

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 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.

ISDA®

国际掉期及衍生工具协会

2002 年主协议

_____年____月____日

_____与_____

之间已进行及/或预期进行受本 2002 年主协议规范(或将其规范)之一笔或多笔交易(均称为“交易”); 本主协议包括附约(以下简称“附约”)以及双方之间另交换或为确认或证明该等交易使其生效之文件和其它确认证据(均称为“确认书”)。本 2002 年主协议及其附约统称为“主协议”。

据此, 双方同意如下: —

1. 释义

(a) **定义。**就本主协议而言, 本主协议第 14 条以及其它部分所定义之词汇将具有其所特定之含义。

(b) **不一致。**若附约之条款与本主协议之其它条款有不一致之处, 以附约为准。若任何确认书与本主协议之条款有不一致之处, 就有关交易而言, 以确认书为准。

(c) **单一协议。**所有交易之进行乃基于信赖本主协议以及所有确认书构成双方之间之单一协议(统称“协议”), 否则双方不会进行任何交易。

2. 义务

(a) **一般条件。**

(i) 受本协议之其它条款约束, 双方应按各确认书之规定为各项付款或交付。

(ii) 本协议项下之付款应于到期日在有关确认书所规定之账户所在地或按本协议其它规定另行支付; 款项应以自由可转让资金以及所要求之货币付款之通用方式支付。若结算以交付形式进行(即付款之外之方式), 该交付应于到期日按有关义务之通用方式进行, 然有关确认书或本协议另有规定时, 则不在此限。

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

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

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

(i) in the same currency; and

(ii) in respect of the same Transaction,

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

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

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

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

(iii) 第 2(a)(i)条下各方之每项义务取决于以下先决条件: (1)对方未发生任何违约事件或潜在违约事件且该事件仍在持续中; (2)就有关交易而言, 尚未出现或尚未有效地指定提前终止日; 以及(3)于本协议下作为本第 2(a)(iii)条先决条件之其它各项条件。

(b) **更改账户。**除非另一方及时发出反对通知且其反对系合理者, 任何一方可在付款或交付之预定结算日前至少五个当地营业日通知对方变更接收款项或交付之账户。

(c) **付款净额结算。**若任何日期双方均须: —

(i) 以相同货币; 及

(ii) 就相同交易,

向另一方付款, 双方支付该款项之义务将于当日自动地完成及解除, 若一方本应支付之总额高于对方本应支付之总额, 支付较大总额一方之付款义务则为向另一方缴付两者 (较大总支付款及较小总支付款) 之间的差额。

双方可就两笔或以上之交易选择就该等交易于同一日期以相同货币支付之所有付款进行净额结算及履行付款义务, 不论此等付款是否关于同一笔交易。该选择可于附约或任何确认书上作出, 并规定“多笔交易付款净额结算”适用于该选择所指定之交易(在此情况下, 上述第(ii)款将不适用于此等交易)。如多笔交易付款净额结算适用者, 其生效日期为附约或确认书中规定之开始日期; 如附约或确认书中未规定生效日期, 则由双方另行以书面另行约定开始日期。此选择可就不同组别之交易分别作出并分别适用于双方用以交付接受款项或交付物之每一组办事处。

(d) **税捐之扣减或预扣。**

(i) **所扣税捐补足。**本协议项下之所有付款应不因任何税捐而予以扣减或预扣, 除非此扣减或预扣是按当时有效并经有关政府税务机关之惯例加以修正之适用法律之要求而作出。若一方被要求扣减或预扣任何款项, 该方("X方")应: —

(1) promptly notify the other party (“Y”) of such requirement;

(2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;

(3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and

(4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for: —

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

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

(ii) **Liability.** If: —

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

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

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

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

(1) 及时将该要求通知另一方(“Y方”);

(2) 当确定需要支付该扣减或预扣款项或收到通知获悉已向 Y 方课征该款项(二者之较早发生者)时, 应及时向有关政府机关支付所需扣减或预扣之全部款项(包括按本第 2(d)条要求从 X 方付给 Y 方之任何额外款项中扣减或预扣之全部款项);

(3) 及时向 Y 方发出正式收据(或经认证之副本), 或 Y 方能合理接受之其它文件, 证明已向有关政府机关付款; 以及

(4) 若该税为可获补偿税捐, 则除了支付给 Y 方其在本协议项下应得之款项外, 还应向 Y 方支付额外款项, 使 Y 方实得之净额(不包括向 X 方或 Y 方课征之可获补偿税捐)相等于在不需要扣减或预扣款项时其应得之全部款项。但如 X 方之支付义务是由以下事件所引发之, 则 X 方无须向 Y 方支付任何额外款项: —

(A) Y 方未遵守或履行第 4(a)(i)、4(a)(iii) 或 4(d)条所载之任何协议; 或

(B) Y 方按第 3(f)条所作之陈述为不正确及不真实, 除非该陈述是由于: (I)在进行某项交易以后, 税务机关采取之行动或在有管辖权之法庭内提出之诉讼(不论该行动或诉讼是否就本协议一方提出), 或(II)税法之变更而变得不正确及不真实。

(ii) **责任。**如: —

(1) 因按经有关政府税务机关之惯例加以修正之任何适用法律之要求, X 方需作出任何扣减或预扣, 但按第 2(d)(i)(4)条之规定, X 方无须向 Y 方支付任何额外款项;

(2) X 方没有扣减或预扣款项; 并且

(3) 税务责任直接加于 X 方,

则 Y 方除非已承担或将承担该税务所引致之责任外, Y 方应及时向 X 方支付有关该责任之款项(包括任何有关利息, 但仅在 Y 方未能遵守或履行第 4(a)(i)、4(a)(iii)或 4(d)条所载之任何协议时才包括任何有关惩罚性责任)。

3. Representations

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

(a) *Basic Representations.*

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

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

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

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

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

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

3. 陈述

各方向另一方作出第 3(a)、3(b)、3(c)、3(d)、3(e)和 3(f)条以及(如按附约规定适用时之)第 3(g)款所载之陈述(这些陈述将被视为在每次进行交易当日为各方复述,按第 3(f)条所作之陈述将被视为直至本协议终止前不断为各方所复述)。如任何“其它陈述”按附约或确认书之规定,亦予适用者,该陈述中规定之一方或各方将于该陈述所指定之时点作出或被视为另重复(如有适用者)此一其它陈述。

(a) *基本陈述。*

(i) **地位。**其为适当地组成并按其成立或组织之司法管辖区之法律有效存续以及,如与该等法律相关者,处于良好之状态;

(ii) **权力。**其有权签署本协议以及其为一方之与本协议有关之其它任何文件,有权按本协议有关交付之要求交付本协议及有关本协议之任何其它文件,及有权履行本协议项下之义务以及任何以其为一方之信用支持文件下之义务,并已采取所有必要行动授权此等签署、交付及履行;

(iii) **无违反或抵触。**此等签署、交付及履行并无违反或抵触任何适用之法律,符合其组织章程性文件之任何规定,符合适用于该方或其资产之任何法庭或政府机关所颁布之法令或判决,或任何约束或影响该方或其资产之合同约定;

(iv) **同意。**已获取有关本协议或其为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并且有关同意生效之所有条件已获遵守;以及

(v) **义务之约束。**其在本协议及其为一方之任何信用支持文件项下之义务均构成其合法、有效及有约束力之义务,并可按该些文件之有关条款强制执行(受限于适用之破产、重组、无偿还能力、延期偿还或通常影响债权人权利之类似法律,并在有关执行方面受限于普遍适用之衡平原则(无论该执行是诉诸于衡平法或普通法))。

(b) **不存在某些事件。**没有任何已经发生及持续之违约事件或潜在之违约事件,或据其所知并无有关该方之终止事件,并且签署或履行本协议或其为一方之任何信用支持文件下之义务,不会引致该终止事件或情况之发

Agreement or any Credit Support Document to which it is a party.

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

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

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

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

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

4. Agreements

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

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

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

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

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

生。

(c) **不存在诉讼。**没有任何待决的，或据其所知，没有任何对其或其任何信用支持提供者或其任何有关特定机构构成威胁之基于普通法或衡平法或于任何法庭、裁判所、政府实体、代理人、官员或仲裁者前进行之诉讼、控告或起诉，其将可能影响本协议或其为一方之任何信用支持文件之合法性、有效性或可执行性，或其履行本协议或该等信用支持文件下之义务之能力。

(d) **指定数据之正确性。**以书面形式由其发出或以其名义发给另一方，并为本第 3(d)条之目的在附约上指明其有所适用之所有数据，于该数据之日期在各重要方面均为真实、正确及完整。

(e) **付款人税务陈述。**其为本第 3(e)条之目的在附约中所作之陈述均为正确及真实。

(f) **收款人税务陈述。**其为本第 3(f)条之目的在附约中所作之陈述均为正确及真实。

(g) **无代理。**其以本人之身份而非任何人或机构之代理人订立本协议。

4. 协议

双方彼此同意，当任何一方在本协议或其为一方之任何信用支持文件下负有或可能负有任何义务时：—

(a) **提供指定数据。**其将向另一方，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税务机关提供：—

(i) 附约或任何确认书规定之有关税务之表格、文件或证书；

(ii) 附约或任何确认书规定之任何其它文件；以及

(iii) 按另一方之合理要求，提供可能需要或以书面合理地要求之任何表格或文件，使该另一方或其信用支持提供者在按本协议或任何适用之信用支持文件付款时无需就任何税捐支付扣减或预扣款项，或得以降低支付此等扣减或预扣之适用率(只要是该表格或文件之完成、签署或递交不会严重地损害接受该要求一方之法律或商业地位)，此等表格或文件应正确地并按使另一方合理满意之方式填写、签署，连同任何合理要求之证明，一并交付，

to be delivered with any reasonably required certification,

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

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

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

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

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

5. Events of Default and Termination Events

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

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

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

(1) Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) or to give notice of a Termination Event or any agreement or obligation under

以上各项义务需按附约或该确认书规定之日期，或者如无规定，则以合理可行之最快时间予以完成。

(b) **维持授权。**应尽一切合理之努力，就本协议或其为一方之任何信用支持文件之有关事项，该方需自政府或其它机关取得之一切同意，维持充分之效力，并将尽一切合理之努力，获取日后可能必要之其它同意。

(c) **遵守法律。**应在一切重要层面遵守对其有约束力且如不遵守者将严重影响其履行本协议或其为一方之任何信用支持文件下义务之能力之相关法律及法令。

(d) **税务协议。**当该方得悉其按第 3(f)条所作之陈述有不正确及不真实之处，应及时就此发出通知。

(e) **印花税之缴付。**除有第 11 条之适用外，应缴付其成立、组织、被管理、被控制之司法管辖区，或视该方拥有一席位，或为履行本协议之某个办事处所在之司法管辖区("印花税司法管辖区")对该方或就其签署或履行本协议所征收之印花税，并当某印花税司法管辖区对非处于该印花税司法管辖区之一方或就其签署或履行本协议征收印花税时，对另一方为赔偿。

5. 违约事件和终止事件

(a) **违约事件。**任何时候，当一方或，如适用之话，该方之任何信用支持提供者或该方之任何特定机构发生以下任何事件，将构成(惟受第 5(c)和第 6(e)(iv)条之限制)该方之违约事件(以下简称"违约事件")：—

(i) **未能付款或交付。**该方未于到期日按本协议付款或按第 2(a)(i)、第 9(h)(i)(2)或(4)条之规定履行交付义务，并且在向该方发出逾期通知后之首个当地营业日(适用于付款)或首个当地交付日(适用于实物交付)或之前仍未补正；

(ii) **违反协议；否认协议。**

(1) 该方未能按本协议规定遵守或履行其应遵守或履行之任何协议或义务(但不包括本协议第 2(a)(i)、第 9(h)(i)(2)或(4)条下之付款义务或交付义务，或发出终止事件通知之义务，或第 4(a)(i)款、第 4(a)(iii)款或 4(d)条项下之任何协

Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied within 30 days after notice of such failure is given to the party; or

(2) the party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, this Master Agreement, any Confirmation executed and delivered by that party or any Transaction evidenced by such a Confirmation (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

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

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

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

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

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

议或义务), 并且在向该方发出违约通知后之三十天内仍未补正; 或

(2) 该方取消、否认、放弃或拒绝全部或部分之本主协议、由该方签订和交付之任何确认书或由此等确认书证明之任何交易, 或对本主协议、上述确认书或交易之有效性提出异议(或该行动由经委派或授权管理该方之任何个人或实体作出或代表其作出);

(iii) **信用支持违约。**

(1) 该方或该方之任何信用支持提供者未能按任何信用支持文件之规定遵守或履行其应遵守或履行之任何协议或义务, 并在任何适用之宽限期经过后仍未补正;

(2) 未经另一方书面同意, 在该方未就此等信用支持文件所涉及之每笔交易皆履行所有义务前, 此等信用支持文件届期或终止, 或此等信用支持文件或该方或其信用支持提供者根据任何此等信用支持文件给予另一方之任何担保权益未能就本协议目的, 保持其充分效力(以上任一情况均不包括按协议条文之正常失效); 或

(3) 该方或该方之信用支持提供者取消、否认、放弃或拒绝全部或部分之信用支持文件, 或对该信用支持文件之有效性提出异议(或该行动由经委派或授权管理该方之任何个人或实体作出或代表其作出);

(iv) **不实之陈述。** 该方或该方之任何信用支持提供者于本协议或任何信用支持文件下作出或复述之, 或被视为作出或复述之陈述(按第 3(e)或 3(f)条所作之陈述除外)被证实作出、复述或被视为作出或复述之时在重要层面为错误或带有误导成分;

(v) **特定交易下之违约。** 某方、该方之任何信用支持提供者或该方之任何相关特定机构: —

(1) 于特定交易或有关特定交易之任何信用支持安排下违约(未能履行交付义务除外), 而在任何适用之通知要求或宽限期生效后, 该违约导致该特定交易之清算、加速偿还、或提前终止之情形;

Specified Transaction;

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

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

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

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

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

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

(vii) **Bankruptcy.** The party, any Credit Support

(2) 于任何适用之通知要求或宽限期生效后, 未能在特定交易之最后付款日或交换日到期时履行任何付款之义务, 或未能支付有关特定交易之提前终止之款项(或如无适用之通知要求或宽限期, 该违约持续至少一个当地营业日);

(3) 未能履行特定交易或有关特定交易之任何信用支持安排下之任何交付义务(包括于最后付款日或交换日到期之任何交付义务), 并在适用之通知要求或宽限期生效后, 该违约导致有关特定交易之文件下所有未完成交易之清算、加速偿还、或提前终止之情形; 或

(4) 全部或部分取消、否认、放弃或拒绝由该方、其信用支持提供者或特定机构签订并交付之文件或其它确认证据确认或证明之特定交易或有关特定交易之任何信用支持安排, 或对特定交易或有关特定交易之任何信用支持安排之有效性提出异议(或该行动由经委派或授权管理该方之任何个人或实体作出或代表其作出);

(vi) **交叉违约。** 若“交叉违约”依附约之规定而适用于某方, 则指发生或存在以下事件: —

(1) 该方、该方之任何信用支持提供者或该方之任何相关特定机构就有关任何一方特定债务(单独或共同)之一份或数份协议或文件发生违约、违约事件或其它类似之情况或事件(不论如何描述), 且该协议或文件下之累计本金金额与以下第(2)款所述之金额(如有)分别或累计达到适用之门坎金额(如附约中定义)以上, 进而导致特定债务于原定到期及应缴付之期限之前依此等协议或文件得以宣告到期及应缴付或得以被宣告为到期及应缴付, 或

(2) 该方、该信用支持提供者或该特定机构(单独或共同)未能在付款到期日(在任何适用之通知要求或宽限期生效后)按上述协议或文件付款, 并且其累计金额单独地或与以上第(1)款所述之金额(如有)分别或一并计算达到适用之门坎金额以上;

(vii) **破产。** 若一方、该方之任何信用支持提供者或

Provider of such party or any applicable Specified Entity of such party: —

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

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

该方之任何相关特定机构发生: —

(1)解散(因结合、合并或并购者除外); (2)无资力或无力偿还债务, 或以书面承认其总体上无力偿还到期债务; (3)与其债权人、或为其债权人利益为转让债务、达成协议或和解; (4)(A)在该方成立或组设之司法管辖区或其总部或总办事处之司法管辖区内, 对其拥有主要破产、重整或监管权之管理者、监督者或任何其它同类官员针对该方提出或已提出法律程序, 按任何破产或无力偿付法律或影响债权人权利之其它类似法律寻求无力偿付或破产判决或任何其它救济方法, 或该方、其管理者、监督者或同类官员提交关于解散或清算之请求, 或(B)已经提出法律程序, 按任何破产或无力偿付法律或影响债权人权利之其它类似法律寻求无力偿付或破产判决或任何其它救济方法, 或就其解散或清算提出请求, 并且该程序或请求并非由以上(A)款中之人士或机构提出, 并且此一程序或请求: (I)导致无力偿付或破产之判决或救济命令, 或命其解散或清算之命令, 或(II)该程序或请求在提出后十五天内未被驳回、撤销、终止或禁止; (5)就其解散、官方接管或清算(因结合、合并或并购者除外)通过决议; (6)就该方或该方于全部或大部分之资产寻求或指派破产管理人、临时清算人、监督人、破产事务官、受托人、保管人或其它类似官员; (7)担保权益持有人取得其所有或大部分资产之占有, 或对其所有或大部分资产提起强制执行扣押、执行、查封、强制保管或其它法律程序, 并且该担保权益持有人持续占有此等资产, 或提起该法律程序后十五日内未被驳回、撤销、终止或禁止; (8)依任何司法管辖区之适用法律, 产生与任何上述第(1)至(7)款(包括该条款)所指事件有类似效果之事件或促使该事件之发生; 或(9)就上述任何行为采取行动、或对其表示同意、批准或默许; 或

(viii) **不承担债务之合并。**一方或该方之任何信用支持提供者与另一实体结合、合并或并购, 将其所有或大部分之资产转移给另一实体, 或重组、再设立或改组成为另一实体; 而在该结合、合并、并购、转让、重组、再设立或改组时: —

reconstitution:—

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

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

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

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

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

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

(ii) **Force Majeure Event.** After giving effect to any

(1) 最终、续存或受让之实体未能承担该方或信用支持提供者或其前手在本协议下或任何信用支持文件下之所有义务；或

(2) 任何信用支持文件之利益(在未得到另一方同意前)未能延伸以涵盖该最终之、续存之或受让之实体以履行本协议下之义务。

(b) **终止事件。** 一方，该方之任何信用支持提供者、或该方之任何特定机构(如有)在任何时候若发生以下(i)款所述之事件将构成(除第 5(c)条另有规定外)非法，若发生(ii)款所述之事件将构成不可抗力事件，若发生以下(iii)款所述之事件将构成税务事件，若发生(iv)款所述之事件将构成因合并造成之税务事件，若列明应予适用之情况下，发生以下(v)款所述之事件将构成因合并造成之信用事件，发生以下(vi)款所述之事件将构成其它终止事件：—

(i) **非法。** 于相关确认书或本协议其它部分规定之任何适用条款、中断保障或补偿条款生效后，倘因交易进行之后发生之任何事件或情况(一方或(如适用)该方之信用支持提供者采取之任何行动者除外)，使得以下行为按照任何适用法律(包括但不限于任何一方或任何信用支持提供者(视情况而定)需进行付款、交付和遵守协议时所在地国家之法律)于任何一日成为非法，或使得有关付款、交付和遵守协议如作出时将会成为非法(因违反第 4(b)条导致上述后果者除外)：—

(1) 该方(即受影响方)就该交易为款项支付及收受或交付之办事处，为该交易为付款或交付而履行任何绝对或有之义务，或接受支付或交付，或就该交易遵守本协议之任何其它重要条款；或

(2) 该方或该方之任何信用支持提供者(即受影响方)为有关该交易有关之信用支持文件中规定之该方或信用支持提供者之支付或交付而履行任何绝对或有之义务，或接受该信用支持文件下之支付或交付，或遵守该信用支持文件之任何其它重要条款；

(ii) **不可抗力事件。** 于适用相关确认书或本协议其

applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, by reason of force majeure or act of state occurring after a Transaction is entered into, on any day: —

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

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

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

(iii) **Tax Event.** Due to (1) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (2) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Settlement Date (A) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (B) receive a

它部分规定之任何应适用之条款、中断保障或补偿条款后，倘因交易进行之后任一日发生之不可抗力或政府行为：—

(1) 该方(即受影响方)就该交易为款项支付及收受或交付之办事处，无法为该交易进行支付或交付而履行任何绝对或或有之义务，或无法接受支付或交付，或无法就该交易遵守本协议之任何其它重要条款(或如该日提出该付款、交付或遵守协议之要求而无法为之)，或该办事处之履行、接受付款或遵守协议变为不可能或不可行(或如该日提出支付款项、交付或遵守协议之要求而该办事处按要求履约系不可能或不可行)；或

(2) 该方或该方之任何信用支持提供者(即受影响方)无法履行该方或该信用支持提供者于有关该等交易之任何信用支持文件下之绝对或或有之支付或交付义务，或无法接受支付或交付，或无法就该交易遵守本协议之任何其它重要条款(或如该日提出该付款、交付或遵守协议之要求而无法为之)，或该方或该信用支持提供者之履行、接受付款或遵守协议变为不可能或不可行(或如该日提出支付款项、交付或遵守协议之要求而该方或该信用支持提供者按要求履约系不可能或不可行)，

且该不可抗力或政府行为超出该办事处、该方或该信用支持提供者(视情况而定)之控制范围，并且该办事处、该方或信用支持提供者于尽所有合理努力(但该努力不应使该方或信用支持提供者承受损失，惟不重要及附带开支以外之损失除外)之后仍无法克服上述不能，不可能或不可行之情况；

(iii) **税务事件。** 由于：(1)在交易进行以后税务机关采取行动或于具合法管辖权之法庭提出之任何诉讼(不论该诉讼是否与本协议一方有关)，或(2)因税法之变更，一方(即受影响方)将有或有极大可能，于下一个预定结算日：(A)须按第 2(d)(i)(4)条就可获补偿税捐向另一方支付额外款项(有关第 9(h)条之利息除外)，或(B)收取一笔需从该项付款中扣减或预扣税款之款项(有关第 9(h)条之利息除外)，而无权按第 2(d)(i)(4)条之规定要求对方支付额外款项(基于第 2(d)(i)(4)(A)或(B)条之原因除外)；

payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 9(h)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

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

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

(1) X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or any substantial part of the assets comprising the business conducted by X as of the date of this Master Agreement) to, or reorganises, reincorporates or reconstitutes into or as, another entity;

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

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

(iv) **因合并造成之税务事件。**在下一个预定结算日，一方(“负担方”)将：(1)就第 2(d)(i)(4)条下之可获补偿税捐支付额外款项(有关第 9(h)条有关之利息除外)，或(2)收取一笔已在该付款中扣减或预扣任何税款之款项，而另一方不须就该税款支付额外款项(基于第 2(d)(i)(4)(A)或(B)条之原因除外)，以上任何一情况，皆由于一方将与另一实体结合、合并或并购，或将其所有或大部份资产(或本主协议日期起其从事之商业行为中运用之大部分资产)转移给另一实体，或重组、再设立或改组为另一实体(称为受影响方)所导致，并且该行动不构成不承担债务之合并；

(v) **因合并造成之信用事件。**若附约中规定“因合并造成之信用事件”适用于某方，而该方、该方之任何信用支持提供者或该方之任何相关特定机构(各为“X方”)发生指定事件(定义如下)，并且该指定事件不构成不承担债务之合并，而 X 方，或(如适用)X 方之继承、存续或受让之实体之信用情况，于考虑任何适用之信用支持文件之后仍严重低于指定事件发生之前 X 方之信用情况(于此等情况下，该方或其继承、存续或受让之实体，视情况而定将成为“受影响方”)。有关 X 方之“指定事件”系指：—

(1) X 方与另一实体结合、合并或并购，或将其所有或大部份资产(或本主协议日期起其从事之商业行为中运用之大部分资产)转移予另一实体，或重组、再设立或改组为另一实体；

(2) 任何人、其关系人或实体直接或间接取得：(A)选举 X 方董事会(或类似机构)大多数成员之股权之受益权，或(B)使其能对 X 方行使控制权之任何其它所有权之受益权；或

(3) X 方透过发行债务、负担债务或保证之方式对其资本结构进行重大改变，或(A)发行优先股或可转换或交换成债券或优先股之其它证券，或(B)如 X 方并非公司，发行其它形式之所有权益之方式对其资本结构进

the case of entities other than corporations, any other form of ownership interest; or

行重大改变；或

(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).

(vi) **其它终止事件。**若附约或任何确认书规定“其它终止事件”适用时，发生该些事件(在此情况下，受影响方或各受影响方将视附约或该确认书中有关其它终止事件之规定而定)。

(c) **Hierarchy of Events.**

(c) **事件之等级。**

(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.

(i) 任何构成或导致非法或不可抗力事件之事件或情况，如在其存续期间与未能付款或未能交付或未遵守本协议或信用支持文件(视情况而定)之任何其它重大规定有关，则将不构成或导致第 5(a)(i)、第 5(a)(ii)(1)或第 5(a)(iii)(1)条下之违约事件。

(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.

(ii) 除上述(i)款规定之情况外，若任何可构成或导致非法或不可抗力事件之事件或情况，亦构成违约事件或任何其它终止事件，该事件或情况将被视为违约事件或其它终止事件(视情况而定)，而不构成或导致非法或不可抗力事件。

(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.

(iii) 若任何可构成或导致不可抗力事件之事件或情况亦构成非法，该事件或情况将被视为非法(上述第(ii)款规定之情况除外)，而非不可抗力事件。

(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: —

(d) **等待期间之迟延付款及交付。**如就任何交易已发生非法或不可抗力事件且非法或不可抗力处于持续状态，该交易下须履行之各项付款或交付将迟延至以下时间始到期：—

(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

(i) 有关非法或不可抗力事件(视情况而定)适用之等待期间之后之首个当地营业日，在交付之情况下为首个当地交付日(或若无非法或不可抗力事件(视情况而定)之发生本应为当地营业日或当地交付日(视情况而定)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.

(ii) 于较早之情形，系指构成或导致非法或不可抗力事件之事件或情况终止之日，或如该日并非当地营业日或就交付而言并非当地交付日，则指次一构成当地营业日或当地交付日(视情况而定)之日。

(e) **Inability of Head or Home Office to Perform Obligations of Branch.** If (i) an Illegality or a Force

(e) **总部或总办事处无法履行分支机构之义务。**如(i)发生第 5(b)(i)(1)或第 5(b)(ii)(1)条下之任何非法或不可抗力

Majeure Event occurs under Section 5(b)(i)(1) or 5(b)(ii)(1) and the relevant Office is not the Affected Party's head or home office, (ii) Section 10(a) applies, (iii) the other party seeks performance of the relevant obligation or compliance with the relevant provision by the Affected Party's head or home office and (iv) the Affected Party's head or home office fails so to perform or comply due to the occurrence of an event or circumstance which would, if that head or home office were the Office through which the Affected Party makes and receives payments and deliveries with respect to the relevant Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and such failure would otherwise constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) with respect to such party, then, for so long as the relevant event or circumstance continues to exist with respect to both the Office referred to in Section 5(b)(i)(1) or 5(b)(ii)(1), as the case may be, and the Affected Party's head or home office, such failure will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1).

6. Early Termination; Close-Out Netting

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

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

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

(ii) **Transfer to Avoid Termination Event.** If a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, other

事件, 而有关办事处并非受影响方之总部或总办事处, (ii)有第 10(a)条规定之适用, (iii)另一方要求受影响方之总部或总办事处履行有关义务或遵守有关规定, 并且(iv)某一事件或情况导致受影响方之总部或总办事处未能按要求履约, 而若该受影响方透过该总部或总办事处就有关交易进行付款和交付, 该事件将构成或导致非法或不可抗力事件, 而且该未能履约之行为可构成该方第 5(a)(i)或第 5(a)(iii)(1)条下之违约事件, 则在第 5(b)(i)(1)或 5(b)(ii)(1)条(视情况而定)所述办事处及受影响方之总部或总办事处皆持续存在有关事件或情况之整个期间, 该未能履约之行为不构成第 5(a)(i)或第 5(a)(iii)(1)条下之违约事件。

6. 提前终止; 终止交易时之净额结算

(a) **违约事件发生后之终止权利。**在任何时候发生有关一方(以下简称“违约方”)之违约事件且在持续中, 另一方(以下简称“未违约方”)得以通知期不超过二十天之通知通知违约方有关违约事件, 并指定不早于通知生效之日期为有关所有未完成之交易之提前终止日。但如附约上规定“自动提前终止”适用于一方, 则该方发生第 5(a)(vii)(1)、(3)、(5)、(6)条规定, 或第 5(a)(vii)(8)条规定之类似之违约事件之时, 或在该方发生第 5(a)(vii)(4)条所规定或第 5(a)(vii)(8)条规定之类似之违约事件后提出有关诉讼或请求状之前, 有关所有未完成交易之提前终止日立即生效。

(b) **终止事件后之终止权利。**

(i) **通知。**若发生不可抗力事件以外之终止事件, 受影响方应在获悉该事件后立即通知另一方, 说明该终止事件之性质及各项受影响交易, 并按另一方合理之要求将有关终止事件之其它资料通知另一方。如发生不可抗力事件, 任一方应在获悉该事件后立即尽所有合理之努力通知另一方, 说明该不可抗力事件之性质, 并按另一方合理之要求将有关不可抗力事件之其它资料通知另一方。

(ii) **为避免终止事件而转让。**若发生税务事件, 而仅有一方受影响, 或发生因合并造成之税务事件而负担方系受影响方, 受影响方以拥有第 6(b)(iv)条下指定提前终止日之权利为条件, 应尽所有合理之努力(但该努力不应使该方承受损失, 惟不重要及附带开支以外之损失除外)于按第 6(b)(i)条发出通知后之

than immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

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

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

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

(iv) **Right to Terminate.**

(1) If: —

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

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

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

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

(A) Subject to clause (B) below, either party may, by not more than 20 days notice to the other party, designate (I) a day not earlier than the day on which such notice becomes effective as an Early Termination Date in respect of all Affected Transactions or (II) by

二十天内将其在本协议下就该受影响交易之所有权利义务转让予其它办事处或关联企业，以停止该终止事件。

若受影响方未能为上述之转让，其应于二十天内通知另一方，而另一方得于收到第 6(b)(i)条下之通知后三十天内进行上述转让。

一方按第 6(b)(ii)条所为之任何转让均须取得另一方之事前书面同意，如另一方依其当时有效之政策容许其与受让方按提出之条件进行交易时，另一方不得拒绝该转让。

(iii) **两个受影响方。**若发生税务事件而有两个受影响方时，各方应在第 6(b)(i)条下有关事件发生之通知作出后三十天内尽一切合理之努力达成协议，以避免该终止事件之发生。

(iv) **终止之权利。**

(1) 如果：—

(A) 受影响方于发出第 6(b)(i)条下之通知后三十天内，未能就所有受影响交易进行第 6(b)(ii)条下之转让或达成第 6(b)(iii)条下之协议(视情况而定)；或

(B) 发生因合并造成之信用事件或其它终止事件，或发生因合并造成之税务事件且负担方并非受影响方，

发生因合并造成之税务事件情况下之负担方，发生税务事件或其它终止事件并且有两个受影响方情况下之任何受影响方，或发生因合并造成之信用事件或其它终止事件并且仅有一个受影响方之情况下之未受影响方，得于相关终止事件仍在持续之情况下，以通知期不超过二十天之通知通知另一方，指定该通知生效后之任一一日作为所有受影响交易之提前终止日。

(2) 倘发生非法或不可抗力事件且该等事件仍持续存在，而适用之等待期间业已届满：—

(A) 除依下述(B)款，任何一方得以通知期不超过二十天之通知通知另一方，(I)就所有受影响交易指定该通知生效日之后之日为提前终止日，或(II)于通知中说明其指定提前终止日之受影响交易，就部分受影响

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

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

(c) **Effect of Designation.**

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

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

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

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

交易指定该通知生效日两个当地营业日之后之任一天作为提前终止日。另一方于收到仅就部分受影响交易指定提前终止日之通知后得通知指定方(该通知须于指定之提前终止日或之前生效)就任何或所有其它受影响交易指定同日为提前终止日。

(B) 任何受影响方(如非法或不可抗力事件系与该方或该方之任何信用支持提供者履行有关信用支持文件下支付或交付之义务有关,或与遵守有关信用支持文件任何其它重要条款有关)仅于另一方根据第 6(b)(iv)(2)(A)条就部分受影响交易指定提前终止日之后,始有权按第 6(b)(iv)(2)(A)条就第 5(b)(i)(2)条下之非法或第 5(b)(ii)(2)条下之不可抗力事件造成之结果指定提前终止日。

(c) **指定之效力。**

(i) 如按第 6(a)或 6(b)条发出通知指定提前终止日,则不论相关之违约事件或终止事件是否持续,该提前终止日将于指定之日期生效。

(ii) 当提前终止日发生或被有效指定时,无须再就已终止交易进行第 2(a)(i)或第 9(h)(i)条下之付款或交付,惟本协议之其它规定将不受影响。有关提前终止日应支付之款项(如有)将按第 6(e)和第 9(h)(ii)条之规定决定。

(d) **计算; 付款日。**

(i) **报告。**于提前终止日或其后合理可行之最短时间内,各方应按第 6(e)条之规定计算其帐目,并提供对方一份报告:(1)合理详细地说明此等计算(包括计算中使用之任何报价、市场数据或内部讯息), (2)说明应付之任何提前终止款项(于有两个受影响方之情况除外),以及(3)详细说明其应收款项应存入之有关账户。若于确定结算款项之过程中,就一项报价或市场数据无法自其来源得到书面确认,则获取该报价或市场数据一方之记录将成为该报价或市场数据存在及正确性之绝对证明。

of a quotation or market data obtained in determining a Close-out Amount, the records of the party obtaining such quotation or market data will be conclusive evidence of the existence and accuracy of such quotation or market data.

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

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

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

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

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

(2) **Two Affected Parties.** Subject to clause (3) below, if there are two Affected Parties, each party will determine an amount equal to the Termination Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an

(ii) **付款日。**就任何提前终止日所计算之提前终止款项将连同根据第 9(h)(ii)(2)条应付之任何利息款项, (1)于因违约事件指定提前终止日时, 应于付款通知书生效当日支付, 及(2)于因终止事件指定提前终止日时, 应于付款通知书生效日后之第二个当地营业日支付(或如有两个受影响方, 则于第二方根据第(i)款所提供之报告生效日之后支付)。

(e) **提前终止之付款。**如发生提前终止日时, 就提前终止日应缴付之款项(如有)(以下简称“提前终止款项”)将根据本第 6(e)条确定且须遵守第 6(f)条之规定。

(i) **违约事件。**如提前终止日系因违约事件产生, 提前终止款项等于(1)以下(A)项与(B)项之和: (A)为未违约方就每一项终止交易或一组终止交易(视情况而定)决定之结算款项(无论是正数还是负数)相当于终止货币之金额; (B)为积欠未违约方之未付款项相当于终止货币之金额, 减去(2)积欠违约方之未付款项相当于终止货币之金额。如该提前终止款项为正数, 应由违约方向未违约方支付; 如该提前终止款项为负数, 未违约方向违约方支付该金额之绝对值。

(ii) **终止事件。**如提前终止日系因终止事件产生: —

(1) **一个受影响方。**除依下述第(3)款之规定, 倘只有一个受影响方, 提前终止款项应按第 6(e)(i)条决定, 惟有关违约方与未违约方之事项将分别视为对受影响方及未受影响方之事项。

(2) **两个受影响方。**除依下述第(3)款之规定, 如有两个受影响方, 各方将就每一项终止交易或一组终止交易(视情况而定)决定一笔相等于终止货币金额之结算款项(无论是正数还是负数), 而提前终止款项将等于(A)以下(I)项与(II)项之和: (I)为(由“X”方)决定之较高之金额与(由“Y”方)决定之较低金额之差额之一半; (II)积欠 X

amount equal to (A) the sum of (I) one-half of the difference between the higher amount so determined (by party "X") and the lower amount so determined (by party "Y") and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.

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

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

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

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

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

(v) *Pre-Estimate*. The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is

方之未付款项之相当于终止货币之金额，减去 (B) 积欠 Y 方之未付款项之相当于终止货币之金额。如提前终止款项为正数，Y 方向 X 方支付；如提前终止款项为负数，X 方向 Y 方支付该金额之绝对值。

(3) *市场中间价事件*。如该终止事件系非法或不可抗力事件，则提前终止款项将根据上述第 (1) 及第 (2) 款 (视情况而定) 决定，但决定方在确定结算款项时将：—

(A) 若自一个或数个第三方 (或自决定方之任何关系人) 获取报价，则该第三方或关系人应：(I) 不考虑决定方目前之信用情况或任何现存之信用支持文件，及 (II) 提供中间市场报价；及

(B) 于其它情况下，使用市场中间价，并且毋须考虑决定方之信用情况。

(iii) *破产调整*。如提前终止日因自动提前终止适用于一方而产生，提前终止款项将根据相关法律而得为适当之调整，以反映自有关提前终止日起至第 6(d)(ii) 条决定之付款日止之期间内，一方于本协议下对另一方支付 (并为该方保留) 之任何款项或其它交付。

(iv) *就非法或不可抗力事件所为之调整*。一方或该方之信用支持提供者未能于到期日支付任何提前终止款项，并且此一未能按期付款之事件或情况如发生于有关交易下之付款、交付或遵守协议之义务时将构成或导致非法或不可抗力事件，此一行将不构成第 5(a)(i)、或 5(iii)(1) 条下之违约事件。该款项系：(1) 累计利息，及倘随后由于违约事件、因合并造成之信用事件或其它终止事件致所有未完成交易成为受影响交易而导致提前终止日之发生，而应被视为积欠另一方之未付款项；及 (2) 根据第 9(h)(ii)(2) 条计算利息。

(v) *预先估计*。双方同意，按第 6(e) 条支付之款项系对亏损之合理预先估计而非违约金。支付该数额之目的系为补偿交易之未能实现及保障未来损失之

payable for the loss of bargain and the loss of protection against future risks, and, except as otherwise provided in this Agreement, neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions.

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

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

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

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

7. Transfer

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

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

(b) a party may make such a transfer of all or any part of its interest in any Early Termination Amount payable to it by a Defaulting Party, together with any amounts payable on or

风险。除非本协议另有规定，任何一方均无权因终止交易之终止而收取任何额外赔偿。

(f) **抵销。**在出现违约方或发生因合并造成之信用事件而产生一个受影响方之情况下，或发生任何其它终止事件而所有未完成交易成为受影响交易时，一方(以下简称“付款人”)应向另一方(以下简称“收款人”)支付之任何提前终止款项将按未违约方或未受影响方(视情况而定，以下简称“X”方)之选择(无需事先通知违约方或受影响方(视情况而定))下用于扣减抵销收款人应向付款人支付之任何其它款项(以下简称“其它款项”)(无论其是否基于本协议所产生、到期的或或有的，亦无论该债务之币别、支付地点或债务入帐之地点)。于任何其它款项以此方式抵销时，此等其它款项之付款义务将被立即全部解除。X方将通知另一方根据本第 6(f)条所为之任何抵销。

为此项之目的，X 方得以善意依合理之商业程序购得相关数额该种货币时之汇率将提前终止款项或其它款项(或此款项之相关部分)兑换成另一币别之金额。

倘一项债务尚未确定，X 方得以善意预估该债务并就该预估数目进行抵销，惟该债务确定后应由相关交易方对交易他方为相关入帐。

本第 6(f)条之规定不具有设定负担或其它担保权益之效力。本第 6(f)条不影响，并且额外存在于任何一方得随时享有之(不论系依法律、契约或其它规定)任何抵销权、抵充权、账户合并权、留置权、保留权或预扣或类似之权利或要求。

7. 转让

依第 6(b)(ii)条之规定并于相关法律允许之范围内，未经另一方事先书面同意，本协议任何一方不得转让本协议或本协议下任何权益或义务(不论以担保或其它方式)，惟下列情况除外：—

(a) 一方得透过与另一实体结合或合并，并购另一实体，或对另一实体转让其所有或大部份资产以转让本协议(但不影响本协议下任何其它权利或救济措施)；及

(b) 一方得转让违约方应向其支付之任何提前终止款项之全部或部分之权益，以及其根据第 8、第 9(h)及第 11 条就上述款项享有之利息及任何其它权利。

with respect to that interest and any other rights associated with that interest pursuant to Sections 8, 9(h) and 11.

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

8. Contractual Currency

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

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

(c) **Separate Indemnities.** To the extent permitted by applicable law, the indemnities in this Section 8 constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply

与第 7 条不符之任何转让均为无效。

8. 约定货币

(a) **以约定货币进行之付款。**本协议下各款项均应以本协议规定之相关货币(以下简称“约定货币”)支付。在适用法律许可之范围内,本协议下以约定货币付款之任何义务如透过约定货币以外之其它货币偿付,不视为已清偿或满足,惟若该等偿付款项被应收款方以善意按合理之商业程序将本协议下应付之所有数额全数兑换为约定货币并实际收讫,则不受此限。如因任何原因,所收约定货币少于本协议下应付之约定货币额,按要求付款一方于适用法律许可之范围内,立即以约定货币支付该等额外数额以补足缺额。如因任何原因,所收约定货币超过本协议下应付之约定货币额,收款方应立即将该等超出额退回。

(b) **判决。**在相关法律许可之范围内,如任何判决或命令中明示以约定货币以外之货币支付:(i)本协议下所积欠任何款项;(ii)有关本协议任何提前终止之任何款项或(iii)另一法院所为有关支付上述第(i)或第(ii)款所载款项之判决或命令,则请求补偿之一方于收取其根据判决或命令有权获得之总金额后,有权立即自另一方获得该方因以其它货币付款而少收之约定货币,或立即向另一方退回因以其它货币付款而多收之约定货币,倘该缺额或超出系因约定货币为该判决或命令之目的兑换为判决或命令中之货币时之汇率,与该方以善意按合理之商业程序以实际收到之判决或命令中之货币款项购买约定货币时能够实际获得之汇率不同而导致或产生。

(c) **分别赔偿。**在适用法律许可之范围内,本第 8 条之赔偿构成分别和独立之义务,有别于本协议下其它义务,并将作为分别和独立之理由而得据以执行,无论应收款一方是否给予任何宽容均得以适用,并不受就本协

notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

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

9. Miscellaneous

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

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

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

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

(e) **Counterparts and Confirmations.**

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

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

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement

will not constitute a waiver of any right, power or privilege and will not affect the right of the party to whom such right, power or privilege is owed to enforce the same by legal proceedings.

(d) **亏损之证明.** 为本第 8 条之目的, 倘一方得证明若实际发生兑换或购买, 该方将蒙受损失, 则该方视为已尽对亏损之证明责任。

9. 其它规定

(a) **完整协议.** 本协议构成双方就本协议下相关事宜之全部协议及了解。各方承认其于签订本协议时并无依赖任何口头或书面之陈述、担保或其它保证(本协议中规定或提及者除外), 并就以上所述抛弃原本得享有之一切权利和救济, 惟本协议之内容不得限制或排除一方之任何诈欺责任。

(b) **修订.** 除非以书面形式(包括以传真证明之书面文件)并经双方签署, 或经交换电传或透过电子讯息系统交换之电子讯息所确认, 任何与本协议有关之修订、修改或弃权均为无效。

(c) **义务之续存.** 于不影响第 2(a)(iii)条及第 6(c)(ii)条之情况下, 双方在本协议下之义务于任何交易终止后仍然有效。

(d) **累积补救.** 除本协议另有规定外, 本协议规定之权利、权力、补救及特权具累积性, 并不排除法律规定之任何权利、权力、补救及特权。

(e) **副本和确认.**

(i) 本协议(及有关本协议之各修订、修改及弃权)得以副本签署及交付(包括以传真及电子讯息系统发送之副本), 各副本均被视为正本。

(ii) 双方自其同意各交易之条款起(不论以口头或其它方式为之), 受各交易条款之法律约束。于实际可行之情况下, 应尽快签署交易之确认书, 并得以副本签署及交付(包括以传真发送), 或由交换电传或透过电子讯息系统交换电子讯息或交换电子邮件而建立确认书, 上述各种方式均足以证明具有约束力之协议补充文件之存在。双方将于该通讯中或透过其它有效途径叙明, 任何该等复本、电传、电子讯息或电子邮件均构成一项确认书。

(f) **非弃权.** 未能或延迟行使与本协议有关之任何权

will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

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

(h) **Interest and Compensation.**

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

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

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

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

(A) a party does not pay any amount that, but for Section 2(a)(iii), would have been payable, it will, to the extent permitted by applicable law and subject to Section 6(c) and clauses (B) and (C) below, pay interest (before as well as after judgment) on that amount to the other

利、权力或特权不得被视为弃权，单独或部份行使任何权利、权力或特权不得视为放弃对以后或进一步对该权利、权力或特权之行使，或任何其它权利、权力或特权之行使。

(g) **标题。**本协议所用标题仅为方便参考，并不影响本协议之解释。

(h) **利息及补偿。**

(i) **提前终止之前。**就有关交易发生或有效地指定提前终止日之前：—

(1) **违约付款之利息。**如一方未能履行付款义务，该方应于适用法律允许范围内并依第 6(c) 条之规定，(于判决之前及之后)于另一方要求时，向另一方就逾期款项按违约利率以与欠款相同之货币支付利息，计息之期间系自原定付款到期日(包括当日)起至实际付款日(不包括当日)为止(但不包括按以下第(3)(B)或第(C)款就逾期款项支付利息或补偿之期间)。

(2) **违约交付之补偿。**如一方未能履行任何交付义务，该方应于另一方要求时：(A)须按相关确认书或本协议之其它规定对另一方补偿，并且(B)除相关确认书或本协议另有规定外，于适用法律允许范围内并依第 6(c)条之规定，(于判决之前及之后)向另一方按违约利率就交付义务之公平市值并以与该款项相同之货币支付利息，计息之期间系自原定交付日(包括当日)起至实际交付日(不包括当日)为止(但不包括根据以下第(4)款就逾期款项支付利息或补偿之期间)。以上所述之公平市值系由有权收受交付之一方自原定交付日起，以善意按合理之商业程序确定之。

(3) **迟延付款之利息。**如：—

(A) 因第 2(a)(iii)条之规定，一方原应支付而未支付之任何款项，该方应于适用法律允许范围内并依第 6(c)及以下第(B)和第(C)款之规定，(于判决之前及之后)于另一方要求时(于该款项应支付时)以与该款项相同之

party on demand (after such amount becomes payable) in the same currency as that amount, for the period from (and including) the date the amount would, but for Section 2(a)(iii), have been payable to (but excluding) the date the amount actually becomes payable, at the Applicable Deferral Rate;

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

(C) a party fails to make any payment due to the occurrence of an Illegality or a Force Majeure Event (after giving effect to any deferral period contemplated by clause (B) above), it will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as the event or circumstance giving rise to that Illegality or Force Majeure Event continues and no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the date the party fails to make the payment due to the occurrence of the relevant Illegality or Force Majeure Event (or, if later, the date the payment is no longer deferred pursuant to Section 5(d)) to (but excluding) the earlier of the date the event or circumstance giving rise to that Illegality or Force Majeure Event ceases to exist and the date during the period upon which an Event of Default or Potential Event of Default with respect to that party occurs (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (B) above), at the Applicable Deferral Rate.

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

(A) a party does not perform any obligation that, but for Section 2(a)(iii), would have been

货币按适用之迟延利率支付利息，计息期间自因第 2(a)(iii)条之规定而未支付之原应支付款项之日(包括当日)起至实际应支付之日(不包括当日)为止；

(B) 若某项付款按第 5(d)条之规定迟延支付时，原应支付该款项之一方将于适用法律允许范围内并依第 6(c)条之规定，于该方未发生及持续存在违约事件或潜在之违约事件之整个期间内，(于判决之前及之后)于另一方要求时(在该款项应予支付时)以与该迟延款项相同之货币就迟延款项按适用之迟延利率支付利息，计息期间自因第 5(d)条规定而未支付之原应支付款项之日(包括当日)起，至该付款依据第 5(d)条规定不再迟延交付或该方在迟延期间发生违约事件或潜在之违约事件之日(以较早之日期为准，不包括当日)为止；或

(C) 如一方(于以上第(B)款下之任何迟延期生效后)因发生非法或不可抗力事件未能支付任何款项，该方将于适用法律允许范围内并依第 6(c)条之规定，于导致非法或不可抗力事件之事件或情况持续存在并且该方未发生并无持续存在之违约事件或潜在之违约事件之整个期间，(于判决之前及之后)于另一方要求时以与该逾期款项相同之货币就欠款按适用之迟延利率支付利息，计息之期间系自该方因非法或不可抗力事件无法付款之日(或其后之日，系指该付款根据第 5(d)条规定不再迟延支付之日)(包括当日)起，至导致该非法或不可抗力事件之事件或情况不复存在之日或该方在迟延期间发生违约事件或潜在之违约事件之日(以较早之日期为准，不包括当日)为止(但不包括有关逾期款项之利息或补偿根据以上(B)款支付之期间)。

(4) *迟延交付之补偿。* 如： —

(A) 因第 2(a)(iii)条之规定，一方未履行原应交付之义务；

required to be settled by delivery;

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

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

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

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

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

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

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

10. Offices; Multibranch Parties

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

(B) 依第 5(d)条规定之迟延交付；或

(C) 一方于任何适用之等待期间届满之后因非法或不可抗力事件而无法进行交付，

应(或按规定本应)进行交付之一方应于适用法律允许范围内并依第 6(c)条之规定，按有关确认书或本协议其它规定于另一方要求时(于上述(A)条和(B)款之情况下，系指应交付之后)对另一方补偿并支付利息。

(ii) **提前终止。**就有关交易发生或有效地指定提前终止日之时：—

(1) *未付款项。*于确定有关交易之未付款项时，在适用法律允许范围内，应就任何应付款项或交付义务之公平市值以该款项相同之货币按适用之结算利率支付利息，计算利息之期间为有关义务应履行之日(或应履行但因第 2(a)(iii)条或第 5(d)条之规定而未履行时，其应履行之日) (包括当日)至相关提前终止日(不包括当日)为止。

(2) *提前终止款项之利息。*如提前终止款项于该提前终止日到期，该款项将于适用法律允许范围内，与以终止货币于该提前终止日(包括当日)至该款项实际支付之日(不包括当日)之期间内，按适用之结算利率计算之利息(于判决之前及之后)一并支付。

(iii) **利息之计算。**任何根据本第 9(h)条支付之利息将每日按复利以及实际之日数计算之。

10. 办事处；拥有多个办事处之交易方

(a) 如附约规定适用第 10(a)条之规定，则透过办事处而非总部或总办事处达成交易之一方兹向另一方声明并约定：尽管登记交易之办事处地点与其成立或组成之司法管辖区不同，但就追索权而言该方之义务与透过总部或总办事处达成交易情况下之义务相同，但根据第 5(d)条迟延履行之付款或交付则例外，于此例外情况下，于迟延之整个期间内一方对另一方之总部或总办事不拥有追索权。本声明和约定将被视为双方达成交易之每一日由每一方重述。

long as the payment or delivery is so deferred. This representation and agreement will be deemed to be repeated by each party on each date on which the parties enter into a Transaction.

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

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

11. Expenses

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

12. Notices

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

(i) if in writing and delivered in person or by courier, on the date it is delivered;

(ii) if sent by telex, on the date the recipient's answerback is received;

(iii) if sent by facsimile transmission, on the date it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(b) 如附约规定一方为拥有多个办事处之交易方，依下述第(c)款之规定，该方得透过在附约中列明之任何办事处达成交易、登记交易、履行或接受任何交易项下之款项或交付(除非双方另有书面约定，否则不得透过其它办事处)。

(c) 一方达成交易之办事处即系有关确认书中为该方指定之或由双方另以书面约定之办事处，如该方之办事处未于有关确认书中指定或由双方另以书面约定，则以其总部或总办事处为办事处。除双方另有书面约定外，一方达成交易之办事处亦是其登记交易之办事处以及其履行或接收任何交易项下之款项或交付之办事处。除依第6(b)(ii)条之规定外，未经另一方事先书面同意，任何一方不得更改其登记交易之办事处以及其履行或接收任何交易项下之款项或交付之办事处。

11. 费用

违约方将依请求，对他方赔偿所有合理代垫费用(包括律师费、签署费及印花税)并使其免受损害，该费用系因该方因执行和保障违约方为一方当事人之本协议或任何信用支持文件下之权利所产生，或因任何交易提前终止而产生之费用，包括但不限于催收费用。

12. 通知

(a) **生效。**有关本协议之任何通知或其它通讯得以下列所述任何方式送达下列地址或号码(第5条或第6条项下之通知或其它通讯不得以电子讯息或电子邮件送达者除外)或根据提供之电子讯息系统或电子邮件送达(详见附约)，通知之生效日期如下：—

(i) 如以书面方式及透过专人或快递服务交付，则为交付当日；

(ii) 如用电传发送，则为收到收件人之回讯之日；

(iii) 如用传真发送，则为收件方之负责员工收到字迹清楚之传真当日(双方同意，发件方就收件方是否收到该通知应负举证责任，发件方传真机打印之传真报告将不足以尽该举证责任)；

(iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered or its delivery is attempted;

(v) if sent by electronic messaging system, on the date it is received; or

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

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

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

13. Governing Law and Jurisdiction

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

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

(i) submits: —

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

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

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

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

(c) **Service of Process.** Each party irrevocably appoints the Process Agent, if any, specified opposite its name in the

(iv) 如用挂号邮递(如在外国, 则为航空邮件)或同等之邮递方式发出(需送件收据), 则为邮件交付或提出交付当日;

(v) 如用电子讯息传送, 则为收到电子讯息当日; 或

(vi) 如用电子邮件传送, 则为交付当日,

如果交付(或提出交付)或收件当日(按情况适用)并非当地营业日或该讯息在当地营业日结束后始交付(或提出交付)或收到(按情况适用), 则该讯息将视为于该日之后之第一个当地营业日送达并生效。

(b) **更改详情。**一方得向他方通知, 更改收取通知或其它通讯之地址、电传或传真号码或电子讯息系统或电子邮件。

13. 准据法和司法管辖区

(a) **准据法。**本协议应依附约中叙明之法律管辖并按该等法律解释。

(b) **司法管辖区。**就因本协议所产生之或相关之任何争议有关之任何诉讼、法律行动或程序(以下简称“诉讼”), 各方不可撤回地遵守下列规定: —

(i) 接受管辖: —

(1) 如本协议明确规定由英国法律管辖, (A)倘该诉讼不涉及公约法院, 则接受英国法院之非专属管辖, 及(B)倘该诉讼涉及公约法院, 则接受英国法院之专属管辖; 或

(2) 如本协议明确规定由纽约州法律管辖, 则接受纽约州法院及位于纽约市曼哈顿区之美国联邦地方法院之非专属管辖;

(ii) 放弃任何对该等法院选择诉讼地点提出异议之权利, 放弃因该等诉讼于不便利之法院进行而作出请求, 并放弃基于该等法院就有关诉讼对该方没有管辖权之异议权; 及

(iii) 同意在适用法律允许范围内于任何一个或多个司法管辖区提起诉讼不排除在任何其它司法管辖区提起诉讼之权利。

(c) **法律程序文件之送达。**一方不可撤回地指派列于附约之与其名对列之送达代收人(如有)为其在任何诉讼中

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

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

14. Definitions

As used in this Agreement: —

"Additional Representation" has the meaning specified in Section 3.

"Additional Termination Event" has the meaning specified in Section 5(b).

"Affected Party" has the meaning specified in Section 5(b).

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

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

"Agreement" has the meaning specified in Section 1(c).

"Applicable Close-out Rate" means: —

(a) in respect of the determination of an Unpaid Amount: —

收受送达。如因任何原因,任何一方之送达代收人未能履行上述工作,该方应立即通知另一方,并在三十日内指派另一方接受之替代送达代收人。双方不可撤回地同意以第 12(a)(i)条、第 12(a)(iii)或第 12(a)(iv)条规定之通知方式送达法律程序文件。本协议之规定不影响任何一方以适用法律许可之任何其它方式收受送达之权利。

(d) **放弃豁免权。**在适用法律许可之范围内,各方不可撤回地放弃有关其本身、其收入和资产(不考虑其用途或拟进行之用途)之基于主权或其它类似权利而享有之所有下列豁免权:(i)诉讼,(ii)任何法院之司法管辖,(iii)禁止令或实际履行或收回财产之命令,(iv)扣押资产(不论在判决之前或之后)及(v)任何司法管辖区内任何针对其本身之收入或资产判决之执行或强制执行,并且双方不可撤回之同意,在适用法律许可之范围内,其将不在任何诉讼中要求该等豁免。

14. 定义

在本协议内,下列词语有如下之定义:—

"其它陈述"其含义如第 3 条之规定。

"其它终止事件"其含义如第 5(b)条之规定。

"受影响方"其含义如第 5(b)条之规定。

"受影响交易"指(a)因非法、不可抗力事件、税务事件或因合并造成之税务事件所构成之任何终止事件,而受该终止事件影响之所有交易(第 5(b)(i)(2)条之非法或第 5(b)(ii)(2)条之不可抗力事件下之受影响交易指所有交易,除非有关信用支持文件仅提及某些交易,在信用支持文件将受影响交易限定为某些交易时,则指该被限定之交易,如有关信用支持文件构成一项交易之确认书,则指该项交易)及(b)对于任何其它终止事件,指所有交易。

"关系人"除非附约另有规定,就某一实体或人而言,指直接或间接对其进行控制、直接或间接受其控制、或直接或间接与其受同一控制之下之任何实体或自然人。本定义中之"控制"任何实体或人系指拥有该实体或人之多数投票权。

"协议"其含义如第 1(c)条之规定。

"适用之结算利率"指:—

(a) 于确定以下之未付款项时:—

- (i) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;
- (ii) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate;
- (iii) in respect of obligations deferred pursuant to Section 5(d), if there is no Defaulting Party and for so long as the deferral period continues, the Applicable Deferral Rate; and
- (iv) in all other cases following the occurrence of a Termination Event (except where interest accrues pursuant to clause (iii) above), the Applicable Deferral Rate; and
- (b) in respect of an Early Termination Amount: —
- (i) for the period from (and including) the relevant Early Termination Date to (but excluding) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable: —
- (1) if the Early Termination Amount is payable by a Defaulting Party, the Default Rate;
- (2) if the Early Termination Amount is payable by a Non-defaulting Party, the Non-default Rate; and
- (3) in all other cases, the Applicable Deferral Rate; and
- (ii) for the period from (and including) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable to (but excluding) the date of actual payment: —
- (1) if a party fails to pay the Early Termination Amount due to the occurrence of an event or circumstance which would, if it occurred with respect to a payment or delivery under a Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and for so long as the Early Termination Amount remains unpaid due to the continuing existence of such event or circumstance, the Applicable Deferral Rate;
- (2) if the Early Termination Amount is payable by a Defaulting Party (but excluding any period in respect of which clause (1) above applies), the Default Rate;
- (3) if the Early Termination Amount is payable by a Non-defaulting Party (but excluding any period in respect of which clause (1) above applies), the Non-default Rate; and
- (4) in all other cases, the Termination Rate.
- (i) 对于违约方应支付或交付之义务(或因第 2(a)(iii)条之规定未支付或交付而原应支付或交付之义务), 系指违约利率;
- (ii) 对于应由未违约方支付或交付之义务(或因第 2(a)(iii)条之规定未支付或交付而原应支付或交付之义务), 系指未违约利率;
- (iii) 对于根据第 5(d)条而迟延履行之义务, 如无违约方且于迟延期间内, 系指适用之迟延利率; 及
- (iv) 于发生终止事件(除按上述第(iii)款累计利息之情况外)后之其它一切情况, 则指适用之迟延利率; 及
- (b) 对于提前终止款项: —
- (i) 自相关提前终止日(包括当日)至该款项应付之日为止(其系依第 6(d)(ii)条之规定而确定)(不包括当日)之期间内: —
- (1) 如应由违约方支付提前终止款项, 指违约利率;
- (2) 如应由未违约方支付提前终止款项, 指未违约利率;
- (3) 于其它情况下, 则指适用之迟延利率; 及
- (ii) 自该款项应付之日(其系依第 6(d)(ii)条之规定而确定)(包括当日)至实际付款日(不包括当日)之期间内: —
- (1) 造成一方不能支付提前终止款项之事件或情况系因发生于某项交易下之付款或交付将构成或导致非法或不可抗力事件, 当该提前终止款项因该事件或情况之持续存在而仍未支付时, 系指适用之迟延利率;
- (2) 如应由违约方支付提前终止款项(但不包括上述(1)款适用之期间), 系指违约利率;
- (3) 如应由未违约方支付提前终止款项(但不包括上述(1)款适用之期间), 系指未违约利率; 及
- (4) 于其它一切情况, 系指终止利率。

“Applicable Deferral Rate” means: —

“适用之迟延利率”指: —

(a) for the purpose of Section 9(h)(i)(3)(A), the rate certified by the relevant payer to be a rate offered to the payer by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market;

(b) for purposes of Section 9(h)(i)(3)(B) and clause (a)(iii) of the definition of Applicable Close-out Rate, the rate certified by the relevant payer to be a rate offered to prime banks by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer after consultation with the other party, if practicable, for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market; and

(c) for purposes of Section 9(h)(i)(3)(C) and clauses (a)(iv), (b)(i)(3) and (b)(ii)(1) of the definition of Applicable Close-out Rate, a rate equal to the arithmetic mean of the rate determined pursuant to clause (a) above and a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount.

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

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

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

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

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

(a) 就第 9(h)(i)(3)(A)条之目的而言, 指有关付款人认证之有关银行同业市场上一家主要银行就相关货币隔夜存款给予付款人之利率, 该银行由付款人依善意选择以便获得可合理反映该有关市场当时状况之有代表性之利率;

(b) 就第 9(h)(i)(3)(B)条和适用之结算利率之定义中第(a)(iii)款之目的而言, 指有关付款人认证之为有关银行同业市场上一家大型银行就相关货币隔夜存款给予主要银行之利率, 该银行由付款人经与另一方(如可行)协商后, 依善意选择以便获得可合理反映该有关市场当时状况之有代表性之利率; 及

(c) 就第 9(h)(i)(3)(C)条以及适用之结算利率之定义中第(a)(iv)、第(b)(i)(3)和第(b)(ii)(1)款之目的而言, 指根据以上(a)款确定之利率和有关收款人(经其认证之)如取得有关金额须支付之资金成本(以年利率计)(无需提供任何实际成本之证明或证据)之算术平均值。

“自动提前终止”其含义如第 6(a)条之规定。

“负担方”其含义如第 5(b)(iv)条之规定。

“税法变更”指在双方达成有关交易之后制定、发布、执行、批准、变更或修订法律(或任何法律之适用或官方解释)。

“结算款项”对于每笔终止交易或每组终止交易及某一决定方而言, 指为决定方替换或提供与下述(a)、(b)项相同之经济效果在当时之情况下决定方所付或将付之损失或费用(以正数表达), 或由决定方所实现或将实现之收益(以负数表达): (a)该项终止交易或该组终止交易之主要条款, 包括关于该终止交易或该组终止交易若未出现提前终止日时, 根据第 2(a)(I)款之规定本应由各方在此日之后所为之付款或交付(假设已满足第 2(a)(iii)条中规定之先决条件); 以及(b)各方对于该终止交易或该组终止交易之选择权。

决定方(或其代理人)将以善意并按合理之商业程序确定任何结算款项, 以达到合理之商业效益。决定方可为任何一组终止交易或一笔终止交易(但总数不得少于所有被终止交易)确定结算款项。每笔结算款项应在提前终止日确定, 或如以该日为之在商业上非合理可行者, 亦可按提前终止日之后商业上合理之日确定。

Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

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

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

(i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;

(ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or

(iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party's Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

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

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

Commercially reasonable procedures used in determining a

在决定结算款项时不应考虑有关某一笔终止交易或一组终止交易之未付款项和第 11 条所指之律师费及实付费用。

决定方可在确定结算款项时参考任何有关信息，包括但不限于以下一类或多类信息：—

(i) 一个或多个第三方提供之有关替换交易之(确定或参考性的)报价，第三方在提供这些报价时可以考虑决定方在提供报价时之信用状况以及决定方与提供报价之第三方间之任何有关文件，包括信用支持文件之条款；

(ii) 一个或多个第三方提供之相关市场数据之数据，包括但不限于相关利率、价格、收益率、收益率曲线、波动性、利差、相关性以及相关市场之其它相关市场数据；或

(iii) 源于内部之(包括源于决定方之任何关系人)之以上(i)和(ii)款所述类型之数据，但该数据应是决定方在评估同类交易之日常商务过程中使用之同类数据。

决定方将按本定义中之标准及程序考虑以上(i)款之报价或以上(ii)款之相关市场数据，除非决定方以善意合理地认为无法获得此类报价或有关市场数据或其产生之结果可能不符合本定义下之标准。决定方在参考以上(i)、(ii)和(iii)款所述之数据时亦可参考资金成本，但以其使用之其它数据未将资金成本纳入考虑或计算为前提。根据以上(i)款提供报价或根据以上(ii)款提供市场数据之第三方可包括但不限于相关市场之交易商、相关产品之最终使用者、数据销售者、经纪商以及市场数据之其它来源。

在不重复计算根据以上(i)、(ii)和(iii)款所述之数据或其它有关数据计算出之款项之前提下，并在商业上合理可行时，决定方在计算结算款项时可另外参考就有关一笔终止交易或一组终止交易而终止、清算或重建任何避险安排所产生之任何亏损或成本(或因此引致之任何收益)。

确定结算款项合理之商业程序可包括：—

Close-out Amount may include the following: —

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

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

“Confirmation” has the meaning specified in the preamble.

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

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

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

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

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

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

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

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

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

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

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

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

“Early Termination Date” means the date determined in

(1) 适用按以上(ii)款由第三方提供之相关市场数据或适用按以上(iii)款源自内部之数据、订价或其它评估模式，惟该等数据、数据、订价或模式亦系在决定结算款项时，决定方在日常商业过程中评估与第三方进行类似交易时所采用者；及

(2) 根据一笔终止交易或一组终止交易之类型、复杂性、规模和数量对该笔或该组终止交易适用不同之评估办法。

“确认书”其含义如前言之规定。

“同意”包括同意、批准、行动、授权、豁免、通知、备案、注册或外汇管制同意。

“约定货币”其含义如第 8(a)条之规定。

“公约法院”指需在诉讼中适用 1968 年《关于民商事案件之司法管辖以及承认和执行判决之布鲁塞尔规定》第 17 条以及 1988 年《关于民商事案件之司法管辖以及承认和执行判决之卢根诺公约》第 17 条之任何法院。

“因合并造成之信用事件”其含义如第 5(b)条之规定。

“信用支持文件”指本协议规定为信用支持文件之任何协议或文件。

“信用支持提供者”其含义如附约之规定。

“交叉违约”指第 5(a)(vi)条规定之事件。

“违约利率”指相等于收款人(经其认证之)取得有关资金之须支付资金成本(以年利率计)(无需对任何实际成本提供证明或证据)加 1%。

“违约方”其含义如第 6(a)条之规定。

“指定事件”其含义如第 5(b)(v)条之规定。

“决定方”指确定结算款项之当事方。

“提前终止款项”其含义如第 6(e)条之规定。

“提前终止日”指按第 6(a)条或第 6(b)(iv)条决定之日。

accordance with Section 6(a) or 6(b)(iv).

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

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

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

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

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

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

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

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

“Local Business Day” means (a) in relation to any obligation under Section 2(a)(i), a General Business Day in the place or places specified in the relevant Confirmation and a day on which a relevant settlement system is open or operating as specified in the relevant Confirmation or, if a place or a settlement system is not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) for the purpose of determining when a Waiting Period expires, a General Business Day in the place where the event or circumstance that constitutes or gives rise to the Illegality or Force Majeure Event, as the case may be, occurs, (c) in relation to any other payment, a General Business Day in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment and, if that currency does not have a single recognised principal financial centre, a day on which the settlement system necessary to accomplish such payment is open, (d) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), a General Business Day

“电子讯息”不包括电子邮件，但包括以标记语言表达之文件。**“电子讯息系统”**将据此予以解释。

“英国法律”指英格兰及威尔士之法律。**“英国之”**将据此予以解释。

“违约事件”其含义如第 5(a)条及附约(按情况适用)之规定。

“不可抗力事件”其含义如第 5(b)条之规定。

“一般营业日”指商业银行营业(包括处理外汇交易及外币存款)之日。

“非法”其含义如第 5(b)条之规定。

“可获补偿税捐”指任何税捐，不包括原本不会对本协议下之付款征收，而仅因为征收该税捐之政府或税务机关之管辖地与该款项收款人或与该款项收款人有关之个人之间现在或之前有连系(此连系包括但不限于因该收款人或有关人员为该管辖地之公民或居民，或正在或已在该管辖地组织或从事贸易或其它业务，或在该管辖地有永久机构或固定之营业地而产生之连系，但此连系不包括仅因该收款人或有关人员签署、交付本协议或信用支持文件或按本协议或信用支持文件履行义务或收款，或执行本协议或信用支持文件而产生之连系)始征收之税捐。

“法律”包括任何条约、法律、规则或条例(及经任何有关政府税务机关之惯例所修改之税务事宜)，并且**“非法”**将据此予以解释。

“当地营业日”(a)对于第 2(a)(i)条款下任何义务，指有关确认书规定之地点之一般营业日并且有关确认书规定之有关结算系统营业之日，或如无规定相关地点或结算系统，则双方以其它书面方式同意之或按本协议所载或包括之规定而决定之地点；(b)于确定等待期间何时届满时，指构成或导致非法或不可抗力事件(视情况而定)之事件或情况发生地之一般营业日；(c)对于其它任何付款，指有关账户之所在地之一般营业日，如账户所在地不同则指付款货币之主要金融中心(如有)之一般营业日，或如果该货币并无单独获认可之主要金融中心，则指结算系统为完成该付款而需营业之日；(d)对于任何通知或其它通讯，包括第 5(a)(I)条下之通知，指收款人提供之接收通知地之一般营业日(或若非某一事件或情况之发生而本应为一般营业日之日，条件系此一事件或情况如发生于某项交易之付款、交付或遵行协议之行为时将构成非法或不可抗力)，如为第 2(b)条下之通知则指有关新账户之所在地之一般营业日；及(e)对于第 5(a)(v)(2)条，则指该特定交易之履行地之一般营业日。

(or a day that would have been a General Business Day but for the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event) in the place specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (e) in relation to Section 5(a)(v)(2), a General Business Day in the relevant locations for performance with respect to such Specified Transaction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“rate of exchange” includes, without limitation, any premiums and costs of exchange payable in connection with

“当地交付日”就第 5(a)(i)和 5(d)条而言,指相关确认书规定地点之完成有关交付所必须之结算系统得依市场惯例为完成有关交付而通常营业之日,或如果确认书未规定地点,则指按有关交付之市场惯例决定之地点。

“主协议”其含义如前言之规定。

“不承担债务之合并”其含义如第 5(a)(iii)条规定之事件。

“多项交易付款净额结算”其含义如第 2(c)条之规定。

“未受影响方”若仅有一个受影响方时,系指另一方。

“未违约利率”指经未违约方认证之于相关银行同业市场上一家主要银行就有关货币之隔夜存款给予未违约方之利率,该银行应由未违约方以善意选择以获得可合理反映该市场当时状况之有代表性之利率。

“未违约方”其含义如第 6(a)条之规定。

“办事处”指一方之分支机构或办事处,有可能是该方之总部或总办事处。

“其它款项”其含义如第 6(f)条之规定。

“收款人”其含义如第 6(f)条之规定。

“付款人”其含义如第 6(f)条之规定。

“潜在违约事件”指任何经发送通知或随时间经过(或两者同时发生)可构成违约事件之任何事件。

“诉讼”其含义如第 13(b)条之规定。

“送达代收人”其含义如附约之规定。

“兑换率”包括但不限于就购买或兑换约定货币应付之任何溢价或兑换成本。

the purchase of or conversion into the Contractual Currency.

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

“Schedule” has the meaning specified in the preamble.

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

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

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

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

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

“有关管辖区”指有关一方而言, (a)该方成立、组成、被管理及控制或视作有其席位之管辖区, (b)该方为本协议之目的而采取行动之办事处之管辖区, (c)一方签署本协议之管辖区, 及(d)若与支付款项有关, 则为该等支付款项之管辖区。

“附约”其含义如前言之规定。

“预定结算日”指有关交易根据第 2(a)(i)条应为付款或交付之日。

“特定机构”其含义如附约之规定。

“特定负债”除非附约另有规定, 指有关借款之任何义务 (不论是现有的或将来的、或有的或其它, 亦不论系主债务人或担保人之债务或其它义务)。

“特定交易”除非附约另有规定, 指(a)本协议一方(或该方之任何信用支持提供者或该方之任何适用特定机构)与本协议另一方(或该方之任何信用支持提供者或该方之任何适用特定机构)现在或日后达成之任何交易(包括与任何此等交易有关之协议), 该特定交易不包括本协议下之交易, 但属于: (i)利率交换交易、交换选择权、利率基础交换交易、远期利率交易、商品交换交易、商品选择权、股权或股权指数交换交易, 股权或股权指数选择权、债券选择权、利率选择权、外汇交易、上限交易、下限交易、上下限交易、货币交换交易、交叉货币利率交换交易、货币选择权、信用保障交易、信用交换交易、信用违约交换交易、信用违约选择权、全部报酬交换交易、信用利差交易、买回交易、逆买回交易, 买回/卖回交易, 债券交易、气候指数交易或证券、商品或其它其它金融工具或利益之远期买卖交易(包括以上任何交易之选择权); 或(ii)任何与(i)款中所列交易类似之, 目前或将来在金融市场上重复进行之交易(包括该协议中之条款和条件), 并且该交易系以一种或多种利率、货币、商品、股票或其它股权凭证、债务证券或其它债权凭证、经济指数或经济风险或价值之测量方法或其它基准作为付款和交易基础之远期、交换、期货、选择权或其它衍生性商品交易, (b)任何上述交易之组合, 及(c)任何本协议或有关确认书中规定为特定交易之任何其它交易。

“印花税”指任何印花税、登记税、文件税或类似之税捐。

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

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

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

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

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

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

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

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

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

“印花税司法管辖区”其含义如第 4(e)条之规定。

“税捐”指印花税、登记税、文件税或类似之税捐以外之与本协议下任何付款有关之任何政府或其它税务机关征收之任何性质之现存或将征收之税捐、税赋、进口税、关税、费用、提列或其它费用(包括其利息、违约金及附加费)。

“税务事件”其含义如第 5(b)条之规定。

“因合并造成之税务事件”其含义如第 5(b)条之规定。

“已终止交易”对于任何提前终止日而言(a)如因非法或不可抗力事件产生, 指根据第 6(b)(iv)条所为之通知中规定之所有受影响交易, (b)如因任何其它终止事件产生, 指所有受影响之交易及(c)如因违约事件产生, 指载明提前终止日之通知生效前, 或如适用自动提前终止指在该提前终止日之前有效之所有交易。

“终止货币”系指(a)于附约中叙明为终止货币, 而该货币可无限制地取得, 指该货币; (b)否则, 如本协议系以英国法律为准据法, 指欧元, 或如本协议系以纽约州法律为准据法, 则指美元。

“终止货币等值额”对于以终止货币为单位之任何款项, 指该终止货币额, 对于以终止货币以外货币为单位(“其它货币”)之任何数额, 则指为决定之一方于有关提前终止日, 或如果有关结算款项在较后日期始确定, 则于该日用以购买该数额之其它货币所需之终止货币, 购买时使用之汇率应为(按以下方式选择之)外汇机构之即期汇率: 在该日上午十一时或左右(以该外汇机构所在之城市为准), 在有关提前终止日或其较后日期以终止货币购买其它货币时, 通常适用之汇率。如果只有一方有义务按第 6(e)条决定, 该方应以善意选择外汇机构, 如果不只一方则以各方同意之方式选择。

“终止事件”指非法、不可抗力事件、税务事件或因合并造成之税务事件, 或(如规定适用)因合并造成之信用事件或其它终止事件。

“终止利率”指相当于各方(经该方认证)取得有关金额须支付之成本(无需提供任何实际成本之证明或证据)之算术平均值之年利率。

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

“Transaction” has the meaning specified in the preamble.

“Unpaid Amounts” owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii) or due but for Section 5(d)) to such party under Section 2(a)(i) or 2(d)(i)(4) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date, (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii) or 5(d)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered and (c) if the Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions, any Early Termination Amount due prior to such Early Termination Date and which remains unpaid as of such Early Termination Date, in each case together with any amount of interest accrued or other compensation in respect of that obligation or deferred obligation, as the case may be, pursuant to Section 9(h)(ii)(1) or (2), as appropriate. The fair market value of any obligation referred to in clause (b) above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it will be the average of the Termination Currency Equivalents of the fair market values so determined by both parties.

“Waiting Period” means: —

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

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

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

“门坎金额”如于附约规定，其含义如附约之规定。

“交易”其含义如前言之规定。

“未付款项”对于提前终止日而言，指积欠任何一方之下列各项之总和：(a)就所有已终止交易而言，指按第 2(a)(i)或 2(d)(i)(4)条应于该提前终止日当日或之前支付予该方但在该提前终止日仍未付(或原本应付，但因第 2(a)(iii)条未付或第 5(d)款到期未付)之数额，及(b)对于每一笔已终止交易，就第 2(a)(i)条之下之每一项需在该终止日或之前向该方交付而未交付(或本应交付但因第 2(a)(iii)条或第 5(d)条而未交付)之义务而言，指应该或原本应该在原定交付日交付之实物之公平市值，以及(c)如因违约事件、因合并造成之信用事件或其它终止事件导致提前终止日，致所有未完成交易变成受影响交易，指该提前终止日前到期，而截至该提前终止日仍未清偿之任何提前终止款项。于以上任何一种情况下均包括根据第 9(h)(ii)(1)或(2)条(视情况而定)决定之有关该义务或迟延履行之义务(视情况而定)累计之利息或其它补偿。上述(b)款所指之任何义务之公平市值将由根据第 6(e)条由有义务为决定之一方以善意并使用合理之商业程序于原定交付日确定，或如各方均有责任，则为各方按上述办法确定之公平市值之平均终止货币等值额。

“等待期间”指：—

(a) 除第 5(b)(i)(2)条实际上于当日要求有关付款、交付或遵守协议(此时不适用等待期间)之情况以外，就第 5(b)(i)条下之事件或情况而言，指发生事件或情况之后之三个当地营业日(或若非该事件或情况之发生本应为当地营业日之日)；及

(b) 除第 5(b)(ii)(2)条规定之实际上于当日要求有关付款、交付或遵守规定(此时不适用等待期间)之情况以外，就第 5(b)(ii)条事件或情况而言，指发生事件或情况后之八个当地营业日(或若非该事件或情况之发生本应为当地营业日之日)。

兹证明双方已于下列日期签署本文件，生效日为本文件首页载明之日期。

| | | | |
|-----------------|-----------------|-----------|-----------|
| _____ | _____ | _____ | _____ |
| (Name of Party) | (Name of Party) | (签署方名称) | (签署方名称) |
| By: _____ | By: _____ | 签名: _____ | 签名: _____ |
| Name: | Name: | 姓名: | 姓名: |
| Title: | Title: | 职位: | 职位: |
| Date: | Date: | 日期: | 日期: |

ISDA®

International Swaps and Derivatives Association, Inc.

SCHEDULE
to the
2002 Master Agreement

dated as of

between _____ and _____
("Party A") ("Party B")

[established as a [COUNTERPARTY TYPE]] [established as a [COUNTERPARTY TYPE]]
[with company number [NUMBER]] [with company number [NUMBER]]
[under the laws of [JURISDICTION]] [under the laws of [JURISDICTION]]
[acting through its [BRANCH]]# [acting through its [BRANCH]]#

Part 1. Termination Provisions.

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

Section 5(a)(v),
Section 5(a)(vi),
Section 5(a)(vii),
Section 5(b)(v),

and in relation to Party B for the purpose of: —

Section 5(a)(v),
Section 5(a)(vi),
Section 5(a)(vii),
Section 5(b)(v),

- (b) "Specified Transaction" [will have the meaning specified in Section 14 of this Agreement.][means]*

- (c) The "Cross-Default" provisions of Section 5(a)(vi) [will][will not]* apply to Party A
[will][will not]* apply to Party B

["Specified Indebtedness" [will have the meaning specified in Section 14 of this Agreement.][means]*

"Threshold Amount" means]**

Include if applicable.

* Delete as applicable.

** Include if Cross-Default will apply to either Party A or Party B.

ISDA®

国际掉期及衍生工具协会

2002 主协议附约

____年____月____日

_____与_____
("A方") ("B方")

[成立之[有关方之类型]] [成立之[有关方之类型]]
[公司号码[号码]] [公司号码[号码]]
[依照[司法管辖区]法律] [依照[司法管辖区]法律]
[透过其[办事处]交易]# [透过其[办事处]交易]#

第一部分 终止条款。

- (a) "特定机构" 就 A 方而言，为下列条款之目的指：—

第 5(a)(v)条，
第 5(a)(vi)条，
第 5(a)(vii)条，
第 5(b)(v)条，

就 B 方而言，为以下条款之目的指：

第 5(a)(v)条，
第 5(a)(vi)条，
第 5(a)(vii)条，
第 5(b)(v)条，

- (b) "特定交易"[其含义如本协议第 14 条之规定。][指]*

- (c) 第 5(a)(vi)条“交叉违约” [将会][不会]*适用于 A 方
[将会][不会]*适用于 B 方

["特定负债"[其含义如本协议第 14 条之规定。][指]*

"门坎金额"指]**

视情况包括。

* 视情况删除。

** 如交叉违约适用于 A 方或 B 方，应包括。

- (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: —.....]**
- (d) 第 5(b)(v) 条“**因合并造成之信用事件**”
[将会][不会]*适用于 A 方
[将会][不会]*适用于 B 方
- (e) 第 6(a) 条“**自动提前终止**”
[将会][不会]*适用于 A 方
[将会][不会]*适用于 B 方
- (f) “**终止货币**”[其含义如本协议第 14 条之规定。][指]*
- (g) **其它终止事件**将会[不会]*适用。[下列事件构成其它终止事件：—.....]*
- 为上述终止事件之目的，受影响方指：—.....]**

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.]*

第二部分 税务陈述****

- (a) **付款人陈述。**为 本协议第 3(e) 条之目的[, A 方及 B 方不为任何陈述。][:—

[[i)] [A 方][及][B 方][各自] 陈述如下：—

经有关政府财税部门之惯例修改之任何有关管辖地之任何适用之法律均不要求自该方根据本协议向另一方支付之任何款项(本协议第 9(h) 条下之利息除外)中扣减或预扣任何税捐。在作出此项陈述时，该方可以依赖：(i) 另一方按本协议第 3(f) 条所为任何陈述之正确性；(ii) 本协议第 4(a)(i) 条或 4(a)(iii) 条中所载之约定之履行，以及另一方按本协议第 4(a)(i) 条或 4(a)(iii) 条所提供之任何文件之正确性及有效性；及(iii) 本协议第 4(d) 条中所载另一方约定之履行，但是，若该方依赖上述第(ii) 款时，另一方为免对其法律或商业地位造成严重损害而未递交第 4(a)(iii) 条项下之表格或文件则不构成对本陈述之违反。]*

* 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.

* 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。

[[(ii)] [Party A] [and] [Party B] [each] make[s] the 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.] [:—

[[(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

[[(ii)] [A 方][及][B 方][各自] 陈述如下: —
.....
.....
.....]]*

- (b) **收款人陈述。** 为本协议第 3(f)条之目的[, A 方及 B 方不为任何陈述。]: —

[[(i)] [A 方][及][B 方][各自] 陈述如下: —

该方具有完全资格取得适用于本协议下收到或将收到之款项之特定条约中规定之“营业利润”或“工商业利润”条款(视情况而定), 及“利息”条款或“其它收入”条款(如有)所赋予之利益, 并且该款项与该方在特定司法管辖区之永久营业地从事之商业或贸易并无任何关联。

“**特定条约**”就 A 方而言, 指
.....

“**特定司法管辖区**”就 A 方而言, 指
.....

“**特定条约**”就 B 方而言, 指
.....

“**特定司法管辖区**”就 B 方而言, 指
.....]]*

[[(ii)] [A 方][及][B 方][各自] 陈述如下: —

其就本协议收到或将收到之每一笔款项将会与该方于特定司法管辖区从事之贸易或商业行为具有实际关联。

“**特定司法管辖区**”就 A 方而言, 指
.....

“**特定司法管辖区**”就 B 方而言, 指
.....]]*

[[(iii)] [A 方][及][B 方][各自] 陈述如下: —

就美国联邦税务目的而言, 其为“美国人”(其含义如美国财政法规第 1.441-4(a)(3)(ii)条之规定)]*

[[(iv)] [A 方][及][B 方][各自] 陈述如下: —

* Delete as applicable.

* 視情况删除。

following representation: —

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.] *

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

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.] *

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

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.] *

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

.....
.....
.....] *

Part 3. Agreement to Deliver Documents.

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: —

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

| Party required to deliver document | Form/Document/ Certificate | Date by which to be delivered |
|------------------------------------|----------------------------|-------------------------------|
| | | |
| | | |
| | | |
| | |] * |

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

| 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] * |

* Delete as applicable.

就美国联邦税务目的而言，其为一“外国人之非美国办事处”(其含义如美国财政法规第 1.441-4(a)(3)(ii) 条之规定)] *

[[(v)] [A 方][及][B 方][各自] 陈述如下: —

有关向美国以外之地址为付款或向美国以外之账户汇入资金事宜，就美国联邦税务目的而言，其为一“外国人之非美国办事处”(其含义如美国财政法规第 1.441-4(a)(3)(ii) 条之规定)] *

[[(vi)] [A 方][及][B 方][各自] 陈述如下: —

就美国联邦税务目的而言，其为一“外国人”(其含义如美国财政法规第 1.6041-4(a)(4) 条之规定)] *

[[(vii)] [A 方][及][B 方][各自] 陈述如下: —

.....
.....
.....] *

第三部分 同意交付文件。

为第 4(a)(i) 和第 4(a)(ii) 条之目的，各方同意交付下列相关之文件: —

(a) 须交付之税务表、文件或证书为[: 无] [: —

| 须交付文件一方 | 表格/文件/证书 | 交付之期限 |
|---------|----------|-----------|
| | | |
| | | |
| | | |
| | |] * |

(b) 其它须交付之文件为[: 无] [: —

| 须交付文件一方 | 表格/文件/证书 | 交付之期限 | 是否为第 3(d) 条下之陈述所涵盖 |
|---------|----------|-------|--------------------|
| | | | [是][否] |
| | | | [是][否] |
| | | | [是][否] |
| | | | [是][否] |
| | | | [是][否] * |

* 视情况删除。

Part 4. **Miscellaneous.**

第四部分 **其它规定。**

- (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.]**

- (a) **通知地址。**为本协议第 12(a)条之目的: —

A 方收取通知或通讯之地址为: —

地址:
收件人:
电传号码: 应答码:
传真号码: 电话号码:
电子邮件:
电子讯息系统数据:
特殊指示:

B 方收取通知或通讯之地址为: —

地址:
收件人:
电传号码: 应答码:
传真号码: 电话号码:
电子邮件:
电子讯息系统数据:
特殊指示:

- (b) **送达代收人。**为本协议第 13(c)条之目的: —

A 方指定其送达代收人如下: [不适用][.....]*
B 方指定其送达代收人如下: [不适用][.....]*

- (c) **办事处。**第 10(a)条之规定将[会][不会]*适用于本协议。

- (d) **拥有多个办事处之交易方。**为本协议 10(b)条之目的: —

A 方[并非拥有多个办事处之交易方。][A 方系拥有多个办事处之交易方, 可以透过以下任何办事处进行交易: —

.....
.....]*

B 方[并非拥有多个办事处之交易方。][B 方系拥有多个办事处之交易方, 可以透过以下办事处进行交易: —

.....
.....]*

- [(e) **计算代理人。**除非有关交易之确认书另有规定, 否则计算代理人为.....。]**

* Delete as applicable.

** Include if applicable.

* 視情况删除。

** 視情况包括。

| | |
|---|--|
| <p>[(f)] Credit Support Document. Details of any Credit Support Document: — [none][.....]*</p> | <p>[(f)] 信用支持文件。 信用支持文件之详情如下: — [无][.....]*</p> |
| <p>[(g)] Credit Support Provider. Credit Support Provider means in relation to Party A, [none][.....]*</p> | <p>[(g)] 信用支持提供者。 就 A 方而言, 信用支持提供者指, [无][.....]*</p> |
| <p>Credit Support Provider means in relation to Party B, [none] [.....]*</p> | <p>就 B 方而言, 信用支持提供者指, [无][.....]*</p> |
| <p>[(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)] *</p> | <p>[(h)] 准据法。 本协议将以[英国法律][纽约州法律(不包括法律选择原则)]为准据法并按其解释]*。</p> |
| <p>[(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] [.....])] *</p> | <p>[(i)] 付款净额结算。 “多项交易付款净额结算”[为本协议第 2(c)条之目的不适用。][为本协议第 2(c)条之目的适用于[所有交易][下列交易或交易组: —] (于各情况下自[本协议之日期起][.....])]*</p> |
| <p>[(j)] “Affiliate” [will have the meaning specified in Section 14 of this Agreement.] [means]*</p> | <p>[(j)] “关系人”[其含义如本协议第 14 条之规定。][指]*</p> |
| <p>[(k)] Absence of Litigation. For the purpose of Section 3(c): —</p> <p>“Specified Entity” means in relation to Party A,</p> <p>“Specified Entity” means in relation to Party B,</p> | <p>[(k)] “不存在诉讼”为第 3(c)条之目的: —</p> <p>“特定机构”就 A 方而言, 指</p> <p>“特定机构”就 B 方而言, 指</p> |
| <p>[(l)] No Agency. The provisions of Section 3(g) [will][will not]* apply to this Agreement.</p> | <p>[(l)] 无代理。 第 3(g)条之规定将[会][不会]*适用于本协议。</p> |
| <p>[(m)] Additional Representation [will] [will not] * apply. [For the purpose of Section 3 of this Agreement, the following will constitute an Additional Representation: —</p> | <p>[(m)] 其它陈述将[会][不会]*适用。[为本协议第 3 条之目的, 以下将构成其它陈述: —</p> |
| <p>[[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): —</p> <p>[(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</p> | <p>[[i)] 当事人间之关系。 一方于每次进行交易当日应被视为向另一方为如下陈述(各方之间存在明确规定与此相反之义务之书面协议之情况除外): —</p> <p>[(1)] 无信赖。 该方代表自己行事, 已自行独立决定进行该交易, 并自行判断及于认为必要时听取顾问之意见后决定该交易是否恰当适宜。该方并未依赖来自于另一方之任何(书面或口头之)通讯并不以此作为进行该交易之投资意见或建议,</p> |

* Delete as applicable.

* 视情况删除。

deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction, it being understood that information and explanations related to the terms and conditions of a Transaction will not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party will be deemed to be an assurance or guarantee as to the expected results of that Transaction.

[(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.

该方理解有关交易条款和条件之讯息和解释将不作为进行该交易之投资意见或建议。自另一方收到之任何(书面或口头之)通讯不被视为对该交易预计效益之担保或保证。

[(2)] *评估和理解。* 该方得评估该交易之价值并(自己或透过独立之专业意见之协助)得以理解并且理解及接受该交易之条款、条件和风险。该方能承担并将承担该交易之风险。

[(3)] *地位。* 另一方就该交易而言并非该方之受托人或顾问。]]*

[[n)] **谈话录音。** 各方(i)同意对交易双方之交易、营销和其它人员进行之有关本协议或任何潜在交易之电话谈话进行录音, (ii)同意自从其有关人员就此等录音取得任何必要之同意及签发必要之通知, 及(iii)同意于适用法律允许范围内此等录音得于任何诉讼中提交作为证据。]**

第五部分 其它规定。

| | | | |
|---------------------------------------|---------------------------------------|--------------------------------|--------------------------------|
| _____ (Name of Party) | _____ (Name of Party) | _____ (签署方名称) | _____ (签署方名称) |
| By: _____ Name: Title: Date: | By: _____ Name: Title: Date: | 签名: _____ 姓名: 职位: 日期: | 签名: _____ 姓名: 职位: 日期: |

* Delete as applicable.
** Include if applicable.

* 視情况删除。
** 視情况包括。