

ISDA®

International Swaps and Derivatives Association, Inc.

2002 MASTER AGREEMENT

dated as of .....

\_\_\_\_\_ 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

(僅供參考)\*

ISDA®

國際掉期及衍生工具協會

2002 年主協議

\_\_\_\_\_年\_\_\_\_月\_\_\_\_日

\_\_\_\_\_與\_\_\_\_\_

之間已進行及/或預期進行受本 2002 年主協議規範(或將為其規範)之一筆或多筆交易(均稱為“交易”)；本主協議包括附約(以下簡稱“附約”)以及雙方間另交換或為確認或證明該等交易使其生效之文件和其他確認證據(均稱為“確認書”)。本 2002 年主協議及其附約統稱為“主協議”。

據此，雙方同意如下：—

1. 釋義

(a) *定義。*就本主協議而言，本主協議第 14 條以及其他部分所定義之詞匯將具有其所特定之含義。

(b) *不一致。*若附約之條款與本主協議之其他條款有不一致之處，以附約為準。若任何確認書與本主協議之條款有不一致之處，就有關交易而言，以確認書為準。

(c) *單一協議。*所有交易之進行乃基於信賴本主協議以及所有確認書構成雙方之間之單一協議(統稱“協議”)，否則雙方不會進行任何交易。

2. 義務

(a) *一般條件。*

(i) 受本協議之其他條款約束，雙方應按各確認書之規定為各項付款或交付。

(ii) 本協議項下之付款應於到期日在有相關確認書所

\* This Chinese translation is for reference only. Parties should always execute the English original in conducting transactions. Although every effort has been made to ensure the accuracy of this translation, due to differences in grammar and legal terminologies, the possibility that terms or words used in the Chinese translation may have different meanings or connotations from the English original cannot be ruled out. Therefore, this Chinese translation should not be relied upon by any person in making any decision or taking any action. If there exists any difference between this Chinese version and the English version, the English version should govern.

本翻譯稿僅用於參考。雙方在交易中應簽署本主協議之英文本。雖然譯者已盡力使該中文譯本正確反映英文原文，但由於中英文用詞、語法結構及法律術語之不同，中文譯文不可避免與英文本存有一些差異，因此交易者不應僅依賴於本譯本而作出任何決定或採取任何行動，中英文本不一致之處，應以英文本為準。

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.

規定之帳戶所在地或按本協議其他規定另行支付；款項應以自由可轉讓資金以及所要求之貨幣付款之通用方式支付。若結算以交付形式進行(即付款之外之方式)，該交付應於到期日按有關義務之通用方式進行，然有關確認書或本協議另有規定時，則不在此限。

(iii) 第 2(a)(i)條下各方之每項義務取決於以下先決條件：(1)對方未發生任何違約事件或潛在違約事件且該事件仍在持續中；(2)就有關交易而言，尚未出現或尚未有效地指定提前終止日；以及(3)於本協議下作為本第 2(a)(iii)條先決條件之其他各項條件。

(b) **更改帳戶。**除非另一方及時發出反對通知且其反對係合理者，任何一方可在付款或交付之預定結算日前至少五個當地營業日通知對方變更接收款項或交付之帳戶。

(c) **付款淨額結算。**若任何日期雙方均須：—

- (i) 以相同貨幣；及
- (ii) 就相同交易，

向另一方付款，雙方支付該款項之義務將於當日自動地完成及解除，若一方本應支付之總額高於對方本應支付之總額，支付較大總額一方之付款義務則為向另一方繳付兩者(較大總支付款及較小總支付款)間之差額。

雙方可就兩筆或以上之交易選擇就該等交易於同一日期以相同貨幣支付之所有付款進行淨額結算及履行付款義務，不論此等付款是否關於同一筆交易。該選擇可於附約或任何確認書上作出，並規定“多筆交易付款淨額結算”適用於該選擇所指定之交易(在此情況下，上述第(ii)款將不適用於此等交易)。如多筆交易付款淨額結算適用者，其生效日期為附約或確認書中規定之開始日期；如附約或確認書中未規定生效日期，則由雙方另行以書面另行約定開始日期。此選擇可就不同組別之交易分別作出並分別適用於雙方用以交付接受款項或交付物之每一組辦事處。

(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

(d) **稅捐之扣減或預扣。**

(i) **所扣稅捐補足。**本協議項下之所有付款應不因任何稅捐而予以扣減或預扣，除非此扣減或預扣是按當時有效並經有關政府稅務機關之慣例加以修正之適用法律之要求而作出。若一方被要求扣減或預扣任何款項，該方(“X方”)應：—

(1) 及時將該要求通知另一方(“Y方”)；

(2) 當確定需要支付該扣減或預扣款項或收到通知獲悉已向 Y 方課徵該款項(二者之較早發生者)時，應及時向有關政府機關支付所需扣減或預扣之全部款項(包括按本第 2(d)條要求從 X 方付給 Y 方之任何額外款項中扣減或預扣之全部款項)；

(3) 及時向 Y 方發出正式收據(或經認證之副本)，或 Y 方能合理接受之其他文件，證明已向有關政府機關付款；以及

(4) 若該稅為可獲補償稅捐，則除了支付給 Y 方其在本協議項下應得之款項外，還應向 Y 方支付額外款項，使 Y 方實得之淨額(不包括向 X 方或 Y 方課徵之可獲補償稅捐)相等於在不需要扣減或預扣款項時其應得之全部款項。但如 X 方之支付義務是由以下事件所引發之，則 X 方無須向 Y 方支付任何額外款項：—

(A) Y 方未遵守或履行第 4(a)(i)、4(a)(iii) 或 4(d)條所載之任何協議；或

(B) Y 方按第 3(f)條所作之陳述為不正確及不真實，除非該陳述是由於：(I)在進行某項交易以後，稅務機關採取之行動或在有管轄權之法庭內提出之訴訟(不論該行動或訴訟是否就本協議一方提出)，或(II)稅法之變更而變得~~不正確及不真實~~。

(ii) **責任。**如：—

(1) 因按經有關政府稅務機關之慣例加以修正之任何適用法律之要求，X 方需作出任何扣減或預扣，但按第 2(d)(i)(4)條之規定，X 方無須向 Y 方支付任何額外款項；

(2) X 方沒有扣減或預扣款項；並且

(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,

(3) 稅務責任直接加於 X 方，

則 Y 方除非已承擔或將承擔該稅務所引致之責任外，Y 方應及時向 X 方支付有關該責任之款項(包括任何有關利息，但僅在 Y 方未能遵守或履行第 4(a)(i)、4(a)(iii)或 4(d)條所載之任何協議時才包括任何有關懲罰性責任)。

### 3. 陳述

各方向另一方作出第 3(a)、3(b)、3(c)、3(d)、3(e)和 3(f)條以及(如按附約規定適用時之)第 3(g)款所載之陳述(這些陳述將被視為在每次進行交易當日為各方複述，按第 3(f)條所作之陳述將被視為直至本協議終止前不斷為各方所複述)。如任何“其他陳述”按附約或確認書之規定，亦予適用者，該陳述中規定之一方或各方將於該陳述所指定之時點作出或被視為另重複(如有適用者)此一其他陳述。

#### (a) *基本陳述。*

(i) *地位。*其為適當地組成並按其成立或組織之司法管轄區之法律有效存續以及，如與該等法律相關者，處於良好之狀態；

(ii) *權力。*其有權簽署本協議以及其為一方之與本協議有關之其它任何文件，有權按本協議有關交付之要求交付本協議及有關本協議之任何其它文件，及有權履行本協議項下之義務以及任何以其為一方之信用支持文件下之義務，並已採取所有必要行動授權此等簽署、交付及履行；

(iii) *無違反或抵觸。*此等簽署、交付及履行並無違反或抵觸任何適用之法律，符合其組織章程性文件之任何規定，符合適用於該方或其資產之任何法庭或政府機關所頒佈之法令或判決，或任何約束或影響該方或其資產之合同約定；

(iv) *同意。*已獲取有關本協議或其為一方之任何信用支持文件所需之一切政府同意及其它同意；此等同意已全面生效並且有關同意生效之所有條件已獲遵守；以及

(v) *義務之約束。*其在本協議及其為一方之任何信用支持文件項下之義務均構成其合法、有效及有約束力之義務，並可按該些文件之有關條款強制執行(受限於適用之破產、重組、無償還能力、延期償還或滯留影響債權者權利之類似法律，並有有關執行

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

或通常影響債權者權利之類似法律，並在有關執行方面受限於普遍適用之衡平原則(無論該執行是訴諸於衡平法或普通法))。

(b) **不存在某些事件。**沒有任何已經發生及持續之違約事件或潛在之違約事件，或據其所知並無有關該方之終止事件，並且簽署或履行本協議或其為一方之任何信用支持文件下之義務，不會引致該終止事件或情況之發生。

(c) **不存在訴訟。**沒有任何待決的，或據其所知，沒有任何對其或其任何信用支持提供者或其任何有關特定機構構成威脅之基於普通法或衡平法或於任何法庭、裁判所、政府實體、代理人、官員或仲裁者前進行之訴訟、控告或起訴，其將可能影響本協議或其為一方之任何信用支持文件之合法性、有效性或可執行性，或其履行本協議或該等信用支持文件下之義務之能力。

(d) **指定資料之正確性。**以書面形式由其發出或以其名義發給另一方，並為本第 3(d)條之目的在附約上指明其有所適用之所有資料，於該資料之日期在各重要方面均為真實、正確及完整。

(e) **付款人稅務陳述。**其為本第 3(e)條之目的在附約中所作之陳述均為正確及真實。

(f) **收款人稅務陳述。**其為本第 3(f)條之目的在附約中所作之陳述均為正確及真實。

(g) **無代理。**其以本人之身份而非任何人或機構之代理人訂立本協議。

#### 4. 協議

雙方彼此同意，當任何一方在本協議或其為一方之任何信用支持文件下負有或可能負有任何義務時：—

(a) **提供指定資料。**其將向另一方，或在下述第(iii)款之某些情形下向另一方合理地指示之政府或稅務機關提供：—

(i) 附約或任何確認書規定之有關稅務之表格、文件或證書；

(ii) 附約或任何確認書規定之任何其他文件；以及

(iii) 按另一方之合理要求，提供可能需要或以書面合理地要求之任何表格或文件，使該另一方或其信用支持提供者在按本協議或任何適用之信用支持文件付款時無須就任何稅項支付扣減或預扣款項，或

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;

件付款時無需就任何稅捐支付扣減或預扣款項，或得以降低支付此等扣減或預扣之適用率(只要是該表格或文件之完成、簽署或遞交不會嚴重地損害接受該要求一方之法律或商業地位)，此等表格或文件應正確地並按使另一方合理滿意之方式填妥、簽署，連同任何合理要求之證明，一併交付，

以上各項義務需按附約或該確認書規定之日期，或者如無規定，則以合理可行之最快時間予以完成。

(b) **維持授權。**應盡一切合理之努力，就本協議或其為一方之任何信用支持文件之有關事項，該方需自政府或其它機關取得之一切同意，維持充分之效力，並將盡一切合理之努力，獲取日後可能必要之其它同意。

(c) **遵守法律。**應在一切重要層面遵守對其有約束力且如不遵守者將嚴重影響其履行本協議或其為一方之任何信用支持文件下義務之能力之相關法律及法令。

(d) **稅務協議。**當該方得悉其按第 3(f)條所作之陳述有不正確及不真實之處，應及時就此發出通知。

(e) **印花稅之繳付。**除有第 11 條之適用外，應繳付其成立、組織、被管理、被控制之司法管轄區，或視該方擁有一席位，或為履行本協議之某個辦事處所在之司法管轄區(“印花稅司法管轄區”)對該方或就其簽署或履行本協議所徵收之印花稅，並當某印花稅司法管轄區對非處於該印花稅司法管轄區之一方或就其簽署或履行本協議徵收印花稅時，對另一方為賠償。

## 5. 違約事件和終止事件

(a) **違約事件。**任何時候，當一方或，如適用之話，該方之任何信用支持提供者或該方之任何特定機構發生以下任何事件，將構成(惟受第 5(c)和第 6(e)(iv)條之限制)該方之違約事件(以下簡稱“違約事件”)：—

(i) **未能付款或交付。**該方未於到期日按本協議付款或按第 2(a)(i)、第 9(h)(i)(2)或(4)條之規定履行交付義務，並且在向該方發出逾期通知後之首個當地營業日(適用於付款)或首個當地交付日(適用於實物交付)或之前仍未補正；

(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,

(ii) **違反協議；否認協議。**

(1) 該方未能按本協議規定遵守或履行其應遵守或履行之任何協議或義務(但不包括本協議第 2(a)(i)、第 9(h)(i)(2)或(4)條下之付款義務或交付義務，或發出終止事件通知之義務，或第 4(a)(i)款、第 4(a)(iii)款或 4(d)條項下之任何協議或義務)，並且在向該方發出違約通知後之三十天內仍未補正；或

(2) 該方取消、否認、放棄或拒絕全部或部分之本主協議、由該方簽訂和交付之任何確認書或由此等確認書證明之任何交易，或對本主協議、上述確認書或交易之有效性提出異議(或該行動由經委派或授權管理該方之任何個人或實體作出或代表其作出)；

(iii) **信用支持違約。**

(1) 該方或該方之任何信用支持提供者未能按任何信用支持文件之規定遵守或履行其應遵守或履行之任何協議或義務，並在任何適用之寬限期經過後仍未補正；

(2) 未經另一方書面同意，在該方未就此等信用支持文件所涉及之每筆交易皆履行所有義務前，此等信用支持文件屆期或終止，或此等信用支持文件或該方或其信用支持提供者根據任何此等信用支持文件給予另一方之任何擔保權益未能就本協議目的，保持其充分效力(以上任一情況均不包括按協議條文之正常失效)；或

(3) 該方或該方之信用支持提供者取消、否認、放棄或拒絕全部或部分之信用支持文件，或對該信用支持文件之有效性提出異議(或該行動由經委派或授權管理該方之任何個人或實體作出或代表其作出)；

(iv) **不實之陳述。**該方或該方之任何信用支持提供者於本協議或任何信用支持文件下作出或複述之，或被視為作出或複述之陳述(按第 3(e)或 3(f)條所作之陳述除外)被證實在作出、複述或被視為作出或複述之時在重要層面為錯誤或帶有誤導成分；

(v) **特定交易下之違約。**某方、該方之任何信用支

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

持提供者或該方之任何相關特定機構:—

(1) 於特定交易或有關特定交易之任何信用支持安排下違約(未能履行交付義務除外),而在任何適用之通知要求或寬限期生效後,該違約導致該特定交易之清算、加速償還、或提前終止之情形;

(2) 於任何適用之通知要求或寬限期生效後,未能在特定交易之最後付款日或交換日到期時履行任何付款之義務,或未能支付有關特定交易之提前終止之款項(或如無適用之通知要求或寬限期,該違約持續至少一個當地營業日);

(3) 未能履行特定交易或有關特定交易之任何信用支持安排下之任何交付義務(包括於最後付款日或交換日到期之任何交付義務),並在適用之通知要求或寬限期生效後,該違約導致有關特定交易之文件下所有未完成交易之清算、加速償還、或提前終止之情形;或

(4) 全部或部分取消、否認、放棄或拒絕由該方、其信用支持提供者或特定機構簽訂並交付之文件或其他確證證據確認或證明之特定交易或有關特定交易之任何信用支持安排,或對特定交易或有關特定交易之任何信用支持安排之有效性提出異議(或該行動由經委派或授權管理該方之任何個人或實體作出或代表其作出);

(vi) **交叉違約。**若“交叉違約”依附約之規定而適用於某方,則指發生或存在以下事件:—

(1) 該方、該方之任何信用支持提供者或該方之任何相關特定機構就有關任何一方特定債務(單獨或共同)之一份或數份協議或文件發生違約、違約事件或其它類似之情況或事件(不論如何描述),且該協議或文件下之累計本金金額與以下第(2)款所述之金額(如有)分別或累計達到適用之門檻金額(如附約中定義)以上,進而導致特定債務於原定到期及應繳付之期限之前依此等協議或文件得以宣告到期及應繳付或得以被宣告為到期及應繳付,或

(2) 該方、該信用支持提供者或該特定機構(單



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

獨或共同)未能在付款到期日(在任何適用之通知要求或寬限期生效後)按上述協議或文件付款, 並且其累計金額單獨地或與以上第(1)款所述之金額(如有)分別或一併計算達到適用之門檻金額以上;

(vii) **破產。**若一方、該方之任何信用支持提供者或該方之任何相關特定機構發生:—

(1)解散(因結合、合併或併購者除外); (2)無資力或無力償還債務, 或以書面承認其總體上無力償還到期債務; (3)與其債權人、或為其債權人利益為轉讓債務、達成協議或和解; (4)(A)在該方成立或組設之司法管轄區或其總部或總辦事處之司法管轄區內, 對其擁有主要破產、重整或監管權之管理者、監督者或任何其他同類官員針對該方提出或已提出法律程序, 按任何破產或無力償付法律或影響債權人權利之其它類似法律尋求無力償付或破產判決或任何其他救濟方法, 或該方、其管理者、監督者或同類官員提交關於解散或清算之請求, 或(B)已經提出法律程序, 按任何破產或無力償付法律或影響債權人權利之其他類似法律尋求無力償付或破產判決或任何其他救濟方法, 或就其解散或清算提出請求, 並且該程序或請求並非由以上(A)款中之人士或機構提出, 並且此一程序或請求: (I)導致無力償付或破產之判決或救濟命令, 或命其解散或清算之命令, 或(II)該程序或請求在提出後十五天內未被駁回、撤銷、終止或禁止; (5)就其解散、官方接管或清算(因結合、合併或併購者除外)通過決議; (6)就該方或該方於全部或大部分之資產尋求或指派破產管理人、臨時清算人、監督人、破產事務官、受託人、保管人或其它類似官員; (7)擔保權益持有人取得其所有或大部分資產之占有, 或對其所有或大部分資產提起強制執行扣押、執行、查封、強制保管或其他法律程序, 並且該擔保權益持有人持續占有此等資產, 或提起該法律程序後十五日內未被駁回、撤銷、終止或禁止; (8)依任何司法管轄區之適用法律, 產生與任何上述第(1)至(7)款(包括該條款)所指事件有類似效果之事件或促使該事件之發生; 或(9)就上述任何行為採取行動、或對其表示同意、批准或默許; 或

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

(viii) **不承擔債務之合併。**一方或該方之任何信用支持提供者與另一實體結合、合併或併購，或將其所有或大部分之資產轉移給另一實體，或重組、再設立或改組成為另一實體；而在該結合、合併、併購、轉讓、重組、再設立或改組時：—

(1) 最終、續存或受讓之實體未能承擔該方或信用支持提供者或其前手在本協議下或任何信用支持文件下之所有義務；或

(2) 任何信用支持文件之利益(在未得到另一方同意前)未能延伸以涵蓋該最終之、續存之或受讓之實體以履行本協議下之義務。

(b) **終止事件。**一方，該方之任何信用支持提供者、或該方之任何特定機構(如有)在任何時候若發生以下(i)款所述之事件將構成(除第 5(c)條另有規定外)非法，若發生(ii)款所述之事件將構成不可抗力事件，若發生(iii)款所述之事件將構成稅務事件，若發生(iv)款所述之事件將構成因合併造成之稅務事件，若列明應予適用之情況下，發生以下(v)款所述之事件將構成因合併造成之信用事件，發生以下(vi)款所述之事件將構成其他終止事件：—

(i) **非法。**於相關確認書或本協議其他部分規定之任何適用條款、中斷保障或補償條款生效後，倘因交易進行之後發生之任何事件或情況(一方或(如適用)該方之信用支持提供者採取之任何行動者除外)，使得以下行為按照任何適用法律(包括但不限於任何一方或任何信用支持提供者(視情況而定)需進行付款、交付和遵守協議時所在地國家之法律)於任何一日成為非法，或使得有關付款、交付和遵守協議如作出時將會成為非法(因違反第 4(b)條導致上述後果者除外)：—

(1) 該方(即受影響方)就該交易為款項支付及收受或交付之辦事處，為該交易為付款或交付而履行任何絕對或有之義務，或接受支付或交付，或就該交易遵守本協議之任何其它重要條款；或

(2) 該方或該方之任何信用支持提供者(即受影響方)為有關該交易有關之信用支持文件中規定

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

之該方或信用支持提供者之支付或交付而履行任何絕對或或有之義務，或接受該信用支持文件下之支付或交付，或遵守該信用支持文件之任何其他重要條款；

(ii) **不可抗力事件。**於適用相關確認書或本協議其他部分規定之任何應適用之條款、中斷保障或補償條款後，倘因交易進行之後任一日發生之不可抗力或政府行為：—

(1) 該方(即受影響方)就該交易為款項支付及收受或交付之辦事處，無法為該交易進行支付或交付而履行任何絕對或或有之義務，或無法接受支付或交付，或無法就該交易遵守本協議之任何其他重要條款(或如該日提出該付款、交付或遵守協議之要求而無法為之)，或該辦事處之履行、接受付款或遵守協議變為不可能或不可行(或如該日提出支付款項、交付或遵守協議之要求而該辦事處按要求履約係不可能或不可行)；或

(2) 該方或該方之任何信用支持提供者(即受影響方)無法履行該方或該信用支持提供者於有關該等交易之任何信用支持文件下之絕對或或有之支付或交付義務，或無法接受支付或交付，或無法就該交易遵守本協議之任何其他重要條款(或如該日提出該付款、交付或遵守協議之要求而無法為之)，或該方或該信用支持提供者之履行、接受付款或遵守協議變為不可能或不可行(或如該日提出支付款項、交付或遵守協議之要求而該方或該信用支持提供者按要求履約係不可能或不可行)，

且該不可抗力或政府行為超出該辦事處、該方或該信用支持提供者(視情況而定)之控制範圍，並且該辦事處、該方或信用支持提供者於盡所有合理努力(但該努力不應使該方或信用支持提供者承受損失，惟不重要及附帶開支以外之損失除外)之後仍無法克服上述不能，不可能或不可行之情況；

(iii) **稅務事件。**由於：(1)在交易進行以後稅務機關採取行動或於具合法管轄權之法庭提出之任何訴訟

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

(不論該訴訟是否與本協議一方有關)，或(2)因稅法之變更，一方(即受影響方)將有或有極大可能，於下一個預定結算日：(A)須按第 2(d)(i)(4)條就可獲補償稅捐向另一方支付額外款項(有關第 9(h)條之利息除外)，或(B)收取一筆需從該項付款中扣減或預扣稅款之款項(有關第 9(h)條之利息除外)，而無權按第 2(d)(i)(4)條之規定要求對方支付額外款項(基於第 2(d)(i)(4)(A)或(B)條之原因除外)；

(iv) **因合併造成之稅務事件。**在下一個預定結算日，一方(“負擔方”)將：(1)就第 2(d)(i)(4)條下之可獲補償稅捐支付額外款項(有關第 9(h)條有關之利息除外)，或(2)收取一筆已在該付款中扣減或預扣任何稅款之款項，而另一方不須就該稅款支付額外款項(基於第 2(d)(i)(4)(A)或(B)條之原因除外)，以上任何一情況，皆由於一方將與另一實體結合、合併或併購，或將其所有或大部份資產(或本主協議日期起其從事之商業行為中運用之大部分資產)轉移給另一實體，或重組、再設立或改組為另一實體(稱為受影響方)所導致，並且該行動不構成不承擔債務之合併；

(v) **因合併造成之信用事件。**若附約中規定“因合併造成之信用事件”適用於某方，而該方、該方之任何信用支持提供者或該方之任何相關特定機構(各為“X方”)發生指定事件(定義如下)，並且該指定事件不構成不承擔債務之合併，而 X 方，或(如適用)X 方之繼承、存續或受讓之實體之信用情況，於考慮任何適用之信用支持文件之後仍嚴重低於指定事件發生之前 X 方之信用情況(於此等情況下，該方或其繼承、存續或受讓之實體，視情況而定將成為“受影響方”)。有關 X 方之“指定事件”係指：—

(1) X 方與另一實體結合、合併或併購，或將其所有或大部份資產(或本主協議日期起其從事之商業行為中運用之大部分資產)轉移予另一實體，或重組、再設立或改組為另一實體；

(2) 任何人、其關係人或實體直接或間接取得：(A)選舉 X 方董事會(或類似機構)大多數成

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

員之股權之受益權，或(B)使其能對 X 方行使控制權之任何其他所有權之受益權；或

(3) X 方透過發行債務、負擔債務或保證之方式對其資本結構進行重大改變，或(A)發行優先股或可轉換或交換成債券或優先股之其他證券，或(B)如 X 方並非公司，發行其他形式之所有權益之方式對其資本結構進行重大改變；或

(vi) **其他終止事件。**若附約或任何確認書規定“其他終止事件”適用時，發生該些事件(在此情況下，受影響方或各受影響方將視附約或該確認書中有關其他終止事件之規定而定)。

(c) **事件之等級。**

(i) 任何構成或導致非法或不可抗力事件之事件或情況，如在其存續期間與未能付款或未能交付或未遵守本協議或信用支持文件(視情況而定)之任何其他重大規定有關，則將不構成或導致第 5(a)(i)、第 5(a)(ii)(1)或第 5(a)(iii)(1)條下之違約事件。

(ii) 除上述(i)款規定之情況外，若任何可構成或導致非法或不可抗力事件之事件或情況，亦構成違約事件或任何其他終止事件，該事件或情況將被視為違約事件或其他終止事件(視情況而定)，而不構成或導致非法或不可抗力事件。

(iii) 若任何可構成或導致不可抗力事件之事件或情況亦構成非法，該事件或情況將被視為非法(上述第(ii)款規定之情況除外)，而非不可抗力事件。

(d) **等待期間之遲延付款及交付。**如就任何交易已發生非法或不可抗力事件且非法或不可抗力處於持續狀態，該交易下須履行之各項付款或交付將遲延至以下時間始到期：—

(i) 有關非法或不可抗力事件(視情況而定)適用之等待期間之後之首個當地營業日，在交付之情況下為首個當地交付日(或若無非法或不可抗力事件(視情況而定)之發生本應為當地營業日或當地交付日(視情況而定)之首日)；或

(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

(ii) 於較早之情形，係指構成或導致非法或不可抗力事件之事件或情況終止之日，或如該日並非當地營業日或就交付而言並非當地交付日，則指次一構成當地營業日或當地交付日(視情況而定)之日。

(e) **總部或總辦事處無法履行分支機構之義務。**如(i)發生第 5(b)(i)(1)或第 5(b)(ii)(1)條下之任何非法或不可抗力事件，而有關辦事處並非受影響方之總部或總辦事處，(ii)有第 10(a)條規定之適用，(iii)另一方要求受影響方之總部或總辦事處履行有關義務或遵守有關規定，並且(iv)某一事件或情況導致受影響方之總部或總辦事處未能按要求履約，而若該受影響方透過該總部或總辦事處就有關交易進行付款和交付，該事件將構成或導致非法或不可抗力事件，而且該未能履約之行為可構成該方第 5(a)(i)或第 5(a)(iii)(1)條下之違約事件，則在第 5(b)(i)(1)或 5(b)(ii)(1)條(視情況而定)所述辦事處及受影響方之總部或總辦事處皆持續存在有關事件或情況之整個期間，該未能履約之行為不構成第 5(a)(i)或第 5(a)(iii)(1)條下之違約事件。

## 6. 提前終止；終止交易時之淨額結算

(a) **違約事件發生後之終止權利。**在任何時候發生有關一方(以下簡稱“違約方”)之違約事件且在持續中，另一方(以下簡稱“未違約方”)得以通知期不超過二十天之通知通知違約方有關違約事件，並指定不早於通知生效之日期為有關所有未完成之交易之提前終止日。但如附約上規定“自動提前終止”適用於一方，則該方發生第 5(a)(vii)(1)、(3)、(5)、(6)條規定，或第 5(a)(vii)(8)條規定之類似之違約事件之時，或在該方發生第 5(a)(vii)(4)條所規定或第 5(a)(vii)(8)條規定之類似之違約事件後提出有關訴訟或請求狀之前，有關所有未完成交易之提前終止日立即生效。

(b) **終止事件後之終止權利。**

(i) **通知。**若發生不可抗力事件以外之終止事件，受影響方應在獲悉該事件後立即通知另一方，說明該終止事件之性質及各項受影響交易，並按另一方合理之要求將有關終止事件之其他資料通知另一方。如發生不可抗力事件，任一方應在獲悉該事件後立即儘所有合理之努力通知另一方，說明該不可抗力事件之性質，並按另一方合理之要求將有關不可抗力事件之其他資料通知另一方。

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.

(ii) **為避免終止事件而轉讓。**若發生稅務事件，而僅有一方受影響，或發生因合併造成之稅務事件而負擔方係受影響方，受影響方以擁有第 6(b)(iv)條下指定提前終止日之權利為條件，應盡所有合理之努力(但該努力不應使該方承受損失，惟不重要及附帶開支以外之損失除外)於按第 6(b)(i)條發出通知後之二十天內將其在本協議下就該受影響交易之所有權利義務轉讓予其他辦事處或關聯企業，以停止該終止事件。

若受影響方未能為上述之轉讓，其應於二十天內通知另一方，而另一方得於收到第 6(b)(i)條下之通知後三十天內進行上述轉讓。

一方按第 6(b)(ii)條所為之任何轉讓均須取得另一方之前書面同意，如另一方依其當時有效之政策容許其與受讓方按提出之條件進行交易時，另一方不得拒絕該轉讓。

(iii) **兩個受影響方。**若發生稅務事件而有兩個受影響方時，各方應在第 6(b)(i)條下有關事件發生之通知作出後三十天內盡一切合理之努力達成協議，以避免該終止事件之發生。

(iv) **終止之權利。**

(1) 如果：—

(A) 受影響方於發出第 6(b)(i)條下之通知後三十天內，未能就所有受影響交易進行第 6(b)(ii)條下之轉讓或達成第 6(b)(iii)條下之協議(視情況而定)；或

(B) 發生因合併造成之信用事件或其他終止事件，或發生因合併造成之稅務事件且負擔方並非受影響方，

發生因合併造成之稅務事件情況下之負擔方，發生稅務事件或其他終止事件並且有兩個受影響方情況下之任何受影響方，或發生因合併造成之信用事件或其他終止事件並且僅有一個受影響方之情況下之未受影響方，得於相關終止事件仍在持續之情況下，以通知期不超過二十天之通知通知另一方，指定該通知生效後之任一日作為所有受影響交易之提前終止日。

(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,

(2) 倘發生非法或不可抗力事件且該等事件仍持續存在，而適用之等待期間業已屆滿：—

(A) 除依下述(B)款，任何一方得以通知期不超過二十天之通知通知另一方，(I)就所有受影響交易指定該通知生效日之後之日為提前終止日，或(II)於通知中說明其指定提前終止日之受影響交易，就部分受影響交易指定該通知生效日兩個當地營業日之後之任一天作為提前終止日。另一方於收到僅就部分受影響交易指定提前終止日之通知後得通知指定方(該通知須於指定之提前終止日或之前生效)就任何或所有其他受影響交易指定同日為提前終止日。

(B) 任何受影響方(如非法或不可抗力事件係與該方或該方之任何信用支持提供者履行有關信用支持文件下支付或交付之義務有關，或與遵守有關信用支持文件任何其他重要條款有關)僅於另一方根據第 6(b)(iv)(2)(A)條就部分受影響交易指定提前終止日之後，始有權按第 6(b)(iv)(2)(A)條就第 5(b)(i)(2)條下之非法或第 5(b)(ii)(2)條下之不可抗力事件造成之結果指定提前終止日。

(c) ***指定之效力。***

(i) 如按第 6(a)或 6(b)條發出通知指定提前終止日，則不論相關之違約事件或終止事件是否持續，該提前終止日將於指定之日期生效。

(ii) 當提前終止日發生或被有效指定時，無須再就已終止交易進行第 2(a)(i)或第 9(h)(i)條下之付款或交付，惟本協議之其他規定將不受影響。有關提前終止日應支付之款項(如有)將按第 6(e)和第 9(h)(ii)條之規定決定。

(d) ***計算；付款日。***

(i) ***報告。***於提前終止日或其後合理可行之最短時間內，各方應按第 6(e)條之規定計算其帳目，並提



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 (l) 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,

供對方一份報告：(1)合理詳細地說明此等計算(包括計算中使用之任何報價、市場數據或內部訊息)，(2)說明應付之任何提前終止款項(於有兩個受影響方之情況除外)，以及(3)詳細說明其應收款項應存入之有關帳戶。若於確定結算款項之過程中，就一項報價或市場數據無法自其來源得到書面確認，則獲取該報價或市場數據一方之記錄將成爲該報價或市場數據存在及正確性之絕對證明。

(ii) **付款日。**就任何提前終止日所計算之提前終止款項將連同根據第 9(h)(ii)(2)條應付之任何利息款項，(1)於因違約事件指定提前終止日時，應於付款通知書生效當日支付，及(2)於因終止事件指定提前終止日時，應於付款通知書生效日後之第二個當地營業日支付(或如有兩個受影響方，則於第二方根據第(i)款所提供之報告生效日之後支付)。

(e) **提前終止之付款。**如發生提前終止日時，就提前終止日應繳付之款項(如有)(以下簡稱“提前終止款項”)將根據本第 6(e)條確定且須遵守第 6(f)條之規定。

(i) **違約事件。**如提前終止日係因違約事件產生，提前終止款項等於(1)以下(A)項與(B)項之和：(A)爲未違約方就每一項終止交易或一組終止交易(視情況而定)決定之結算款項(無論是正數還是負數)相當於終止貨幣之金額；(B)爲積欠未違約方之未付款項相當於終止貨幣之金額，減去(2)積欠違約方之未付款項相當於終止貨幣之金額。如該提前終止款項爲正數，應由違約方向未違約方支付；如該提前終止款項爲負數，未違約方應向違約方支付該金額之絕對值。

(ii) **終止事件。**如提前終止日係因終止事件產生：—

(1) **一個受影響方。**除依下述第(3)款之規定，倘只有一個受影響方，提前終止款項應按第 6(e)(i)條決定，惟有關違約方與未違約方之事項將分別視爲對受影響方及未受影響方之事項。

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.

(2) *兩個受影響方*。除依下述第(3)款之規定，如有兩個受影響方，各方將就每一項終止交易或一組終止交易(視情況而定)決定一筆相等於終止貨幣金額之結算款項(無論是正數還是負數)，而提前終止款項將等於(A)以下(I)項與(II)項之和：(I)為(由“X”方)決定之較高之金額與(由“Y”方)決定之較低金額之差額之一半；(II)積欠 X 方之未付款項之相當於終止貨幣之金額，減去(B)積欠 Y 方之未付款項之相當於終止貨幣之金額。如提前終止款項為正數，Y 方應向 X 方支付；如提前終止款項為負數，X 方應向 Y 方支付該金額之絕對值。

(3) *市場中間價事件*。如該終止事件係非法或不可抗力事件，則提前終止款項將根據上述第(1)及第(2)款(視情況而定)決定，但決定方在確定結算款項時將：—

(A) 若自一個或數個第三方(或自決定方之任何關係人)獲取報價，則該第三方或關係人應：(I)不考慮決定方目前之信用情況或任何現存之信用支持文件，及(II)提供中間市場報價；及

(B) 於其他情況下，使用市場中間價，並且毋須考慮決定方之信用情況。

(iii) *破產調整*。如提前終止日因自動提前終止適用於一方而產生，提前終止款項將根據相關法律而得為適當之調整，以反映自有關提前終止日起至第6(d)(ii)條決定之付款日止之期間內，一方於本協議下對另一方支付(並為該方保留)之任何款項或其它交付。

(iv) *就非法或不可抗力事件所為之調整*。一方或該方之信用支持提供者未能於到期日支付任何提前終止款項，並且此一未能按期付款之事件或情況如發生於有關交易下之付款、交付或遵守協議之義務時將構成或導致非法或不可抗力事件，此一行為將不構成第 5(a)(i)、或 5(iii)(1)條下之違約事件。該款項係：(1)累計利息，及倘隨後由於違約事件、因合併造成之信用事件或其他終止事件致所有未完成交易成為受影響交易而導致提前終止日之發生，而應被視為積欠另一方之未付款項；及(2)根據第 9(h)(ii)(2)條計算利息。

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:—

(v) **預先估計。**雙方同意，按第 6(e)條支付之款項係對虧損之合理預先估計而非違約金。支付該數額之目的係為補償交易之未能實現及保障未來損失之風險。除非本協議另有規定，任何一方均無權因終止交易之終止而收取任何額外賠償。

(f) **抵銷。**在出現違約方或發生因合併造成之信用事件而產生一個受影響方之情況下，或發生任何其他終止事件而所有未完成交易成為受影響交易時，一方(以下簡稱“付款人”)應向另一方(以下簡稱“收款人”)支付之任何提前終止款項將按未違約方或未受影響方(視情況而定，以下簡稱“X”方)之選擇(無需事先通知違約方或受影響方(視情況而定))下用於扣減抵銷收款人應向付款人支付之任何其他款項(以下簡稱“其他款項”)(無論其是否基於本協議所產生、到期的或或有的，亦無論該債務之幣別、支付地點或債務入帳之地點)。於任何其他款項以此方式抵銷時，此等其他款項之付款義務將被立即全部解除。X 方將通知另一方根據本第 6(f)條所為之任何抵銷。

為此項之目的，X 方得以善意依合理之商業程序購得相關數額該種貨幣時之匯率將提前終止款項或其他款項(或此款項之相關部分)兌換成另一幣別之金額。

倘一項債務尚未確定，X 方得以善意預估該債務並就該預估數目進行抵銷，惟該債務確定後應由相關交易方對交易他方為相關入帳。

本第 6(f)條之規定不具有設定負擔或其他擔保權益之效力。本第 6(f)條不影響，並且額外存在於任何一方得隨時享有之(不論係依法律、契約或其他規定)任何抵銷權、抵充權、帳戶合併權、留置權、保留權或預扣或類似之權利或要求。

## 7. 轉讓

依第 6(b)(ii)條之規定並於相關法律允許之範圍內，未經另一方事先書面同意，本協議任何一方不得轉讓本協議或本協議下任何權益或義務(不論以擔保或其它方式)，惟下列情況除外：—

(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

(a) 一方得透過與另一實體結合或合併，併購另一實體，或對另一實體轉讓其所有或大部份資產以轉讓本協議(但不影響本協議下任何其它權利或救濟措施)；及

(b) 一方得轉讓違約方應向其支付之任何提前終止款項之全部或部分之權益，以及其根據第 8、第 9(h)及第 11 條就上述款項享有之利息及任何其他權利。

與第 7 條不符之任何轉讓均為無效。

## 8. 約定貨幣

(a) **以約定貨幣進行之付款。**本協議下各款項均應以本協議規定之相關貨幣(以下簡稱“約定貨幣”)支付。在適用法律許可之範圍內，本協議下以約定貨幣付款之任何義務如透過約定貨幣以外之其它貨幣償付，不視為已清償或滿足，惟若該等償付款項被應收款方以善意按合理之商業程序將本協議下應付之所有數額全數兌換為約定貨幣並實際收訖，則不受此限。如因任何原因，所收約定貨幣少於本協議下應付之約定貨幣額，按要求付款一方於適用法律許可之範圍內，立即以約定貨幣支付該等額外數額以補足缺額。如因任何原因，所收約定貨幣超過本協議下應付之約定貨幣額，收款方應立即將該等超出額退回。

(b) **判決。**在相關法律許可之範圍內，如任何判決或命令中明示以約定貨幣以外之貨幣支付：(i)本協議下所積欠任何款項；(ii)有關本協議任何提前終止之任何款項或(iii)另一法院所為有關支付上述第(i)或第(ii)款所載款項之判決或命令，則請求補償之一方於收取其根據判決或命令有權獲得之總金額後，有權立即自另一方獲得該方因以其它貨幣付款而少收之約定貨幣，或立即向另一方退回因以其它貨幣付款而多收之約定貨幣，倘該缺額或超出係因約定貨幣為該判決或命令之目的兌換為判決或命令中之貨幣時之匯率，與該方以善意按合理之商業程序以實際收到之判決或命令中之貨幣款項購買約定貨幣時能夠實際獲得之匯率不同而導致或產生。

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

(c) **分別賠償。**在適用法律許可之範圍內，本第 8 條之賠償構成分別和獨立之義務，有別於本協議下其他義務，並將作為分別和獨立之理由而得據以執行，無論應收款一方是否給予任何寬容均得以適用，並不受就本協議下應付之任何其他款項因獲得之判決或提出要求或提供證明而有所影響。

(d) **虧損之證明。**為本第 8 條之目的，倘一方得證明若實際發生兌換或購買，該方將蒙受損失，則該方視為已盡對虧損之證明責任。

## 9. 其它規定

(a) **完整協議。**本協議構成雙方就本協議下相關事宜之全部協議及瞭解。各方承認其於簽訂本協議時並無依賴任何口頭或書面之陳述、擔保或其他保證(本協議中規定或提及者除外)，並就以上所述拋棄原本得享有一切權利和救濟，惟本協議之內容不得限制或排除一方之任何詐欺責任。

(b) **修訂。**除非以書面形式(包括以傳真證明之書面文件)並經雙方簽署，或經交換電傳或透過電子訊息系統交換之電子訊息所確認，任何與本協議有關之修訂、修改或棄權均為無效。

(c) **義務之續存。**於不影響第 2(a)(iii)條及第 6(c)(ii)條之情況下，雙方在本協議下之義務於任何交易終止後仍然有效。

(d) **累積補救。**除本協議另有規定外，本協議規定之權利、權力、補救及特權具累積性，並不排除法律規定之任何權利、權力、補救及特權。

### (e) 副本和確認。

(i) 本協議(及有關本協議之各修訂、修改及棄權)得以副本簽署及交付(包括以傳真及電子訊息系統發送之副本)，各副本均被視為正本。

(ii) 雙方自其同意各交易之條款起(不論以口頭或其它方式為之)，受各交易條款之法律約束。於實際可行之情況下，應儘速簽署交易之確認書，並得以副本簽署及交付(包括以傳真發送)，或由交換電傳或透過電子訊息系統交換電子訊息或交換電子郵件而建立確認書，上述各種方式均足以證明具有約束力

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

之協議補充文件之存在。雙方將於該通訊中或透過其他有效途徑敘明，任何該等復本、電傳、電子訊息或電子郵件均構成一項確認書。

(f) **非棄權。** 未能或延遲行使與本協議有關之任何權利、權力或特權不得被視為棄權，單獨或部分行使任何權利、權力或特權不得視為放棄對以後或進一步對該權利、權力或特權之行使，或任何其它權利、權力或特權之行使。

(g) **標題。** 本協議所用標題僅為方便參考，並不影響本協議之解釋。

(h) **利息及補償。**

(i) **提前終止之前。** 就有關交易發生或有效地指定提前終止日之前：—

(1) **違約付款之利息。** 如一方未能履行付款義務，該方應於適用法律允許範圍內並依第 6(c) 條之規定，(於判決之前及之後)於另一方要求時，向另一方就逾期款項按違約利率以與欠款相同之貨幣支付利息，計息之期間係自原定付款到期日(包括當日)起至實際付款日(不包括當日)為止(但不包括按以下第(3)(B)或第(C)款就逾期款項支付利息或補償之期間)。

(2) **違約交付之補償。** 如一方未能履行任何交付義務，該方應於另一方要求時：(A)須按相關確認書或本協議之其他規定對另一方補償，並且(B)除相關確認書或本協議另有規定外，於適用法律允許範圍內並依第 6(c)條之規定，(於判決之前及之後)向另一方按違約利率就交付義務之公平市值並以與該款項相同之貨幣支付利息，計息之期間係自原定交付日(包括當日)起至實際交付日(不包括當日)為止(但不包括根據以下第(4)款就逾期款項支付利息或補償之期間)。以上所述之公平市值係由有權收受交付之一方自原定交付日起，以善意按合理之商業程序確定之。

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

(3) *遲延付款之利息。*如：—

(A) 因第 2(a)(iii)條之規定，一方原應支付而未支付之任何款項，該方應於適用法律允許範圍內並依第 6(c)及以下第(B)和第(C)款之規定，(於判決之前及之後)於另一方要求時(於該款項應支付時)以與該款項相同之貨幣按適用之遲延利率支付利息，計息期間自因第 2(a)(iii)條之規定而未支付之原應支付款項之日(包括當日)起至實際應支付之日(不包括當日)為止；

(B) 若某項付款按第 5(d)條之規定遲延支付時，原應支付該款項之一方將於適用法律允許範圍內並依第 6(c)條之規定，於該方未發生及持續存在違約事件或潛在之違約事件之整個期間內，(於判決之前及之後)於另一方要求時(在該款項應予支付時)以與該遲延款項相同之貨幣就遲延款項按適用之遲延利率支付利息，計息期間自因第 5(d)條規定而未支付之原應支付款項之日(包括當日)起，至該付款依據第 5(d)條規定不再遲延交付或該方在遲延期間發生違約事件或潛在之違約事件之日(以較早之日期為準，不包括當日)為止；或

(C) 如一方(於以上第(B)款下之任何遲延期生效後)因發生非法或不可抗力事件未能支付任何款項，該方將於適用法律允許範圍內並依第 6(c)條之規定，於導致非法或不可抗力事件之事件或情況持續存在並且該方未發生並無持續存在之違約事件或潛在之違約事件之整個期間，(於判決之前及之後)於另一方要求時以與該逾期款項相同之貨幣就欠款按適用之遲延利率支付利息，計息之期間係自該方因非法或不可抗力事件無法付款之日(或其後之日，係指該付款根據第 5(d)條規定不再遲延支付之日)(包括當日)起，至導致該非法或不可抗力事件之事件或情況不復存在之日或該方在遲延期間發生違約事件或潛在之違約事件之日(以較早之日期為準，不包括當日)為止(但不包括有關逾期款項之利息或補償根據以上(B)款支付之期間)。

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.

(4) *遲延交付之補償。*如：—

(A) 因第 2(a)(iii)條之規定，一方未履行原應交付之義務；

(B) 依第 5(d)條規定之遲延交付；或

(C) 一方於任何適用之等待期間屆滿之後因非法或不可抗力事件而無法進行交付，

應(或按規定本應)進行交付之一方應於適用法律允許範圍內並依第 6(c)條之規定，按有關確認書或本協議其他規定於另一方要求時(於上述(A)條和(B)款之情況下，係指應交付之後)對另一方補償並支付利息。

(ii) *提前終止。*就有關交易發生或有效地指定提前終止日之時：—

(1) *未付款項。*於確定有關交易之未付款項時，在適用法律允許範圍內，應就任何應付款項或交付義務之公平市值以該款項相同之貨幣按適用之結算利率支付利息，計算利息之期間為有關義務應履行之日(或應履行但因第 2(a)(iii)條或第 5(d)條之規定而未履行時，其應履行之日)(包括當日)至相關提前終止日(不包括當日)為止。

(2) *提前終止款項之利息。*如提前終止款項於該提前終止日到期，該款項將於適用法律允許範圍內，與以終止貨幣於該提前終止日(包括當日)至該款項實際支付之日(不包括當日)之期間內，按適用之結算利率計算之利息(於判決之前及之後)一併支付。

(iii) *利息之計算。*任何根據本第 9(h)條支付之利息將每日按複利以及實際之日數計算之。



## 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:—

## 10. 辦事處；擁有多個辦事處之交易方

(a) 如附約規定適用第 10(a)條之規定，則透過辦事處而非總部或總辦事處達成交易之一方茲向另一方聲明並約定：儘管登記交易之辦事處地點與其成立或組成之司法管轄區不同，但就追索權而言該方之義務與透過總部或總辦事處達成交易情況下之義務相同，但根據第 5(d)條遲延履行之付款或交付則例外，於此例外情況下，於遲延之整個期間內一方對另一方之總部或總辦事不擁有追索權。本聲明和約定將被視為雙方達成交易之每一日由每一方重述。

(b) 如附約規定一方為擁有多個辦事處之交易方，依下述第(c)款之規定，該方得透過在附約中列明之任何辦事處達成交易、登記交易、履行或接受任何交易項下之款項或交付(除非雙方另有書面約定，否則不得透過其他辦事處)。

(c) 一方達成交易之辦事處即係有關確認書中為該方指定之或由雙方另以書面約定之辦事處，如該方之辦事處未於有關確認書中指定或由雙方另以書面約定，則以其總部或總辦事處為辦事處。除雙方另有書面約定外，一方達成交易之辦事處亦是其登記交易之辦事處以及其履行或接收任何交易項下之款項或交付之辦事處。除依第 6(b)(ii)條之規定外，未經另一方事先書面同意，任何一方不得更改其登記交易之辦事處以及其履行或接收任何交易項下之款項或交付之辦事處。

## 11. 費用

違約方將依請求，對他方賠償所有合理代墊費用(包括律師費、簽署費及印花稅)並使其免受損害，該費用係因該方因執行和保障違約方為一方當事人之本協議或任何信用支持文件下之權利所產生，或因任何交易提前終止而產生之費用，包括但不限於催收費用。

## 12. 通知

(a) **生效。**有關本協議之任何通知或其它通訊得以下列所述任何方式送達下列地址或號碼(第 5 條或第 6 條項下之通知或其它通訊不得以電子訊息或電子郵件送達者除外)或根據提供之電子訊息系統或電子郵件送達(詳見附約)，通知之生效日期如下：—

(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

(i) 如以書面方式及透過專人或快遞服務交付，則為交付當日；

(ii) 如用電傳發送，則為收到收件人之回訊之日；

(iii) 如用傳真發送，則為收件方之負責員工收到字跡清楚之傳真當日(雙方同意，發件方就收件方是否收到該通知應負舉證責任，發件方傳真機列印之傳真報告將不足以盡該舉證責任)；

(iv) 如用掛號郵遞(如在外國，則為航空郵件)或同等之郵遞方式發出(需送件收據)，則為郵件交付或提出交付當日；

(v) 如用電子訊息傳送，則為收到電子訊息當日；或

(vi) 如用電子郵件傳送，則為交付當日，

如果交付(或提出交付)或收件當日(按情況適用)並非當地營業日或該訊息在當地營業日結束後始交付(或提出交付)或收到(按情況適用)，則該訊息將視為於該日之後之第一個當地營業日送達並生效。

(b) **更改詳情。**一方得向他方通知，更改收取通知或其它通訊之地址、電傳或傳真號碼或電子訊息系統或電子郵件。

### 13. 準據法和司法管轄區

(a) **準據法。**本協議應依附約中敘明之法律管轄並按該等法律解釋。

(b) **司法管轄區。**就因本協議所產生之或相關之任何爭議有關之任何訴訟、法律行動或程序(以下簡稱“訴訟”)，各方不可撤回地遵守下列規定：—

(i) 接受管轄：—

(1) 如本協議明確規定由英國法律管轄，(A)倘該訴訟不涉及公約法院，則接受英國法院之非專屬管轄，及(B)倘該訴訟涉及公約法院，則接受英國法院之專屬管轄；或

(2) 如本協議明確規定由紐約州法律管轄，則接受紐約州法院及位於紐約市曼哈頓區之美國聯邦地方法院之非專屬管轄；

(ii) 放棄任何對該等法院選擇訴訟地點提出異議之權利，放棄因該等訴訟於不便利之法院進行而作出

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

請求，並放棄基於該等法院就有關訴訟對該方沒有管轄權之異議權；及

(iii) 同意在適用法律允許範圍內於任何一個或多個司法管轄區提起訴訟不排除在任何其它司法管轄區提起訴訟之權利。

(c) **法律程序文件之送達。**一方不可撤回地指派列於附約之與其名對列之送達代收人(如有)為其在任何訴訟中收受送達。如因任何原因，任何一方之送達代收人未能履行上述工作，該方應立即通知另一方，並在三十日內指派另一方接受之替代送達代收人。雙方不可撤回地同意以第 12(a)(i)條、第 12(a)(iii)或第 12(a)(iv)條規定之通知方式送達法律程序文件。本協議之規定不影響任何一方以適用法律許可之任何其它方式收受送達之權利。

(d) **放棄豁免權。**在適用法律許可之範圍內，各方不可撤回地放棄有關其本身、其收入和資產(不考慮其用途或擬進行之用途)之基於主權或其他類似權利而享有之所有下列豁免權：(i)訴訟，(ii)任何法院之司法管轄，(iii)禁止令或實際履行或收回財產之命令，(iv)扣押資產(不論在判決之前或之後)及(v)任何司法管轄區內任何針對其本身之收入或資產判決之執行或強制執行，並且雙方不可撤回之同意，在適用法律許可之範圍內，其將不在任何訴訟中要求該等豁免。

#### 14. 定義

在本協議內，下列詞語有如下之定義：—

“**其他陳述**”其含義如第 3 條之規定。

“**其他終止事件**”其含義如第 5(b)條之規定。

“**受影響方**”其含義如第 5(b)條之規定。

“**受影響交易**”指(a)因非法、不可抗力事件、稅務事件或因合併造成之稅務事件所構成之任何終止事件，而受該終止事件影響之所有交易(第 5(b)(i)(2)條之非法或第 5(b)(ii)(2)條之不可抗力事件下之受影響交易指所有交易，除非有關信用支持文件僅提及某些交易，在信用支持文件將受影響交易限定為某些交易時，則指該被限定之交易，如有關信用支持文件構成一項交易之確認書，則指該項交易)及(b)對於任何其他終止事件，指所有交易。

“**關係人**”除非附約另有規定，就某一實體或人而言，指直接或間接對其進行控制、直接或間接受其控制、或直

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

接或間接與其受同一控制之下之任何實體或自然人。本定義中之“控制”任何實體或人係指擁有該實體或人之多數投票權。

“**協議**”其含義如第 1(c)條之規定。

“**適用之結算利率**”指：—

(a) 於確定以下之未付款項時：—

(i) 對於違約方應支付或交付之義務(或因第 2(a)(iii)條之規定未支付或交付而原應支付或交付之義務)，係指違約利率；

(ii) 對於應由未違約方支付或交付之義務(或因第 2(a)(iii)條之規定未支付或交付而原應支付或交付之義務)，係指未違約利率；

(iii) 對於根據第 5(d)條而遲延履行之義務，如無違約方且於遲延期間內，係指適用之遲延利率；及

(iv) 於發生終止事件(除按上述第(iii)款累計利息之情況外)後之其他一切情況，則指適用之遲延利率；及

(b) 對於提前終止款項：—

(i) 自相關提前終止日(包括當日)至該款項應付之日為止(其係依第 6(d)(ii)條之規定而確定)(不包括當日)之期間內：—

(1) 如應由違約方支付提前終止款項，指違約利率；

(2) 如應由未違約方支付提前終止款項，指未違約利率；

(3) 於其他情況下，則指適用之遲延利率；及

(ii) 自該款項應付之日(其係依第 6(d)(ii)條之規定而確定)(包括當日)至實際付款日(不包括當日)之期間內：—

(1) 造成一方不能支付提前終止款項之事件或情況係因發生於某項交易下之付款或交付將構成或導致非法或不可抗力事件，當該提前終止款項因該事件或情況之持續存在而仍未支付時，係指適用之遲延利率；

(2) 如應由違約方支付提前終止款項(但不包括上述(1)款適用之期間)，係指違約利率；

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

(3) 如應由未違約方支付提前終止款項(但不包括上述(1)款適用之期間), 係指未違約利率; 及

(4) 於其他一切情況, 係指終止利率。

“**適用之遲延利率**”指:—

(a) 就第 9(h)(i)(3)(A)條之目的而言, 指有關付款人認證之有關銀行同業市場上一家主要銀行就相關貨幣隔夜存款給予付款人之利率, 該銀行由付款人依善意選擇以便獲得可合理反映該有關市場當時狀況之有代表性之利率;

(b) 就第 9(h)(i)(3)(B)條和適用之結算利率之定義中第(a)(iii)款之目的而言, 指有關付款人認證之為有關銀行同業市場上一家大型銀行就相關貨幣隔夜存款給予主要銀行之利率, 該銀行由付款人經與另一方(如可行)協商後, 依善意選擇以便獲得可合理反映該有關市場當時狀況之有代表性之利率; 及

(c) 就第 9(h)(i)(3)(C)條以及適用之結算利率之定義中第(a)(iv)、第(b)(i)(3)和第(b)(ii)(1)款之目的而言, 指根據以上(a)款確定之利率和有關收款人(經其認證之)如取得有關金額須支付之資金成本(以年利率計)(無需提供任何實際成本之證明或證據)之算術平均值。

“**自動提前終止**”其含義如第 6(a)條之規定。

“**負擔方**”其含義如第 5(b)(iv)條之規定。

“**稅法變更**”指在雙方達成有關交易之後制定、發佈、執行、批准、變更或修訂法律(或任何法律之適用或官方解釋)。

“**結算款項**”對於每筆終止交易或每組終止交易及某一決定方而言, 指為決定方替換或提供與下述(a)、(b)項相同之經濟效果在當時之情況下決定方所付或將付之損失或費用(以正數表達), 或由決定方所實現或將實現之收益(以負數表達): (a)該項終止交易或該組終止交易之主要條款, 包括關於該終止交易或該組終止交易若未出現提前終止日時, 根據第 2(a)(I)款之規定本應由各方在此日之後所為之付款或交付(假設已滿足第 2(a)(iii)條中規定之先決條件); 以及(b)各方對於該終止交易或該組終止交易之選擇權。

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.

決定方(或其代理人)將以善意並按合理之商業程序確定任何結算款項,以達到合理之商業效益。決定方可為任何一組終止交易或一筆終止交易(但總數不得少於所有被終止交易)確定結算款項。每筆結算款項應在提前終止日確定,或如以該日為之在商業上非合理可行者,亦可按提前終止日之後商業上合理之日確定。

在決定結算款項時不應考慮有關某一筆終止交易或一組終止交易之未付款項和第 11 條所指之律師費及實付費用。

決定方可在確定結算款項時參考任何有關信息,包括但不限於以下一類或多類信息:—

(i) 一個或多個第三方提供之有關替換交易之(確定或參考性的)報價,第三方在提供這些報價時可以考慮決定方在提供報價時之信用狀況以及決定方與提供報價之第三方間之任何有關文件,包括信用支持文件之條款;

(ii) 一個或多個第三方提供之相關市場數據之資料,包括但不限於相關利率、價格、收益率、收益率曲線、波動性、利差、相關性以及相關市場之其他相關市場數據;或

(iii) 源於內部之(包括源於決定方之任何關係人)之以上(i)和(ii)款所述類型之資料,但該資料應是決定方在評估同類交易之日常商務過程中使用之同類資料。

決定方將按本定義中之標準及程序考慮以上(i)款之報價或以上(ii)款之相關市場數據,除非決定方以善意合理地認為無法獲得此類報價或有關市場數據或其產生之結果可能不符合本定義下之標準。決定方在參考以上(i)、(ii)和(iii)款所述之資料時亦可參考資金成本,但以其使用之其他資料未將資金成本納入考量或計算為前提。根據以上(i)款提供報價或根據以上(ii)款提供市場數據之第三方可包括但不限於相關市場之交易商、相關產品之最終使用者、資料銷售者、經紀商以及市場資料之其他來源。

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

在不重複計算根據以上(i)、(ii)和(iii)款所述之資料或其他有關資料計算出之款項之前提下，並在商業上合理可行時，決定方在計算結算款項時可另外參考就有關一筆終止交易或一組終止交易而終止、清算或重建任何避險安排所產生之任何虧損或成本(或因此引致之任何收益)。

確定結算款項合理之商業程序可包括：—

(1) 適用按以上(ii)款由第三方提供之相關市場數據或適用按以上(iii)款源自內部之資料、訂價或其他評估模式，惟該等數據、資料、訂價或模式亦係在決定結算款項時，決定方在日常商業過程中評估與第三方進行類似交易時所採用者；及

(2) 根據一筆終止交易或一組終止交易之類型、複雜性、規模和數量對該筆或該組終止交易適用不同之評估辦法。

“**確認書**”其含義如前言之規定。

“**同意**”包括同意、批准、行動、授權、豁免、通知、備案、註冊或外匯管制同意。

“**約定貨幣**”其含義如第 8(a)條之規定。

“**公約法院**”指需在訴訟中適用 1968 年《關於民商事案件之司法管轄以及承認和執行判決之布魯塞爾規定》第 17 條以及 1988 年《關於民商事案件之司法管轄以及承認和執行判決之盧根諾公約》第 17 條之任何法院。

“**因合併造成之信用事件**”其含義如第 5(b)條之規定。

“**信用支持文件**”指本協議規定為信用支持文件之任何協議或文件。

“**信用支持提供者**”其含義如附約之規定。

“**交叉違約**”指第 5(a)(vi)條規定之事件。

“**違約利率**”指相等於收款人(經其認證之)取得有關資金之須支付資金成本(以年利率計)(無需對任何實際成本提供證明或證據)加 1%。

“**違約方**”其含義如第 6(a)條之規定。

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

“**指定事件**”其含義如第 5(b)(v)條之規定。

“**決定方**”指確定結算款項之當事方。

“**提前終止款項**”其含義如第 6(e)條之規定。

“**提前終止日**”指按第 6(a)條或第 6(b)(iv)條決定之日。

“**電子訊息**”不包括電子郵件，但包括以標記語言表達之文件。“**電子訊息系統**”將據此予以解釋。

“**英國法律**”指英格蘭及威爾士之法律。“**英國之**”將據此予以解釋。

“**違約事件**”其含義如第 5(a)條及附約(按情況適用)之規定。

“**不可抗力事件**”其含義如第 5(b)條之規定。

“**一般營業日**”指商業銀行營業(包括處理外匯交易及外幣存款)之日。

“**非法**”其含義如第 5(b)條之規定。

“**可獲補償稅捐**”指任何稅捐，不包括原本不會對本協議下之付款徵收，而僅因為徵收該稅捐之政府或稅務機關之管轄地與該款項收款人或與該款項收款人有關之個人之間現在或之前有連繫(此連繫包括但不限於因該收款人或有關人員為該管轄地之公民或居民，或正在或已在該管轄地組織或從事貿易或其它業務，或在該管轄地有永久機構或固定之營業地而產生之連繫，但此連繫不包括僅因該收款人或有關人員簽署、交付本協議或信用支持文件或按本協議或信用支持文件履行義務或收款，或執行本協議或信用支持文件而產生之連繫)始徵收之稅捐。

“**法律**”包括任何條約、法律、規則或條例(及經任何有關政府稅務機關之慣例所修改之稅務事宜)，並且“**非法**”將據此予以解釋。

“**當地營業日**”(a)對於第 2(a)(i)條項下任何義務，指有關確認書規定之地點之一般營業日並且有關確認書規定之有關結算系統營業之日，或如無規定相關地點或結算系統，則雙方以其他書面方式同意之或按本協議所載或包括之規定而決定之地點；(b)於確定等待期間何時屆滿時，指構成或導致非法或不可抗力事件(視情況而定)之事件或情況發生地之一般營業日；(c)對於其他任何付款，指有關帳戶之所在地之一般營業日，如帳戶所在地



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).

不同則指付款貨幣之主要金融中心(如有)之一般營業日, 或如果該貨幣並無單獨獲認可之主要金融中心, 則指結算系統為完成該付款而需營業之日; (d)對於任何通知或其他通訊, 包括第 5(a)(I)條下之通知, 指收款人提供之接收通知地之一般營業日(或若非某一事件或情況之發生而本應為一般營業日之日, 條件係此一事件或情況如發生於某項交易之付款、交付或遵行協議之行為時將構成非法或不可抗力), 如為第 2(b)條下之通知則指有關新帳戶之所在地之一般營業日; 及(e)對於第 5(a)(v)(2)條, 則指該特定交易之履行地之一般營業日。

**“當地交付日”**就第 5(a)(i)和 5(d)條而言, 指相關確認書規定地點之完成有關交付所必須之結算系統得依市場慣例為完成有關交付而通常營業之日, 或如果確認書未規定地點, 則指按有關交付之市場慣例決定之地點。

**“主協議”**其含義如前言之規定。

**“不承擔債務之合併”**其含義如第 5(a)(iii)條規定之事件。

**“多項交易付款淨額結算”**其含義如第 2(c)條之規定。

**“未受影響方”**若僅有一個受影響方時, 係指另一方。

**“未違約利率”**指經未違約方認證之於相關銀行同業市場上一家主要銀行就有關貨幣之隔夜存款給予未違約方之利率, 該銀行應由未違約方以善意選擇以獲得可合理反映該市場當時狀況之有代表性之利率。

**“未違約方”**其含義如第 6(a)條之規定。

**“辦事處”**指一方之分支機構或辦事處, 有可能是該方之總部或總辦事處。

**“其他款項”**其含義如第 6(f)條之規定。

**“收款人”**其含義如第 6(f)條之規定。

**“付款人”**其含義如第 6(f)條之規定。

“**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

“**潛在違約事件**”指任何經發送通知或隨時間經過(或兩者同時發生)可構成違約事件之任何事件。

“**訴訟**”其含義如第 13(b)條之規定。

“**送達代收人**”其含義如附約之規定。

“**兌換率**”包括但不限於就購買或兌換約定貨幣應付之任何溢價或兌換成本。

“**有關管轄區**”指有關一方而言, (a)該方成立、組成、被管理及控制或視作有其席位之管轄區, (b)該方為本協議之目的而採取行動之辦事處之管轄區, (c)一方簽署本協議之管轄區, 及(d)若與支付款項有關, 則為該等支付款項之管轄區。

“**附約**”其含義如前言之規定。

“**預定結算日**”指有關交易根據第 2(a)(i)條應為付款或交付之日。

“**特定機構**”其含義如附約之規定。

“**特定負債**”除非附約另有規定, 指有關借款之任何義務(不論是現有的或將來的、或有的或其他, 亦不論係主債務人或擔保人之債務或其他義務)。

“**特定交易**”除非附約另有規定, 指(a)本協議一方(或該方之任何信用支持提供者或該方之任何適用特定機構)與本協議另一方(或該方之任何信用支持提供者或該方之任何適用特定機構)現在或日後達成之任何交易(包括與任何此等交易有關之協議), 該特定交易不包括本協議下之交易, 但屬於: (i)利率交換交易、交換選擇權、利率基礎交換交易、遠期利率交易、商品交換交易、商品選擇權、股權或股權指數交換交易、股權或股權指數選擇權、債券選擇權、利率選擇權、外匯交易、上限交易、下限交易、上下限交易、貨幣交換交易、交叉貨幣利率交換交易、貨幣選擇權、信用保障交易、信用交換交易、信用違約交換交易、信用違約選擇權、全部報酬交換交易、信用利差交易、買回交易、逆買回交易、買回/賣回交易、債券交易、氣候指數交易或證券、商品或其他其他金融工具或利益之遠期買賣交易(包括以上任何交易之選擇權); 或(ii)任何與(i)款中所列交易類似之, 目前或將來在金融市場上重複進行之交易(包括該協議中之條款和條件), 並且該交易係以一種或多種利率、貨幣、商品、股票或其他股權憑證、債務證券或其他債權憑證、經濟指數或經濟風險或價值之測量方法或其他基準作為付款和交易基礎之遠期、交換、期貨、選擇權或其他衍生性商品交易, (b)任何上述交易之組合, 及(c)任何本協議或有關確認書中規定為特定交易之任何其它交易。

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

“**印花稅**”指任何印花稅、登記稅、文件稅或類似之稅捐。

“**印花稅司法管轄區**”其含義如第 4(e)條之規定。

“**稅捐**”指印花稅、登記稅、文件稅或類似之稅捐以外之與本協議下任何付款有關之任何政府或其它稅務機關徵收之任何性質之現存或將徵收之稅捐、稅賦、進口稅、關稅、費用、提列或其他費用(包括其利息、違約金及附加費)。

“**稅務事件**”其含義如第 5(b)條之規定。

“**因合併造成之稅務事件**”其含義如第 5(b)條之規定。

“**已終止交易**”對於任何提前終止日而言(a)如因非法或不可抗力事件產生，指根據第 6(b)(iv)條所為之通知中規定之所有受影響交易，(b)如因任何其他終止事件產生，指所有受影響之交易及(c)如因違約事件產生，指載明提前終止日之通知生效前，或如適用自動提前終止指在該提前終止日之前有效之所有交易。

“**終止貨幣**”係指(a)於附約中敘明為終止貨幣，而該貨幣可無限制地取得，指該貨幣；(b)否則，如本協議係以英國法律為準據法，指歐元，或如本協議係以紐約州法律為準據法，則指美元。

“**終止貨幣等值額**”對於以終止貨幣為單位之任何款項，指該終止貨幣額對於以終止貨幣以外貨幣為單位(“其他貨幣”)之任何數額，則指為決定之一方於有關提前終止日，或如果有關結算款項在較後日期始確定，則於該日用以購買該數額之其他貨幣所需之終止貨幣，購買時使用之匯率應為(按以下方式選擇之)外匯機構之即期匯率：在該日上午十一時或左右(以該外匯機構所在之城市為準)，在有關提前終止日或其較後日期以終止貨幣購買其他貨幣時，通常適用之匯率。如果只有一方有義務按第 6(e)條決定，該方應以善意選擇外匯機構，如果不只一方則以各方同意之方式選擇。

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

**“終止事件”**指非法、不可抗力事件、稅務事件或因合併造成之稅務事件，或(如規定適用)因合併造成之信用事件或其他終止事件。

**“終止利率”**指相當於各方(經該方認證)取得有關金額須支付之成本(無需提供任何實際成本之證明或證據)之算術平均值之年利率。

**“門檻金額”**如於附約規定，其含義如附約之規定。

**“交易”**其含義如前言之規定。

**“未付款項”**對於提前終止日而言，指積欠任何一方之下列各項之總和：(a)就所有已終止交易而言，指按第 2(a)(i)或 2(d)(i)(4)條應於該提前終止日當日或之前支付予該方但在該提前終止日仍未付(或原本應付，但因第 2(a)(iii)條未付或第 5(d)款到期未付)之數額，及(b)對於每一筆已終止交易，就第 2(a)(i)條之下之每一項需在該終止日或之前向該方交付而未交付(或本應交付但因第 2(a)(iii)條或第 5(d)條而未交付)之義務而言，指應該或原本應該在原定交付日交付之實物之公平市值，以及(c)如因違約事件、因合併造成之信用事件或其他終止事件導致提前終止日，致所有未完成交易變成受影響交易，指該提前終止日前到期，而截至該提前終止日仍未清償之任何提前終止款項。於以上任何一種情況下均包括根據第 9(h)(ii)(1)或(2)條(視情況而定)決定之有關該義務或遲延履行之義務(視情況而定)累計之利息或其他補償。上述(b)款所指之任何義務之公平市值將由根據第 6(e)條由有義務為決定之一方以善意並使用合理之商業程序於原定交付日確定，或如各方均有責任，則為各方按上述辦法確定之公平市值之平均終止貨幣等值額。

**“等待期間”**指：—

(a) 除第 5(b)(i)(2)條實際上於當日要求有關付款、交付或遵守協議(此時不適用等待期間)之情況以外，就第 5(b)(i)條下之事件或情況而言，指發生事件或情況之後之三個當地營業日(或若非該事件或情況之發生本應為當地營業日之日)；及

(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.

(b) 除第 5(b)(ii)(2)條規定之實際上於當日要求有關付款、交付或遵守規定(此時不適用等待期間)之情況以外，就第 5(b)(ii)條事件或情況而言，指發生事件或情況後之八個當地營業日(或非該事件或情況之發生本應為當地營業日之日)。

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.

茲證明雙方已於下列日期簽署本文件，生效日為本文件首頁載明之日期。

_____ (Name of Party)	_____ (Name of Party)	_____ (簽署方名稱)	_____ (簽署方名稱)
By: _____ Name: Title: Date:	By: _____ Name: Title: Date:	簽名: _____ 姓名: 職位: 日期:	簽名: _____ 姓名: 職位: 日期:



(d) The “*Credit Event Upon Merger*” provisions of Section 5(b)(v) [will][will not]\* apply to Party A  
[will][will not]\* apply to Party B

(e) The “*Automatic Early Termination*” provision of Section 6(a) [will][will not]\* apply to Party A  
[will][will not]\* apply to Party B

(f) “*Termination Currency*” [will have the meaning specified in Section 14 of this Agreement.][means ..... ]\*

(g) *Additional Termination Event* [will][will not]\* apply. [The following will constitute an Additional Termination Event:— ..... ]

For the purpose of the foregoing Termination Event, the Affected Party or Affected Parties will be:— ..... ]\*\*\*

#### Part 2. Tax Representations.\*\*\*\*

(a) *Payer Representations.* For the purpose of Section 3(e) of this Agreement[, Party A and Party B do not make any representations.][:—

[[i)] [Party A] [and] [Party B] [each] make[s] 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, except that it will 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.]\*

[[ii)] [Party A] [and] [Party B] [each] make[s] the

\* Delete as applicable.  
\*\* Include if Additional Termination Event will apply.  
\*\*\* N.B.: the following representations may need modification if either party is a Multibranch Party.

(d) 第 5(b)(v)條“*因合併造成之信用事件*”  
[將會][不會]\*適用於 A 方  
[將會][不會]\*適用於 B 方

(e) 第 6(a)條“*自動提前終止*”  
[將會][不會]\*適用於 A 方  
[將會][不會]\*適用於 B 方

(f) “*終止貨幣*”[其含義如本協議第 14 條之規定。][指 ..... ]\*

(g) *其他終止事件*將會[不會]\*適用。[下列事件構成其他終止事件：— ..... ]

為上述終止事件之目的，受影響方指：— ..... ]\*\*\*

#### 第二部分 稅務陳述\*\*\*\*

(a) *付款人陳述。*為本協議第 3(e)條之目的[，A 方及 B 方不為任何陳述。][:—

[[i)] [A 方][及][B 方][各自] 陳述如下：—

經有關政府財稅部門之慣例修改之任何有關管轄地之任何適用之法律均不要求自該方根據本協議向另一方支付之任何款項(本協議第 9(h)條下之利息除外)中扣減或預扣任何稅捐。在作出此項陳述時，該方可以依賴：(i) 另一方按本協議第 3(f)條所為任何陳述之正確性；(ii)本協議第 4(a)(i)條或 4(a)(iii)條中所載之約定之履行，以及另一方按本協議第 4(a)(i)條或 4(a)(iii)條所提供之任何文件之正確性及有效性；及(iii)本協議第 4(d)條中所載另一方約定之履行，但是，若該方依賴上述第(ii)款時，另一方為免對其法律或商業地位造成嚴重損害而未遞交第 4(a)(iii)條項下之表格或文件則不構成對本陳述之違反。]\*

[[ii)] [A 方][及][B 方][各自] 陳述如下：— ..... ]

\* 視情況刪除。  
\*\*\* 如其他終止事件適用之話，應包括。  
\*\*\*\* 注意：如任何一方為擁有多個辦事處之交易方，下述陳述可能需進行調整。

following representation[s]:— .....  
.....  
..... ]]\*

- (b) **Payee Representations.** For the purpose of Section 3(f) of this Agreement[, Party A and Party B do not make any representations.]:— (b) **收款人陳述。** 為本協議第 3(f)條之目的[, A 方及 B 方不為任何陳述。]:—

[[i)] [Party A] [and] [Party B] [each] make[s] the following representation:—

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.

“Specified Treaty” means with respect to Party A .....

“Specified Jurisdiction” means with respect to Party A .....

“Specified Treaty” means with respect to Party B .....

“Specified Jurisdiction” means with respect to Party B .....]\*

[[ii)] [Party A] [and] [Party B] [each] make[s] the following representation:—

Each payment received or to be received by it in connection with this Agreement will be effectively connected with its conduct of a trade or business in the Specified Jurisdiction.

“Specified Jurisdiction” means with respect to Party A .....

“Specified Jurisdiction” means with respect to Party B .....]\*

[[iii)] [Party A] [and] [Party B] [each] make[s] the following representation:—

It is a “U.S. person” (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for United States federal income tax purposes.]\*

[[iv)] [Party A] [and] [Party B] [each] make[s] the following representation:—

It is a “non-U.S. branch of a foreign person” (as that

[[i)] [A 方][及][B 方][各自] 陳述如下:—

該方具有完全資格取得適用於本協議下收到或將收到之款項之特定條約中規定之“營業利潤”或“工商業利潤”條款(視情況而定), 及“利息”條款或“其他收入”條款(如有)所賦予之利益, 並且該款項與該方在特定司法管轄區之永久營業地從事之商業或貿易並無任何關連。

“特定條約”就 A 方而言, 指 .....

“特定司法管轄區”就 A 方而言, 指 .....

“特定條約”就 B 方而言, 指 .....

“特定司法管轄區”就 B 方而言, 指 .....]\*

[[ii)] [A 方][及][B 方][各自] 陳述如下:—

其就本協議收到或將收到之每一筆款項將會與該方於特定司法管轄區從事之貿易或商業行為具有實際關連。

“特定司法管轄區”就 A 方而言, 指 .....

“特定司法管轄區”就 B 方而言, 指 .....]\*

[[iii)] [A 方][及][B 方][各自] 陳述如下:—

就美國聯邦稅務目的而言, 其為“美國人”(其含義如美國財政法規第 1.441-4(a)(3)(ii)條之規定)]\*

[[iv)] [A 方][及][B 方][各自] 陳述如下:—

就美國聯邦稅務目的而言, 其為一“外國人之非美國

\* Delete as applicable.

\* 視情況刪除。



term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for United States federal income tax purposes.]\*

辦事處”(其含義如美國財政法規第 1.441-4(a)(3)(ii)條之規定)]\*

[[v)] [Party A] [and] [Party B] [each] make[s] the following representation:—

[[v)] [A 方][及][B 方][各自] 陳述如下：—

With respect to payments made to an address outside the United States or made by a transfer of funds to an account outside the United States, 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 United States Treasury Regulations) for United States federal income tax purposes.]\*

有關向美國以外之地址為付款或向美國以外之帳戶匯入資金事宜，就美國聯邦稅務目的而言，其為一“外國人之非美國辦事處”(其含義如美國財政法規第 1.441-4(a)(3)(ii)條之規定)]\*

[[vi)] [Party A] [and] [Party B] [each] make[s] the following representation:—

[[vi)] [A 方][及][B 方][各自] 陳述如下：—

It is a “foreign person” (as that term is used in section 1.6041-4(a)(4) of United States Treasury Regulations) for United States federal income tax purposes.]\*

就美國聯邦稅務目的而言，其為一“外國人”(其含義如美國財政法規第 1.6041-4(a)(4)條之規定)]\*

[[vii)] [Party A] [and] [Party B] [each] make[s] the following representation[s]:—

[[vii)] [A 方][及][B 方][各自] 陳述如下：—

..... ]]\*

..... ]]\*

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

**第三部分 同意交付文件。**

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

為第 4(a)(i)和第 4(a)(ii)條之目的，各方同意交付下列相關之文件：—

(a) Tax forms, documents or certificates to be delivered are[: none]:—

(a) 須交付之稅務表、文件或證書為[: 無]:—

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....]

須交付文件一方	表格/文件/證書	交付之期限
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....]

(b) Other documents to be delivered are[: none]:—

(b) 其他須交付之文件為[: 無]:—

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
.....	.....	.....	[Yes][No]
.....	.....	.....	[Yes][No]
.....	.....	.....	[Yes][No]
.....	.....	.....	[Yes][No]
.....	.....	.....	[Yes][No]]*

須交付文件之一方	表格/文件/證書	交付之期限	是否為第 3(d)條下之陳述所涵蓋
.....	.....	.....	[是][否]
.....	.....	.....	[是][否]
.....	.....	.....	[是][否]
.....	.....	.....	[是][否]
.....	.....	.....	[是][否]]*

\* Delete as applicable.

\* 視情況刪除。

Part 4. **Miscellaneous.**

第四部分 **其他規定。**

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

Address for notices or communications to Party A:—

Address: .....  
Attention: .....  
Telex No.: ..... Answerback: .....  
Facsimile No.: ..... Telephone No.: .....  
E-mail: .....  
Electronic Messaging System Details: .....  
Specific Instructions: .....

Address for notices or communications to Party B:—

Address: .....  
Attention: .....  
Telex No.: ..... Answerback: .....  
Facsimile No.: ..... Telephone No.: .....  
E-mail: .....  
Electronic Messaging System Details: .....  
Specific Instructions: .....

- (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: [not applicable] [ ..... ]\*

- (c) **Offices.** The provisions of Section 10(a) [will][will not]\* apply to this Agreement.

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

Party A [is not a Multibranch Party.][is a Multibranch Party and may enter into a Transaction through any of the following Offices:—

.....  
.....]\*

Party B [is not a Multibranch Party.][is a Multibranch Party and may enter into a Transaction through any of the following Offices:—

.....  
.....]\*

- (e) **Calculation Agent.** The Calculation Agent is, unless otherwise specified in a Confirmation in relation to the relevant Transaction.]\*\*

- (f) **Credit Support Document.** Details of any Credit

- (a) **通知地址。** 為本協議第 12(a)條之目的:—

A 方收取通知或通訊之地址為:—

地址: .....  
收件人: .....  
電傳號碼: ..... 應答碼: .....  
傳真號碼: ..... 電話號碼: .....  
電子郵件: .....  
電子訊息系統資料: .....  
特殊指示: .....

B 方收取通知或通訊之地址為:—

地址: .....  
收件人: .....  
電傳號碼: ..... 應答碼: .....  
傳真號碼: ..... 電話號碼: .....  
電子郵件: .....  
電子訊息系統資料: .....  
特殊指示: .....

- (b) **送達代收人。** 為本協議第 13(c)條之目的:—

A 方指定其送達代收人如下: [不適用][ ..... ]\*  
B 方指定其送達代收人如下: [不適用][ ..... ]\*

- (c) **辦事處。** 第 10(a)條之規定將[會][不會]\*適用於本協議。

- (d) **擁有多個辦事處之交易方。** 為本協議 10(b)條之目的:—

A 方[並非擁有多個辦事處之交易方。][A 方係擁有多個辦事處之交易方, 可以透過以下任何辦事處進行交易:—

.....  
.....]\*

B 方[並非擁有多個辦事處之交易方。][B 方係擁有多個辦事處之交易方, 可以透過以下辦事處進行交易:—

.....  
.....]\*

- (e) **計算代理人。** 除非有關交易之確認書另有規定, 否則計算代理人為.....。]\*\*

- (f) **信用支持文件。** 信用支持文件之詳情如下:— [無[ ..

\* Delete as applicable.  
\*\* Include if applicable.

\* 視情況刪除。  
\*\* 視情況包括。

Support Document:— [none][.....]  
.....]  
.....]\*

[(g)] **Credit Support Provider.** Credit Support Provider means in relation to Party A, [none][.....]  
.....]\*

Credit Support Provider means in relation to Party B, [none][.....]  
.....]\*

[(h)] **Governing Law.** This Agreement will be governed by and construed in accordance with [English law][the laws of the State of New York (without reference to choice of law doctrine)]\*.

[(i)] **Netting of Payments.** “Multiple Transaction Payment Netting” [will not apply for the purpose of Section 2(c) of this Agreement.][will apply for the purpose of Section 2(c) of this Agreement to [all Transactions][the following Transactions or groups of Transactions:— .....]  
.....]  
(in each case starting from [the date of this Agreement] [.....])]\*

[(j)] **“Affiliate”** [will have the meaning specified in Section 14 of this Agreement.][means .....]\*

[(k)] **Absence of Litigation.** For the purpose of Section 3(c):—

“Specified Entity” means in relation to Party A, .....

“Specified Entity” means in relation to Party B, .....

[(l)] **No Agency.** The provisions of Section 3(g) [will][will not]\* apply to this Agreement.

[(m)] **Additional Representation** [will][will not]\* apply. [For the purpose of Section 3 of this Agreement, the following will constitute an Additional Representation:—

[(i)] **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

\* Delete as applicable.

\* 視情況刪除。

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.

[(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.]]

[[~~(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.**

解釋將不作為進行該交易之投資意見或建議。自另一方收到之任何(書面或口頭之)通訊不被視為對該交易預計效益之擔保或保證。

[(2)] *評估和理解。* 該方得評估該交易之價值並(自己或透過獨立之專業意見之協助)得以理解並且理解及接受該交易之條款、條件和風險。該方能承擔並將承擔該交易之風險。

[(3)] *地位。* 另一方就該交易而言並非該方之受託人或顧問。]]\*

[[~~(n)~~]**談話錄音。** 各方(i)同意對交易雙方之交易、行銷和其他人員進行之有關本協議或任何潛在交易之電話談話進行錄音，(ii)同意自從其有關人員就此等錄音取得任何必要之同意及簽發必要之通知，及(iii)同意於適用法律允許範圍內此等錄音得於任何訴訟中提交作為證據。]]\*\*

**第五部分** 其它規定。

\_\_\_\_\_  
(Name of Party)

\_\_\_\_\_  
(Name of Party)

\_\_\_\_\_  
(簽署方名稱)

\_\_\_\_\_  
(簽署方名稱)

By: \_\_\_\_\_  
Name:  
Title:  
Date:

By: \_\_\_\_\_  
Name:  
Title:  
Date:

簽名: \_\_\_\_\_  
姓名:  
職位:  
日期:

簽名: \_\_\_\_\_  
姓名:  
職位:  
日期:

\* Delete as applicable.  
\*\* Include if applicable.

\* 視情況刪除。  
\*\* 視情況包括。