

## Swiss Master Agreement for OTC Derivative Instruments

dated \_\_\_\_\_

between \_\_\_\_\_  
("Party A")

and \_\_\_\_\_  
("Party B")

### 1. Scope

- 1.1 This Swiss Master Agreement together with the elections and amendments made in Annex 1 (Elections) hereto (the "**Master Agreement**") shall replace any existing 2003 Swiss Master Agreement entered into between Party A and Party B at an earlier date and shall govern all OTC derivative transactions entered into between Party A and Party B under this Master Agreement or under such earlier 2003 Swiss Master Agreement (each such OTC derivative transaction entered into under this Master Agreement or an earlier 2003 Swiss Master Agreement a "**Transaction**").
- 1.2 All Transactions are entered into on the basis of the understanding that this Master Agreement and all documents or other confirming evidence relating to such Transactions (each a "**Confirmation**") form a single agreement between the parties (the "**Agreement**").

### 2. Interpretation

- 2.1 The relevant parts of Annex 2 (SMA Definitions) shall apply to each Transaction.
- 2.2 In the event of any inconsistency between any provisions of Annex 1 (Elections) of this Master Agreement and the other provisions of this Master Agreement, Annex 1 (Elections) shall prevail. In the event of any inconsistency between the provisions of any Confirmation applicable to the relevant Transaction and this

Master Agreement, such Confirmation shall prevail for the purposes of the relevant Transaction. In the event of any inconsistency between any Confirmation and the relevant parts of Annex 2 (SMA Definitions) of this Master Agreement applicable to such Transaction, the terms of such Confirmation shall prevail.

### **3. Execution of Transactions**

- 3.1 The execution of this Master Agreement does not constitute an obligation to enter into any Transaction.
- 3.2 The parties may enter into a Transaction without any formalities. After a Transaction has been entered into, the Calculation Agent shall send a Confirmation to the counterparty.

### **4. Representations, non-reliance and risk disclosure**

- 4.1 Each party represents to the other party that:
  - a) except where a party is a natural person, it is duly organised and validly existing under the laws of the jurisdiction of its incorporation or organisation;
  - b) it has the power to enter into the Master Agreement, any Transactions thereunder, to execute any documentation relating to this Master Agreement and such Transactions and to perform its obligations thereunder;
  - c) such execution and performance does not violate any laws applicable to it and is in compliance with any provision of its constitutional documents and any other legal or regulatory obligations applicable to it;
  - d) where necessary, the execution of this Master Agreement, the Transactions thereunder and any other documentation relating to this Master Agreement has been duly authorised by the competent persons or bodies; and
  - e) where necessary, it has obtained all governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document.
- 4.2 Where a party is subject to specific investment regulations applicable to derivative transactions, such party represents to the other party, in addition to any other representations under this section 4, that it understands the regulations applicable to it and it enters into Transactions under this Master Agreement in compliance with such regulations. Such party further represents that it will keep its responsible employees informed of the applicable regulations and that it will monitor compliance with such regulations. Such party undertakes to compensate the other party in full for any loss which it may suffer as a result of any breach of such investment regulations.
- 4.3 By signing this Master Agreement, each party represents to the other party, in addition to any other representations under this section 4, that it has made its

own independent decisions whether any Transaction entered into under this Master Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary and that it understands the types of transactions covered by this Master Agreement and the risks involved with the execution of such transactions. Notwithstanding the foregoing, each party shall comply with the relevant duties of disclosure applicable to it.

- 4.4 Any representations given under this Master Agreement shall be deemed to be repeated by each party giving such representation on each date on which a Transaction is entered into.

## **5. Payments and deliveries**

- 5.1 Each party shall discharge its payment obligations and other obligations owed to the other party no later than on the due dates specified in the Confirmation.
- 5.2 If any of the agreed due dates falls on a date that is not a Banking Day, the payment shall be made on the first following day that is a Banking Day unless that day falls in the next calendar month, in which case that date will be the first preceding day that is a Banking Day.
- 5.3 All payments shall be made in the currency specified in the Confirmation free of any charge, in such manner as is customary for payments in that currency and in funds that are freely transferable on the due date of such payment obligation.
- 5.4 If both parties have to make payments in respect of the same Transaction on the same day and in the same currency, the party owing the higher amount shall pay the difference between the two amounts owed. The Calculation Agent shall give timely notice to such party of the difference payable to the other party prior to the due date for the payment.
- 5.5 If any party is, or becomes obligated to deduct or withhold any tax or levy from its payments that is not recoverable by the other party, the party making the deduction or withholding shall pay to the other party such additional amounts as are necessary to ensure that the net amount received by the other party after such deduction or withholding equals the amount that would have been received by the other party in the absence of such deduction or withholding.
- 5.6 If a party fails to make a delivery on the date such delivery was due, the other party has the right to buy or borrow the relevant Underlyings from third parties. The defaulting party will be obliged to indemnify the other party for all the costs and any direct loss incurred in connection therewith.
- 5.7 Any obligation to make payments or deliveries under this Master Agreement shall be subject to the condition precedent that no Event of Default or potential Event of Default has occurred in respect of the other party, provided that the condition

precedent in this section 5.7 does not apply to a payment or delivery owing by a party if the other party has satisfied in full all its payment and delivery obligations under this Agreement. This section 5.7 shall not apply in respect of any amount due and payable as a result of a termination of this Master Agreement or Transactions entered into hereunder pursuant to section 7 (Early termination) below.

## 6. Events of default and termination events

- 6.1 The occurrence of any of the following events with respect to a party to this Master Agreement shall constitute an event of default (an "**Event of Default**") with respect to such party:
- a) failure by a party to make, when due, any payment or delivery as required under the terms of this Agreement, provided that such failure is not remedied on or before the first Banking Day after notice of such failure is given to the defaulting party;
  - b) failure by a party to perform any other obligation under this Agreement if such failure is not remedied on or before 30 days after notice of such failure is given to the defaulting party;
  - c) any representation made or repeated or deemed to have been made or repeated under this Agreement by a party proves to have been incorrect or misleading when made or repeated or deemed to have been made or repeated;
  - d) failure by a party to this Agreement to perform any obligation under any other agreement entered into between the parties to this Agreement if such failure is not remedied within the applicable grace period relevant for such other agreement after notice of such failure is given to the defaulting party;
  - e) failure by a party to this Agreement to perform any obligation under any other agreement entered into between such party and a third party in an aggregate amount of not less than the Threshold Amount if such failure is not remedied within the applicable grace period relevant for such other agreement after notice of such failure is given to the defaulting party, provided that this provision shall not apply if the parties fail to specify a Threshold Amount in Annex 1 (Elections);
  - f) failure by the Credit Support Provider to comply with the terms of the relevant Credit Support Document, provided that any applicable grace period specified in such Credit Support Document has expired;
  - g) a regulatory authority or court withdraws a party's licence or prohibits such party to carry on its business;

- h) a legal or economic restructuring of a party (including, but not limited to, any merger, take-over or spin-off) which results in a material deterioration of its creditworthiness;
- i) an application is made for the institution of any composition proceedings or any measures set out under section 6.1 (n) below or for any similar insolvency-related proceedings in respect of a party, provided that such process is not dismissed, discharged or stayed within 15 days of the institution thereof;
- j) a secured party takes possession of all or substantially all of the assets of a party or a creditor institutes debt enforcement proceedings regarding the seizing, the sequestration or the attachment of assets or a similar legal process against a party, provided that such process is not dismissed, discharged or stayed within 15 days of the institution thereof;
- k) a party becomes insolvent or is unable to pay its debts or admits its inability generally to pay its debts as they become due;
- l) where a party is a natural person, such party dies, is declared incompetent or has a conservator or guardian appointed to oversee his or her affairs;
- m) where a party is licensed as a bank under the Swiss Federal Banking Act of 8 November 1934 or as a broker-dealer under the Swiss Federal Stock Exchanges and Securities Trading Act of 24 March 1995, the Swiss Financial Market Supervisory Authority (FINMA) institutes with respect to such party either (i) re-organisation measures affecting rights of creditors generally or (ii) protective measures to the effect of prohibiting it to make or receive payments or settle securities transactions, terminating its business operations or granting a payment moratorium; or
- n) a party (i) is declared bankrupt, (ii) has an order for liquidation issued with respect to it or (iii) has a composition agreement leading to an assignment of all or part of its assets approved with respect to it.

6.2 The occurrence of any of the following events with respect to a party to this Master Agreement shall constitute a termination event (a "**Termination Event**") with respect to such party:

- a) any provision of a Transaction under this Master Agreement, or the performance of any obligation in respect of a Transaction becomes illegal under any applicable law, rule or regulation or its interpretation by any governmental or regulatory authority or any competent court;
- b) by reason of act of state or force majeure either party is prevented from making or receiving payments or deliveries in respect of any Transaction under this Master Agreement, or from doing so on time;

- c) a tax or any other levy is imposed in respect of a Transaction (e.g. to the effect that any amount is deducted or withheld from any payment under this Agreement or a party is required to pay additional amounts under section 5.5 above), such that the parties would not have entered into the Transaction had they known about the imposition of such tax or levy; or
- d) any event specified as an Additional Termination Event in Annex 1 (Elections) of this Master Agreement.

## 7. Early termination

- 7.1 If any of the Events of Default specified in section 6.1 (a) to (m) has occurred with respect to a party and such default has not been remedied within the applicable grace period, the non-defaulting party may terminate all Transactions outstanding under the Master Agreement by notifying the defaulting party. Such notice shall be effective as of the date it is validly delivered or, if a later date is specified, as of such later date (the date when such termination notice is effective the "**Early Termination Date**").
- 7.2 If the Event of Default specified in section 6.1 (n) has occurred with respect to a party, an Early Termination Date shall be deemed to have been designated automatically (without delivery of an actual notice) as of the time immediately prior to the occurrence of such event and all outstanding Transactions under the Master Agreement shall be terminated automatically as of such date.
- 7.3 If any of the Termination Events specified in section 6.2 (a) and (b) has occurred with respect to Party A or Party B, either party may terminate the affected Transactions by designating an Early Termination Date in respect of such affected Transactions and notifying the other party accordingly, provided that such Early Termination Date may not be a date before the notice has been validly delivered.
- 7.4 If any of the Termination Events specified in section 6.2 (c) and (d) has occurred with respect to Party A or Party B, each party affected by such Termination Event may terminate the affected Transactions by designating an Early Termination Date in respect of such affected Transactions and notifying the other party accordingly, provided that such Early Termination Date may not be a date before the notice has been validly delivered.
- 7.5 As of the occurrence or effective designation of an Early Termination Date, no further payments or deliveries that would have become due on or after the Early Termination Date must be made in respect of the Transactions to be terminated in accordance with this section 7 (such Transactions the "**Terminated Transactions**"). Instead, any such obligations shall be replaced by the obligation to make the payments following early termination as specified in section 8 (Payments following early termination).

## **8. Payments following early termination**

- 8.1 In case of an early termination in accordance with section 7 (Early termination) above, all obligations in respect of the Terminated Transactions under this Agreement shall be replaced by an obligation to pay a liquidation value in accordance with this section 8. Such liquidation value shall be denominated in the Termination Currency.
- 8.2 The non-defaulting party or, as applicable, the party terminating the Agreement in accordance with section 7 (Early termination) above (hereafter for the purposes of this section 8 "X") shall calculate the liquidation value of the Terminated Transactions. Such amount shall be an amount equal to:
- a) the aggregate of the gains (expressed as a negative amount) that would be realised by X and the costs (expressed as a positive amount) that would be incurred by X if X were to enter into replacement transactions for the Terminated Transactions as of the Early Termination Date or, if that would not be commercially reasonable, as of such later date that would be commercially reasonable (provided that a replacement transaction means a transaction that has the same economic effects for X as the Terminated Transaction);
  - b) plus any unpaid amounts that became due and payable to X prior to the Early Termination Date in respect of the Terminated Transactions;
  - c) minus any amounts that became due and payable to the other party prior to the Early Termination Date in respect of the Terminated Transactions.
- 8.3 When calculating the amount under section 8.2 above, X shall use commercially reasonable procedures in order to produce a commercially reasonable outcome. In particular, when valuing each Transaction, X may use one of the valuation methods commonly used in the market for OTC derivatives, provided that such method produces a commercially reasonable outcome.
- 8.4 Any amount denominated in a currency other than the Termination Currency shall be converted by X into the Termination Currency at the rate equal to the spot exchange rate for the purchase by a foreign exchange agent of such other currency with the Termination Currency prevailing at 11:00 a.m. (Swiss time or, in the event that the Termination Currency is not CHF, the time relevant for the relevant foreign exchange market) on the date the amount under section 8.2 above is calculated.
- 8.5 The amount resulting from the calculation under section 8.2 above (liquidation value) must be notified by X as soon as reasonably practicable after the Early Termination Date together with supporting evidence substantiating in reasonable detail the results of the calculation and the method applied for such calculation.

- 8.6 The amount resulting from the calculation under section 8.2 above (liquidation value) becomes due and payable within one Banking Day after notice has been served by X to the other party in accordance with section 8.5 above, provided that a positive amount shall be paid by the counterparty to X and a negative amount shall be paid by X to the counterparty.
- 8.7 A party in respect of which an Event of Default has occurred shall indemnify the other party for all reasonable expenses, including any legal fees and any other fees or costs of collection or enforcement, incurred by the non-defaulting party by reason of the enforcement and protection of its rights under the Agreement and any Credit Support Document.
- 8.8 A party to whom a liquidation value is owed pursuant to section 8.6 above may set-off such amount against any claims such party has against the other party, irrespective of whether or not such amount has arisen under this Master Agreement, such amount is due and payable, such amount is denominated in the Termination Currency and irrespective of any collateral having been provided for the claims under this Master Agreement.

## **9. Interest**

- 9.1 A party that fails to make any payment under the Agreement on the due date will be required to pay interest on the overdue amount at a rate of 1% above the rate of interest that is payable by the party entitled to receive such payment for funding the relevant amount, provided that such default rate shall not be less than zero and provided further that, in the event that such rate of interest cannot be ascertained by the party entitled to receive such payment, the relevant rate shall be 1% above the greater of zero and the rate of interest that is payable for overnight deposits by prime banks at the relevant place of payment and in the relevant currency.
- 9.2 Notwithstanding section 9.1 above, if any amount resulting from the calculation under section 8.2 above (liquidation value) becomes due and payable by the party in respect of which no Event of Default has occurred, the party owing such amount shall pay interest on such amount at the rate of interest that is payable for overnight deposits by prime banks at the relevant place of payment and in the Termination Currency.
- 9.3 For the time period between the Early Termination Date and the date on which any amount resulting from the calculation under section 8.2 above (liquidation value) becomes due and payable, a party in respect of which an Event of Default has occurred owes interest on the liquidation value at the rate pursuant to section 9.1 above and, if the liquidation value is payable by any other party, such party owes interest on the liquidation value at the rate pursuant to section 9.2 above.



9.4 Notwithstanding section 9.1 above, if a party does not pay any amount that, but for the section 5.7 above, would have been due and payable, the party owing such amount shall pay interest on such amount at the rate of interest that is payable for overnight deposits by prime banks at the relevant place of payment and in the relevant currency.

## **10. Collateral**

The granting of collateral for Transactions entered into hereunder, if any, shall be agreed separately (for example, in a Credit Support Appendix, any other Credit Support Document or, in respect of a Transaction, in the related Confirmation).

## **11. Transfer of rights and obligations**

11.1 A party may only transfer its rights and obligations under this Agreement to a third party with the other party's prior written consent.

11.2 Notwithstanding section 11.1 above, a party may transfer all or any part of its rights in respect of any amounts due and payable following the occurrence or designation of an Early Termination Date without the other party's prior written consent.

## **12. Notices**

12.1 With the exception of a notice or other communication under sections 6 (Events of default and termination events), 7 (Early termination) and 8 (Payments following early termination) of this Master Agreement and subject to any other provision of the Master Agreement to the contrary, any notice or other communication relating to this Master Agreement may be given or made in any of the following manners to the address or number or in accordance with the email details provided pursuant to Annex 1 (Elections) and will be deemed effective as indicated below:

- a) if in writing and delivered in person, by courier or registered mail, on the date it is delivered; or
- b) 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 sender may prove the receipt by the recipient with a transmission report generated by the sender's facsimile machine); or
- c) if sent by email, on the date it is received (it being agreed that the sender may prove the receipt by the recipient with a delivery report generated by the sender's email system).

12.2 In the event that a notice or communication according to section 12.1 (a) to (c) is received or delivered at a time on which commercial banks are not open for general business at the location of the recipient's address, such notice will be

deemed validly given and effective on the next following day on which such banks are open for such activities.

- 12.3 Any notice or other communication under sections 6 (Events of default and termination events), 7 (Early termination) and 8 (Payments following early termination) of this Master Agreement may not be given by email. Such notice or communication must be given in writing or by facsimile.
- 12.4 The notice details specified in Annex 1 (Elections) may be amended by the respective party by written notice to the other party (provided that, where such amended details are only included in a Confirmation, they shall be relevant only for the respective Transaction).

## **13. Miscellaneous**

- 13.1 Each party acknowledges and consents to the recording of telephone conversations in connection with Transactions under this Master Agreement.
- 13.2 No amendments of, or additions to, this Master Agreement will be effective unless in writing and validly executed by the parties.
- 13.3 If any provision of this Master Agreement becomes legally invalid for any reason, this shall not affect the validity of the other provisions of this Master Agreement. The invalid provision shall be deemed to be replaced by a provision that corresponds as closely as possible with the spirit and purpose of the invalid provision and that of the whole agreement, taking into account the principle of good faith, as well as the customs and practices used in similar business dealings between the parties.

## **14. Place of performance, applicable law and jurisdiction**

- 14.1 The principal offices of Party A in Switzerland shall be deemed to be the place of performance of all obligations arising under this Master Agreement and the Transactions entered into hereunder. Where the principal offices of Party A are not located in Switzerland, the place of performance shall be determined according to the rules set out in the Swiss Code of Obligations.
- 14.2 This Master Agreement and all Transactions entered into pursuant to the terms of this Master Agreement shall be governed by Swiss law (excluding any conflict of law rules).
- 14.3 Any dispute, controversy or claim arising out of or in connection with this Master Agreement or any Transaction entered into thereunder, including any question regarding its existence, validity, invalidity or any breach or termination thereof, shall be settled by the competent courts of the City of Zurich. The parties agree that such choice of jurisdiction shall be exclusive.

## **15. Definitions**

The following terms used in the Agreement shall have the meaning set out below:

**"Additional Credit Support Document"** means a document specified as such in Annex 1 (Elections).

**"Additional Termination Event"** means any event specified as such in Annex 1 (Elections).

**"Agreement"** has the meaning specified in section 1.2 of this Master Agreement.

**"Banking Day"** means a day on which the banks in the principal markets for the Underlying or of currencies used in a Transaction are open, in particular, for the settlement of payments and of foreign exchange transactions, provided that, for the purposes of sections 6 (Events of default and termination events), 7 (Early termination) and 8 (Payments following early termination) of this Master Agreement, a "Banking Day" means a day on which commercial banks are open for the settlement of payments and of foreign exchange transactions in (i) Zurich, (ii) the locations specified by Party A and Party B in Annex 1 (Elections) as address for notices and (iii) the principal financial centre of the currency in which the relevant payment obligation is denominated.

**"Calculation Agent"** means the party determined as such in Annex 1 (Elections) or, in respect of a Transaction, in the related Confirmation.

**"Confirmation"** has the meaning specified in section 1.2 of this Master Agreement.

**"Credit Support Appendix"** means a Credit Support Appendix (in the form as published by the Swiss Bankers Association) entered into in relation to this Master Agreement.

**"Credit Support Document"** means (i) each Credit Support Appendix entered into between the parties and (ii) each Additional Credit Support Document specified in Annex 1 (Elections).

**"Credit Support Provider"** means, in respect of a Credit Support Appendix entered into between the parties and any Additional Credit Support Document, the party providing the collateral.

**"Early Termination Date"** has the meaning specified in section 7.1 of this Master Agreement.

**"Event of Default"** has the meaning specified in section 6.1 of this Master Agreement.

**"Master Agreement"** has the meaning specified in section 1.1 of this Master Agreement.

**"SMA Definitions"** means the definitions set out in Annex 2.

**"Terminated Transaction"** has the meaning specified in section 7.5 of this Master Agreement.

**"Termination Currency"** means CHF or such other freely transferable currency, as determined by the non-defaulting party or, as applicable, the party designating an Early Termination Date, provided that such currency shall be one of the currencies in which payments in respect of any Terminated Transactions is to be made.

**"Termination Event"** has the meaning specified in section 6.2 of this Master Agreement.

**"Threshold Amount"** means the amount determined as such in Annex 1 (Elections).

**"Transaction"** and **"Transactions"** has the meaning specified in section 1.1 of this Master Agreement.

**"Underlying"** means the underlying asset (such as a share, a bond or a currency) from which a Transaction derives its value.

**Party A**

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

Position: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Position: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**Party B**

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

Position: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Position: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**Annex 1 (Elections)**

**ELECTIONS IN RESPECT OF THE SWISS MASTER AGREEMENT  
FOR OTC DERIVATIVE INSTRUMENTS**

**dated** \_\_\_\_\_

**between** \_\_\_\_\_  
("Party A")

**and** \_\_\_\_\_  
("Party B")

**Party A and Party B hereby agree that the following shall apply in respect of the Swiss Master Agreement entered into between them:**

**1. General Provisions**

**a) Threshold Amount**

The Threshold Amount for the purposes of section 6.1(e) of this Master Agreement is as follows:

For Party A \_\_\_\_\_  
(currency and amount)

For Party B \_\_\_\_\_  
(currency and amount)

**b) Address for Notices**

For Party A

For Party B

**c) Additional Credit Support Document (other than Credit Support Appendix, if any)**

For Party A \_\_\_\_\_  
(name of document)

For Party B \_\_\_\_\_  
(name of document)

**d) Calculation Agent**

Party A shall be deemed to be the Calculation Agent for the purposes of this Master Agreement, unless provided otherwise in respect of a Transaction in the related Confirmation.

**e) FATCA Withholding Tax**

Any obligation to pay additional amounts in accordance with section 5.5 of this Master Agreement shall not apply, where any such deduction or withholding is a FATCA Withholding Tax.

For these purposes, a "**FATCA Withholding Tax**" means any U.S. federal withholding tax imposed, collected or withheld under or pursuant to section 1471 through 1474 of the United States Internal Revenue Code of 1986, as amended, or any current or future regulations or interpretation thereof, any implementing legislation or any agreement entered into pursuant to any such provisions or in connection with the implementation of such provisions or any legislation, rules or practices adopted in connection with such agreement, each as interpreted by the competent authorities from time to time.

## 2. Other Provisions

### a) [Replacement of Agreements (other than 2003 Swiss Master Agreements)]

This Master Agreement shall replace any [\_\_\_\_\_ if applicable, specify any pre-existing master agreement for OTC derivatives transactions (other than any 2003 Swiss Master Agreements) to be replaced, e.g. other 2013 Swiss Master Agreements, any ISDA Master Agreement or FX Master Agreement], which the parties may have entered into at an earlier date. Every transaction entered into under any such agreement shall be deemed to be a Transaction for the purposes of this Master Agreement.]

### b) [Multiple Parties]

Each person or legal entity signing this Master Agreement on behalf of [Party A]/[Party B] shall be jointly and severally liable for the obligations arising under this Agreement and the rights of such persons or legal entities under this Agreement shall be exercised, on behalf of [Party A]/[Party B] jointly and severally by all such persons and entities. Any Event of Default or Termination Event occurring in respect of each such person or legal entity will constitute an Event of Default or Termination Event under this Agreement in respect of [Party A]/[Party B].]

### c) [Additional Representations]

#### [Representation of counterparty with administrative assets:]

[Party A]/[Party B][specify party with administrative assets] represents to the other party, in addition to any other representations under section 4 of the Master Agreement, that any collateral provided in respect of the Agreement form part of its financial assets (*Finanzvermögen*) and not of its administrative assets (*Verwaltungsvermögen*).]

#### [Representation of pension fund as counterparty:]



[Party A]/[Party B][**specify pension fund**] represents to the other party, in addition to any other representations under section 4 of the Master Agreement, that:

- a) it is registered in the relevant register for pension funds (Register für die berufliche Vorsorge) in accordance with Art. 48(1) of the Swiss Federal Professional Pensions Act of 25 June 1982; and
- b) it acts in compliance with any laws and regulations applicable to it, in particular the provisions of the Swiss Federal Professional Pensions Act of 25 June 1982 and the rules relating to minimum contributions, organization, financing and management set out in such act.]

**[Representation of collective investment scheme as counterparty:**

[Party A]/[Party B][**specify collective investment scheme**] represents to the other party, in addition to any other representations under section 4 of the Master Agreement, that:

- a) it enters into Transactions under the Master Agreement in compliance with the relevant documentation governing [investments made by it][the collective investment scheme on behalf of which it enters into this Master Agreement] (e.g. the prospectus, the collective investment contract or the fund regulations); and
- b) it acts in compliance with any laws and regulations applicable to it [and the collective investment scheme on behalf of which it enters into this Master Agreement], in particular the Swiss Federal Collective Investment Schemes Act of 23 June 2006, the Ordinance on Collective Investment Schemes of 22 November 2006, the Ordinance of the Swiss Financial Market Supervisory Authority (FINMA) on Collective Investment Schemes of 21 December 2006 and any implementing rules and regulations.]

**[Representation of insurance company (providing direct insurance services) as counterparty:**

[Party A]/[Party B][**specify insurance company**] represents to the other party, in addition to any other representations under section 4 of the Master Agreement, that:

- a) all Transactions entered into under this Master Agreement and any collateral provided in respect of such Transactions belong to the pool of assets in respect of which it has entered into this Master Agreement or, where it has not entered into this Master Agreement in respect of any pool of assets, that such Transactions and any collateral provided in respect thereto belong to its free assets; and
- b) it acts in compliance with any laws and regulations applicable to it, in particular the Swiss Federal Insurance Supervision Act of 17 December 2004, the Ordinance regarding the supervision of Insurance Companies of 9 November 2005 and any implementing rules and regulations.]

**[Representation of natural person as counterparty:**

[If a party is a natural person, such party represents to the other party, in addition to any other representations under section 4 of the Master Agreement, that it has received, read and understood the brochure "Special Risks in Securities Trading" published by the Swiss Bankers Association.]

**d) [Additional Termination Events]**

**[If applicable, include any Additional Termination Events]**

**[E.g., for collective investment scheme as counterparty:**

If the current rating of [Party A]/[Party B][**specify counterparty of collective investment scheme**] falls below the minimum short-term rating or the minimum long-term rating required according to Art. 33 of the Ordinance of the Swiss Financial Market Supervisory Authority (FINMA) on Collective Investment Schemes of 21 December 2006, this shall constitute an Additional Termination Event entitling [Party A]/[Party B][**specify collective investment scheme**] to terminate all Transactions under section 7.4 of the Master Agreement.]

**e) [Set-off]**

**[For insurance company (providing direct insurance services) as counterparty:**

Any rights of set-off under section 8.8 of the Master Agreement shall not apply in respect of any claims of [Party A]/[Party B][**specify insurance company**] belonging to any pool of allocated assets of [Party A]/[Party B][**specify insurance company**].]

- f) [Other Provisions]  
[If applicable, include any further provisions]

**Party A**

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

Position: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Position: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

**Party B**

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

Position: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

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

Position: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

## Annex 2 (SMA Definitions)

### Part A

#### GENERAL DEFINITIONS

The following definitions under this Part A shall apply to any Transactions to which Annex 2 is applicable, subject to any provisions in Parts B, C, D or E of this Annex 2 that are applicable to the relevant type of Transaction and subject to the provisions of the relevant Confirmation (provided that any provisions in Parts B, C, D or E of this Annex 2 and any terms of a Confirmation shall prevail over the definitions in this Part A in the event of any conflict or inconsistency):

**"American Option"** means an Option Transaction, other than a Bermuda Option, pursuant to which the right or rights granted are exercisable during an Exercise Period that consists of more than one day.

**"Automatic Exercise"** means in respect of an Option Transaction that the parties have specified in the related Confirmation that Options that have not been exercised are deemed to have been exercised automatically on the Expiration Date.

**"Averaging Date"** means, in respect of any Valuation Date and an Option Transaction, each date specified as such in the related Confirmation.

**"Bermuda Option"** means an Option Transaction pursuant to which the right or rights granted are exercisable only on the Potential Exercise Dates during the Exercise Period and on the Expiration Date.

**"Business Day"** means, in respect of any day that is subject to adjustment in accordance with any applicable Business Day Convention, any Banking Day.

**"Business Day Convention"** means the convention for adjusting any relevant date if it would otherwise fall on a day that is not a Business Day, as specified in the related Confirmation. The terms "Following", "Modified Following" or "Preceding", when used in conjunction with the term "Business Day Convention" and a date, are the relevant conventions for adjusting any relevant date if that date would otherwise fall on a day that is not a Business Day.

**"Buyer"** means the party specified as such in the related Confirmation.

**"Call Option"** means the right, but not the obligation of the Buyer of such option, in return for the payment of a Premium, to purchase from the Seller of the option a certain number of Underlyings at a certain price at or before an Expiration Date.

**"Commencement Date"** means, in respect of an American Option, the date specified as such in the related Confirmation, as adjusted with the Following Business Day

Convention. If no such date is specified, the Commencement Date shall be the Trade Date.

"**Currency**" means the currency specified in a Confirmation in respect of the Transaction concerned.

"**Effective Date**" means the date specified as such in the related Confirmation.

"**European Option**" means an Option Transaction which is exercisable, in accordance with the terms governing the relevant Transaction, only on the Expiration Date. A European Option is only exercisable on the Expiration Date up to and including the Expiration Time.

"**Exercise Date**" means the Banking Day as specified in the related Confirmation on which an Option Transaction is exercised or deemed to have been exercised.

"**Exercise Time**" means in respect of each Banking Day on which an Option Transaction may be exercised, the time on which an Option is exercised.

"**Expiration Time**" means, in respect of an Option Transaction, the time specified as such in the related Confirmation. If no such time is specified, the Valuation Time shall be deemed to be the Expiration Time.

"**Final Exchange Amount**" means an amount that is specified as such for that party and, subject to any other applicable provisions, is payable by that party on the Final Exchange Date.

"**Final Exchange Date**" means the date specified as such in the related Confirmation or, if that date is not so specified and a Final Exchange Amount is specified, the Termination Date, subject to adjustment with the Modified Following Business Day Convention, unless specified otherwise in the related Confirmation.

"**Following**" means the Business Day Convention under which the relevant date will be the first following day that is a Business Day.

"**In-the-money**" transactions mean transactions with a positive Intrinsic Value.

"**Initial Exchange Amount**" means an amount that is specified as such for that party and, subject to any other applicable provisions, is payable by that party on the Initial Exchange Date.

"**Initial Exchange Date**" means the date specified as such in the related Confirmation or, if that date is not so specified and an Initial Exchange Amount is specified, the Effective Date or, if there is no Effective Date, the Trade Date, subject to adjustment with the Following Business Day Convention unless specified otherwise in the related Confirmation.

"**Interim Exchange Amount**" means an amount that is specified as such for that party and, subject to any other applicable provisions, is payable by that party on the Interim Exchange Date.

**"Interim Exchange Date"** means the date specified as such in the related Confirmation, subject to adjustment with the Modified Following Business Day Convention, unless specified otherwise in the related Confirmation.

**"Knock-in Event"** specified as applicable to a Transaction means, unless specified otherwise in the related Confirmation, that a party's right to exercise an Option under an Option Transaction and its right to receive, or its obligation to make, a payment or delivery under an Option Transaction (once exercised or deemed exercised), is subject to such Knock-in Event, and that the parties shall have any other rights and obligations set forth in the Confirmation as arising upon, or continuing to exist from and after, the occurrence of such Knock-in Event.

**"Knock-out Event"** specified as applicable to a Transaction means, unless specified otherwise in the related Confirmation, that a party's right to exercise an Option under an Option Transaction and its right to receive, or its obligation to make, a payment or delivery under an Option Transaction (once exercised or deemed exercised), is subject to such Knock-out Event not having occurred, and that the parties shall have any other rights and obligations set forth in the Confirmation as arising upon, or continuing to exist from and after, the occurrence of such Knock-out Event.

**"Latest Exercise Time"** means, in respect of an Option Transaction, the time specified as such in the related Confirmation, provided that, unless specified differently in a Confirmation, on the Expiration Date the Expiration Time shall be deemed to be the Latest Exercise Time.

**"Modified Following"** means the Business Day Convention under which the relevant date will be the first following day that is a Business Day, unless that day falls on the next calendar month, in which case that date will be the first preceding day that is a Business Day.

**"Multiple Exercise"** means, if specified to be applicable in respect of American Options or Bermuda Options, that Buyer may exercise all or less than all the unexercised Options on one or more Exercise Dates.

**"Option"** means, in respect of an Option Transaction, each unit into which the Option is divided for purposes of exercise, valuation and settlement.

**"Option Transaction"** means either a Call Option or a Put Option.

**"Potential Exercise Date"** means, in respect of a Bermuda Option, each date specified as such in the related Confirmation, as adjusted pursuant to the Following Business Day Convention.

**"Preceding"** means the Business Day Convention under which the relevant date will be the first preceding day that is a Business Day.

**"Premium"** means, in respect of an Option Transaction, the purchase price to be paid by the Buyer to the Seller, as specified in the related Confirmation.

**"Premium Payment Date"** means the date specified as such in the related Confirmation. Unless specified otherwise, the Premium becomes due and payable two Banking Days following the Trade Date.

**"Put Option"** means the right but not the obligation of the Buyer of such option, in return for the payment of a Premium, to sell to the Seller of the option a certain number of Underlyings at a certain price at or before an Expiration Date.

**"Seller"** means the party specified as such in the related Confirmation.

**"Settlement Date"** means (a) in respect of an Option Transaction, unless provided otherwise in the related Confirmation, the Banking Day that falls one settlement cycle following the relevant Exercise Date and (b) in respect of any other Transaction, the date specified as such in the related Confirmation, if any.

**"Strike Price"** means the price specified in the related Confirmation for each Underlying, at which the Underlying may be purchased or sold or otherwise settled upon exercise of the relevant Option.

**"Swap Transaction"** means (a) any transaction which is a rate swap transaction, basis swap, forward rate transaction, interest rate cap transaction, interest rate floor transaction, interest rate collar transaction, currency swap transaction, cross-currency rate swap transaction, or any other similar transaction, including a Swaption, (b) any combination of these transactions or (c) any other transaction identified as a Swap Transaction in the related Confirmation.

**"Swaption"** means a Transaction identified in the related Confirmation as a Swaption and pursuant to which Seller grants to Buyer, upon exercise or deemed exercise, either the right to cause the Underlying Swap Transaction to become effective or, if cash settlement is applicable, the right to request from the Seller the payment of the relevant cash settlement amount.

**"TARGET Settlement Day"** means any day on which the TARGET system is open.

**"Trade Date"** means the date specified as such in the Confirmation, which is the day on which the parties enter into the Transaction.

**"Underlying Swap Transaction"** means, in respect of a Swaption, a Swap Transaction, the terms of which are set out in the related Confirmation.

**"Valuation Date"** means, in respect of an Option Transaction, each Exercise Date.

**"Valuation Time"** means the time on the relevant Valuation Date specified as such in the related Confirmation, if any.



## Part B

### PROVISIONS FOR OPTION TRANSACTIONS ON SHARES, SHARE BASKETS, INDICES AND FIXED INCOME INSTRUMENTS

#### 1. Scope

This Part B applies to Share Option Transactions, Share Basket Option Transactions, Index Option Transactions and Fixed Income Instruments Option Transactions.

#### 2. Definitions

"**Cash Settlement**" designated in a Confirmation shall mean that one of the settlement methods pursuant to section 4.1 of this Part B apply.

"**Exercise Period**" means, unless specified otherwise in the related Confirmation, (a) in respect of an American Option, all Banking Days from, and including, the Commencement Date to, and including, the Expiration Date between 9:00 a.m. (local time in the place specified in the related Confirmation for receipt by Seller of notices relating to the Transaction or, where a Reference Exchange has been specified in a Confirmation in respect of a Transaction, local time in the location in the jurisdiction of the Reference Exchange) and the Latest Exercise Time, (b) in respect of a Bermuda Option, each Potential Exercise Date and the Expiration Date between 9:00 a.m. (local time in the place specified in the related Confirmation for receipt by Seller of notices relating to the Transaction or, where a Reference Exchange has been specified in a Confirmation in respect of a Transaction, local time in the location in the jurisdiction of the Reference Exchange) and the Latest Exercise Time and (c) in respect of a European Option, the Expiration Date between 9:00 a.m. (local time in the place specified in the related Confirmation for receipt by Seller of notices relating to the Transaction or, where a Reference Exchange has been specified in a Confirmation in respect of a Transaction, local time in the location in the jurisdiction of the Reference Exchange) and the Latest Exercise Time.

"**Expiration Date**" means the (last) day on which an Option may be exercised, as specified in the related Confirmation, and, where such day is not a Scheduled Trading Day, the next following Scheduled Trading Day.

"**Extraordinary Dividend**" means any dividend determined as such in the related Confirmation or, in the absence of such determination, any dividend payment made by the Issuer in respect to Shares during the period from, but excluding, the Trade Date to, and including, the Exercise Date in an amount that the Calculation Agent determines to be in excess of an ordinary gross dividend per Share.

**"Fixed Income Instrument"** means any bonds or any other debt securities specified in the related Confirmation.

**"Fixed Income Instrument Option Transaction"** means any Option Transaction referencing Fixed Income Instruments as Underlying.

**"Index"** means each index comprising different shares that is specified in the relevant Confirmation.

**"Index Option Transaction"** means an Option Transaction referencing an Index as Underlying.

**"Intrinsic Value"** of an Option Transaction means the amount by which the market price of the Underlying as listed on the Reference Exchange exceeds the Strike Price (in the case of Call Option), or is less than the Strike Price (in the case of a Put Option), multiplied by the number of Underlyings covered by such transaction.

**"Issuer"** means, in respect of Shares, the issuer of the relevant Shares.

**"Minimum Number of Options"** means, in respect of an Option Transaction to which Multiple Exercise is applicable, the number specified as such in the related Confirmation or any integral multiple thereof, if any, specified as such in the related Confirmation.

**"Number of Options"** means, in respect of an Option Transaction, the number specified as such in the related Confirmation, being the number of Options comprised in the relevant Option Transaction.

**"Number of Underlyings to be Delivered"** means in respect of Option Transactions relating to Shares, Share Baskets or Fixed Income Instruments, the number of Underlyings equal to the Number of Options exercised or deemed to be exercised on that Exercise Date multiplied by the Option Entitlement.

**"Option Entitlement"** means, in respect of an Option Transaction, the number of Underlyings per Option, if any, specified as such in the related Confirmation. In the event that no Option Entitlement is specified in the related Confirmation, the Option Entitlement shall be deemed to be one per Option.

**"Physical Settlement"** designated in a Confirmation shall mean that one of the settlement methods pursuant to section 4.2 of this Part B apply.

**"Reference Exchange"** means the exchange or quotation system specified by the parties in the related Confirmation, any successor to such exchange or any substitute exchange or quotation system to which trading in the relevant shares or other instruments, as applicable, has temporarily been relocated.

**"Reference Exchange for Adjustments"** means the exchange or quotation system specified by the parties in the relevant Confirmation to apply to

adjustments (such as regarding questions on dilution, stock split, merger, capital restructuring, market disruption).

**"Scheduled Trading Day"** means any day on which all Reference Exchanges and all Reference Exchanges for Adjustments are scheduled to be open for trading for their respective regular trading sessions.

**"Settlement Price"** means, in respect of a Share Option Transaction, a Share Basket Option Transaction or a Fixed Income Instrument Option Transaction, the Strike Price.

**"Share"** or **"Shares"** means, in respect of a Share Option Transaction or a Share Basket Option Transaction, the shares or other securities specified as such in the related Confirmation.

**"Share Basket"** and **"Share Baskets"** means, in respect of a Share Basket Option Transaction, a basket composed of Shares of each Issuer specified in the related Confirmation in the relative proportions or numbers of Shares of each Issuer specified in the related Confirmation.

**"Share Option Transaction"** means any Option Transaction referencing Shares as Underlying.

**"Share Basket Option Transaction"** means any Option Transaction referencing a Share Basket as Underlying.

**"Valuation Time"** means the scheduled close of business on the Reference Exchange on the relevant Valuation Date.

### 3. Exercise of Options

- 3.1 Options relating to Shares, Share Baskets, Indices or Fixed Income Instruments may be exercised on any Scheduled Trading Day during the Exercise Period relevant for the Option Transaction concerned, provided that the Exercise Time is before close of business on the Reference Exchange. Options that are exercised after close of business of the Reference Exchange will be deemed to have been exercised on the following Scheduled Trading Day that does not fall on a day later than the Expiration Date.
- 3.2 If notice of exercise is given prior to the Exercise Period commencing, that notice is deemed to be given when the Exercise Period commences.
- 3.3 An American Option or a Bermuda Option cannot be exercised in partial amounts unless Multiple Exercise is specified to be applicable in the related Confirmation. If Multiple Exercise applies, then each exercise amount must be at least equal to the Minimum Number of Options.
- 3.4 Option Transactions may be exercised orally.

3.5 Options that have not been exercised are deemed to have been exercised on the Expiration Date if (i) Cash Settlement applies, and (ii) such Options are In-the-money. Where Physical Settlement applies, Options that have not been exercised are deemed to have been exercised on the Expiration Date only if (i) the parties have elected in the related Confirmation that Automatic Exercise shall apply, and (ii) the relevant Option is In-the-money.

## 4. Valuation and Settlement

4.1 "Cash Settlement" designated in a Confirmation means that the following payments shall be made on the Settlement Date by the Seller:

- a) in respect of Call Options relating to Shares, Share Baskets or Fixed Income Instruments: the closing price of the Underlying on the Reference Exchange on the Exercise Date (provided that, in respect of Share Baskets, such amount shall be the arithmetic mean of the closing prices of the Shares comprised in the Share Basket) less the Strike Price, multiplied by the Number of Options in respect of which the Call Option has been exercised and multiplied by the Option Entitlement;
- b) in respect of a Put Option relating to Shares, Share Baskets or Fixed Income Instruments: the Strike Price less the closing price of the Underlying at the close of business on the Reference Exchange on the Exercise Date (provided that, in respect of Share Baskets, such amount shall be the arithmetic mean of the closing prices of the Shares comprised in the Share Basket), multiplied by the Number of Options in respect of which the Put Option has been exercised and multiplied by the Option Entitlement;
- c) in respect of a Call Option relating to an Index: the level of the Index determined by the index sponsor at the close of business on the Reference Exchange on the Exercise Date (provided that, where (i) such Index is published by a Swiss index sponsor or the Confirmation specifies this accordingly and (ii) the Exercise Date falls on an expiration date of exchange traded options relating to such Index, then the level of the Index shall be determined as follows: the closing price used by the index sponsor for such exchange traded options shall be deemed to be the level of the Index for the purposes of this clause (c)) less the Strike Price, multiplied by the Number of Options in respect of which the Call Option has been exercised; and
- d) in respect of a Put Option relating to an Index: the Strike Price less the level of Index determined by the index sponsor at the close of business on the Reference Exchange on the Exercise Date (provided that, where (i) such Index is published by a Swiss index sponsor or the Confirmation specifies this accordingly and (ii) the Exercise Date falls on an expiration date of exchange traded options relating to such Index, then the level of the Index shall be

determined as follows: the closing price used by the index sponsor for such exchange traded options shall be deemed to be the level of the Index for the purposes of this clause (d)), multiplied by the Number of Options in respect of which the Call Option has been exercised.

- 4.2 "Physical Settlement" designated in a Confirmation in respect of an Option Transaction means that, on the relevant Settlement Date:
- a) in the case of a Call Option regarding Shares, Share Baskets or Fixed Income Instruments, the Buyer shall pay to the Seller the Settlement Price multiplied by the Number of Underlyings to be Delivered and the Seller shall deliver to the Buyer the Number of Underlyings to be Delivered; and
  - b) in the case of a Put Option regarding Shares, Share Baskets or Fixed Income Instruments, the Buyer shall deliver to the Seller the Number of Underlyings to be Delivered and the Seller shall pay to the Buyer the Settlement Price multiplied by the Number of Underlyings to be Delivered.
- 4.3 If Averaging Dates are specified in the Confirmation, then any amount due as a result of a Cash Settlement will be the arithmetic mean of the prices on each Averaging Date determined at the Valuation Time on the Valuation Date by the Calculation Agent.
- 4.4 Where an Option Transaction is physically settled, the relevant Underlyings shall be delivered to the other party in accordance with the rules of the Reference Exchange. In respect of any Settlement Date on which there are corresponding delivery and payment obligations, settlement shall occur on a delivery versus payment basis, to the extent that the relevant clearance system permits a settlement to occur on such basis.
- 4.5 All expenses relating to the transfer of Underlyings to be delivered under a Transaction (such as any stamp duty, stock exchange tax or local tax) will be payable by the party that would pay such expenses, according to market practice for a sale of such Underlyings in the case of trading of the Underlying on the Reference Exchange.
- 4.6 Where an Option Transaction is bought on an Underlying that is registered, it is the Buyer's responsibility to obtain the consent of the Issuer for the Buyer to be registered on the relevant register. Failure to obtain such consent will not affect the validity of the exercise of the Option.

## **5. Dividends and other rights in relation to Shares as Underlying**

Prior to the Exercise Date all rights under or in connection with the Underlyings belong to the holder of the Underlyings. Upon exercise of the Option, the party entitled to receive the relevant Underlyings (or their respective value) is entitled to all dividend and other rights in connection with the Underlyings that become

payable after the Exercise Date. Where an Exercise Date falls on the date on which a dividend is paid, no such dividend must be paid. The same applies with respect to other rights that may be related to the Underlyings (e.g. subscription rights, preferential subscription rights).

## **6. Rights in relation to Fixed Income Instruments as Underlying**

Until the Settlement Date, all rights under, or in connection with, the Underlyings belong to the holder of the Underlyings. Upon exercise of an Option, the party entitled to receive the relevant Underlyings (or their respective value) may exercise all rights in respect of interest payments or other rights related to such Underlyings that become payable after the Settlement Date. If a Settlement Date falls on the same day on which an interest payment becomes due, the Underlying will be delivered without such interest payment. The same rule applies to other rights which may be attached to the Underlying.

## **7. Disruptions**

In the event that trading, exercise, valuation or settlement is disrupted or any other event occurs which the Calculation Agent determines is material to a Share Option Transaction, a Share Basket Option Transaction or a Fixed Income Instrument Option Transaction, then the Calculation Agent may make such adjustments as it deems necessary (acting commercially reasonably and in good faith) to the valuation procedure and any of the Valuation Dates, Settlement Dates or other relevant dates, having regard to market practice and adjustments being made by any hedging counterparty of Party A or Party B.

## **8. Adjustments in relation to Shares as Underlying**

- 8.1 Subject to the provisions regarding capital restructurings and mergers under section 10 of this Part B, if any event occurs which has or could potentially have (as determined by the Calculation Agent in its discretion, including without limitation any increase of the capital of the Issuer, a subdivision, consolidation or reclassification of the relevant Shares, a free distribution of a dividend to shareholders, an Extraordinary Dividend, a change of any applicable laws, the imposition of additional taxes or any other event affecting the Issuer) a material effect (such as a dilutive or concentrative effect) on the theoretical value of the Underlyings or a Transaction or on Party A's or Party B's ability to hedge one or several Transactions, the relevant Transactions shall be adjusted pursuant to the rules applicable at the Reference Exchange for Adjustments and, to the extent that no such adjustment can be made, the Calculation Agent may in its discretion and acting in good faith, adjust any term of the relevant Transactions that it determines appropriate to account for the economic effect on the Underlying or

on the relevant Transactions of such event (e.g. by adjusting the Strike Price, the Number of Options or the Option Entitlement).

- 8.2 If the Calculation Agent determines that no adjustment that it could make will produce a commercially reasonable or fair result, then the relevant Transactions will be cancelled and the Calculation Agent shall in good faith determine the payment that one party must pay to the other party. For the avoidance of doubt, the Buyer shall not be required to pay any amount to the Seller as a result of the cancellation other than any unpaid Premium.

## **9. Nationalisation and delisting**

If:

- a) the Calculation Agent in its discretion but having regard to market practice determines that the Shares have been nationalised; or
- b) the Reference Exchange announces that pursuant to its rules the Shares cease (or will cease) to be listed, traded or publicly quoted on the exchange for any reason (other than a merger event or tender offer) and are not immediately re-listed, re-traded or re-quoted on an exchange or quotation system located in the same country as the Reference Exchange (or, where the Reference Exchange is within the European Union, in any member state of the European Union),

then the relevant Transaction will be cancelled as of the announcement date and the Calculation Agent shall in good faith determine the payment that one party must pay to the other party. For the avoidance of doubt, the Buyer shall not be required to pay any amount to the Seller as a result of the cancellation other than any unpaid Premium.

## **10. Capital restructuring and mergers in relation to Shares as Underlying**

- 10.1 If a capital restructuring or merger occurs, the relevant Transactions will be adjusted in accordance with the rules of the Reference Exchange for Adjustments. If no such rules exist, the following rules will apply:

- a) Where Underlyings are consolidated or exchanged, such Underlyings will be replaced by the new Underlyings and the Strike Price will be adjusted accordingly, if necessary. If there are any elections to be made, they shall be made by the holder of the old Underlyings in his sole discretion. Any residual amount shall be settled in cash.
- b) Where, during the Exercise Period of a Call Option, the Issuer of the Underlying announces its intention to merge with, or to be taken over by, another company and the Issuer of such Underlying is subsequently to be resolved, the party obligated to deliver the Underlying (or their respective

value) has the right to adjust its delivery obligation under the current agreement in respect of all, but not part, of the Underlyings, so that the other party upon exercise of the relevant Option will be entitled to an amount (X) which will be determined pursuant to the following formula, instead of receiving the Underlyings or other rights in such other company (or their respective value) that are granted to the holders of Underlyings in connection with such merger:

$$(X) = \text{Number of Underlyings to be Delivered} \times \text{Price of the Underlying at the close of business on the Reference Exchange on the last trading day prior to the day on which the merger becomes effective}$$

Such adjustment must be notified to the other party no later than 20 calendar days prior to the merger date. If the party obligated to deliver the Underlyings (or their respective value) fails to notify the other party, such other party, when exercising its Options, may nevertheless request from the party obligated to deliver the Underlyings (or their respective value) the payment of the amount (X) instead of delivery of Underlyings or other rights in such other company that are granted to the holders of Underlyings in connection with such merger. Such decision must be notified to the party that is required to deliver the Underlyings (or their respective value) no later than 10 calendar days prior to the merger date.

10.2 The rule of section 10.1(b) of this Part B shall apply by analogy to Put Options. Accordingly, it is the party that is required to pay the Strike Price that must serve the respective notice no later than 20 calendar days, whereas the other party must serve the notice no later than 10 calendar days prior to the merger date.

## **11. Adjustments in relation to Fixed Income Instruments as Underlying**

11.1 Where, in particular following a debt restructuring, debtor substitution etc., the Underlyings are exchanged or consolidated, then the old Underlyings shall be replaced by the new Underlyings and, if applicable, the Strike Price shall be adjusted accordingly. Any elections to be made will be made by the holder of the old Underlyings at its sole discretion. Any residual amount shall be settled in cash.

11.2 The same applies if changes are made that are binding upon all creditors in relation to the repayment of capital, interest payments or the due dates of such payments.



11.3 If an early redemption in respect of all Underlyings occurs which is binding on all creditors, then the Option may be exercised early with effect as of the redemption date. In such event, Cash Settlement shall apply and, instead of the closing price of the Underlying on the Reference Exchange on the Exercise Date, the repayment price paid by the debtor shall be relevant.

## **12. Adjustment of the Index calculation for Indices as Underlying**

12.1 Where, prior to the Expiration Date, the Index is not calculated and published by the original index sponsor but by a third party that is acceptable to both parties to the Agreement (for the purposes of this section 12 the "**Third Party**"), then the Calculation Agent will determine any amounts due as a result of a Cash Settlement pursuant to the price calculated and published by the Third Party at the close of business on the Exercise Date.

12.2 Where, prior to the Exercise Date, the original sponsor or Third Party changes the formula or the method of calculating the Index or the Index itself, any amount due as a result of a Cash Settlement shall be adjusted pursuant to the procedure applicable on the Reference Exchange for Adjustments. If this is not possible, the Calculation Agent shall make the calculation in such a way that any amounts due as a result of a Cash Settlement are as close as possible to the amount that would have been payable if the calculation were based on the formula or method used previously.

12.3 In the event that the original index sponsor or the Third Party cancels, interrupts or suspends (temporarily or permanently) the calculation and publication of the Index and no successor index is available, the rules applicable at the Reference Exchange for Adjustments shall apply. If there are no such rules, the Index will be calculated on the next following Banking Day. If the Index cannot be calculated within five Banking Days, the Calculation Agent will calculate the Index for the determination of any amounts due as a result of a Cash Settlement in good faith, by applying the calculation formula and method that were used on the day on which the calculation of the Index was cancelled, interrupted or suspended.

## Part C

### PROVISIONS FOR INTEREST RATE TRANSACTIONS

#### 1. Scope

This Part C applies to Interest Rate Transactions.

#### 2. Definitions

"**Calculation Amount**" means, in respect of a party, the relevant Notional Amount or Currency Amount, as specified in the related Confirmation.

"**Calculation Period**" means, in respect of a party, each period from, and including, one Period End Date of that party to, but excluding, the next following applicable Period End Date during the Term of the Swap Transaction, except that (a) the initial Calculation Period for the party will commence on, and include, the Effective Date and (b) the final Calculation Period for the party will end on, but exclude, the Termination Date.

"**Cap**" means a Transaction under which payments are determined by reference to a maximum rate, as specified as such in the related Confirmation.

"**Cap Buyer**" means the party specified as such in the related Confirmation.

"**Cap Rate**" means the rate, if any, specified as such in the related Confirmation.

"**Cap Seller**" means the party specified as such in the related Confirmation.

"**Compounding**" means, to the extent specified as applicable in the related Confirmation, that Floating Amounts are calculated by taking into account compounding in respect of each Compounding Period.

"**Compounding Period**" means, in respect of the calculation of Floating Amounts to which Compounding shall be applicable, any periods specified as such in the related Confirmation.

"**Currency Amount**" means, in respect of a Swap Transaction involving more than one Currency, the relevant amount applicable for the relevant Calculation Period and a party, as specified in the related Confirmation.

"**Designated Maturity**" means, in respect of the calculation of a Floating Amount, the period of time specified as such in respect of the Floating Rate Option.

"**Effective Date**" means the date specified as such in the related Confirmation, which date is the first day of the Term of the Swap Transaction.

"**Fixed Amount**" means any amount specified in the related Confirmation to be payable by the Fixed Amount Payer.

**"Fixed Amount Payer"** or **"Fixed Rate Payer"** means the party specified in the related Confirmation as the party obligated to make payments, from time to time during the Term of the Swap Transaction, of amounts calculated by reference to a fixed per annum rate or to make one or more payments of a Fixed Amount.

**"Fixed Rate"** means, for any Payment Date or for any Calculation Period in respect of a Payment Date, a rate, expressed as a decimal, equal to the per annum rate specified as such for the Swap Transaction or that party.

**"Fixed Rate Day Count Fraction"** means, in respect of any calculation of a Fixed Amount, the day count fraction specified in the Confirmation.

**"Floating Amount"** means any amount specified in the related Confirmation to be payable by the Floating Amount Payer.

**"Floating Amount Payer"** or **"Floating Rate Payer"** means the party specified in the related Confirmation as the party obligated to make payments, from time to time during the Term of the Swap Transaction, of amounts calculated by reference to a floating per annum rate.

**"Floating Rate"** means in respect of the calculation of a Floating Amount for each Calculation Period:

- a) in the event that the relevant Floating Rate Option is not relating to the Euro, the rate offered in the interbank market for money market transactions in the relevant Currency, as published by the British Bankers' Association, for a period of the Designated Maturity at 11:00 a.m., London time, on the day that is two London banking days preceding the relevant Reset Date, provided that, if the British Bankers' Association or any other body designated by it does not publish such rates, the Calculation Agent shall determine the floating rate as the average (rounded upwards to the fifth decimal place) of the rates quoted by four prime banks in the place of payment, selected mutually by both parties, for money market transactions in amounts similar to the relevant Calculation Amount and for the relevant Reset Date and Designated Maturity (if no agreement can be reached as to the selection of the prime banks, or if, due to other reasons, the Calculation Agent cannot determine the average, then the reference interest rate that was last published for the relevant Designated Maturity by the British Bankers' Association, if any, shall apply);
- b) in the event that the relevant Floating Rate Option is relating to the Euro, the rate offered in the interbank market for money market transactions in Euros, as published by the European Banking Federation, for a period of the Designated Maturity at 11:00 a.m., Brussels time, on the day that is two TARGET Settlement Days preceding the relevant Reset Date, provided that, if the European Banking Federation or any other body designated by it does not publish such rates, the Calculation Agent shall determine the floating rate

as the average (rounded upwards to the fifth decimal place) of the rates quoted by four prime banks in the place of payment, selected mutually by both parties, for money market transactions in amounts similar to the relevant Calculation Amount and for the relevant Reset Date and Designated Maturity (if no agreement can be reached as to the selection of the prime banks, or if, due to other reasons, the Calculation Agent cannot determine the average, then the reference interest rate that was last published for the relevant Designated Maturity by the European Banking Federation, if any, shall apply);

- c) in the event that a party to a Transaction is designated as surplus payer (or Cap Seller or FRA Seller) in the related Confirmation, the excess, if any, of a rate determined pursuant to (a) or (b) above over the maximum rate (e.g. Cap Rate or Forward Rate) specified as such in the related Confirmation, provided that such rate may not be a negative value;
- d) in the event that a party to a Transaction is designated as deficit payer (or Floor Seller or FRA Buyer) in the related Confirmation, the excess, if any, of such minimum rate (e.g. Floor Rate or Forward Rate) specified as such in the related Confirmation over the rate determined pursuant to (a) or (b) above, provided that such rate may not be a negative value; and
- e) in the event that more than one Reset Date have been determined in respect of a Calculation Period, unless a different calculation method has been determined in the related Confirmation, the arithmetic mean of the rates determined pursuant to (a) to (d) above, as applicable.

**"Floating Rate Day Count Fraction"** means, in respect of any calculation of a Floating Amount, the day count fraction specified in the Confirmation.

**"Floating Rate Option"** means, in respect of the calculation of a Floating Amount, the type of floating rate specified as such in the related Confirmation.

**"Floor"** means a Transaction under which payments are determined by reference to a minimum rate, as specified as such in the related Confirmation.

**"Floor Buyer"** means the party specified as such in the related Confirmation.

**"Floor Rate"** means the rate, if any, specified as such in the related Confirmation.

**"Floor Seller"** means the party specified as such in the related Confirmation.

**"Forward Rate"** means, in respect of a FRA, the rate, if any, specified as such in the related Confirmation or, if no such rate is specified, the Fixed Rate.

**"FRA"** means a Transaction under which payments are determined by reference to a Forward Rate, as specified as such in the related Confirmation, and payable the first day of the relevant Calculation Period.

**"FRA Buyer"** means, in respect of a FRA, the Fixed Rate Payer.

"**FRA Seller**" means, in respect of a FRA, the Floating Rate Payer.

"**Interest Rate Transaction**" means any Swap Transaction, which is, or includes elements of, (a) a rate swap transaction, basis swap, forward rate transaction, interest rate cap transaction, interest rate floor transaction, interest rate collar transaction, cross-currency rate swap transaction, or any other similar transaction or (b) any combination of these transactions.

"**Notional Amount**" means, in respect of a Swap Transaction involving one Currency, the relevant amount applicable for the relevant Calculation Period and a party, as specified in the related Confirmation.

"**Payment Date**" means each day during the Term of a Swap Transaction specified as such in respect of the relevant party in the related Confirmation, subject to adjustment with the relevant Business Day Convention determined in the related Confirmation and, in the absence of such determination, the Modified Following Business Day Convention.

"**Period End Date**" means, in respect of a party, (a) if Period End Dates are not specified or otherwise predetermined for the Swap Transaction or that party, each Payment Date of that party during the Term of the Swap Transaction and (b) if Period End Dates are specified or otherwise predetermined for the Swap Transaction or that party, each day during the Term so specified or predetermined, subject to adjustment with the relevant Business Day Convention determined in the related Confirmation and, in the absence of such determination, the Modified Following Business Day Convention.

"**Reset Date**" means, for the calculation of the relevant Floating Amount, each day specified as such in the related Confirmation, subject to adjustment in accordance with any applicable Business Day Convention which, if a Business Day Convention is not specified in the related Confirmation as being applicable to Reset Dates, shall be the Business Day Convention applicable to Payments Dates relevant for such Floating Rate Payer in respect of such Swap Transaction, unless an adjustment in accordance with that Business Day Convention would cause a Reset Date to fall on the Payment Date in respect of the Calculation Period to which that Reset Date relates, in which case that Reset Date shall be adjusted in accordance with the Preceding Business Day Convention.

"**Term**" means the period commencing on the Effective Date of a Swap Transaction and ending on the Termination Date of the Swap Transaction.

"**Termination Date**" means the date specified as such in the related Confirmation, which date is the last day of the Term of the Swap Transaction and is subject to adjustment with the relevant Business Day Convention as specified in the related Confirmation.

### 3. Payment obligations

- 3.1 The parties shall pay any Initial Exchange Amounts, Interim Exchange Amounts and Final Exchange Amounts as specified in the related Confirmation.
- 3.2 Unless specified otherwise in the related Confirmation, the Fixed Amount Payer shall pay the Fixed Amounts, as specified under section 4.1 of this Part C, provided that, in respect of a FRA, the relevant payments shall be made by the FRA Buyer or the FRA Seller, as applicable, by reference to the Floating Amounts, as specified under section 4.2 of this Part C.
- 3.3 Unless specified otherwise in the related Confirmation, the Floating Amount Payer shall pay the Floating Amounts, as specified under section 4.2 of this Part C, provided that, in respect of a FRA, the relevant payments shall be made by the FRA Buyer or the FRA Seller, as applicable, by reference to the Floating Amounts, as specified under section 4.2 of this Part C, and provided further that, in the event that the Floating Amount is negative, the party that is not the Floating Amount Payer shall make the payment specified under section 4.2 (c) of this Part C.
- 3.4 To the extent that a payment is not made upon expiration of the relevant Calculation Period, but at the beginning thereof, the amount to be paid shall be discounted at the discount rate as determined in the related Confirmation.

### 4. Fixed Amounts and Floating Amounts

#### 4.1 Fixed Amounts

- a) Fixed Amounts are the amounts resulting, in respect of each Calculation Period, from the below calculation.

$$CA \times FI \times DF$$

CA = Calculation Amount (unless specified otherwise in the related Confirmation, the Initial Exchange Amount applicable to the relevant party shall be deemed to be the Calculation Amount)

FI = Fixed Rate, expressed as a decimal (e.g. 3% = 0.03)

DF = Fixed Rate Day Count Fraction (e.g. resulting from dividing the actual number of days in the relevant Calculation Period by 360, 365 or, in a leap year, 366, in accordance with the relevant market practice for the relevant Fixed Rate and Currency)

- b) Such Fixed Amounts shall be payable by the Fixed Amount Payer on each Payment Date specified in respect of the Fixed Amount Payer in the related Confirmation.

## 4.2 Floating Amounts

- a) Floating Amounts are amounts resulting, in respect of each Calculation Period, from the below calculation.

$$CA \times FL \times DF$$

CA = Calculation Amount (unless specified otherwise in the related Confirmation, the Initial Exchange Amount shall be deemed to be the Calculation Amount)

FL = Floating Rate expressed as a decimal (e.g. 3% = 0.03)

DF = Floating Rate Day Count Fraction (e.g. resulting from dividing the actual number of days in the relevant Calculation Period by 360, 365 or, in a leap year, 366, in accordance with the relevant market practice for the Floating Rate Option and Currency)

- b) Such Floating Amounts shall be payable by the Floating Amount Payer on each Payment Date specified in respect of the Floating Amount Payer in the related Confirmation.
- c) If the Floating Amount is negative, then the party that is not the Floating Amount Payer shall pay to the Floating Amount Payer the absolute value of such amount, unless the parties have agreed otherwise in a related Confirmation.

## 5. Compounding

If the parties agree to apply Compounding in a Confirmation for the purposes of the calculation of Floating Amounts, the amount calculated under section 4.2 of this Part C shall be equal to the aggregate of the amounts, calculated in respect of each Compounding Period during such Calculation Period, as if a Floating Amount were being calculated for that Compounding Period, provided that the Calculation Amount for each such Compounding Period shall be increased, except for the first Compounding Period, by the aggregate of such amounts calculated in respect of the previous Compounding Periods.

## **6. Optional termination**

If the parties agree to include an optional termination right for one or both parties into a Confirmation, the terms and conditions of such termination right shall be as set out in the Confirmation. If such right is exercised, then the Calculation Agent shall - in accordance with the method specified in the relevant Confirmation - determine the liquidation value that one party must pay to the other party.

## **7. Option for extension**

If the parties agree to include an optional extension right for one or both parties into a Confirmation, the terms and conditions applicable to such extension shall be as set out in the Confirmation.



## Part D

### PROVISIONS FOR FOREIGN EXCHANGE TRANSACTIONS, CURRENCY OPTION TRANSACTIONS AND BULLION TRANSACTIONS

#### 1. Scope

This Part D applies to Foreign Exchange Transactions, Currency Option Transactions and Bullion Transactions.

#### 2. Definitions

"**Bullion**" means Gold, Silver, Platinum or Palladium, as the case may be.

"**Bullion Option Transaction**" means a Bullion Transaction, which is an Option Transaction.

"**Bullion Transaction**" means a transaction for the sale of a certain amount of Bullion for Physical Settlement on a certain Settlement Date.

"**Call Currency**" means, in respect of a Currency Option Transaction, the Currency specified as such in the related Confirmation or, if such a Currency is not specified, the Currency that is to be purchased by the Buyer.

"**Call Currency Amount**" means, in respect of a Currency Option Transaction, the aggregate amount of Call Currency to be purchased upon exercise of the Currency Option Transaction, as specified in the related Confirmation.

"**Currency Option Transaction**" means an Option Transaction entitling Buyer, upon exercise, to purchase from Seller at the Strike Price a specified quantity of Call Currency and to sell to Seller at the Strike Price a specified quantity of Put Currency.

"**Deliverable Transaction**" means, in respect of a Foreign Exchange Transaction, a Currency Option Transaction and a Bullion Transaction, that "Physical Settlement" is applicable to such Transaction.

"**Exercise Period**" means, unless specified otherwise in the related Confirmation, (a) in respect of an American Option, all Banking Days from, and including, the Commencement Date to, and including, the Expiration Date between 9:00 a.m. (local time in the place specified in the related Confirmation for receipt by Seller of notices relating to the Transaction) and the Latest Exercise Time, (b) in respect of a Bermuda Option, each Potential Exercise Date and the Expiration Date between 9:00 a.m. (local time in the place specified in the related Confirmation for receipt by Seller of notices relating to the Transaction) and the Latest Exercise

Time and (c) in respect of a European Option, the Expiration Date between 9:00 a.m. (local time in the place specified in the related Confirmation for receipt by Seller of notices relating to the Transaction) and the Latest Exercise Time.

**"Expiration Date"** means the (last) day on which an Option may be exercised, as specified in the related Confirmation, subject to adjustment with the Following Business Day Convention.

**"Foreign Exchange Transaction"** means an agreement between the parties providing for the purchase by one party of an agreed amount in one Currency in exchange for the sale by it of an agreed amount in another Currency to the other party for settlement on the same due date.

**"Gold"** means gold bars or unallocated gold complying with the rules of The London Bullion Market Association relating to good delivery and fineness from time to time in effect, unless otherwise agreed between the parties.

**"Intrinsic Value"** of an Option Transaction means the amount by which the market price of the Underlying exceeds the Strike Price (in the case of Call Option), or is less than the Strike Price (in the case of a Put Option), multiplied by the number of Underlyings covered by such transaction.

**"Palladium"** means palladium ingots or plate or unallocated palladium complying with the rules of The London Platinum and Palladium Market relating to good delivery and fineness from time to time in effect, unless otherwise agreed between the parties.

**"Physical Settlement"** applicable in respect of an Option Transaction shall mean that, on the relevant Settlement Date, each party shall make the payments and deliveries as specified in section 4.1 of this Part D.

**"Platinum"** means platinum ingots or plate or unallocated platinum complying with the rules of The London Platinum and Palladium Market relating to good delivery and fineness from time to time in effect, unless otherwise agreed between the parties.

**"Put Currency"** means, in respect of a Currency Option Transaction, the Currency specified as such in the related Confirmation or, if such a Currency is not specified, the Currency that is to be sold by Buyer.

**"Put Currency Amount"** means, in respect of a Currency Option Transaction, the aggregate amount of Put Currency to be sold upon exercise of the Currency Option Transaction, as specified in the related Confirmation.

**"Silver"** means silver bars or unallocated silver complying with the rules of The London Bullion Market Association relating to good delivery and fineness from time to time in effect, unless otherwise agreed between the parties.

### **3. Exercise of Options**

- 3.1 A European Option can only be exercised on the Expiration Date until 10.00 a.m. New York time (in respect Currency Option Transactions) and 9.30 a.m. New York time (in respect of Bullion Option Transactions). For such Option Transactions, these times shall be deemed to be the Expiration Time and the Latest Exercise Time.
- 3.2 An American Option can be exercised on any Banking Day during the Exercise Period relevant for the Option Transaction. On the Expiration Date, an American Option can only be exercised until 10.00 a.m. New York time (in respect Currency Option Transactions) and 9.30 a.m. New York time (in respect of Bullion Option Transactions). For such Option Transactions, these times shall be deemed to be the Expiration Time and the Latest Exercise Time. Subject to the provisions regarding automatic exercise pursuant to section 3.5 of this Part D, exercise notices received after these deadlines have expired, shall be deemed to be received on the next following Banking Day.
- 3.3 Option Transactions may be exercised orally.
- 3.4 If one of the parties of the Option Transaction is a bank and the other party is a client holding deposits with such bank and the bank is free to offset or charge such deposits without further authorisation, then such bank is not required to notify the client when it exercises any Options. The client hereby entitles the bank to settle the Option in accordance with the method agreed in the related Confirmation, as applicable, and agrees to be notified after the settlement of such transaction.
- 3.5 If the Buyer has not given any previous instructions as to the exercise of Options, then the Option will be deemed to be automatically exercised on the Expiration Date at the Expiration Time, provided that the Option is In-the-money at such time.

### **4. Settlement**

- 4.1 Except where the parties to a Foreign Exchange Transaction, a Currency Option Transaction or a Bullion Transaction specify otherwise in a related Confirmation, such Transaction shall be deemed to be a Deliverable Transaction and, on the relevant Settlement Date, the following applies:

- a) in the case of Foreign Exchange Transactions, each party shall pay the amounts specified as payable by it in the related Confirmation;
  - b) in the case of Currency Option Transactions, in respect of an Exercise Date, Buyer shall pay to Seller on the Settlement Date the Put Currency Amount and Seller shall pay to Buyer the Call Currency Amount; and
  - c) in the case of Bullion Transactions, each party shall make the deliveries and payments as specified in the related Confirmation.
- 4.2 Any physical deliveries of Bullion shall be made to the location or the account specified in respect of the recipient in the related Confirmation. If the recipient does not wish to take delivery of standard bars with the usual fineness, a manufacturer's surcharge will be levied to cover the costs of producing smaller bars and/or bars with a higher fineness.
- 4.3 In the event that a Foreign Exchange Transaction, a Currency Option Transaction or a Bullion Transaction is not a Deliverable Transaction, the settlement method shall be as agreed between the parties in the related Confirmation.

## **5. Disruption Events**

- 5.1 In case the Calculation Agent ascertains, acting in good faith, that the valuation or the settlement of an Underlying is impossible, the Calculation Agent shall make such adjustments to the valuation method or determine a new Valuation Date or Valuation Time, as the Calculation Agent deems necessary to take into account the occurrence of such event.
- 5.2 If, after entering into a Foreign Exchange Transaction or a Currency Option Transaction, a Currency is converted or re-denominated into another currency, then the obligation to deliver the initial Currency will be replaced by the obligation to deliver a respective amount of the new currency.
- 5.3 If, after entering into a Foreign Exchange Transaction or a Currency Option Transaction, a Currency becomes inconvertible or an event occurs that generally makes it impossible to deliver the relevant Currency pursuant to the terms of the relevant Transaction, then such Foreign Exchange Transaction or Currency Option Transaction shall be cancelled as of the date immediately prior to the occurrence of such event and the Calculation Agent shall in good faith determine the payment that one party must pay to the other party as a result of such cancellation.

## Part E

### PROVISIONS FOR COMMODITY TRANSACTIONS

#### 1. Scope

This Part E applies to Commodity Transactions.

#### 2. Definitions

"**Calculation Period**" means, in respect of a party and as specified in the related Confirmation, each period from and including the first day specified as being included in such period to, but excluding, the last date specified as being included in such period, provided that (a) the initial Calculation Period for the party will commence on, and include, the Effective Date and (b) the final Calculation Period for the party will end on, but exclude, the Termination Date.

"**Cap Price**" means the price, if any, specified as such in the related Confirmation.

"**Cash Settlement**" designated in a Confirmation shall mean that one of the settlement methods pursuant to section 8 of this Part E apply.

"**Commodity**" means the underlying commodity as specified in the related Confirmation and as defined in the Price Description.

"**Commodity Basket**" means a basket composed of Commodities as specified in the related Confirmation.

"**Commodity Business Day**" means (i) in respect of a Commodity Transaction for which the Price Description is a price announced or published by an Exchange, a day that is (or, but for the occurrence of a Market Disruption Event, would have been) a day on which that Exchange is open for trading during its regular trading session, notwithstanding any such Exchange closing prior to its scheduled closing time; and (ii) in respect of a Commodity Transaction for which the Price Description is not a price announced or published by an Exchange, a day in respect of which the relevant price source published (or, but for the occurrence of a Market Disruption Event, would have published) a price.

"**Commodity Business Day Convention**" means the convention for adjusting any relevant date if it would otherwise fall on a day that is not a Commodity Business Day, as specified in the related Confirmation. The terms "Following", "Modified Following" or "Preceding", when used in conjunction with the term "Commodity Business Day Convention" and a date, are the relevant conventions for adjusting any relevant date if that date would otherwise fall on a day that is not a Commodity Business Day.

**"Commodity Cap Transaction"** means a Commodity Swap Transaction, where a Cap Price has been specified.

**"Commodity Forward Transaction"** means a Commodity Transaction, where the parties agree to the sale of a certain number or a certain amount of Commodities at a certain price for settlement or delivery on a certain date.

**"Commodity Floor Transaction"** means a Commodity Swap Transaction, where a Floor Price has been specified.

**"Commodity Pricing Date"** means a day on which the Relevant Price is to be determined and as specified as such in the related Confirmation.

**"Commodity Option Transaction"** means a Commodity Transaction, which is an Option Transaction.

**"Commodity Swap Transaction"** means a Commodity Transaction, where the Fixed Amount Payer shall pay the Fixed Amounts and the Floating Amount Payer shall pay the Floating Amounts.

**"Commodity Transaction"** means a transaction, which is subject to Cash Settlement, referencing a certain amount of Commodity or a Commodity Basket as Underlying.

**"Delivery Date"** means the relevant date or month for delivery of the underlying Commodity as specified in the related Confirmation or as resulting from the method specified in the related Confirmation for purposes of making such determination.

**"Effective Date"** means, in respect of a Commodity Swap Transaction, the date specified as such in the related Confirmation, which date is the first day of the Term of the Commodity Swap Transaction.

**"Exchange"** means the exchange or quotation system as specified in the related Price Description of the Commodity.

**"Exercise Period"** means, unless specified otherwise in the related Confirmation, (a) in respect of an American Option, all Commodity Business Days from, and including, the Commencement Date to, and including, the Expiration Date between 9:00 a.m. (local time in the place specified in the related Confirmation for receipt by Seller of notices relating to the Transaction) and the Latest Exercise Time, (b) in respect of a Bermuda Option, each Potential Exercise Date and the Expiration Date between 9:00 a.m. (local time in the place specified in the related Confirmation for receipt by Seller of notices relating to the Transaction) and the Latest Exercise Time and (c) in respect of a European Option, the Expiration Date between 9:00 a.m. (local time in the place specified in the related Confirmation for receipt by Seller of notices relating to the) and the Latest Exercise Time.

**"Expiration Date"** means the (last) day on which an Option may be exercised, as specified in the related Confirmation, and, where such day is not a Commodity Business Day, the next following Commodity Business Day.

**"Expiration Time"** means, in respect of a Commodity Option Transaction, the time specified as such in section 4 of this Part E or as otherwise specified in the related Confirmation, as applicable.

**"Fixed Amount Payer"** means, in respect of a Commodity Swap Transaction, the party, as specified in the related Confirmation, which is the party obligated to make payments from time to time during the Term of the Commodity Swap Transaction of amounts calculated by reference to a Fixed Price.

**"Fixed Amount"** means any payments made by reference to a Fixed Price.

**"Fixed Price"** means, for the purpose of the calculation of a Fixed Amount payable by a party on any Settlement Date or Payment Date, a price expressed as a price per relevant Unit, equal to the price specified as such in the related Confirmation for the Transaction or that party.

**"Floating Amount"** means any payments made by reference to a Floating Price.

**"Floating Amount Payer"** means, in respect of a Commodity Swap Transaction, the party, as specified in the related Confirmation, which is the party obligated to make payments from time to time during the Term of the Commodity Swap Transaction of amounts calculated by reference to a Floating Price.

**"Floating Price"** means, for the purpose of the calculation of a Floating Amount payable by a party on any Settlement Date or Payment Date, a price expressed as a price per relevant Unit, equal to the price resulting from the relevant Price Description or as specified otherwise in the related Confirmation for the Transaction or that party.

**"Floor Price"** means the price, if any, specified as such in the related Confirmation.

**"Following"** means the Commodity Business Day Convention under which the relevant date will be the first following day that is a Commodity Business Day.

**"Intrinsic Value"** of an Option Transaction means the amount by which the Relevant Price of the Underlying exceeds the Strike Price (in the case of Call Option), or is less than the Strike Price (in the case of a Put Option), multiplied by the number of Underlyings covered by such transaction.

**"Market Disruption Event"** means the occurrence of one of the events pursuant to section 10 of this Part E.

**"Minimum Quantity"** means the quantity specified as such in the related Confirmation by which an Option can be exercised if Multiple Exercise is applicable.

**"Modified Following"** means the Commodity Business Day Convention under which the relevant date will be the first following day that is a Commodity Business Day, unless that day falls on the next calendar month, in which case that date will be the first preceding day that is a Commodity Business Day.

**"Notional Quantity"** means, in respect of a party and a Commodity Transaction, the quantity, expressed in Units, specified as such in the related Confirmation.

**"Payment Date"** means each day during the Term of a Commodity Swap Transaction specified as such in respect of the relevant party in the related Confirmation, subject to adjustment with the relevant Commodity Business Day Convention determined in the related Confirmation and, in the absence of such determination, the Modified Following Commodity Business Day Convention.

**"Preceding"** means the Commodity Business Day Convention under which the relevant date will be the first preceding day that is a Commodity Business Day.

**"Price Description"** means the applicable price description from the different options in the Price Description Options Supplement, as specified in the related Confirmation, or such other relevant price description specified in the related Confirmation.

**"Price Description Options Supplement"** means the list with the title "Price Description Options Supplement" relating to this Part E of Annex 2 to the Swiss Master Agreement for OTC derivative instruments, as published by the Swiss Bankers Association (most recent version published at the time the relevant Commodity Transaction is entered into).

**"Price Source"** means any entity or person publishing a price relevant for any determination under this Part E.

**"Relevant Price"** means, for any Commodity Pricing Date, the price, expressed as a price per Unit, determined with respect to that day for the specified Price Description as provided in the Price Description Options Supplement.

**"Term"** means the period commencing on the Effective Date of a Commodity Swap Transaction and ending on the Termination Date of the Commodity Swap Transaction.

**"Termination Date"** means, in respect of a Commodity Swap Transaction, the date specified as such in the related Confirmation, which date is the last day of the Term of the Commodity Swap Transaction and is subject to adjustment with the relevant Commodity Business Day Convention as specified in the related Confirmation.



"Unit" means a certain amount or quantity of the Commodity, expressed in Units, and as specified as such in the related Confirmation.

### **3. Commodity Business Days**

For the purposes of any Commodity Transactions, any references to "Banking Day" or "Banking Days" shall be deemed to be references to a "Commodity Business Day" or to "Commodity Business Days".

### **4. Exercise of Commodity Option Transactions**

- 4.1 A European Option can only be exercised on the Expiration Date until 9.30 a.m. New York time or as otherwise specified in the related Confirmation. For Commodity Option Transactions, such time shall be deemed to be the Expiration Time and the Latest Exercise Time.
- 4.2 An American Option can be exercised on any Commodity Business Day during the Exercise Period. A Bermuda Option can be exercised on any Potential Exercise Date during the Exercise Period, provided that such Potential Exercise Date is also a Commodity Business Day. On the Expiration Date, an American Option and a Bermuda Option can only be exercised until 9.30 a.m. New York time or as otherwise specified in the related Confirmation. For Commodity Option Transactions, such time shall be deemed to be the Expiration Time and the Latest Exercise Time. Subject to the provisions regarding automatic exercise pursuant to section 4.5 of this Part E, exercise notices received after the relevant deadline has expired shall be deemed to be received on the next following Commodity Business Day.
- 4.3 If notice of exercise is given prior to the Exercise Period commencing, that notice is deemed to be given when the Exercise Period commences.
- 4.4 An American Option or a Bermuda Option cannot be exercised in partial amounts unless Multiple Exercise is specified to be applicable in the related Confirmation. If Multiple Exercise applies, then each exercise amount must be at least equal to the Minimum Quantity.
- 4.5 Options that have not been exercised are deemed to have been exercised on the Expiration Date if (i) Cash Settlement applies, and (ii) such Options are In-the-money. Where Cash Settlement does not apply, Options that have not been exercised are deemed to have been exercised on the Expiration Date only if (i) the parties have elected in the related Confirmation that Automatic Exercise shall apply, and (ii) the relevant Option is In-the-money.
- 4.6 Commodity Option Transactions may be exercised orally.

**5. Payment obligations for Commodity Swap Transactions and Commodity Cap/Floor Transactions**

5.1 The parties shall pay any Initial Exchange Amounts, Interim Exchange Amounts and Final Exchange Amounts as specified in the related Confirmation.

5.2 For Commodity Swap Transactions, Commodity Cap Transactions and Commodity Floor Transactions, unless specified otherwise in the related Confirmation, the Fixed Amount Payer shall pay the Fixed Amounts and the Floating Amount Payer shall pay the Floating Amounts pursuant to the terms set out in sections 5.3, 5.4 and 5.5 of this Part E.

**5.3 Fixed Amounts**

a) Fixed Amounts are the amounts resulting, in respect of each Calculation Period, from the below calculation (provided that, for Commodity Transactions referencing a Commodity Basket, such calculation shall be made separately for each basket component and each Fixed Amount is the aggregate of such calculations).

Notional Quantity per Calculation Period x Fixed Price

b) Such Fixed Amounts shall be payable by the Fixed Amount Payer on each Payment Date specified in respect of the Fixed Amount Payer in the related Confirmation.

**5.4 Floating Amounts**

a) Floating Amounts are the amounts resulting, in respect of each Calculation Period, from the below calculation (provided that, for Commodity Transactions referencing a Commodity Basket, such calculation shall be made separately for each basket component and each Floating Amount is the aggregate of such calculations).

Notional Quantity per Calculation Period x Floating Price

b) Such Floating Amounts shall be payable by the Floating Amount Payer on each Payment Date specified in respect of the Floating Amount Payer in the related Confirmation.

5.5 For Commodity Cap Transactions and Commodity Floor Transactions, unless specified otherwise in the related Confirmation, each Floating Amount to be paid by the Floating Amount Payer shall be determined in accordance with the following provisions:

- a) For a Commodity Cap Transaction, the Buyer shall receive from the Seller the amount by which the Floating Price exceeds the Cap Price, multiplied by the Notional Quantity.
- b) For a Commodity Floor Transaction, the Buyer shall receive from the Seller the amount by which the Floor Price exceeds the Floating Price, multiplied by the Notional Quantity.

## **6. Provisions for Commodity Forward Transactions**

- 6.1 The parties shall pay any Initial Exchange Amounts, Interim Exchange Amounts and Final Exchange Amounts as specified in the related Confirmation.
- 6.2 For Commodity Forward Transactions, unless specified otherwise in the related Confirmation, if the Floating Amount set out under section 6.3 of this Part E is positive (resulting from the Floating Price being greater than the Fixed Price), the Seller shall pay the Floating Amount to the Buyer. Conversely, if the Floating Amount set out under section 6.3 of this Part E is negative (resulting from the Floating Price being smaller than the Fixed Price), the Buyer shall pay the absolute value of the Floating Amount to the Seller. For Commodity Transactions referencing a Commodity Basket, such calculation shall be made separately for each basket component.
- 6.3 Floating Amounts:
  - a) Floating Amounts are the amounts resulting, in respect of a Commodity Pricing Date, from the below Calculation.  
$$\text{Notional Quantity} \times (\text{Floating Price} - \text{Fixed Price})$$
  - b) Such Floating Amounts shall be payable on each Payment Date specified as such in the related Confirmation by the Buyer or the Seller, as applicable.

## **7. Floating Price Determination**

- 7.1 Unless specified otherwise in the related Confirmation, the Floating Price shall be determined as follows:

- a) If for an Exercise Date, a Calculation Period, Settlement Date or Payment Date the parties agreed on one Commodity Pricing Date only in the related Confirmation, then the Floating Price shall be the Relevant Price as determined in accordance with the Price Description of the relevant Commodity on that Commodity Pricing Date.
- b) If for an Exercise Date, a Calculation Period, Settlement Date or Payment Date the parties agreed on two or more Commodity Pricing Dates in the related Confirmation, then the Floating Price shall be the arithmetic mean of the Relevant Prices determined in accordance with the Price Description of the relevant Commodity on each Commodity Pricing Date.

## **8. Settlement**

- 8.1 Cash Settlement shall be deemed to apply to a Commodity Transaction.
- 8.2 As regards Commodity Option Transactions, unless the parties specify otherwise in a Confirmation, the following payments shall be made on the Settlement Date (provided that, for Commodity Transactions referencing a Commodity Basket, such calculation shall be made separately for each basket component):
  - a) in respect of Call Options: the Floating Price on the Commodity Pricing Date less the Strike Price (expressed as a price per Unit), multiplied by the Notional Quantity; and
  - b) in respect of a Put Option: the Strike Price less the Floating Price on the Commodity Pricing Date (expressed as a price per Unit), multiplied by the Notional Quantity.
- 8.3 As regards Commodity Swap Transactions, Commodity Cap Transactions, Commodity Floor Transactions and Commodity Forward Transactions, the payments shall be made as specified in sections 5 and 6 of this Part E.

## **9. Corrections**

- 9.1 For purposes of determining the Relevant Price for any day, if the price published or announced on a given day and used or to be used by the Calculation Agent to determine the Relevant Price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement within 30 calendar days after the original publication or announcement (or within such other period of time specified in a Confirmation), either party may notify the other party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. Any such amount shall only be due and payable if the notice has been received not later than 30 calendar days after the publication of the correction.

- 9.2 Any amount that is payable pursuant to section 9.1 of this Part E shall be paid by the relevant party receiving such notice within three Commodity Business Days of receipt of such notice. The party owing such amount shall pay interest on such amount from the date of the original payment up to the date the amount pursuant to section 9.1 of this Part E has become due and payable at the rate of interest that is payable for overnight deposits by prime banks at the relevant place of payment and in the relevant currency.

## **10. Market Disruption Events and Disruption Fallbacks**

- 10.1 If the Price Source fails to announce or publish a price or trading in the Commodity or any futures or options contract or similar products referencing any such Commodity is temporarily or permanently disrupted, suspended, limited or cancelled, then the Calculation Agent may make such adjustments as it deems necessary (acting in a commercially reasonable manner and in good faith) in order to determine the Relevant Price and any amounts becoming due and payable under a Commodity Transaction, provided that any such event is material to the Commodity Transaction concerned. When making any such adjustment, the Calculation Agent shall have regard to the relevant market practice and any adjustments being made by any hedging counterparty of Party A or Party B.
- 10.2 In the event that the disruption pursuant to section 10.1 of this Part E continues to exist (measured from and including the original day that would otherwise have been the Commodity Pricing Date) for two consecutive Commodity Business Days, the Calculation Agent will determine the Relevant Price (or a method for determining a Relevant Price), taking into consideration the latest available quotation from the relevant Price Source and any other information that it determines in good faith to be relevant.
- 10.3 As long as, as a result of a disruption pursuant to section 10.1 of this Part E, the Relevant Price cannot be determined, the Settlement Date or Payment Date will be delayed to the same extent as the determination of the Relevant Price.