

ISDA[®]

International Swaps and Derivatives Association, Inc.

NOVATION AGREEMENT

dated as of [] among:

..... (the "**Remaining Party**"), (the "**Transferor**")

AND

..... (the "**Transferee**").¹

The Transferor and the Remaining Party have entered into one or more Transactions [as identified in the attached Annex]² (each an "**Old Transaction**"), each evidenced by a Confirmation (an "**Old Confirmation**") [attached hereto]³ [subject to an ISDA []⁴ dated as of [] (the "**Old Agreement**")]⁵.

[The Remaining Party and the Transferee have entered into an ISDA [] (the "**New Agreement**") dated as of []]⁶.

With effect from and including [] (the "**Novation Date**")/[each date indicated in the Annex attached hereto to be a Novation Date with respect to a particular Old Transaction (each, a "**Novation Date**")]⁷ the Transferor wishes to transfer by novation to the Transferee, and the Transferee wishes to accept the transfer by novation of, all the rights, liabilities, duties and obligations of the Transferor under and in respect of each Old Transaction, with the effect that the Remaining Party and the Transferee enter into a new transaction (each a "**New Transaction**") between them having terms identical to those of each Old Transaction, as more particularly described below.

The Remaining Party wishes to accept the Transferee as its sole counterparty with respect to the New Transactions.

The Transferor and the Remaining Party wish to have released and discharged, as a result and to the extent of the transfer described above, their respective obligations under and in respect of the Old Transactions.

Accordingly, the parties agree as follows: ---

1. Definitions.

Terms defined in the ISDA Master Agreement (Multicurrency-Cross Border) as published in 1992 by the International Swaps and Derivatives Association, Inc., (the "**1992 ISDA Master Agreement**") are used herein as so defined, unless otherwise provided herein.

1 The parties may wish to consider whether this document should address any credit support arrangements, pre-existing or otherwise, and whether any credit support provider need be a party.

2 Delete where Annex not used.

3 Delete where Confirmation(s) not attached.

4 Insert the title of the relevant ISDA form of agreement.

5 Delete where Transferor and Remaining Party do not have an executed ISDA form of agreement.

6 Insert the title and date of the relevant ISDA form of agreement or delete the entire statement where Transferee and Remaining Party do not have an executed ISDA form of agreement. Please also see note 9 below.

7 Where multiple Old Transactions are being novated on different dates, the parties may provide for multiple Novation Dates.

2. Transfer, Release, Discharge and Undertakings.

With effect from and including the Novation Date and in consideration of the mutual representations, warranties and covenants contained in this Novation Agreement and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties):

- (a) the Remaining Party and the Transferor are each released and discharged from further obligations to each other with respect to each Old Transaction and their respective rights against each other thereunder are cancelled, provided that such release and discharge shall not affect any rights, liabilities or obligations of the Remaining Party or the Transferor with respect to payments or other obligations due and payable or due to be performed on or prior to the Novation Date⁸, and all such payments and obligations shall be paid or performed by the Remaining Party or the Transferor in accordance with the terms of the Old Transaction;
- (b) in respect of each New Transaction, the Remaining Party and the Transferee each undertake liabilities and obligations towards the other and acquire rights against each other identical in their terms to each corresponding Old Transaction (and, for the avoidance of doubt, as if the Transferee were the Transferor and with the Remaining Party remaining the Remaining Party, save for any rights, liabilities or obligations of the Remaining Party or the Transferor with respect to payments or other obligations due and payable or due to be performed on or prior to the Novation Date); and
- (c) each New Transaction shall be governed by [and form part of the New Agreement⁹] and [the relevant Old Confirmation (which, in conjunction and as deemed modified to be consistent with this Novation Agreement, shall be deemed to be a Confirmation between the Remaining Party and the Transferee)]/[the Transferee and the Remaining Party shall enter into a Confirmation specifying the terms of each New Transaction; provided, however, that any failure of either the Transferee or the Remaining Party to enter into such Confirmations shall not affect the rights and obligations of the Transferor pursuant to this Novation Agreement]¹⁰, and the offices of the Remaining Party and the Transferee for purposes of each New Transaction shall be [[] and [], respectively]/[as specified in the Annex] and the office of the Transferor for purposes of the Old Transaction shall have been []/[as specified in the Annex].

3. Representations and Warranties.

- (a) On the date of this Novation Agreement and on each Novation Date:
 - (i) Each of the parties makes to each of the other parties those representations and warranties set forth in Section 3(a) of the 1992 ISDA Master Agreement with references in such Section to "this Agreement" or "any Credit Support Document" being deemed references to this Novation Agreement alone.
 - (ii) [The Remaining Party and the Transferor each makes to the other,]/[and]/[the Remaining Party and the Transferee each makes to the other,] the representation set forth in Section 3(b) of the 1992 ISDA Master Agreement, in each case with respect to [the Old

⁸ Other apportionments of responsibility may be desired by the parties. Please see section 3 of the User's Guide with respect to this Novation Agreement.

⁹ Where the Remaining Party and the Transferee do not have a governing agreement between them, they may wish to delete this paragraph and insert appropriate language such as that set forth in the User's Guide with respect to this Novation Agreement.

¹⁰ The Remaining Party and the Transferee should consider carefully whether they will continue to rely on Old Confirmations or enter into New Confirmations. Under some circumstances, the deemed amendment language contained in subparagraph (c) may not be sufficiently specific to achieve the desired result. Old Confirmations may require explicit amendment to adequately serve the purposes of the Remaining Party and the Transferee.

Agreement]/[or]/[the New Agreement], as the case may be, and taking into account the parties entering into and performing their obligations under this Novation Agreement.¹¹

(iii) Each of the Transferor and the Remaining Party represents and warrants to each other and to the Transferee that [:

(A) it has made no prior transfer (whether by way of security or otherwise) of [the Old Agreement or] any interest or obligation [in or under [the Old Agreement or]/[in respect of any Old Transaction]]/.]; and

(B) as of the Novation Date, all obligations of the Transferor and the Remaining Party under each Old Transaction required to be performed on or before the Novation Date have been fulfilled.]¹²

(b) The Transferor makes no representation or warranty and does not assume any responsibility with respect to the legality, validity, effectiveness, adequacy or enforceability of any New Transaction [or the New Agreement] or any documents relating thereto and assumes no responsibility for the condition, financial or otherwise, of the Remaining Party, the Transferee or any other person or for the performance and observance by the Remaining Party, the Transferee or any other person of any of its obligations under any New Transaction [or the New Agreement] or any document relating thereto and any and all such conditions and warranties, whether express or implied by law or otherwise, are hereby excluded.¹³

4. Counterparts.

This Novation 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.

5. Costs and Expenses.

The parties will each pay their own costs and expenses (including legal fees) incurred in connection with this Novation Agreement and as a result of the negotiation, preparation and execution of this Novation Agreement.

6. Amendments.

No amendment, modification or waiver in respect of this Novation 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.

7. (a) Governing Law.

This Novation Agreement will be governed by and construed in accordance with the laws of [England] / [the State of New York without reference to the conflict of laws provisions thereof].

¹¹ In the absence of an Old Agreement or a New Agreement, delete the related references and consider amending the representation to suit such contractual arrangements as do exist.

¹² Each clause in subparagraph (iii) should be deleted or amended if not factually correct. In the absence of an Old Agreement, bracketed references thereto should be deleted.

¹³ In the absence of a New Agreement, bracketed references thereto should be deleted. The parties to a New Agreement may wish to review the applicability, if any, to this Novation Agreement, of any representations and warranties contained therein that may bear on matters of disclosure and reliance.

(b) **Jurisdiction.**

The terms of Section 13(b) of the 1992 ISDA Master Agreement shall apply to this Novation Agreement with references in such Section to "this Agreement" being deemed references to this Novation Agreement alone.

IN WITNESS WHEREOF the parties have executed this Novation Agreement on the respective dates specified below with effect from and including [the]/[each] Novation Date.

.....
(Name of Remaining Party)

.....
(Name of Transferor)

By:
Name:
Title:
Date:

By:
Name:
Title:
Date:

.....
(Name of Transferee)

By:
Name:
Title:
Date:

[ANNEX]

[Identification of Old Transactions to be discharged]¹⁴

[Old Confirmations]

¹⁴ Parties may choose to append an Annex (consider for example the form in the User's Guide with respect to this Novation Agreement) or the Old Confirmations with respect to the Old Transactions to be discharged.
