) *Termination Events.* If the Early Termination Date results from a Termination Event: —

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties: —

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Pre-Estimate.* The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

## 7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that: —

- (a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and
- (b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

## 8. Contractual Currency

(a) **Payment in the Contractual Currency.** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the "Contractual Currency"). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term "rate of exchange" includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

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

(d) **Evidence of Loss.** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

## 9. Miscellaneous

- (a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.
- (b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.
- (c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.
- (d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.
- (e) **Counterparts and Confirmations.**
- (i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
  - (ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.
- (f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.
- (g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

## 10. Offices; Multibranch Parties

- (a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.
- (b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.
- (c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

## 11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document

to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 12. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

## 13. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

- (i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and
- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Service of Process.** Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any

reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

#### 14. Definitions

As used in this Agreement:—

**"Additional Termination Event"** has the meaning specified in Section 5(b).

**"Affected Party"** has the meaning specified in Section 5(b).

**"Affected Transactions"** means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

**"Affiliate"** means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

**"Applicable Rate"** means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

**"Burdened Party"** has the meaning specified in Section 5(b).

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

**"consent"** includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

**"Credit Event Upon Merger"** has the meaning specified in Section 5(b).

**"Credit Support Document"** means any agreement or instrument that is specified as such in this Agreement.

**"Credit Support Provider"** has the meaning specified in the Schedule.

**"Default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

**"Defaulting Party"** has the meaning specified in Section 6(a).

**"Early Termination Date"** means the date determined in accordance with Section 6(a) or 6(b)(iv).

**"Event of Default"** has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

**"Illegality"** has the meaning specified in Section 5(b).

**"Indemnifiable Tax"** means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

**"law"** includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and **"lawful"** and **"unlawful"** will be construed accordingly.

**"Local Business Day"** means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

**"Loss"** means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that 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 this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

**"Market Quotation"** means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have

been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

**"Non-default Rate"** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

**"Non-defaulting Party"** has the meaning specified in Section 6(a).

**"Office"** means a branch or office of a party, which may be such party's head or home office.

**"Potential Event of Default"** means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

**"Reference Market-makers"** means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

**"Relevant Jurisdiction"** means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

**"Scheduled Payment Date"** means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

**"Set-off"** means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

**"Settlement Amount"** means, with respect to a party and any Early Termination Date, the sum of: —

(a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

**"Specified Entity"** has the meanings specified in the Schedule.



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

**"Specified Transaction"** means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

**"Stamp Tax"** means any stamp, registration, documentation or similar tax.

**"Tax"** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

**"Tax Event"** has the meaning specified in Section 5(b).

**"Tax Event Upon Merger"** has the meaning specified in Section 5(b).

**"Terminated Transactions"** means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

**"Termination Currency"** has the meaning specified in the Schedule.

**"Termination Currency Equivalent"** means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

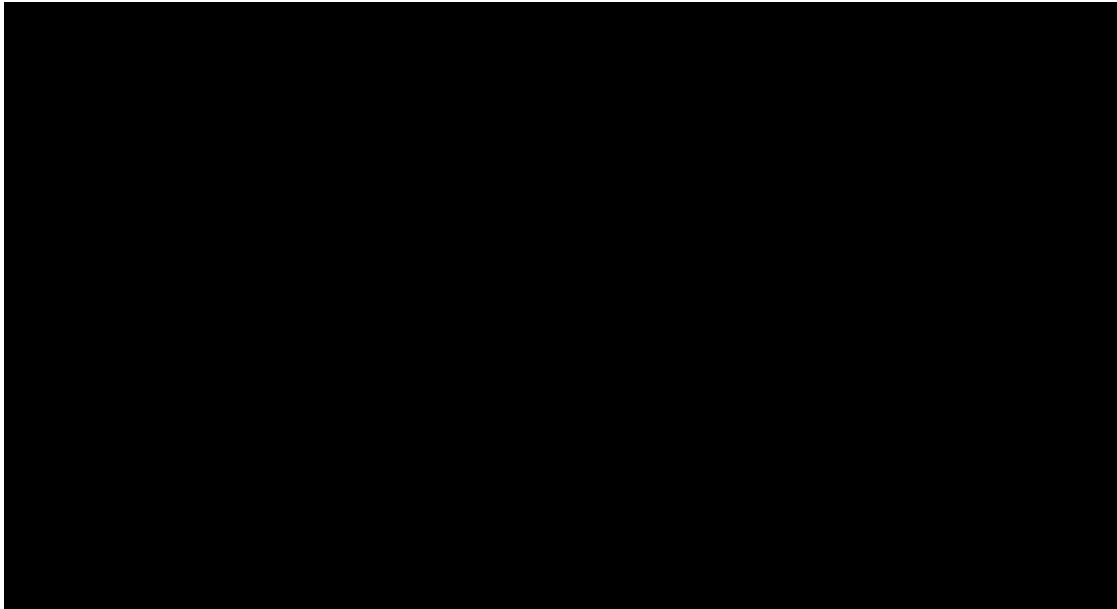
**"Termination Event"** means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

**"Termination Rate"** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

**"Unpaid Amounts"** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market

value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.



**SCHEDULE  
to the Master Agreement  
dated as of September 15, 2017**

**between  
UBS AG, a banking corporation organized under the laws of Switzerland  
("Party A")  
and**

**[REDACTED] a designated activity company  
limited incorporated under the Companies Act of 2014 and governed by the laws of Ireland  
("Party B")**

**Part 1**

**Termination Provisions**

In this Agreement:

(a) **"Specified Entity"** means in relation to Party A for the purpose of:

Section 5(a)(v),	Not Applicable
Section 5(a)(vi),	Not Applicable
Section 5(a)(vii),	Not Applicable
Section 5(b)(iv),	Not Applicable

and in relation to Party B for the purpose of:

Section 5(a)(v),	Not Applicable
Section 5(a)(vi),	Not Applicable
Section 5(a)(vii),	Not Applicable
Section 5(b)(iv),	Not Applicable

(b) (i) **"Specified Transaction"** will have the meaning specified in Section 14 of this Agreement and shall also include (a) any repurchase agreements, reverse repurchase agreements, securities lending agreements, forward contracts and precious metals transactions now existing or hereafter entered into between a party to this Agreement (or any applicable Specified Entity of such party) and the other party to this Agreement (or any applicable Specified Entity of such other party) or which is a type of transaction that is similar to any transaction referred to above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on the following: one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

(ii) It shall not be an Event of Default with respect to a party ("X") under Section 5(a)(v) unless (i) the relevant Specified Transaction has been (or to the extent that such Specified Transaction is subject to a master agreement, all Specified Transactions under such master agreement have been) accelerated, terminated or liquidated by the non-defaulting party thereto, and (ii) X has failed to pay in full when due any termination or settlement payment payable by it with respect to the accelerated, terminated or liquidated Specified Transaction.

- (c) The **"Cross Default"** provisions of Section 5(a)(vi) will apply to Party A and to Party B; provided however, that (a) it shall not constitute an Event of Default under Section 5(a)(vi) if a party provides written notice to the other party, stating that (i) such event, condition or failure is a failure to pay caused by an error or omission of an administrative or operational nature, (ii) funds were available to such party to enable it to make the relevant payment when due, and (iii) such event, condition or failure is remedied on or before the third Local Business Day after receipt of written notice of its occurrence, and (b) it shall not be an Event of Default with respect to a party ("X") under Section 5(a)(vi) unless (i) the relevant Specified Indebtedness has been (or to the extent that such Specified Indebtedness is subject to a master agreement, all Specified Indebtedness under such master agreement has been) accelerated by the non-defaulting party thereto, (ii) X has failed to pay in full when due any payment owed by it with respect to the accelerated Specified Indebtedness, and (iii) such payment, after giving effect to any payments or offsetting collateral or margin, is greater than the Threshold Amount.

If such provisions apply:

- (1) **"Specified Indebtedness"** will have the meaning specified in Section 14 of this Agreement; provided, however, that Specified Indebtedness shall also include amounts payable (whether on a Scheduled Payment Date, an Early Termination Date or otherwise) by a party under any Derivative Transaction after giving effect to any applicable notice requirement or grace period.
  - (2) **"Derivative Transaction"** means: (a) any transaction (including an agreement with respect thereto) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, precious metals transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit default swap, total return swap, or any other similar transaction (including any option with respect to any of these transactions); and (b) any combination of these transactions.
  - (3) **"Threshold Amount"** means:  
  
with respect to Party A, three percent (3%) of shareholder equity however described; and with respect to Party B, three percent (3%) of Party B's NAV (as defined below) as of the most recent NAV Determination Date or its equivalent in any other currency.
  - (4) Section 5(a)(vi) is hereby amended by deleting in the seventh line thereof the words ", or becoming capable at such time of being declared,".
- (d) The **"Credit Event Upon Merger"** provisions of Section 5(b)(iv), as amended herein, will apply to Party A and Party B.

"Credit Event Upon Merger" shall mean that a Designated Event (as defined below) occurs with respect to a party, any Credit Support Provider of the party or any applicable Specified Entity (any such party or entity, "X"), and such Designated Event does not constitute an event described in 5(a)(viii), Merger Without Assumption, but the creditworthiness of X, or, if applicable, the successor, surviving or transferee entity of X, is materially weaker, after taking into account any applicable Credit Support Documents, than that of X immediately prior to such event. In any such case the Affected Party shall be the party with respect to which, or with respect to the Credit Support Provider or Specified Entity of which, the Designated Event occurred, or, if applicable, the successor, surviving or transferee entity of such party. For purposes hereof, a Designated Event means that, after the date hereof:

- (i) X consolidates, amalgamates with or merges with or into, or transfers all or substantially all its assets to, or receives all or substantially all the assets or obligations of, another entity; or
- (ii) any person or entity acquires directly or indirectly the beneficial ownership of equity securities having the power to elect a majority of the board of directors of X or otherwise acquires directly or indirectly the power to control the policy-making decisions of X.
- (e) **Payments on Early Termination.** For the purpose of Section 6(e) of this Agreement:
- (1) Market Quotation will apply.
  - (2) The Second Method will apply.
- (f) **"Termination Currency"** means United States Dollars.
- (g) The **"Automatic Early Termination"** provision of Section 6(a) will not apply to Party A or to Party B provided, however, where the Event of Default specified in Section 5(a)(vii)(1),(3),(4),(5),(6) or, to the extent analogous thereto, (8) is governed by a system of law which does not permit termination to take place after the occurrence of the relevant Event of Default, then the Automatic Early Termination provision of Section 6(a) will apply to such party.
- (h) **Additional Termination Event** will apply. The following shall be an Additional Termination Event with Party B as the Affected Party solely for purposes of this Part 1(h), and all Transactions shall be Affected Transactions; provided all calculations for purposes of Section 6(e) of the Agreement shall be made on the basis of two Affected Parties.
- (A) **Decline in NAV.** A decline as of any NAV Determination Date (as defined below), in Party B's NAV (as defined below) (i) by 30% or more from Party B's NAV as of the NAV Determination Date that is three months preceding such NAV Determination Date or, (ii) by 50% or more from Party B's NAV as of the NAV Determination Date that is twelve months preceding such NAV Determination Date.
  - (B) **Minimum NAV.** As of any NAV Determination Date, Party B's NAV is less than either (i) 15,000,000, or (ii) 50% of Party B's NAV as of the last day of the previous fiscal year (as reflected in Party B's annual financial statements for the previous fiscal year). For purposes of (h)(B)(ii), the first day of calculation shall be Dec 1, 2017 and Party B's annual financial statements for the previous fiscal year shall refer to the most recent audited financial statements for [REDACTED] until Party B's annual audited financial statements are provided to Party A.
  - (C) **Portfolio Manager.** Neither is Party B's Portfolio Manager controlled nor is the majority of the equity share capital of Party B's Portfolio Manager owned, directly or indirectly by one or more [REDACTED]. For this purpose, [REDACTED] means any entity that directly or indirectly, controls, is controlled by or is under common control with [REDACTED] or any of its affiliates. The term "control" means ownership of a majority of the voting power of the entity or person or the possession of the power, directly or indirectly, whether by contract or ownership, to direct or cause the direction of the management and affairs of a person, including investment decisions.
  - (D) **Financials.** Party B shall fail to provide to Party A pursuant to Part 3 (i) Monthly Transparency Reports, (ii) Party B's Annual Report, (iii) Performance Summary, (iv) Party B's NAV Estimate, (v) Monthly Un-Audited Reports and (vi) Ownership Allocation Reports, and in each of (i), (ii),

(iii), (iv), (v) and (vi), such failure is not cured within two Local Business Days after Party A notifies Party B of its failure to provide such report, statement or estimate (as applicable).  
"Party B's NAV" shall be an amount equal to the NAV of Party B as of the applicable NAV Determination Date as determined by Party B and specified to Party A in an unaudited estimated Performance Summary delivered pursuant to Part 3 of this Schedule.

"NAV Determination Date" means the last calendar day of each month.

"NAV" means total assets minus total liabilities (measured according to generally accepted accounting principles consistently applied).

- (E) **Public Announcement of Decline in NAV.** At any time, a written statement intended for public dissemination is issued by the President or Chief Financial Officer of the Portfolio Manager or any person with substantially similar capacity (a) to Party B's investors, or (b) through a Public Source (as defined below) (each such case a "**Public Announcement**") that states that Party B's NAV determined as of the date specified in the Public Announcement has declined by (i) 30% or more as compared to Party B's NAV determined as of the third NAV Determination Date prior to date of such Public Announcement or (ii) 50% or more as compared to Party B's NAV determined as of the twelfth NAV Determination Date prior to date of such Public Announcement.

"Public Source" means each of Bloomberg Service, Dow Jones Telerate Service, Reuters Monitor Money Rates Services, Dow Jones News Wire, Wall Street Journal, New York Times, Financial Times, (and successor publications), and any other main source(s) of business news."

- (F) **Change in Regulatory Status.** The Portfolio Manager ceases to be regulated by a recognized regulatory body in a FATF (Financial Action Task Force) country.

*[Intentionally left blank]*

**Part 2**  
**Tax Representations**

**(a) Payer Tax Representations.**

**Payer Tax Representation for Party A and Party B.** For the purpose of Section 3(e) of this Agreement, each party makes the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on:

- (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement;
- (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement; and
- (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement;

provided, however, that it shall not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

**(b) Payee Tax Representation.**

**(1) Payee Tax Representations for Party A.** For the purposes of Section 3(f), Party A makes the representation(s) specified below:

Each payment received or to be received by it in connection with this Agreement is effectively connected with its conduct of a trade or business carried on by it through a permanent establishment in the United States.

**(2) Payee Tax Representation for Party B.** For the purposes of Section 3(f), Party B makes the representation specified below:

- (i) Party B is a designated activity company established under the laws of Ireland and is classified as a disregarded entity for U.S. federal income tax purposes, and
- (ii) It is fully eligible for the benefits of the "Business Profits" or "Industrial and Commercial Profits" provision, as the case may be, the "Interest" provision or the "Other Income" provision (if any) of the Specified Treaty with respect to any payment described in such provisions and received or to be received by it in connection with this Agreement and no such payment is attributable to a trade or business carried on by it through a permanent establishment in the Specified Jurisdiction.

If such representation applies, then:

"Specified Treaty" means, with respect to a Transaction, the tax treaty applicable between Ireland and Switzerland.

"Specified Jurisdiction" means Switzerland.

**Part 3  
Documents to be delivered**

For the purpose of Sections 4(a)(i) and (ii) of this Agreement, each party agrees to deliver the following documents, as applicable:

Tax forms, documents or certificates to be delivered are:

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered
Party B	Form W-8IMY (or any successor thereto) from the sole owner of Party B, with the attachments required under section 1.1441-5(c) of the U.S. Treasury Regulations.	(i) Upon execution and delivery of this Agreement; (ii) promptly upon reasonable demand by counterparty; and (iii) promptly upon learning that any such form previously provided has become obsolete or incorrect.
Party A and Party B	Any document required or reasonably requested to allow the other party to make payments under the Agreement without any deduction or withholding for or on the account of any Tax or with such deduction or withholding at a reduced rate.	Promptly upon execution of this Agreement and thereafter upon demand by the other party.

(a) Other documents to be delivered are:

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
Party A and Party B	Certificate of Authority, Incumbency and Specimen Signatures and Resolutions adopted by its Board of Directors, or relevant committee of the Board of Directors (and evidence of authority of such committee of the Board of Directors), authorizing the execution, delivery and performance of this Agreement and the Transactions contemplated hereunder.	As of execution of this Agreement.	Yes
Party B	Ownership Allocation Reports.	Within 25 days after each month end.	Yes
Party B	Unaudited monthly consolidated financial statements of Party B in a format determined by Party B from time-to-time, including generally a balance	Within 25 days after each month end.	Yes



	sheet statement, income statement and statement of change in shareholder's equity in respect of Party B as of the relevant month ("Monthly Un-Audited Reports").		
Party A and Party B	Annual report of Party A and Party B and any Credit Support Provider, containing audited consolidated financial statements for such fiscal year prepared in accordance with US GAAP (except that, in the case of Party B and any Credit Support Provider, such annual report may not include their respective condensed schedule of investments in accordance with AICPA SOP 01-1)("Annual Report").	As soon as practicable after execution of this Agreement and 120 days after each fiscal year.	Yes
Party B	Unaudited estimate of Party B's NAV as of the last day of a calendar month ("Performance Summary")	Within 20 days after each month end	Yes
Party B	Oral good faith estimate of Party B's NAV or good faith written estimate (including by email) of Party B's NAV ("NAV Estimate")	By the close of business on the second Local Business Day following written request by Party A.	No
Party B	Certified copy of its Memorandum and Articles of Association.	On or before execution of this Agreement.	Yes
Party A and Party B	Credit Support Documents specified in Part 4(f).	Concurrent with the execution of this Agreement.	No

The obligations of a party under this Agreement to deliver any form, document or certificate (including those listed in Part 3 of this Schedule) shall be satisfied if such party shall have provided the other party with access to an internet or intranet website from which such form, document or certificate can be readily obtained using a commonly used web browser. For the avoidance of doubt, any NAV Estimates provided by Party B shall not be covered by the representation in Section 3(d) or constitute the basis for a Event of Default under Section 5(a)(iv) or any Additional Termination Event under Part 1(h)(C).

A request for a form, document or certificate listed in Part 3 of this Schedule may, notwithstanding Part 4(a) of this Schedule, be made by Party A to Party B via e-mail at the e-mail address listed below:

████████████████████

**Part 4**  
**Miscellaneous**

- (a) **Addresses for Notices.** For the purposes of Section 12(a) of this Agreement:

**Address for notices or communications to Party A for all purposes:**

Address: UBS AG  
1285 Avenue of the Americas  
New York, NY 10019  
Attention: Legal Department – Documentation Unit

**With a mandatory copy to:** SH-UBSLegalNotices-Amer@ubs.com

**Address for notices or communications to Party B for all purposes except under Sections 5 or 6:**

[REDACTED]

**With a mandatory copy to:**

[REDACTED]

**Address for notices or communications to Party B under Sections 5 or 6:**

Any notice to Party B under Sections 5 or 6 hereunder shall be in writing and delivered to Party B via telecopy with a mandatory copy sent via e-mail, in each case, pursuant to the telecopy and e-mail address listed below.

E-Mail Address: [REDACTED]  
Telecopy No.: [REDACTED]

- (b) **Process Agent.** [REDACTED]  
Party A appoints as its Process Agent:

[REDACTED]

Party B appoints as its Process Agent: Not applicable.

- (c) **Offices.** The provisions of Section 10(a) will apply to Party A and to Party B.

- (d) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement.

Party A is a Multibranch Party and may act through its branches in any of the following territories or countries: England and Wales, Hong Kong, United States of America, Singapore, Australia and Switzerland.

Party B is not a Multibranch Party.

- (e) **Calculation Agent.** The Calculation Agent is Party A, unless an Event of Default has occurred and is continuing with respect to Party A, in which case the Calculation Agent is Party B. If a party within ten Local Business Days of receipt of a Calculation Agent determination or calculation in good faith disagrees with a particular Calculation Agent determination or calculation, each of the Parties agrees to be bound by the determinations and calculations of a leading, independent third party which is a leading dealer in derivatives that is not an Affiliate of either party, selected by agreement between the parties within one Local Business Day of such disagreement (the "Substitute Calculation Agent"), whose fees and expenses shall be met equally by both parties. If the parties are unable to agree on a Substitute Calculation Agent, then Party A and Party B shall each promptly pick a leading dealer for the relevant Transaction, and such dealers shall choose a third leading dealer to be the Substitute Calculation Agent. Party A or the Substitute Calculation Agent shall make each calculation in good faith and in a commercially reasonable manner.

If a party ("X") in good faith disagrees with any Calculation Agent calculation or determination pursuant to the foregoing paragraph X, shall specify in reasonable detail: (i) X's basis for dispute, together with supporting calculations or evidence, (ii) the amount of X's calculation or the result of X's determination, (iii) in the case of a calculation the amount by which X's calculation differs from the Calculation Agent's calculation, and in the case of a determination, if ascertainable, the amount of the difference between applying the Calculation Agent's determination and applying X's determination (the "Disputed Amount") and (iv) if applicable, the amount that is not subject to dispute (the "Undisputed Amount").

The Undisputed Amount shall be paid or delivered, as the case may, as scheduled for the relevant Transaction.

If a Substitute Calculation Agent is appointed and agrees to such appointment to make a determination or calculation and thereafter fails to make such determination or calculation within one Local Business Day of such appointment, the parties shall promptly select a mutually agreeable independent third party which is a leading dealer in derivatives that is not an Affiliate of either party, to act as the Substitute Calculation Agent. If the parties cannot agree on a Substitute Calculation Agent, then Party A and Party B shall each promptly pick a leading dealer in the relevant market and such dealers shall choose a third leading dealer to be the Substitute Calculation Agent. Any calculation or determination made pursuant to this Part 4(e) by a Substitute Calculation Agent will be binding in the absence of manifest error except as provided in the next paragraph of this Part 4(e).

Upon receipt of the Substitute Calculation Agent's calculation and/or determination, either party may notify the other party of its recalculation of the Disputed Amount pursuant to such Substitution Calculation Agent's calculation and/or determination, and any resulting adjustments (such Disputed Amount, as adjusted pursuant hereto, the "Adjusted Amount"). If such notice is given by 2:00 p.m., New York time, on a Local Business Day, the applicable party shall transfer the Adjusted Amount, if any, by 6:00 p.m., New York time, on such date. If such notice is given after 2:00 p.m., New York time on a Local Business Day, the applicable party shall transfer the Adjusted Amount, if any, by 6:00 p.m., New York time, on the Local Business Day next succeeding the date on which such notice is given.

Notwithstanding the previous paragraphs, where the terms of any Transaction hereunder provides or contemplates that the Calculation Agent will solicit quotations from one or more dealers for purposes of making a calculation, selection of those dealers shall not be subject to this Part 4(e). Pending internal approval

- (f) **Credit Support Document.** The Credit Support Annex attached hereto is a Credit Support Document with respect to Party A and Party B for all purposes hereunder and is incorporated herein by this reference.
- (g) **Credit Support Provider.** Not Applicable.
- (h) **Governing Law & Jurisdiction.** This Agreement and each Confirmation will be governed by and construed in accordance with the laws of the State of New York without reference to choice of law doctrine.

Section 13(b) is amended by deleting in the second line of clause (i) the word "non-" and deleting the final paragraph thereof and replacing it with the following paragraph: "Nothing in this provision shall prohibit a party from bringing an action to enforce money judgment in any other jurisdiction."

- (i) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will apply, except for the following groups of Transactions which shall be treated separately: (1) foreign exchange transactions together with currency options and (2) commodity transactions, in which case subparagraph (ii) of Section 2(c) of this Agreement will not apply.
- (j) **"Affiliate"** shall have the meaning specified in Section 14 with respect to Party A.

**"Affiliate"** shall have the meaning specified in Section 14 with respect to Party B; provided, however Party B shall be deemed to have no Affiliates.

*[Intentionally left blank]*

**Part 5**  
**Other Provisions**

(k) **Modifications to the Agreement.**

- (i) **Condition Precedent.** The right of a party ("Party X") pursuant to Section 2(a)(iii)(1) to withhold a payment or delivery obligation, is subject to the following conditions: (i) X must give written notice (a "2(a)(iii) Notice") to the other party specifying the relevant Event of Default or Potential Event of Default giving rise to such right (the "2(a)(iii) Event") no later than the close of business on the Local Business Day that the relevant payment or delivery would otherwise be due, and (ii) such right may only be exercised once in respect of any 2(a)(iii) Event, for a period of no more than fifteen (15) Local Business Days following timely delivery of the relevant 2(a)(iii) Notice (the "2(a)(iii) Period"). Immediately following the 2(a)(iii) Period, the obligations of X under Section 2(a)(i) shall no longer be subject to the condition precedent that a 2(a)(iii) Event shall not have occurred and be continuing. In no case shall the obligations of X under Section 2(a)(i) be subject to the condition precedent that a Potential Event of Default relating to Section 5(a)(ii) with respect to the other party shall not have occurred and be continuing.
- (ii) **Absence of Litigation.** Section 3(c) is hereby amended by adding in the second line thereof after the word "governmental" the words "or regulatory".
- (iii) **Accuracy of Specified Information.** The representation in Section 3(d) is modified by adding the words "or, in the case of any estimates, true, accurate and complete in every material respect to the best of its knowledge or, in the case of audited or unaudited financial statements, a fair presentation in all material respects of the financial condition of the relevant person" at the end thereof.
- (iv) **Additional Representations.** Section 3 is hereby amended by adding the following new subsections:
  - (g) **No Reliance.** In connection with the negotiation of, the entering into, and the confirming of the execution of, this Agreement, any Credit Support Document to which it is a party, and each Transaction: (a) each party is acting for its own account and is not acting as a fiduciary or financial or investment advisor for the other party; (b) neither party is relying upon any communications (whether written or oral) of the other party as investment advice or as a recommendation to enter into this Agreement, any Credit Support Document to which it is a party or any Transaction (other than the representations expressly set forth in this Agreement, in such Credit Support Document or in such Transaction), it being understood that information and explanations related to the terms and conditions of this Agreement, such Credit Support Document or any Transaction shall not be considered investment advice or a recommendation to enter into this Agreement, such Credit Support Document or such Transaction; (c) it has not received from the other party any assurance or guarantee as to the expected results of any Transaction; and (d) it has consulted with its own legal, regulatory, tax, business, investment, financial, and accounting advisors to the extent it has deemed necessary, and it has made its own independent investment, hedging, and trading decisions based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the other party.
  - (h) **Eligible Contract Participant.** It is an "eligible contract participant" as defined in Sections 1a(18) respectively of the Commodity Exchange Act, as amended (7 U.S.C. § 1a (18)), as amended (the "CEA");

(i) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.

(j) **No Agency.** It is entering into this Agreement and each Transaction as principal (and not as agent or in any other capacity, fiduciary or otherwise).

(k) **Securities Act Representations.** If any Transaction and/or the instrument underlying a Transaction is not otherwise excluded from the coverage, or otherwise exempt from the registration requirements, of the United States Securities Act of 1933, as amended (the "Securities Act"), then each party makes the following representations, warranties and covenants with respect to such Transaction, and such representations, warranties and covenants shall remain in full force and effect whenever the offeree or buyer of the Transaction and/or the offeree or buyer of the instrument underlying the Transaction (the "Offeree") shall enter into a Transaction, or make any payment or delivery relating to a Transaction:

(I) Each party is entering into the Transaction for its own account as principal, and not with a view to, or for, resale, distribution or fractionalization thereof, in whole or in part.

(II) Each party acknowledges its understanding that the offer and sale of any Transaction with the other party is intended to be excluded from the coverage of, or otherwise exempt from registration under, the Securities Act, by virtue of Section 4(2) of the Securities Act. In furtherance thereof, each party represents and warrants to the other party that (i) it has the financial ability to bear the economic risk of its investment, including a loss of its entire investment, (ii) it is an "accredited investor" as that term is defined under Regulation D under the Securities Act, and (iii) it has the knowledge and experience of investing in instruments similar to the Transaction and is capable of evaluating the risks and merits of the Transaction and has, or has had an opportunity to request, such information as it deemed necessary to make such evaluation.

(III) Each party understands that the Transaction has not been, and is not intended to be, registered under the Securities Act or under the securities laws of certain states and, therefore, cannot be resold, pledged, assigned or otherwise disposed of unless an exclusion from the coverage of the Securities Act, or an exemption for such resale, pledge, assignment or disposition is available. Neither party is obliged to register the Transaction or to assist the Offeree in complying with any exclusion from the coverage of the Securities Act, or with any exemption from registration under the Securities Act or state securities laws.

(v) **Comply With Laws.** Section 4(c) is hereby amended by replacing the words "to which it may be subject" with the words "to which it is subject."

(vi) **Merger Without Assumption.** The introductory paragraph of Section 5(a)(viii) is hereby amended by adding the words "or reorganizes, reincorporates or reconstitutes into or as," in the third line thereof after the words "its assets to," and by adding the words "reorganization, reincorporation, reconstitution" in the third line thereof after the word "merger."

(vii) **Tax Event Upon Merger.** Section 5(b)(iii) is hereby amended by:

(a) adding the words "or reorganizing, reincorporating, or reconstituting into or as," in the eighth line thereof after the words "its assets to,"; and

- (b) deleting the word "Indemnifiable" in the fifth line thereof.
- (vii) **Transfer.** Section 7 of this Agreement shall be amended by inserting the phrase "which consent shall not be unreasonably withheld" in the third line thereof after the word "party".
- (ix) **Definitions.** The definition of the term "Tax" in Section 14 is hereby amended by adding in the third line thereof after the word "Agreement" and before the word "other" the words "or any Credit Support Document."
- (x) **Definitions.** The definition of the term "Indemnifiable Tax" in Section 14 is hereby amended by adding in the second line thereof after the word "Agreement" and before the word "but" the words "or any Credit Support Document".
- (xi) The parties agree to add the following clause to the Agreement as Section 6(f):

**"Set-off.** Without affecting the provisions of the Agreement requiring the calculation of certain net payment amounts, all payments under this Agreement will be made without set-off or counterclaim; provided, however, that upon the designation of any Early Termination Date with respect to all Transactions outstanding under the Agreement, in addition to and not in limitation of any other right or remedy (including any right to set off, counterclaim, or otherwise withhold payment or any recourse to any Credit Support Document) under applicable law the Non-defaulting Party or the party that is not the Affected Party, in the case of a Termination Event (in either case, "X") may without prior notice to any person reduce any amount owed by X to the other party ("Y") under this Agreement (the "Early Termination Amount") by set-off against any obligation of Y owed to X (whether or not matured or contingent and whether or not arising under this Agreement, and regardless of the currency, place of payment or booking office of the obligation) (the "Other Agreement Amount") and the Other Agreement Amount will be discharged promptly and in all respects to the extent it is so set-off. X will give notice to the other party of any set off effected under this Section 6(f), provided that any failure to give such notice shall not invalidate the relevant set off. The Early Termination Amount or the Other Agreement Amount (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained. Nothing in this Section 6(f) shall be effective to create a charge or other security interest. This Section 6(f) shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise)."

- (l) **Inconsistency.** In the event of any inconsistency between the provisions contained in a Confirmation and those contained in this Agreement, the provisions contained in such Confirmation shall prevail unless otherwise specified in a Confirmation or other writing signed by the parties.
- (m) **Representations and Warranties of Party B.** Party B represents and warrants to and for the benefit of Party A as of the date hereof, and shall be deemed to represent and warrant to and for the benefit of Party A as of the date of each Transaction, as follows:

- (i) **Portfolio Manager's Authority.** Unless Party B notifies Party A to the contrary, the Portfolio Manager is duly authorized to enter into Transactions on behalf of Party B and Party A shall be entitled to rely upon any and all instructions or notices received from the Portfolio Manager with respect to any Transaction, and Party A shall be under no duty to determine whether the giving of any notice or instruction, or the entry into any Transaction (including without limitation its nature and its amount), on behalf of Party B is within the authority of the Portfolio Manager."
- (ii) **No ERISA Funds.** The assets of Party B do not include "plan assets" within the meaning of Section 3(42) of ERISA, and Party B is not an "employee benefit plan" subject to Title I of ERISA or a plan within the meaning of Section 4975(e)(1) of the Code.
- (iii) **No Governmental Plan Funds.** The assets of Party B do not include the assets of any "governmental plan" or other entity that is subject to any federal, state or local law that is substantially similar to the provisions of Section 406 of ERISA or Section 4975 of the Code.
- (iv) **Compliance with Law and Regulation.** The terms and conditions of any Transaction entered into under this Agreement will comply with all applicable legislation or regulations, including, without limitation, the Irish Companies Acts, any Notices issued by the Irish Financial Services Regulatory Authority Central Bank of Ireland, and rules and regulations issued by any relevant government authority. Party A will have no responsibility whatsoever to monitor or confirm compliance by any other with respect to any such law or regulation whether it has knowledge of the same or not.
- (v) **Country-Specific Underlier Representation and Covenants.**
- Restricted Markets.** The parties agree not to transact any over-the-counter derivatives transaction that references a security listed on any securities exchange located in any of India, the People's Republic of China or Taiwan (each such transaction a "Restricted Market Transaction") unless mutually agreeing in advance to terms specific to those markets, including representations and warranties, necessary to comply with local market law and regulations.
- (n) **Additional Notification Requirements.**
- (i) **Notice of Termination or Modification of the Portfolio Manager's Relationship; Reliance on Notices.** Party B shall promptly notify Party A in the event that the Portfolio Manager's business relationship with Party B is terminated. Except as otherwise stated herein, each party shall be entitled to rely upon any oral or written notices and instructions reasonably believed to be originated from the other party hereto or its duly authorized agent (including, in the case of Party B, the Portfolio Manager) and shall not incur any liability to the other party in acting in accordance with such notices and instructions.
- Each party acknowledges and agrees that (a) the Portfolio Manager will act solely as agent for Party B in connection with Transactions under this Agreement and shall have no obligations or liabilities in connection with this Agreement or the Transactions thereunder and (b) the Transactions and the related collateral under the Credit Support Annex shall have no relation to the assets and liabilities of the Portfolio Manager or of any entity that is affiliated with or managed by the Portfolio Manager.
- (ii) **Notice of Increase of Constituent Plan Investment.** Party B will promptly notify Party A if (a) the assets of Party B include "plan assets" within the meaning of Section 3(42) of ERISA and the regulations thereunder or (b) Party B otherwise becomes or is reasonably expected to become an "employee benefit plan" subject to Title I of ERISA or a "plan" within the meaning of Section 4975(e)(1) of the Code.



- (e) **WAIVER OF JURY TRIAL.** EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY TRANSACTION AND ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO THE OTHER PARTY'S ENTERING INTO THIS AGREEMENT.
- (f) **Consent to Recording.** Each Party (i) consents to the recording of all telephone conversations between trading, operations and marketing personnel of the parties and their Affiliates in connection with this Agreement or any potential Transaction; (ii) agrees to give notice to such personnel of it and its Affiliates that their calls will be recorded; and (iii) agrees that in any Proceedings, it will not object to the introduction of such recordings in evidence on grounds that consent was not properly given.
- (g) **Tax Event.** Section 5(b)(ii) of this Agreement is hereby amended by the deletion of "or there is a substantial likelihood that it will," from line four thereof.
- (h) **Definitions.** Section 14 is hereby amended to include the following definitions in their appropriate alphabetical order:

"Code" means the Internal Revenue Code of 1986, as amended, or any successor statute.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, or any successor statute.

"Portfolio Manager" means each one [REDACTED] collectively the "Portfolio Managers".

- (i) **FATCA - HIRE Act.**

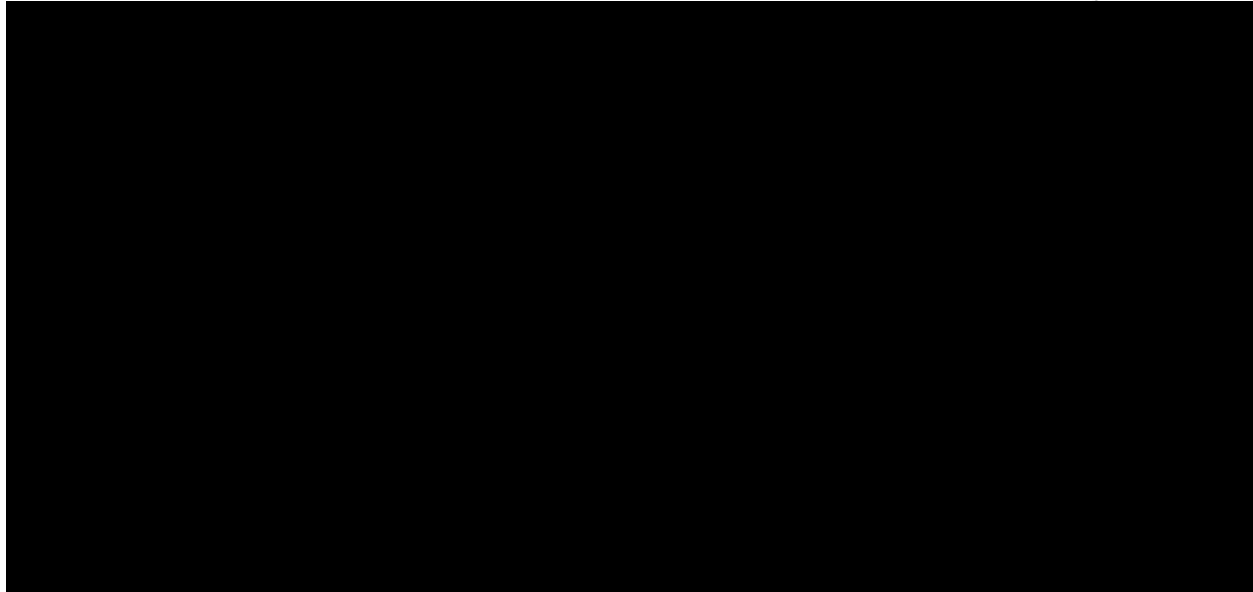
(a) **FATCA PROTOCOL PROVISION.** Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act. "Tax" as used in Part 2(a) of this Schedule (Payer Tax Representation) and "Indemnifiable Tax" as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "FATCA Withholding Tax"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this agreement. This provision shall not apply, however, if the payee has provided the payor with information or certification that are sufficient to relieve the payor of any obligation to withhold any FATCA Withholding Taxes on payments made to the payee, as specified by such foregoing Code sections or regulations promulgated thereunder.

(b) **HIRE ACT: SECTION 871(M).** The parties agree that the amendments set out in the Attachment to the ISDA 2015 Section 871(m) Protocol published by ISDA on November 2, 2015, which is available on the ISDA website ([www.isda.org](http://www.isda.org)) (the "Protocol"), will apply to this Agreement. The parties further agree that this Agreement will be deemed to be a Covered Master Agreement and that the Implementation Date will be the effective date of this Agreement as amended by the parties for the purposes of such amendments, regardless of the definitions of such terms in the Protocol.

- (j) **Netting Act.** The parties intend that, should this Agreement come to be considered under Irish law, it will fall within the scope of the Netting of Financial Contracts Act, 1995 (as amended).
- (k) **ISDA Dodd Frank Protocols.** The parties agree that, notwithstanding anything to the contrary in the ISDA August 2012 Dodd Frank Protocol (as published by the International Swaps and Derivatives Association, Inc. on August 13, 2012) that may have previously been entered into by the parties and the March 2013 Dodd Frank Protocol Agreement (as published by the International Swaps and Derivatives Association, Inc. on March 22, 2013) that may have previously been entered into by the parties (together, the "Protocol Agreements"), this Agreement shall constitute a "Protocol Covered Agreement" for all purposes under the Protocol Agreements.
- (o) **Counterparts.** This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission, by portable document ("PDF") or other electronic file contained in an email and by electronic messaging system), each of which will be deemed an original.

*[Signature page follows]*

**IN WITNESS WHEREOF** the parties have executed this Schedule with effect from the date specified on the first page of this document.



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1950

1951

(Bilateral Form)

(ISDA Agreements Subject to New York Law Only)

# ISDA<sup>®</sup>

International Swaps and Derivatives Association, Inc.

## CREDIT SUPPORT ANNEX

to the Schedule to the

.....  
1992 ISDA Master Agreement  
.....

dated as of September 15, 2017.

between

UBS AG

..... and .....

.....  
("Party A")

.....  
("Party B")

This Annex supplements, forms part of, and is subject to, the above-referenced Agreement, is part of its Schedule and is a Credit Support Document under this Agreement with respect to each party.

Accordingly, the parties agree as follows:—

### Paragraph 1. Interpretation

(a) **Definitions and Inconsistency.** Capitalized terms not otherwise defined herein or elsewhere in this Agreement have the meanings specified pursuant to Paragraph 12, and all references in this Annex to Paragraphs are to Paragraphs of this Annex. In the event of any inconsistency between this Annex and the other provisions of this Schedule, this Annex will prevail, and in the event of any inconsistency between Paragraph 13 and the other provisions of this Annex, Paragraph 13 will prevail.

(b) **Secured Party and Pledgor.** All references in this Annex to the "Secured Party" will be to either party when acting in that capacity and all corresponding references to the "Pledgor" will be to the other party when acting in that capacity; *provided, however*, that if Other Posted Support is held by a party to this Annex, all references herein to that party as the Secured Party with respect to that Other Posted Support will be to that party as the beneficiary thereof and will not subject that support or that party as the beneficiary thereof to provisions of law generally relating to security interests and secured parties.

### Paragraph 2. Security Interest

Each party, as the Pledgor, hereby pledges to the other party, as the Secured Party, as security for its Obligations, and grants to the Secured Party a first priority continuing security interest in, lien on and right of Set-off against all Posted Collateral Transferred to or received by the Secured Party hereunder. Upon the Transfer by the Secured Party to the Pledgor of Posted Collateral, the security interest and lien granted hereunder on that Posted Collateral will be released immediately and, to the extent possible, without any further action by either party.

### Paragraph 3. Credit Support Obligations

(a) **Delivery Amount.** Subject to Paragraphs 4 and 5, upon demand made by the Secured Party on or promptly following a Valuation Date, if the Delivery Amount for that Valuation Date equals or exceeds the Pledgor's Minimum Transfer Amount, then the Pledgor will Transfer to the Secured Party Eligible Credit Support having a Value as of the date of Transfer at least equal to the applicable Delivery Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "**Delivery Amount**" applicable to the Pledgor for any Valuation Date will equal the amount by which:

(i) the Credit Support Amount

exceeds

(ii) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party.

(b) **Return Amount.** Subject to Paragraphs 4 and 5, upon a demand made by the Pledgor on or promptly following a Valuation Date, if the Return Amount for that Valuation Date equals or exceeds Secured Party's Minimum Transfer Amount, then the Secured Party will Transfer to the Pledgor Posted Credit Support specified by the Pledgor in that demand having a Value as of the date of Transfer as close as practicable to the applicable Return Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "**Return Amount**" applicable to the Secured Party for any Valuation Date will equal the amount by which:

(i) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party

exceeds

(ii) the Credit Support Amount.

"**Credit Support Amount**" means, unless otherwise specified in Paragraph 13, for any Valuation Date (i) the Secured Party's Exposure for that Valuation Date plus (ii) the aggregate of all Independent Amounts applicable to the Pledgor, if any, minus (iii) all Independent Amounts applicable to the Secured Party, if any, minus (iv) the Pledgor's Threshold; *provided, however*, that the Credit Support Amount will be deemed to be zero whenever the calculation of Credit Support Amount yields a number less than zero.

### Paragraph 4. Conditions Precedent, Transfer Timing, Calculations and Substitutions

(a) **Conditions Precedent.** Each Transfer obligation of the Pledgor under Paragraphs 3 and 5 and of the Secured Party under Paragraphs 3, 4(d)(ii), 5 and 6(d) is subject to the conditions precedent that:

(i) no Event of Default, Potential Event of Default or Specified Condition has occurred and is continuing with respect to the other party; and

(ii) no Early Termination Date for which any unsatisfied payment obligations exist has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the other party.

(b) **Transfer Timing.** Subject to Paragraphs 4(a) and 5 and unless otherwise specified, if a demand for the Transfer of Eligible Credit Support or Posted Credit Support is made by the Notification Time, then the relevant Transfer will be made not later than the close of business on the next Local Business Day; if a demand is made after the Notification Time, then the relevant Transfer will be made not later than the close of business on the second Local Business Day thereafter.

(c) **Calculations.** All calculations of Value and Exposure for purposes of Paragraphs 3 and 6(d) will be made by the Valuation Agent as of the Valuation Time. The Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) of its calculations not later than the Notification Time on the Local Business Day following the applicable Valuation Date (or in the case of Paragraph 6(d), following the date of calculation).

(d) **Substitutions.**

(i) Unless otherwise specified in Paragraph 13, upon notice to the Secured Party specifying the items of Posted Credit Support to be exchanged, the Pledgor may, on any Local Business Day, Transfer to the Secured Party substitute Eligible Credit Support (the "Substitute Credit Support"); and

(ii) subject to Paragraph 4(a), the Secured Party will Transfer to the Pledgor the items of Posted Credit Support specified by the Pledgor in its notice not later than the Local Business Day following the date on which the Secured Party receives the Substitute Credit Support, unless otherwise specified in Paragraph 13 (the "Substitution Date"); *provided* that the Secured Party will only be obligated to Transfer Posted Credit Support with a Value as of the date of Transfer of that Posted Credit Support equal to the Value as of that date of the Substitute Credit Support.

**Paragraph 5. Dispute Resolution**

If a party (a "Disputing Party") disputes (I) the Valuation Agent's calculation of a Delivery Amount or a Return Amount or (II) the Value of any Transfer of Eligible Credit Support or Posted Credit Support, then (1) the Disputing Party will notify the other party and the Valuation Agent (if the Valuation Agent is not the other party) not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in case of (I) above or (Y) the date of Transfer in the case of (II) above, (2) subject to Paragraph 4(a), the appropriate party will Transfer the undisputed amount to the other party not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in the case of (I) above or (Y) the date of Transfer in the case of (II) above, (3) the parties will consult with each other in an attempt to resolve the dispute and (4) if they fail to resolve the dispute by the Resolution Time, then:

(i) In the case of a dispute involving a Delivery Amount or Return Amount, unless otherwise specified in Paragraph 13, the Valuation Agent will recalculate the Exposure and the Value as of the Recalculation Date by:

(A) utilizing any calculations of Exposure for the Transactions (or Swap Transactions) that the parties have agreed are not in dispute;

(B) calculating the Exposure for the Transactions (or Swap Transactions) in dispute by seeking four actual quotations at mid-market from Reference Market-makers for purposes of calculating Market Quotation, and taking the arithmetic average of those obtained; *provided* that if four quotations are not available for a particular Transaction (or Swap Transaction), then fewer than four quotations may be used for that Transaction (or Swap Transaction); and if no quotations are available for a particular Transaction (or Swap Transaction), then the Valuation Agent's original calculations will be used for that Transaction (or Swap Transaction); and

(C) utilizing the procedures specified in Paragraph 13 for calculating the Value, if disputed, of Posted Credit Support.

(ii) In the case of a dispute involving the Value of any Transfer of Eligible Credit Support or Posted Credit Support, the Valuation Agent will recalculate the Value as of the date of Transfer pursuant to Paragraph 13.

Following a recalculation pursuant to this Paragraph, the Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) not later than the Notification Time on the Local Business Day following the Resolution Time. The appropriate party will, upon demand following that notice by the Valuation Agent or a resolution pursuant to (3) above and subject to Paragraphs 4(a) and 4(b), make the appropriate Transfer.

**Paragraph 6. Holding and Using Posted Collateral**

(a) **Care of Posted Collateral.** Without limiting the Secured Party's rights under Paragraph 6(c), the Secured Party will exercise reasonable care to assure the safe custody of all Posted Collateral to the extent required by applicable law, and in any event the Secured Party will be deemed to have exercised reasonable care if it exercises at least the same degree of care as it would exercise with respect to its own property. Except as specified in the preceding sentence, the Secured Party will have no duty with respect to Posted Collateral, including, without limitation, any duty to collect any Distributions, or enforce or preserve any rights pertaining thereto.

(b) **Eligibility to Hold Posted Collateral; Custodians.**

(i) **General.** Subject to the satisfaction of any conditions specified in Paragraph 13 for holding Posted Collateral, the Secured Party will be entitled to hold Posted Collateral or to appoint an agent (a "Custodian") to hold Posted Collateral for the Secured Party. Upon notice by the Secured Party to the Pledgor of the appointment of a Custodian, the Pledgor's obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Posted Collateral by a Custodian will be deemed to be the holding of that Posted Collateral by the Secured Party for which the Custodian is acting.

(ii) **Failure to Satisfy Conditions.** If the Secured Party or its Custodian fails to satisfy any conditions for holding Posted Collateral, then upon a demand made by the Pledgor, the Secured Party will, not later than five Local Business Days after the demand, Transfer or cause its Custodian to Transfer all Posted Collateral held by it to a Custodian that satisfies those conditions or to the Secured Party if it satisfies those conditions.

(iii) **Liability.** The Secured Party will be liable for the acts or omissions of its Custodian to the same extent that the Secured Party would be liable hereunder for its own acts or omissions.

(c) **Use of Posted Collateral.** Unless otherwise specified in Paragraph 13 and without limiting the rights and obligations of the parties under Paragraphs 3, 4(d)(ii), 5, 6(d) and 8, if the Secured Party is not a Defaulting Party or an Affected Party with respect to a Specified Condition and no Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Secured Party, then the Secured Party will, notwithstanding Section 9-207 of the New York Uniform Commercial Code, have the right to:

(i) sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise dispose of, or otherwise use in its business any Posted Collateral it holds, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor; and

(ii) register any Posted Collateral in the name of the Secured Party, its Custodian or a nominee for either.

For purposes of the obligation to Transfer Eligible Credit Support or Posted Credit Support pursuant to Paragraphs 3 and 5 and any rights or remedies authorized under this Agreement, the Secured Party will be deemed to continue to hold all Posted Collateral and to receive Distributions made thereon, regardless of whether the Secured Party has exercised any rights with respect to any Posted Collateral pursuant to (i) or (ii) above.

(d) **Distributions and Interest Amount.**

(i) **Distributions.** Subject to Paragraph 4(a), if the Secured Party receives or is deemed to receive Distributions on a Local Business Day, it will Transfer to the Pledgor not later than the following Local Business Day any Distributions it receives or is deemed to receive to the extent that a Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose).



(ii) **Interest Amount.** Unless otherwise specified in Paragraph 13 and subject to Paragraph 4(a), in lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to Posted Collateral in the form of Cash (all of which may be retained by the Secured Party), the Secured Party will Transfer to the Pledgor at the times specified in Paragraph 13 the Interest Amount to the extent that a Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose). The Interest Amount or portion thereof not Transferred pursuant to this Paragraph will constitute Posted Collateral in the form of Cash and will be subject to the security interest granted under Paragraph 2.

**Paragraph 7. Events of Default**

For purposes of Section 5(a)(iii)(1) of this Agreement, an Event of Default will exist with respect to a party if:

- (i) that party fails (or fails to cause its Custodian) to make, when due, any Transfer of Eligible Collateral, Posted Collateral or the Interest Amount, as applicable, required to be made by it and that failure continues for two Local Business Days after notice of that failure is given to that party;
- (ii) that party fails to comply with any restriction or prohibition specified in this Annex with respect to any of the rights specified in Paragraph 6(c) and that failure continues for five Local Business Days after notice of that failure is given to that party; or
- (iii) that party fails to comply with or perform any agreement or obligation other than those specified in Paragraphs 7(i) and 7(ii) and that failure continues for 30 days after notice of that failure is given to that party.

**Paragraph 8. Certain Rights and Remedies**

(a) **Secured Party's Rights and Remedies.** If at any time (1) an Event of Default or Specified Condition with respect to the Pledgor has occurred and is continuing or (2) an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Pledgor, then, unless the Pledgor has paid in full all of its Obligations that are then due, the Secured Party may exercise one or more of the following rights and remedies:

- (i) all rights and remedies available to a secured party under applicable law with respect to Posted Collateral held by the Secured Party;
- (ii) any other rights and remedies available to the Secured Party under the terms of Other Posted Support, if any;
- (iii) the right to Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and
- (iv) the right to liquidate any Posted Collateral held by the Secured Party through one or more public or private sales or other dispositions with such notice, if any, as may be required under applicable law, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor (with the Secured Party having the right to purchase any or all of the Posted Collateral to be sold) and to apply the proceeds (or the Cash equivalent thereof) from the liquidation of the Posted Collateral to any amounts payable by the Pledgor with respect to any Obligations in that order as the Secured Party may elect.

Each party acknowledges and agrees that Posted Collateral in the form of securities may decline speedily in value and is of a type customarily sold on a recognized market, and, accordingly, the Pledgor is not entitled to prior notice of any sale of that Posted Collateral by the Secured Party, except any notice that is required under applicable law and cannot be waived.

(b) **Pledgor's Rights and Remedies.** If at any time an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Secured Party, then (except in the case of an Early Termination Date relating to less than all Transactions (or Swap Transactions) where the Secured Party has paid in full all of its obligations that are then due under Section 6(e) of this Agreement):

(i) the Pledgor may exercise all rights and remedies available to a Pledgor under applicable law with respect to Posted Collateral held by the Secured Party;

(ii) the Pledgor may exercise any other rights and remedies available to the Pledgor under the terms of Other Posted Support, if any;

(iii) the Secured Party will be obligated immediately to Transfer all Posted Collateral and the Interest Amount to the Pledgor; and

(iv) to the extent that Posted Collateral or the Interest Amount is not so Transferred pursuant to (iii) above, the Pledgor may:

(A) Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and

(B) to the extent that the Pledgor does not Set-off under (iv)(A) above, withhold payment of any remaining amounts payable by the Pledgor with respect to any Obligations, up to the Value of any remaining Posted Collateral held by the Secured Party, until that Posted Collateral is Transferred to the Pledgor.

(c) **Deficiencies and Excess Proceeds.** The Secured Party will Transfer to the Pledgor any proceeds and Posted Credit Support remaining after liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b) after satisfaction in full of all amounts payable by the Pledgor with respect to any Obligations; the Pledgor in all events will remain liable for any amounts remaining unpaid after any liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b).

(d) **Final Returns.** When no amounts are or thereafter may become payable by the Pledgor with respect to any Obligations (except for any potential liability under Section 2(d) of this Agreement), the Secured Party will Transfer to the Pledgor all Posted Credit Support and the Interest Amount, if any.

#### **Paragraph 9. Representations**

Each party represents to the other party (which representations will be deemed to be repeated as of each date on which it, as the Pledgor, Transfers Eligible Collateral) that:

(i) it has the power to grant a security interest in and lien on any Eligible Collateral it Transfers as the Pledgor and has taken all necessary actions to authorize the granting of that security interest and lien;

(ii) it is the sole owner of or otherwise has the right to Transfer all Eligible Collateral it Transfers to the Secured Party hereunder, free and clear of any security interest, lien, encumbrance or other restrictions other than the security interest and lien granted under Paragraph 2;

(iii) upon the Transfer of any Eligible Collateral to the Secured Party under the terms of this Annex, the Secured Party will have a valid and perfected first priority security interest therein (assuming that any central clearing corporation or any third-party financial intermediary or other entity not within the control of the Pledgor involved in the Transfer of that Eligible Collateral gives the notices and takes the action required of it under applicable law for perfection of that interest); and

(iv) the performance by it of its obligations under this Annex will not result in the creation of any security interest, lien or other encumbrance on any Posted Collateral other than the security interest and lien granted under Paragraph 2.

**Paragraph 10. Expenses**

(a) **General.** Except as otherwise provided in Paragraphs 10(b) and 10(c), each party will pay its own costs and expenses in connection with performing its obligations under this Annex and neither party will be liable for any costs and expenses incurred by the other party in connection herewith.

(b) **Posted Credit Support.** The Pledgor will promptly pay when due all taxes, assessments or charges of any nature that are imposed with respect to Posted Credit Support held by the Secured Party upon becoming aware of the same, regardless of whether any portion of that Posted Credit Support is subsequently disposed of under Paragraph 6(c), except for those taxes, assessments and charges that result from the exercise of the Secured Party's rights under Paragraph 6(c).

(c) **Liquidation/Application of Posted Credit Support.** All reasonable costs and expenses incurred by or on behalf of the Secured Party or the Pledgor in connection with the liquidation and/or application of any Posted Credit Support under Paragraph 8 will be payable, on demand and pursuant to the Expenses Section of this Agreement, by the Defaulting Party or, if there is no Defaulting Party, equally by the parties.

**Paragraph 11. Miscellaneous**

(a) **Default Interest.** A Secured Party that fails to make, when due, any Transfer of Posted Collateral or the Interest Amount will be obliged to pay the Pledgor (to the extent permitted under applicable law) an amount equal to interest at the Default Rate multiplied by the Value of the items of property that were required to be Transferred, from (and including) the date that the Posted Collateral or Interest Amount was required to be Transferred to (but excluding) the date of Transfer of that Posted Collateral or Interest Amount. This interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(b) **Further Assurances.** Promptly following a demand made by a party, the other party will execute, deliver, file and record any financing statement, specific assignment or other document and take any other action that may be necessary or desirable and reasonably requested by that party to create, preserve, perfect or validate any security interest or lien granted under Paragraph 2, to enable that party to exercise or enforce its rights under this Annex with respect to Posted Credit Support or an Interest Amount or to effect or document a release of a security interest on Posted Collateral or an Interest Amount.

(c) **Further Protection.** The Pledgor will promptly give notice to the Secured Party of, and defend against, any suit, action, proceeding or lien that involves Posted Credit Support Transferred by the Pledgor or that could adversely affect the security interest and lien granted by it under Paragraph 2, unless that suit, action, proceeding or lien results from the exercise of the Secured Party's rights under Paragraph 6(c).

(d) **Good Faith and Commercially Reasonable Manner.** Performance of all obligations under this Annex, including, but not limited to, all calculations, valuations and determinations made by either party, will be made in good faith and in a commercially reasonable manner.

(e) **Demands and Notices.** All demands and notices made by a party under this Annex will be made as specified in the Notices Section of this Agreement, except as otherwise provided in Paragraph 13.

(f) **Specifications of Certain Matters.** Anything referred to in this Annex as being specified in Paragraph 13 also may be specified in one or more Confirmations or other documents and this Annex will be construed accordingly.

## **Paragraph 12. Definitions**

As used in this Annex:—

“**Cash**” means the lawful currency of the United States of America.

“**Credit Support Amount**” has the meaning specified in Paragraph 3.

“**Custodian**” has the meaning specified in Paragraphs 6(b)(i) and 13.

“**Delivery Amount**” has the meaning specified in Paragraph 3(a).

“**Disputing Party**” has the meaning specified in Paragraph 5.

“**Distributions**” means with respect to Posted Collateral other than Cash, all principal, interest and other payments and distributions of cash or other property with respect thereto, regardless of whether the Secured Party has disposed of that Posted Collateral under Paragraph 6(c). Distributions will not include any item of property acquired by the Secured Party upon any disposition or liquidation of Posted Collateral or, with respect to any Posted Collateral in the form of Cash, any distributions on that collateral, unless otherwise specified herein.

“**Eligible Collateral**” means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

“**Eligible Credit Support**” means Eligible Collateral and Other Eligible Support.

“**Exposure**” means for any Valuation Date or other date for which Exposure is calculated and subject to Paragraph 5 in the case of a dispute, the amount, if any, that would be payable to a party that is the Secured Party by the other party (expressed as a positive number) or by a party that is the Secured Party to the other party (expressed as a negative number) pursuant to Section 6(e)(ii)(2)(A) of this Agreement as if all Transactions (or Swap Transactions) were being terminated as of the relevant Valuation Time; *provided* that Market Quotation will be determined by the Valuation Agent using its estimates at mid-market of the amounts that would be paid for Replacement Transactions (as that term is defined in the definition of “Market Quotation”).

“**Independent Amount**” means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

“**Interest Amount**” means, with respect to an Interest Period, the aggregate sum of the amounts of interest calculated for each day in that Interest Period on the principal amount of Posted Collateral in the form of Cash held by the Secured Party on that day, determined by the Secured Party for each such day as follows:

- (x) the amount of Cash on that day; multiplied by
- (y) the Interest Rate in effect for that day; divided by
- (z) 360.

“**Interest Period**” means the period from (and including) the last Local Business Day on which an Interest Amount was Transferred (or, if no Interest Amount has yet been Transferred, the Local Business Day on which Posted Collateral in the form of Cash was Transferred to or received by the Secured Party) to (but excluding) the Local Business Day on which the current Interest Amount is to be Transferred.

“**Interest Rate**” means the rate specified in Paragraph 13.

“**Local Business Day**”, unless otherwise specified in Paragraph 13, has the meaning specified in the Definitions Section of this Agreement, except that references to a payment in clause (b) thereof will be deemed to include a Transfer under this Annex.

**"Minimum Transfer Amount"** means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

**"Notification Time"** has the meaning specified in Paragraph 13.

**"Obligations"** means, with respect to a party, all present and future obligations of that party under this Agreement and any additional obligations specified for that party in Paragraph 13.

**"Other Eligible Support"** means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

**"Other Posted Support"** means all Other Eligible Support Transferred to the Secured Party that remains in effect for the benefit of that Secured Party.

**"Pledgor"** means either party, when that party (i) receives a demand for or is required to Transfer Eligible Credit Support under Paragraph 3(a) or (ii) has Transferred Eligible Credit Support under Paragraph 3(a).

**"Posted Collateral"** means all Eligible Collateral, other property, Distributions, and all proceeds thereof that have been Transferred to or received by the Secured Party under this Annex and not Transferred to the Pledgor pursuant to Paragraph 3(b), 4(d)(ii) or 6(d)(i) or released by the Secured Party under Paragraph 8. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(d)(ii) will constitute Posted Collateral in the form of Cash.

**"Posted Credit Support"** means Posted Collateral and Other Posted Support.

**"Recalculation Date"** means the Valuation Date that gives rise to the dispute under Paragraph 5; *provided, however,* that if a subsequent Valuation Date occurs under Paragraph 3 prior to the resolution of the dispute, then the "Recalculation Date" means the most recent Valuation Date under Paragraph 3.

**"Resolution Time"** has the meaning specified in Paragraph 13.

**"Return Amount"** has the meaning specified in Paragraph 3(b).

**"Secured Party"** means either party, when that party (i) makes a demand for or is entitled to receive Eligible Credit Support under Paragraph 3(a) or (ii) holds or is deemed to hold Posted Credit Support.

**"Specified Condition"** means, with respect to a party, any event specified as such for that party in Paragraph 13.

**"Substitute Credit Support"** has the meaning specified in Paragraph 4(d)(i).

**"Substitution Date"** has the meaning specified in Paragraph 4(d)(ii).

**"Threshold"** means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

**"Transfer"** means, with respect to any Eligible Credit Support, Posted Credit Support or Interest Amount, and in accordance with the instructions of the Secured Party, Pledgor or Custodian, as applicable:

(i) in the case of Cash, payment or delivery by wire transfer into one or more bank accounts specified by the recipient;

(ii) in the case of certificated securities that cannot be paid or delivered by book-entry, payment or delivery in appropriate physical form to the recipient or its account accompanied by any duly executed instruments of transfer, assignments in blank, transfer tax stamps and any other documents necessary to constitute a legally valid transfer to the recipient;

(iii) in the case of securities that can be paid or delivered by book-entry, the giving of written instructions to the relevant depository institution or other entity specified by the recipient, together with a written copy thereof to the recipient, sufficient if complied with to result in a legally effective transfer of the relevant interest to the recipient; and

(iv) in the case of Other Eligible Support or Other Posted Support, as specified in Paragraph 13.

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**"Valuation Agent"** has the meaning specified in Paragraph 13.

**"Valuation Date"** means each date specified in or otherwise determined pursuant to Paragraph 13.

**"Valuation Percentage"** means, for any item of Eligible Collateral, the percentage specified in Paragraph 13.

**"Valuation Time"** has the meaning specified in Paragraph 13.

**"Value"** means for any Valuation Date or other date for which Value is calculated and subject to Paragraph 5 in the case of a dispute, with respect to:

- (i) Eligible Collateral or Posted Collateral that is:
  - (A) Cash, the amount thereof; and
  - (B) a security, the bid price obtained by the Valuation Agent multiplied by the applicable Valuation Percentage, if any;
- (ii) Posted Collateral that consists of items that are not specified as Eligible Collateral, zero; and
- (iii) Other Eligible Support and Other Posted Support, as specified in Paragraph 13.

**ISDA  
CREDIT SUPPORT ANNEX  
to the Schedule  
to the Master Agreement**

dated as of September 15, 2017

between

UBS AG  
("Party A")

and

[REDACTED]  
("Party B")

**Paragraph 13. Elections and Variables**

- (a) **Security Interest for "Obligations."** The term "*Obligations*" as used in this Annex includes the following additional obligations:

With respect to Party A: None

With respect to Party B: None

- (b) **Credit Support Obligations**

- (i) **Delivery Amount, Return Amount and Credit Support Amount**

(1) "*Delivery Amount*" has the meaning specified in Paragraph 3(a).

(2) "*Return Amount*" has the meaning specified in Paragraph 3(b).

(3) "*Credit Support Amount*" has the meaning specified in Paragraph 3.

- (ii) **Eligible Collateral and Valuation Percentages.** Notwithstanding any provisions to the contrary in the Annex, only the following items will qualify as Eligible Collateral for the party specified and the following Valuation Percentages will be applicable:

Collateral Type	Rating (S&P/Moody's)	Party A and Party B	Valuation Percentage
Cash in the form of U.S. Dollars	N/A	Yes	100%
Treasury Securities	AAA / Aaa to AA- / Aa3 (inclusive)	Yes	Residual Maturity in years: < 1: 98% 1-5: 96% > 5-10: 95% > 10: 94%

Treasury Securities	A+ / A1 to BBB- / Baa3 (inclusive)	Yes	Residual Maturity in years: < 1: 98% 1-5: 96% > 5-10: 94% > 10: 94%
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If any Treasury Security in the table above is assessed as having a Rating below BBB-/Baa3 such security will cease to be Eligible Collateral for the purposes of further Transfers under Paragraph 3(a) of the Annex and the parties shall immediately substitute for such securities Substitute Credit Support pursuant to Paragraph 4(d) of the Annex.

With respect to **Party A** and **Party B**:

Unless otherwise expressly provided, an item of non-cash collateral will only qualify as a Treasury Security for a party (as the Pledgor) if it is (i) a security issued by the Department of the Treasury backed by the credit of the United States of America and denominated in USD, (ii) bears interest on its stated principal amount at a non-variable fixed rate until maturity, (iii) is not a security issued by the Department of the Treasury backed by the credit of the United States of America that represent either interest components or principal components stripped from underlying US treasury obligations under the program of the Department of the Treasury called "Separate Trading of registered Interest and Principal Securities", and (iv) does not pay interest or repay principal amounts linked to an inflation rate, inflation index or any other index.

**"Rating"** means the lower of any long-term senior unsecured debt rating, long-term deposit rating, insurer financial strength rating or counterparty rating, published by either Rating Agency. For the avoidance of doubt "pi" or "Public Information" ratings are specifically excluded from this definition.

**"Rating Agency"** means Standard & Poor's Corporation (S&P) and Moody's Investors Service, Inc. (Moody's).

(iii) **Other Eligible Support.** None.

(iv) **Thresholds**

- (1) **"Independent Amount"** means with respect to both Party A and Party B for any Valuation Date: for each Transaction outstanding at such Valuation Date, zero, unless otherwise agreed by the parties with respect to the relevant Confirmation.
- (2) **"Threshold"** means with respect to Party A: \$ 0.  
**"Threshold"** means with respect to Party B: \$ 0.
- (3) **"Minimum Transfer Amount"** means with respect to both Party A and Party B, USD \$100,000, provided that (i) if the Party is a Defaulting Party at the time, its Minimum Transfer Amount will be zero, and (ii) if no Transactions are outstanding then the Minimum Transfer Amount for both parties will be zero.



- (4) **"Rounding"** means the Delivery Amount will be rounded up and the Return Amount will be rounded down, as the case may be, to the nearest multiple of USD \$10,000, or to the nearest multiple of USD 1, if no Transactions are outstanding.

(c) **Valuation and Timing**

- (i) **"Valuation Agent"** means, for purposes of Paragraphs 3 and 5, the party making the demand under Paragraph 3 and, for purposes of Paragraph 6(d), the Secured Party receiving or deemed to receive the Distributions or the Interest Amount, as applicable.
- (ii) **"Valuation Date"** means each Local Business Day.
- (iii) **"Valuation Time"** means the close of business on the Local Business Day prior to the Valuation Date or date of calculation, as applicable; *provided, however* that the calculations of Value and Exposure will be made as of approximately the same time on the same date.
- (iv) **"Notification Time"** means 10:00 a.m. New York Time time on a Local Business Day.
- (v) **"Transfer Timing"** The terms of Paragraph 4(b) are deleted and the following substituted therefor:

"Subject to Paragraphs 4(a) and 5, and unless otherwise specified, if a demand for the Transfer of Eligible Credit Support or Posted Credit Support is made by the Notification Time, then the relevant Transfer will be made by the close of business New York time. If such demand is made after the Notification Time, then the relevant Transfer will be made the next Local Business Day.

(d) **Conditions Precedent and Secured Party's Rights and Remedies.**

- (i) For purposes of Paragraph 8(a), each Termination Event will constitute a Specified Condition with respect to a Pledgor, if the Pledgor fails to pay when due any amount payable by it in connection with any Early Termination Date designated in connection with that Termination Event. For all other purposes of this Annex, each Termination Event specified below with respect to a party will be a "Specified Condition" for that party to the extent that all Transactions are Terminated Transactions and that party is the sole Affected Party.

	Party A	Party B
Illegality	[ ]	[ ]
Tax Event	[ ]	[ ]
Tax Event Upon Merger	[ ]	[ ]
Credit Event Upon Merger	[X]	[X]
Additional Termination Event(s):	[ ]	[ ]

- (ii) The condition precedent in Paragraph 4(a)(i) does not apply to a Transfer obligation of a party if the other party shall have satisfied in full all its payment and delivery obligations under Section 2(a)(i) of this Agreement and shall at the relevant time have no future payment or delivery obligations, whether absolute or contingent, under Section 2(a)(i) and has no present or future obligation to transfer Eligible Credit Support or Posted Credit Support, whether absolute or contingent, under this Annex. If a party ("Party X")

withholds a Transfer of Eligible Credit Support or Posted Credit Support pursuant to Paragraph 4(a)(i):

(A) Party X will give written notice to the other party ("Party Y") specifying the relevant Event of Default, Potential Event of Default or Specified Condition giving rise to the exercise of its rights under Paragraph 4(a)(i) no later than the close of business on the Local Business Day that the relevant Transfer would otherwise be due under Paragraph 4(b), and

(B) notwithstanding Paragraph 4(a)(1), unless an Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated as of the 15<sup>th</sup> Local Business Day following the occurrence of the earlier of the relevant Event of Default or Specified Condition or the expiration of any grace period applicable to the relevant Potential Event of Default (the "Decision Date"), make such Transfer on the Decision Date

(e) **Substitution**

- (i) **"Substitution Date"** has the meaning specified in Paragraph 4(d)(ii).
- (ii) **Consent.** If specified here as applicable, then the Pledgor must obtain the Secured Party's consent for any substitution pursuant to Paragraph 4(d): Applicable. Consent shall not be unreasonably withheld.

(f) **Dispute Resolution**

- (i) **No Available Quotations.** In line 6 of Paragraph 5(i)(B), the words "the Valuation Agent's original calculations will be used" shall be replaced with the words "the parties will appoint a mutually acceptable leading dealer in the relevant market to make such calculation and such expense will be shared equally by the parties".
- (ii) **"Resolution Time"** means for both parties 1:00 p.m., New York time, on a Local Business Day, following the date the Disputing Party gives notice of a dispute pursuant to Paragraph 5.
- (iii) **Value.** For the purpose of Paragraphs 5(i)(C) and 5(ii), the Value of Posted Credit Support of the type described in Paragraphs 13(b)(ii)(B), (C), (D) or (E) (referred to herein as "Government Obligations") will equal the Valuation Percentage multiplied by the sum of (A) either (1) the mean of the high bid and low asked prices quoted on such date by any principal market maker for such Government Obligations, which market maker shall be selected by the Disputing Party in good faith and in a commercially reasonable manner, or (2) if no quotations are available from a principal market maker for such date, the mean of such high bid and low asked prices as of the day next preceding such date, on which such quotations were available, and (B) accrued interest on such Government Obligations (except to the extent included in the applicable price referred to in clause (A) above).
- (iv) **Acknowledgement.** A failure by the Disputing Party to Transfer to the other party the disputed portion of a Delivery Amount or a Return Amount that is the subject of a dispute

under Paragraph 5 shall not give rise to an Event of Default under Paragraph 7(i) unless and until the Disputing Party fails to make when due any additional Transfer of Eligible Collateral in respect of such disputed Delivery Amount or Return Amount required to be made by it pursuant to Paragraph 5.

(g) ***Holding and Using Posted Collateral.***

(i) ***Eligibility to Hold Posted Collateral; Custodians.*** Either Party A or Party B or the respective Custodian of Party A or Party B, if any, will be entitled to hold Posted Collateral pursuant to Paragraph 6(b); provided that the following conditions applicable to it are satisfied:

- (1) Party A or Party B, as applicable: Such party is not a Defaulting Party.
- (2) Any Custodian appointed by a party must be a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof or a U.S. branch of a bank organized under the laws of Switzerland, having assets of at least \$10 billion and a long term debt or deposit rating of at least "A3" from Moody's and "A-" from S&P.
- (3) Without prejudice to such party's rights under Section 6(c), Posted Collateral may only be held in one or more accounts in the United States.

Initially, the **Custodian** for Party A is: Not applicable.

Initially, the **Custodian** for Party B is: Not applicable

(ii) ***Use of Posted Collateral.*** The provisions of Paragraph 6(c) will apply to Party A and Party B.

(h) ***Distributions and Interest Amount***

(i) ***Interest Rate.*** The "*Interest Rate*" shall mean the "Federal Funds (Effective)" rate in effect for such each day, as published in the weekly statistical release designated as H.15(519) (or any successor publications) by the Board of Governors for the Federal Reserve System.

(ii) ***Transfer of Interest Amount.*** The Transfer of the Interest Amount will be made on the last Local Business Day of each calendar month and on any Local Business Day that Posted Collateral in the form of Cash is Transferred to the Pledgor pursuant to Paragraph 3(b).

(iii) ***Alternative to Interest Amount.*** The provisions of Paragraph 6(d)(ii) will apply.

(i) ***Other Eligible Support and Other Posted Support***

(i) "***Value***" with respect to Other Eligible Support and Other Posted Support means: Not applicable

(ii) "***Transfer***" with respect to Other Eligible Support and Other Posted Support means: Not applicable

(j) ***Demands and Notices.*** All demands, specifications and notices under this Annex will be made pursuant to Part 4 of the Schedule to this Agreement, except as specified below:

All communications to Party A with respect to Transfers of Eligible Collateral shall be sent to:

Collateral Management  
600 Washington Boulevard  
Stamford, CT, 06901  
Attention: Margin Specialist  
Tel: (203) 719-6116  
E-mail: [SH-Coll-STM-OTC2@ubs.com](mailto:SH-Coll-STM-OTC2@ubs.com)

With a copy to:

5 Broadgate  
London EC2M 2QS  
Email: [SH-OTC-Collateral2@ubs.com](mailto:SH-OTC-Collateral2@ubs.com)  
Tel: +44 207 567 7211  
Tel: +44 207 567-7211  
Attention: Collateral Manager

All communications, specifications and notices to Party B with respect to Transfers of Eligible Collateral, except for notices pursuant to Paragraphs 7 and 8 of this Annex, shall be sent to:

Address: [REDACTED]  
[REDACTED]  
[REDACTED]  
Attention: [REDACTED]  
Facsimile No. [REDACTED]  
Telephone No.: [REDACTED]  
Email: [REDACTED]

(k) **Other Provisions**

- (i) **Taxes in Connection with Interest Amounts.** Notwithstanding anything to the contrary in this Agreement, neither Party makes any Payer Tax Representation referred to in Section 3(e) of this Agreement with respect to any Interest Amount it is required to Transfer under this Annex, and neither Party will be entitled to designate an Early Termination Date on the grounds of any Tax Event resulting from the Party's obligation to pay additional amounts in respect of Indemnifiable Taxes imposed with respect to any such Interest Amount.
- (ii) **Set off.** For purposes of Paragraphs 2 and 8(a)(iii) of this Annex, the reference to any amount payable under Section 6 of this Agreement in the definition of "Set-off" in this Agreement shall be deemed a reference to any amount payable with respect to any Obligation, as described in Paragraph 8(a)(iii) of this Annex.
- (iii) **Secured Party's Rights and Remedies.** In the first paragraph of Paragraph 8(a), the phrase "(1) an Event of Default or Specified Condition with respect to the Pledgor has occurred and is continuing or (2)" shall be deleted in its entirety.

- (iv) **Paragraph 5. Dispute Resolution.** Paragraph 5 of the Credit Support Annex is hereby amended by deleting clause (2) in its entirety and inserting in lieu thereof the following:

"(2) subject to Paragraph 4(a), the appropriate party will Transfer the undisputed amount to the other party not later than (X) the time delivery otherwise would have been due if no dispute had existed in the case of (I) above, or (Y) the close of business on the Local Business Day following the date of Transfer in the case of (II) above,"

- (v) **Paragraph 7. Event of Default.** Subparagraph (i) of Paragraph 7 of the Credit Support Annex is hereby amended by deleting the phrase "two Local Business Days" and inserting in lieu thereof the phrase "one Local Business Day."

- (vi) **Paragraph 12. Definitions.** Paragraph 12 of the Credit Support Annex is hereby amended as follows:

The definition of "Local Business Day" is hereby amended by inserting the following in lieu thereof: "Local Business Day means a day on which commercial banks in New York City are open for business (including dealings in foreign exchange and foreign currency deposits)"

- (vii) **Paragraph 3. Credit Support Obligations.** Paragraph 3(b) of the Credit Support Annex is hereby amended to include the following at the end thereof:

"Notwithstanding the provisions of Paragraph 13(b)(iv)(3), when the Credit Support Amount with respect to a Pledgor on a Valuation Date is zero, then for the purpose of any Return Amount due to such Pledgor, the Minimum Transfer Amount with respect to the Secured Party shall be zero."

- (viii) **ISDA 2014 Collateral Agreement Negative Interest Protocol.** Notwithstanding that Party B may not have adhered to the ISDA 2014 Collateral Agreement Negative Interest Protocol published by the International Swaps and Derivatives Association, Inc. on 12 May 2014 (the "Negative Interest Protocol"), the parties agree that this Annex shall be deemed to be a Protocol Covered Collateral Agreement; and the provisions of the Negative Interest Protocol shall apply to this Annex as if both parties were Adhering Parties to the Negative Interest Protocol with the Implementation Date deemed to be the date of this Annex. Capitalised terms used in this paragraph but not defined shall have the same meaning as set out in the Negative Interest Protocol.