

# CZECH BANKING ASSOCIATION

On the basis of standard documentation published by the European Banking Federation

## MASTER AGREEMENT FOR FINANCIAL TRANSACTIONS

### GENERAL PROVISIONS

Edition 12/2016

#### 1. Purpose, Structure, Interpretation

(1) **Purpose. Applicability.** The provisions set out in this document (the "General Provisions") are intended to govern financial transactions (each a "Transaction") under any Master Agreement for Financial Transactions (each a "Master Agreement") based on the form published by the Czech Banking Association ("CBA"). The provisions of a Master Agreement shall apply to the extent that they are incorporated by the parties into the terms of a Transaction or type of Transactions between them.

(2) **Structure.** A Master Agreement consists of (i) an agreement between the parties thereto providing a basis for Transactions between them (the "Special Provisions"), (ii) these General Provisions, (iii) any annexes thereto (each an "Annex"), being Annexes concerning particular types of Transactions ("Product Annexes") or concerning other matters and (iv) any supplements to the Product Annexes (each a "Supplement"). If no Special Provisions have been agreed, these General Provisions (together with, if applicable, any Annexes and any Supplements thereto) shall constitute a Master Agreement governing all Transactions into the terms of which they have been incorporated. Each Master Agreement and the terms agreed in respect of all Transactions there under shall collectively be referred to herein as the "Agreement". These General Provisions and all the Annexes and Supplements incorporated in the Master Agreement under the Special Provisions form and inseparable part of the Agreement, which is also formed by the respective Special Provisions and terms agreed for all Transactions entered into under the Master Agreement. Sections 1799, 1800 and sections 2758 to 2883 of Act No. 89/2012 Coll., Civil Code, as amended (the "Civil Code") shall be disappplied.

(3) **Interpretation.** In the event of any conflict between different parts of the Agreement, (i) any Annex or Supplement shall prevail over the General Provisions, (ii) the Special Provisions shall prevail over the General Provisions and any Annex or Supplement and (iii) the terms agreed in respect of an individual Transaction shall, in respect of that Transaction only, prevail over all other terms of the Agreement. Therefore, the terms agreed for a particular Transaction amend and supplement the Special Provisions in the given extent and the Special Provisions amend and supplement these General Provisions and the respective Annexes or Supplements. Unless otherwise specified, all references herein or in any Annex to Sections are to Sections of these General Provisions or such Annex, respectively. Certain expressions used in the

Agreement are defined at the places indicated in the Index of Defined Terms published by the CBA in connection with these General Provisions. Unless otherwise agreed, the term "interest" used in the Agreement may, depending on circumstances, mean a positive or negative amount of money or may be zero.

(4) **Single Agreement.** The Agreement constitutes a single obligation. Accordingly, (i) each duty of a party under any Transaction is incurred and performed in consideration of the duties incurred and to be performed by the other party under all Transactions, (ii) unless otherwise agreed, a failure by a party to perform a duty under any Transaction shall constitute a failure to perform under the Agreement as a whole and (iii) unless otherwise agreed (in particular subject to Section 6(2)(a)(ii)), a discharge of a duty of any Transaction in any manner other than performance, set-off, lapse of time, waiver of right or agreement will trigger the termination of all duties from all other Transactions with the legal effects pursuant to Section 6(4).

The parties enter into the Master Agreement between them and each Transaction there under in reliance on these principles, which they consider fundamental to their risk assessment. For the avoidance of doubt, Transactions may be concluded and arise independently from each other.

(5) **Amendments.** Any amendments or supplements to the documentation forming the Master Agreement published by the CBA on the website [www.czech-ba.cz](http://www.czech-ba.cz) (the "Amendment Documentation") shall become effective on the day when the CBA is delivered a written notification of the accession to the respective Amendment Documentation made by each party. Such accession notification shall include a precise identification of the Amendment Documentation to which the party is acceding, the signatures of authorised signatories and any other elements stipulated by the CBA and published on the website [www.czech-ba.cz](http://www.czech-ba.cz) (the "Accession Notification"). The Accession Notification is irrevocable. To the acceding party, the CBA shall issue a written confirmation of delivery of the Accession Notification proving its delivery. The parties shall inform each other about the serving of an Accession Notification by either exchanging the copies of the respective Accession Notifications together with evidence of their delivery to the CBA, or exchanging copies of confirmation of delivery of the Accession Notifications issued by the CBA. However, the effects of accession to the respective Amendment Documentation between the parties shall occur always on the day of delivery of the Accession Notification to the CBA by the last party. Between the

parties, such accession shall always be effective only to the extent the descriptions of the Amendment Documentation in the respective Accession Notifications by the individual parties are identical. This Section 1(5) does not exclude the right of the parties to agree any amendment to the Agreement in accordance with the governing law.

## **2. Transactions**

(1) Form. A Transaction may be entered into orally or by any other means of communication. The parties acknowledge that it must be possible to evidence the conclusion of the Agreement in writing or by other records enabling reproduction in unchanged form, to qualify the Agreement as an agreement on close-out netting. The parties further acknowledge that the conclusion of financial collateral does not require a written or any other special form, but it must be possible to evidence in writing the fact that financial collateral was provided, otherwise it shall be disqualified as an agreement on financial collateral arrangement. Written form will be preserved if the provision of financial collateral is recorded by a record evidencing the provision of financial collateral and enabling reproduction in unchanged form, in particular by a record in the electronic system of the party specified in the Special Provisions or in the electronic system operated by a third party and specified in the Special Provisions; written agreement itself is not required.

### **(2) Confirmation.**

(a) General. Upon the parties having agreed on a Transaction each party shall promptly send to the other a confirmation (a "Confirmation") of such Transaction in the manner specified in Section 8 or by any other method intended by the parties to be effective for the purpose of confirming or evidencing such Transaction, which in each case will be sufficient for all purposes to evidence a binding part of this Agreement. The parties may agree that only one party will execute a Confirmation which will be confirmed by the other party. A Confirmation confirms the terms of the Transaction agreed or amended in the manner stipulated by this Agreement. A confirmation describes in more detail and supplements the agreed terms of the Transactions, among others, by certain terms stipulated in the Confirmation. A Confirmation confirmed, or deemed confirmed, by the other party is a confirmation of the conclusion or amendment of the Transaction, although in the conclusion of the Transaction the parties did not provide to each other all the terms specifying the Transaction; they are provided solely in the Confirmation. In the event of any discrepancy between the terms agreed during the conclusion or amendment of the Transaction, the Confirmation and the Master Agreement, such agreed terms of the Transaction shall have precedence over the Confirmation and the Master Agreement and the Confirmation has precedence over the Master Agreement. A failure to issue or deliver one or both Confirmations, a failure to confirm a Confirmation issued by the other party or the issuing and confirming of an incorrect Confirmation shall not and cannot affect the validity or the contents of the Transaction. Section 1757 of the Civil Code shall be disappplied.

(b) Timely Confirmation. The parties shall use all reasonable efforts acting in good faith and a commercially reasonable manner to ensure each Transaction is confirmed by the Timely Confirmation Deadline. In relation to each Relevant Confirmation

Transaction::

(i) the Documenting Party shall deliver a Confirmation to the Receiving Party as soon as possible and at the latest by the Confirmation Delivery Deadline ; and

(ii) following the delivery in (a) above, the Receiving Party shall, using all reasonable efforts acting in good faith and a commercially reasonable manner, either confirm the Confirmation or deliver to the Documenting Party a Not Confirmed Notice as soon as possible and at the latest by the Timely Confirmation Deadline.

If the Receiving Party delivers a Not Confirmed Notice to the Documenting Party by the Timely Confirmation Deadline, Party A and Party B shall, using all reasonable efforts acting in good faith and a commercially reasonable manner, attempt to resolve the difference and confirm the Relevant Confirmation Transaction as soon as possible. In respect of each Relevant DAC Transaction, if the Documenting Party sends a Confirmation to the Receiving Party by the Confirmation Delivery Deadline and the Receiving Party does not confirm the Confirmation or deliver to the Documenting Party a Not Confirmed Notice by the Timely Confirmation Deadline, the Receiving Party shall be deemed to have agreed to the terms of the Confirmation and to have confirmed the Confirmation at the Timely Confirmation Deadline. A failure by the Receiving Party to confirm the Confirmation or a failure to send the Not Confirmed Notice by the Receiving Party to the Documenting Party by the Timely Confirmation Deadline shall not clear the Receiving Party of the duty to deliver to the Documenting Party a Confirmation under this Section 2(2).

(c) Definitions. For the purposes of this Section 2(2)(b):

"CCP" means a central clearing house authorised under Article 14 of EMIR or recognised under Article 25 of EMIR.

"CCP Service" means in respect of a CCP, an over-the-counter derivative clearing service offered by such CCP.

"Cleared" means, in respect of a Transaction, that such Transaction has been submitted (including where details of such Transaction are submitted) to a CCP for clearing in a relevant CCP Service and that such CCP has become a party to a resulting or corresponding transaction, as applicable, pursuant to such CCP's Rule Set.

"confirm" means, with respect to a Confirmation provided by the Documenting Party to the Receiving Party, an acknowledgement in writing (whether by execution in counterpart of the Confirmation or otherwise) or electronically from the Receiving Party to the Documenting Party that the terms of such Confirmation reflect the terms of the Relevant Confirmation Transaction and "confirmed" will be construed accordingly.

"Confirmation Delivery Deadline" means (i) 4pm on the Local Business Day prior to the Timely Confirmation Deadline; or (ii) if the Timely Confirmation Deadline falls after the day that is the second Local Business Day following the Trade Date, 4pm on the second Local Business Day immediately preceding the Timely Confirmation Deadline. Notwithstanding anything to the contrary in the Agreement, for this purpose "Local Business Day" means a day on which commercial banks

and foreign exchange markets are generally open to settle payments in the city in which the office through which the Receiving Party is acting for the purposes of the Relevant Confirmation Transaction is located.

"Documenting Party" means the party designated as the Documenting Party in the Special Provisions.

"Not Confirmed Notice" means, with respect to a Confirmation provided by the Documenting Party, a written notice from the Receiving Party to the Documenting Party stating that the terms of such Confirmation do not accurately reflect the terms of the Transaction, which terms are inaccurate and what such terms should be, in the opinion of the Receiving Party.

"Receiving Party" means the party which is not the Documenting Party.

"Relevant Confirmation Transaction" means any Transaction which is not Cleared and which was entered into on or following the Timely Confirmation Start Date.

"Relevant DAC Transaction" means any Relevant Confirmation Transactions that was entered into based on the Receiving Party's implicit agreement with the confirmation.

"Rule Set" means, with respect to a CCP Service, the relevant rules, conditions, procedures, regulations, standard terms, membership agreements, collateral addenda, notices, guidance, policies or other such documents promulgated by the relevant CCP and amended and supplemented from time to time.

"Timely Confirmation Deadline" means the end of the latest day by which such Relevant Confirmation Transaction must be confirmed in accordance with Article 12 of Chapter VIII of the Commission Delegated Regulation (EU) No 149/2013.

"Timely Confirmation Start Date" means the twentieth day following the day of publication of Article 12 of Chapter VIII of the Commission Delegated Regulation (EU) No 149/2013.

"Trade Date" means the date of execution of the Transaction.

### (3) Reporting Obligations.

(a) In respect of any Transaction that is subject to the obligation to report details of derivative contracts that are concluded, modified or terminated to any entity registered as trade repository in accordance with Article 55 of Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories ("EMIR") or recognised as a trade repository in accordance with Article 77 of EMIR (a "Trade Repository") or to the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council ("ESMA") in accordance with Article 9 of EMIR ("Reporting Obligation") (for the purpose of this Section 2(3) and Part 6(i) of the Special Provisions "Relevant Transaction"), the parties agree that they will act in good faith to agree the information listed in Table 2 (*Common Data*) of (i) the Annex to the Commission Delegated Regulation (EU) No 148/2013, and (ii) the Annex to the Commission Implementing Regulation (EU) No 1247/2012 ("Reporting Annexes") ("Common Data") before it is reported to the Relevant Trade Repository (as defined in Part 6(i) of the Special Provisions).

(b) If, in respect of any Relevant Transaction(s), only one party (the "Reporting Party") agrees to report the information listed in Table 1 (*Counterparty Data*) of the Reporting Annexes ("Counterparty Data") in relation to both parties and/or the Common Data, the other party (the "Non-Reporting Party"):

- (i) agrees that it will deliver to the Reporting Party the information needed by the Reporting Party in time for the Reporting Party to comply with its obligation under Part 6(i) of the Special Provisions; and
- (ii) represents to the Reporting Party that the information it delivers under Section 2(3)(b)(i) above is, at the time of delivery, true, accurate and complete in every material respect.

(c) If either party identifies an error in any information previously provided to the other party which is material to the Reporting Obligation, such party will notify such other party as soon as reasonably practicable and both parties will use all reasonable efforts in good faith and a commercially reasonable manner to resolve such error.

Any information provided to a Trade Repository or the Relevant Trade Repository (as defined in Part 6(i) of the Special Provisions) for the purposes of complying with the Reporting Obligation is provided without prejudice to any present or future dispute between the parties in relation to the information provided.

## 3. **Payments, Deliveries and Related Definitions**

(1) Date, Place, Manner. Each party shall make the payments and deliveries to be made by it at the time, date and place and to the account agreed in respect of the Transaction concerned and in the manner customary for payments or deliveries of the relevant kind. Each payment shall be made in the currency agreed in respect thereof (the "Contractual Currency"), free of all costs and in funds which are freely available on the due date. Each party may change its account for receiving a payment or delivery by giving notice to the other at least ten Business Days prior to the scheduled date for the relevant payment or delivery, unless the other party reasonably objects to such change and gives timely notice thereof.

### (2) Transfer of Title. Retransfer of Securities.

(a) Transfer of Title. Unless otherwise agreed, any delivery or transfer of securities or book-entry securities ("securities") or other investment instruments and financial instruments (securities and other investment instruments and financial instruments jointly as "Securities") or any other assets (including, in respect of Derivative Transactions, any other underlying assets of such Transactions) by a party to the other pursuant to the Agreement shall constitute a transfer to such other party of the unrestricted title to such Securities and/or assets or, if customary in the place where delivery is to be effected, of a legal position (such as a co-ownership of Securities or another form of beneficial ownership which is the functional equivalent of such title, including, in each case, an unrestricted right to dispose of such Securities and/or assets) and not the creation of a security interest; the use of the terms "margin" or "financial collateral" or "substitution" shall not be construed as indicating an agreement to the contrary. The transferor of any Securities and/or assets shall, accordingly, (i) not retain in respect of those Securities and/or assets any ownership interest, security interest or right to dispose and (ii) execute all documents reasonably required to effect such full transfer.

(b) Retransfer of Securities. A duty to return or retransfer any Securities is a duty to transfer Securities of the same kind as such Securities. Securities are "of the same kind" as other Securities if they are of the same kind, issued by the same issuer, in the same currency, in the same issue or class and of the same type, form (if they can have a different type and/or form) and nominal value (if any), and represent identical rights as such other Securities; if all such other Securities have been redeemed, redenominated, withdrawn, exchanged, converted, subdivided, consolidated or been the subject of an event similar to any of the foregoing, Securities "of the same kind" means the amount of Securities, money and other property (together "Substitute Assets") received in respect of such other Securities as a result of such event (provided that if any sum had to be paid in order to receive such Substitute Assets, a duty to transfer them shall be conditional upon payment by the transferee of such sum to the transferor).

(3) Conditions Precedent. Each payment or delivery duty of a party is subject to the conditions precedent that

- (i) no Event of Default or event which by the lapse of time or the giving of notice (or both) may become an Event of Default with respect to the other party has occurred and is continuing and
- (ii) no notice of withdrawal has been given in respect of the relevant Transaction because of a Change of Circumstances.

(4) Payment Netting. Unless otherwise agreed, if on any date both parties would otherwise be required to make payments in the same currency in respect of the same Transaction, the mutual monetary debts shall automatically be set off against each other and the party owing the higher amount shall pay to the other the difference between the amounts owed. The parties may agree that this principle shall apply in respect of two or more Transactions or one or more types of Transactions or that it shall apply also in respect of mutual obligations to deliver things or assets which are fungible with each other. If and so long as a single currency can be expressed in different currency units (such as the euro unit and national currency units under the principles governing the transition to European Economic and Monetary Union), the principle set forth in the first sentence of this subsection shall apply only if both payments are to be made in the same unit.

(5) Late Payment. If in respect of a Transaction a party fails to make a payment to the other when due (and, for the avoidance of doubt, without being entitled to withhold such payment), interest, payable on demand, shall accrue (before and after judgment) at the Default Rate on the amount outstanding, calculated for the period from (and including) the due date to (but excluding) the day on which such payment is received.

"Default Rate" means the highest of

- (a) the Interbank Rate; or
- (b) the cost to the other party, as certified by it, of funding the relevant amount, in each of (a) and (b) plus any interest surcharge which may be agreed in the Special Provisions; or
- (c) 0%.

"Interbank Rate" means the interbank offered interest rate charged by prime banks to each other for overnight deposits at the place of payment and in the currency of

the amount outstanding for each day on which interest is to be charged (being, if an amount in euros is outstanding, the Euro Overnight Index Average ("EONIA") Rate calculated by the European Central Bank; if an amount in Czech crowns is outstanding, the Czech Overnight Index Average ("CZEONIA") Rate published by the Czech National Bank).

(6) Business Day Convention. If any payment or delivery date, any determination or valuation date, any commencement or termination date or any exercise date agreed between the parties which is deemed to be a Business Day is not a Business Day, payments, deliveries, determinations or valuations shall be made or, as the case may be, the commencement date, the termination date or the exercise date shall be deemed to occur, as elected in respect of the relevant Transaction, on

(a) the immediately preceding Business Day ("Preceding"),

(b) the immediately following Business Day ("Following"), or

(c) the immediately following Business Day, unless such day falls in the next calendar month, in which case the relevant payment, delivery, determination or valuation shall be made or, as the case may be, the relevant commencement date, termination date or exercise date shall be deemed to occur on the immediately preceding Business Day ("Modified Following" or "Modified"), provided that failing such election, (b) shall apply, except for the valuation date, for which (a) shall apply..

(7) Business Day Definition.

(a) "Business Day" means, in the case of payment or delivery, a day (other than a Saturday or a Sunday), on which commercial banks are open for business and simultaneously:

- (i) in relation to any payment in Czech crowns, a day on which all relevant parts of the Czech National Bank system CERTIS are operational to effect such a payment;
- (ii) in relation to any payment in euros a day on which all relevant parts of TARGET are operational to effect such a payment,
- (iii) in relation to any payment in any other currency a day on which commercial banks are open for business (including payments in the currency concerned as well as dealings in foreign exchange and foreign currency deposits) in the place(s) agreed in relation to the relevant Transaction or, if not so agreed, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment,
- (iv) in relation to any delivery of Securities,

(A) where a Transaction is to be settled through a settlement system for securities, book-entry securities or other similar securities kept in records, a day on which such securities settlement system is open for business in the place where delivery of the Securities is to be effected, and

(B) where a Transaction is to be settled in a way other than (A), a day (other than a Saturday or a Sunday) on which commercial banks are open for business in the place where delivery of the Securities is to be effected,

(v) in relation to any delivery of any assets other than Securities, a day on which commercial banks are open for business in the place where delivery of the relevant assets is to be effected or any other day agreed between the parties in the Confirmation of the relevant Transactions or otherwise,

(b) "Business Day" means, in relation to any valuation, a day (other than a Saturday or a Sunday) on which an up-to-date valuation based on the agreed price sources can reasonably be carried out, and

(c) "Business Day" means, in relation to any notice or other communication, a day (other than a Saturday or a Sunday) on which commercial banks are open for business in the city specified in the address provided by the recipient pursuant to Section 8(1).

(8) Market Value. "Market Value" means in respect of any Securities as of any time on any date,

(a) the price for such Securities then quoted through and obtainable from a generally recognised source agreed to by the parties and

(b) failing such agreement or such quotation

(i) if the Securities are accepted for trading on a regulated market and not then suspended, their price last quoted on such regulated market;

(ii) if the Securities are not accepted for trading on a regulated market, but have, on the main market on which they are traded, the price published or made public by a central bank or an entity of undisputed authority on such day, such price last published or made public; and

(iii) in any other case, the average of the bid and offer prices for such Securities, as of such time on such date, as established by two leading market participants other than the parties;

in each of the cases listed in (a) and (b) with addition of all accrued and outstanding interest (if it is a positive amount) and deduction of the absolute values of such interest (if they are negative amounts) (unless these amounts are already included in such price) any interest accrued on such Securities as of that date.

#### 4. Taxes

(1) Withholding Tax. If a party is or will be obliged to deduct or withhold an amount for or on account of any tax or other duty from a payment which it is to make, it shall pay to the other party such additional amounts as are necessary to ensure that such other party receives the full amount to which it would have been entitled at the time of such payment if no deduction or withholding had been required. This shall not apply if the tax or duty concerned is imposed or levied

(a) by or on behalf or for the account of the jurisdiction (or a tax authority of or resident in the jurisdiction) in which the Booking Office of the payee (or its place of residence, if the payee is an individual) is located,

(b) pursuant to (directly or indirectly) an obligation imposed by a treaty to which such jurisdiction is a party, or by a regulation or directive enacted under such treaty,

(c) because the payee has failed to perform its obligation under Section 10(4)(b); or

(d) as a withholding tax imposed on payments to non-US counterparties under the US Foreign Account Tax

Compliance Act ("FATCA"), i.e. as any US federal withholding tax imposed or levied under Sections 1471 to 1474 of the US Internal Revenue Code of 1986, as amended (the "Code"), any existing or future regulations or their official interpretation, any agreement entered into under Section 1471(b) of the Code or any fiscal or regulatory regulations, rules or practice adopted based on any inter-governmental treaty concluded in connection with the implementation of the above Sections of the Code (the "FATCA Withholding Tax"). For the avoidance of doubt, the FATCA Withholding Tax is a tax whose imposition or levying is required by the relevant law.

(2) Documentary Tax. Subject to Section 10(2), each party shall pay any stamp, documentary or similar tax or duty payable with respect to the Agreement (a "Documentary Tax") and imposed upon it in the jurisdiction in which its Booking Office or place of residence is located and shall indemnify the other party for any Documentary Tax payable in such jurisdiction and imposed upon the other party, unless the Booking Office of such other party (or its place of residence, if the other party is an individual) is also located in such jurisdiction.

#### 5. Representations

(1) Representations. Each party represents to the other, as of the date on which it enters into a Master Agreement and as of each date on which a Transaction is entered into, that:

(a) Status. It validly exists under the laws of its organisation or incorporation;

(b) Corporate Action. It is duly authorised to execute and deliver, and perform its duties under the Agreement;

(c) No Violation or Conflict. The execution, delivery and performance of the Agreement do not violate or conflict with any provision of law, judgment or government or court order applicable to it, or any provision of its constitutional documents;

(d) Consents. All governmental and other consents which are required to be obtained by it with respect to the Agreement have been obtained and are in full force and effect;

(e) Obligations Binding. Its obligations under the Agreement are valid, effective and enforceable;

(f) Absence of Certain Events. No Event of Default or event which by the lapse of time or the giving of notice (or both) may become an Event of Default and, to its knowledge, no Change of Circumstances with respect to it has occurred and is continuing;

(g) Absence of Litigation. There is not pending or, to its knowledge, threatened against it any action, suit or proceeding before any court, tribunal, arbitrator or governmental or other authority that is likely to affect the legality, validity, binding effect or enforceability against it of the Agreement or its ability to perform its duties under the Agreement;

(h) No Reliance. It has the necessary knowledge and experience to assess the benefits and risks incurred in each Transaction and has not relied for such purpose on the other party;

(i) Margin. It has full title to the Securities and

money transferred, as margin or collateral, to the other party under the Agreement and that such Securities and money shall be free and clear of any lien, security interest, claim or any other right which may affect the right of the other party to dispose freely of such Securities and money.

(2) Applicability to Guarantor. The representations in Sections 1(a) to (i) will apply accordingly also to the Guarantor and the Guarantee.

A “Guarantee” is an agreement or other instrument specified in the Special Provisions or in a Confirmation, or other security document by which a party to the Agreement or the Guarantor has given a suretyship, guarantee or other security or credit support or has otherwise secured the monetary debts, specified in the Guarantee, of either party under the Agreement, from the Transactions entered into under the Agreement or created in connection with them.

A “Guarantor” is a third party specified in the Special Provisions or a Confirmation or a third party not specified in these documents that secures the debts of a party to the Agreement to the other party to the Agreement from the Guarantee.

(3) NFC Representation.

(a) NFC Representation. Each Representing Party represents to the other party on each date and at each time on which it enters into a Transaction (which representation will be, subject to Section 5(3)(b) below, deemed to be repeated by a Representing Party at all times while such Transaction remains outstanding) that:

(i) it is either (A) a non-financial counterparty (as such term is defined in EMIR) or (B) an entity established outside the European Union that, to the best of its knowledge and belief, having given due and proper consideration to its status, would constitute a non-financial counterparty (as such term is defined in EMIR) if it were established in the European Union; and

(ii) it is not subject to a clearing obligation pursuant to EMIR (or, in respect of an entity under Section 5(3)(a)(i)(B) above, would not be subject to the clearing obligation if it were established in the European Union) in respect of such Transaction. For the purposes of this Section 5(3)(a)(ii) of this representation, it is assumed that the Transaction is of a type that has been declared to be subject to the clearing obligation in accordance with Article 5 of EMIR and is subject to the clearing obligation in accordance with Article 4 of EMIR (whether or not in fact this is the case), and that any transitional provisions in EMIR are ignored.

(b) Status and Change of Status.

(i) From and including the earlier of:

(A) the time at which a Representing Party is specified in the Special Provisions as a NFC + Party; and

(B) the time at which a Representing Party has effectively delivered to the other party a Clearing Status Notice,

in either case, to but excluding the time at which a Representing Party has effectively delivered to the other party a Non-Clearing Status Notice, Section 5(3)(a)(ii) of the NFC Representation is disappplied and does not form part of the NFC Representation in respect of the party which has been specified in the

Special Provisions as an NFC+ Party or effectively delivered a Clearing Status Notice.

(ii) From and including the time at which a NFC+ Party has effectively delivered to the other party a Non-Clearing Status Notice, Section 5(3)(a)(ii) of the NFC Representation is applied and will form part of the NFC Representation in respect of the party which has effectively delivered such Non-Clearing Status Notice.

(iii) From and including the time at which a Representing Party has effectively delivered to the other party a Non-representation Notice, Section 5(3)(a)(i) and, where not already disappplied, Section 5(3)(a)(ii) of the NFC Representation is disappplied and does not form part of the NFC Representation in respect of the party which has effectively delivered such Non-representation Notice.

(iv) From and including the time at which a Non-representing Party has effectively delivered to the other party a NFC Representation Notice, Section 5(3)(a)(i) and Section 5(3)(a)(ii) of the NFC Representation are applied in respect of the party which has effectively delivered such NFC Representation Notice.

(v) From and including the time at which a Non-representing Party has effectively delivered to the other party a NFC Representation Notice, Section 5(3)(a)(i) of the NFC Representation is applied but Section 5(3)(a)(ii) of the NFC Representation is not applied and will not form part of the NFC Representation, in either case, in respect of the party which has effectively delivered such NFC+ Representation Notice.

(c) Breach of NFC Representation.

(i) If the representation in Section 5(3)(a)(ii) of the NFC Representation proves to have been incorrect or misleading in any material respect when made (or deemed repeated) by a Representing Party, the parties will use all reasonable efforts, negotiating in good faith and a commercially reasonable manner, to:

(A) if the Relevant Transaction Clearing Deadline Date has not occurred in relation to any Relevant Clearable Transaction, (I) agree, implement and apply any amendments or modifications to the terms of such Relevant Clearable Transaction and/or to take any steps, as applicable, to ensure that such Relevant Clearable Transaction is Cleared by the Clearing Deadline Date, including any amendments, modifications and/or steps, as applicable, to ensure the payment of any Balancing Payment Amount under Section 5(3)(c)(i)(A)(II); and (II) agree the Balancing Payment Amount, if any, payable between the parties and the date on which any such Balancing Payment Amount is to be paid; and

(B) (I) agree, implement and apply any amendments or modifications to the terms of any Relevant Non-Clearable Transaction, or to any related processes, and/or to take any steps to ensure that the relevant Risk Mitigation Techniques are adhered to in respect of each such Relevant Non-Clearable Transaction from, and including, the Relevant Transaction Risk Mitigation Deadline Date, including any amendments, modifications and/or steps, as applicable, to ensure the payment of any Balancing Risk Mitigation Payment Amount under Section 5(3)(c)(i)(B)(II); and (II) agree the Balancing Risk Mitigation Payment Amount, if any, payable between the parties and the date on which any such Balancing Risk Mitigation Payment Amount is to be paid.

(ii) If:

(A) subject to Section 5(3)(c)(vi), any Relevant Clearable Transaction is not Cleared by the Clearing Deadline Date (including, without limitation, as a result of the Clearing Deadline Date occurring before the date on which both parties are aware that the NFC Representation in respect of such Relevant Clearable Transaction was incorrect or misleading in any material respect); or

(B) the Risk Mitigation Techniques are not adhered to in respect of any Relevant Non-Clearable Transaction by the Risk Mitigation Deadline Date,

it will constitute a Change of Circumstances in respect of which (I) such Relevant Transaction(s) will be the sole Transaction(s) affected by such change; and (II) either party will be entitled to withdraw from such Relevant Transaction(s).

(iii) For the purposes of any determination pursuant to Section 7(1) following the designation of an Early Termination Date as a result of this Change of Circumstances: (A) it will be deemed that limbs (i) and (ii) of the NFC Representation apply to the Change of Status Party or Change of Status Parties, as applicable, (whether or not in fact this is the case); and (B) the Transaction Value in relation to the relevant Transaction(s) affected by such change will always be the amount equal to the loss incurred (expressed as a positive number) or gain realized (expressed as a negative number) by the Calculation Party as a result of the termination of such Transactions).

(iv) Without prejudice to the rights, powers, remedies and privileges provided by law, neither the making by a party of an incorrect or misleading NFC Representation nor the failure of a party to take any actions required by Section 5(3)(c)(i) to negotiate in good faith and a commercially reasonable manner will constitute an Event of Default under the Agreement.

(v) Failure by a party, for whatever reason, to take any action required by Section 5(3)(c)(i) will not prevent it designating an Early Termination Date as a result of the occurrence of the Change of Circumstances in Section 5(3)(c)(ii).

(vi) With respect to a Relevant Clearable Transaction and without prejudice to Section 5(3)(c)(ii)(B), in the event that the parties have taken action under Section 5(3)(c)(i) to ensure that such Relevant Clearable Transaction is Cleared by the Clearing Deadline Date but such Relevant Clearable Transaction is not Cleared by the Clearing Deadline Date for reasons set out in any execution and give-up agreement (howsoever described) between the parties, the consequences of such Relevant Clearable Transaction not being Cleared by the Clearing Deadline Date will be the consequences set out in the relevant execution and give-up agreement (howsoever described) between the parties and the Change of Circumstances in Section 5(3)(c)(ii)(A) will not apply.

(d) Definitions. As used in this Section 5(3):

"Balancing Payment Amount" means, with respect to a Relevant Clearable Transaction, the amount, if any, required to be paid between the parties (which, for the avoidance of doubt, may be payable by or to a Change of Status Party) in order to reflect the difference between (1) the pricing of the Relevant Clearable Transaction by reference to the terms of such Relevant Clearable Transaction immediately prior to any amendments or

modifications agreed by the parties pursuant to Section 5(3)(c)(i)(A)(I) above and (2) the pricing of the Relevant Clearable Transaction by reference to the terms of such Relevant Clearable Transaction immediately following any amendments or modifications agreed between the parties pursuant to Section 5(3)(c)(i)(A)(I) above.

"Balancing Risk Mitigation Payment Amount" means, with respect to a Relevant Non-Clearable Transaction, the amount, if any, required to be paid between the parties (which, for the avoidance of doubt, may be payable by or to a Change of Status Party) in order to reflect the difference between (1) the pricing of the Relevant Non-Clearable Transaction by reference to the terms of such Relevant Non-Clearable Transaction immediately prior to any amendments or modifications agreed by the parties pursuant to Section 5(3)(c)(i)(B)(I) above and (2) the pricing of the Relevant Non-Clearable Transaction by reference to the terms of such Relevant Non-Clearable Transaction immediately following any amendments or modifications agreed between the parties pursuant to Section 5(3)(c)(i)(B)(I) above.

"CCP" means a central clearing house authorised under Article 14 of EMIR or recognised under Article 25 of EMIR.

"CCP Service" means in respect of a CCP, an over-the-counter derivative clearing service offered by such CCP.

"Change of Status Party" means a Representing Party in respect of which the representation in Section 5(3)(a)(i) of the NFC Representation proves to have been incorrect or misleading in any material respect when made (or deemed repeated) by such Representing Party.

"Cleared" means, in respect of a Transaction, that such Transaction has been submitted (including where details of such Transaction are submitted) to a CCP for clearing in a relevant CCP Service and that such CCP has become a party to a resulting or corresponding transaction, as applicable, pursuant to such CCP's Rule Set.

"Clearing Deadline Date" means the date by which the Relevant Transaction is, or was, required to be Cleared under and in accordance with EMIR.

"Clearing Status Notice" means a notice in writing from a Representing Party to the other party specifying that, in respect of such Representing Party, Section 5(3)(a)(ii) of the NFC Representation is disappplied and will not form part of the NFC Representation.

"effectively delivered" means, with respect to a Clearing Status Notice, Non-Clearing Status Notice, NFC Representation Notice, NFC+ Representation Notice or Non-representation Notice in the manner set out in Section 8(1) provided that: (1) a Clearing Status Notice, Non-Clearing Status Notice, NFC Representation Notice, NFC+ Representation Notice or Non-representation Notice will be delivered to the address details set out for this purpose in the Special Provisions, unless no such address details are specified for this purpose in the Special Provisions in which case it will be delivered to the address details agreed between the parties in respect of the Agreement;; and (2) delivery of a Clearing Status Notice, Non-Clearing Status Notice, NFC Representation Notice, NFC+ Representation Notice or Non-representation Notice will be deemed effective on the date that it is delivered, irrespective of whether such date is a Business Day in the city specified in the address details provided by the recipient of such notice.

"NFC Representation" means the representation set out in

Section 5(3)(a) above.

"NFC Representation Notice" means a notice in writing from a Non-representing Party to the other party specifying that, in respect of such Non-representing Party, Section 5(3)(a)(i) and Section 5(3)(a)(ii) of the NFC Representation are applied.

"NFC+ Party" means any party which is specified in the Special Provisions as such or which has effectively delivered to the other party a Clearing Status Notice or a NFC+ Representation Notice and, in either case, in respect of which Section 5(3)(a)(ii) of the NFC Representation has not subsequently been applied or a Non-representation Notice has not subsequently been delivered.

"NFC+ Representation Notice" means a notice in writing from a Non-representing Party to the other party specifying that, in respect of such Non-representing Party, Section 5(3)(a)(i) of the NFC Representation is applied but that Section 5(3)(a)(ii) of the NFC Representation is not applied and will not form part of the NFC Representation.

"Non-Clearing Status Notice" means a notice in writing from a NFC+ Party to the other party specifying that, in respect of such NFC+ Party, Section 5(3)(a)(ii) of the NFC Representation is applied and will form part of the NFC Representation.

"Non-representation Notice" means a notice in writing from a Representing Party to the other party specifying that, in respect of such Representing Party, Section 5(3)(a)(i) and, where not already disapplied, Section 5(3)(a)(ii) of the NFC Representation is disapplied and does not form part of the NFC Representation.

"Non-representing Party" means any party which is specified in the Special Provisions as a party that does not make the NFC Representation and in respect of which the NFC Representation has not subsequently been applied.

"Relevant Clearable Transaction" means any Transaction (1) in respect of which the representation in Section 5(3)(a)(ii) of the NFC Representation was incorrect or misleading in any material respect when made (or deemed repeated) by a Representing Party and (2) which is subject to the clearing obligation pursuant to EMIR.

"Relevant Non-Clearable Transaction" means any Transaction (1) in respect of which the representation in Section 5(3)(a)(ii) of the NFC Representation was incorrect or misleading in any material respect when made (or deemed repeated) by a Representing Party and (2) which is subject to the Risk Mitigation Techniques.

"Relevant Transaction" means any Relevant Non-Clearable Transaction and any Relevant Clearable Transaction.

"Representing Party" means any party which is specified in the Special Provisions as a party making the NFC Representation (which party may include a NFC+ Party) or who has effectively delivered to the other party a NFC Representation Notice or a NFC+ Representation Notice and, in either case, in respect of which the NFC Representation has not subsequently been disapplied.

"Risk Mitigation Deadline Date" means the later of (1) the sixth Business Day following the date on which both parties are aware that the representation in Section 5(3)(a)(ii) of the NFC Representation was incorrect or misleading in any material respect when made (or

deemed repeated) by a Representing Party and (2) the last day of any transitional period provided in published official guidance, if any, from ESMA or the European Commission in respect of the implementation of the relevant Risk Mitigation Techniques following the change in status of a non-financial counterparty (as such term is defined in EMIR) or an entity established outside the European Union that would constitute a non-financial counterparty (as such term is defined in EMIR) if it were established in the European Union from an entity not subject to the clearing duty pursuant to EMIR to an entity subject to the clearing obligation pursuant to EMIR.

"Risk Mitigation Techniques" means the risk mitigation techniques for OTC derivative transactions set out in Article 11 of EMIR as supplemented by Chapter VIII of the Commission Delegated Regulation (EU) No 149/2013.

"Rule Set" means, with respect to a CCP Service, the relevant rules, conditions, procedures, regulations, standard terms, membership agreements, collateral addenda, notices, guidance, policies or other such documents promulgated by the relevant CCP and amended and supplemented from time to time.

## **6. Withdrawal**

### **(1) Withdrawal due to an Event of Default.**

(a) Event of Default. The occurrence of any of the following events in respect of a party shall constitute an event of default ("Event of Default"):

(i) Failure to Pay or Deliver. The party fails to make, when due, any payment or delivery under the Agreement and such failure continues for three Business Days after the day on which notice of such failure is given to the party;

### **(ii) Default in respect of Security Documentation.**

(A) Failure by any party or Guarantor to comply with or perform any agreement or duty to be complied with or performed by it under (i) the provisions on financial collateral under this Agreement; or (ii) a Guarantee (together "Security Documentation") in any applicable grace period; if no grace period has been agreed for the provision of security or for the compliance with or performance of the respective duty under the Security Documentation, an Event of Default shall occur if the party or the Guarantor fails to provide security or if the party or the Guarantor fails to remedy or ensure the remedying of such failure to comply with or perform any agreement or duty under the Security Documentation by 2:00pm of the Business Day following the Trade Date or the day when the other party invites the Defaulting Party or the Guarantor to remedy the failure; or

(B) such Security Documentation is terminated or ceases to be in full force and effect and enforceable for the purposes of this Agreement; or the security provided under any Security Documentation ceases to exist, deteriorates, is ineffective or enforceable or is declared to be so by the party that provided it or by the Guarantor (in each case other than in accordance with its terms) prior to the satisfaction of all duties of such party under each Transaction to which such Security Documentation relates without the written consent of the other party, or a party or the Guarantor denies, repudiates or refuses, either in full or in part,



to perform the duties under the Security Documentation or disputes the validity of, or performance of a duty under, the Security Documentation;

(iii) Other Breach of Agreement. The party fails to perform, when due, any other duty under the Agreement and such failure continues for thirty days after the day on which notice of such failure is given to the party;

(iv) Misrepresentation. A representation made or repeated or deemed to have been made or repeated by the party or any Guarantor of such party in this Agreement or any Security Documentation proves to have been untrue, incomplete, incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) Default under Specified Transactions. The party or any Guarantor of such party

(A) defaults (other than by failing to make a delivery) under a Specified Transaction or any arrangement on the providing or transfer of a security, financial collateral or other credit support relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of debts under, or an early termination of, that Specified Transaction; or

(B) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment due on the last payment or exchange date of, or any payment on early termination of, a Specified Transaction (or, if there is no applicable notice requirement or grace period, such default continues for at least one Business Day), provided that such failure is not caused by circumstances which, if occurring under the Agreement, would constitute a Change of Circumstances as described in subsection 2(a)(ii); or

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

(D) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, a Specified Transaction or any arrangement on the providing or transfer of a security, financial collateral or other credit support arrangement relating to a Specified Transaction that is, in either case, confirmed or evidenced by a document or other confirming evidence executed and delivered by that party or the Guarantor of that party (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf).

"Specified Transaction" means, unless otherwise agreed by the parties in the Special Provisions, (a) any transaction (including an agreement with respect to any

such transaction) now existing or hereafter entered into between one party to this Agreement (or any Guarantor of such party) and the other party to this Agreement (or any Guarantor of such other party) which is not a Transaction under this Agreement but (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, investment securities or other investment instruments, (b) any combination or modification of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant Confirmation, in any case including any security or other credit support or any financial collateral transferred or otherwise provided to secure the respective duties from such transaction.

(vi) Cross Default. Any other duty or duties (whether existing, future or conditional) of the party or its Guarantor to pay any amount of money (whether incurred by it as primary or secondary obligor and whether arising from one or more contracts or instruments) in an aggregate amount of not less than the applicable Default Threshold

(A) have become, or may be declared, due and payable prior to the stated maturity thereof as a result of any default or similar event (however described) which has occurred in respect of the party or

(B) have not been performed for more than seven days after their due date.

"Default Threshold" means the amount specified as such in the Special Provisions in respect of a party or, in the absence of such specification, 1 per cent, of such party's equity (meaning the sum of its capital, capital funds, reserve fund, indivisible fund and other profit funds, economic results of previous periods and economic results of the current accounting year, determined in accordance with generally accepted accounting principles applicable to that party, as reported in its most recent published audited financial statements);

(vii) Restructuring without Assumption. The party is subject to a Corporate Restructuring and the Successor Entity fails to assume all duties of such party under the Agreement.

"Corporate Restructuring" means, with respect to such party, any consolidation or amalgamation with, or merger into, or demerger, or transfer of all or substantially all assets to, another person, change of legal form, or an

agreement providing for any of the foregoing, and

"Successor Entity" means the person which results from, survives or is the transferee in, such Corporate Restructuring;

(viii) Insolvency Events.

(1) The party is dissolved or has a resolution passed for its dissolution (other than, in either case, pursuant to a Corporate Restructuring resulting in a solvent Successor Entity);

(2) the party commences an Insolvency Proceeding against itself or takes any corporate action to authorize such Insolvency Proceeding;

(3) a governmental or judicial authority or self-regulatory organisation having jurisdiction over the party in a Specified Jurisdiction (a "Competent Authority") commences an Insolvency Proceeding with respect to the party;

(4) a Competent Authority takes any action under any bankruptcy, insolvency or similar law or any banking, insurance, collective investments, supplementary pension insurance, pension saving or supplementary pension saving or similar law governing the operation of the party which is likely to prevent the party from performing when due its payment or delivery duties under the Agreement;

(5) a person other than a Competent Authority commences an Insolvency Proceeding against the party in a Specified Jurisdiction and such action (A) results in a Judgment of Insolvency, or (B) is not dismissed or stayed within thirty days following the action or event commencing the Insolvency Proceeding, unless the commencement of such Proceedings by such person or under the given circumstances is obviously inadmissible or frivolous;

(6) the party is bankrupt or insolvent as defined under any bankruptcy or insolvency law applicable to it in a Specified Jurisdiction;

(7) the party makes a general assignment for the benefit of, or enters into a composition or amicable settlement with, its creditors generally;

(8) the party is generally unable to pay its debts as they fall due; or

(9) the party causes or is subject to any event which, under the laws of the Specified Jurisdiction, has an effect which is analogous to any of the events specified in Nos. (1) to (8).

"Insolvency Proceeding" means a mandatory or voluntary proceeding seeking a judgment, order or arrangement of insolvency, bankruptcy, composition, amicable settlement, rehabilitation, reorganisation, administration, dissolution or liquidation with respect to a party or its assets or seeking the appointment of a receiver, liquidator, insolvency or other administrator or similar official for such party or for all or any substantial part its assets under any bankruptcy, insolvency or similar law or any banking, insurance or similar law governing the operation of the party; the expression does not include a solvent corporate reorganisation. An Insolvency Proceeding is "commenced" if a petition to conduct such proceeding is presented to or filed with, or (where no

such petition is required) a decision to conduct such proceeding is taken by, a competent court, authority, corporate body or person.

"Judgment of Insolvency" means any judgment, order or arrangement instituting an Insolvency Proceeding.

"Specified Jurisdiction" in relation to a party means the jurisdiction of that party's organisation, incorporation, principal office or residence and any additional jurisdiction that may be specified with respect to that party in the Special Provisions;

(ix) Repudiation of Duties. The party or the Guarantor (i) declares that it will not perform; (ii) repudiates; (iii) challenges; or (iv) refuses any material duty under the Agreement, any Specified Transaction or the Security Documentation; (v) or contests its validity (otherwise than as part of a bona fide dispute as to the existence, nature or extent of such duty);

(b) Withdrawal. If an Event of Default occurs with respect to a party (the "Defaulting Party") and is continuing, the other party (the "Non-Defaulting Party") may, by giving not more than twenty days' notice specifying the relevant Event of Default, withdraw from all outstanding Transactions, but not from some Transactions or part thereof only, with effect as from a date (the "Early Termination Date") to be designated by it in such notice. The parties may specify in the Special Provisions that all outstanding Transactions shall terminate, and the Early Termination Date shall occur, automatically in the case of an Event of Default mentioned in paragraph (a)(viii)(1), (2), (3), (5)(A) or, to the extent analogous thereto, (9) as of the moment immediately preceding the time of the relevant event or action.

(2) Withdrawal due to Change of Circumstances.

(a) Change of Circumstances. The occurrence of any of the following events or circumstances in respect of a party shall constitute a change of circumstances ("Change of Circumstances"):

(i) Tax Event. As a result of the entry into force of any new law or regulation or of any change in law or any other provision of mandatory effect or change in the application or official interpretation thereof occurring after the date on which a Transaction is entered into, or as a result of a Corporate Restructuring of either party not falling under subsection 1(a)(vii), the party would, on or before the next due date relating to such Transaction,

(A) be required to pay additional amounts pursuant to Section 4(1) with regard to a payment which it is obliged to make, other than a payment of interest pursuant to Section 3(5), or

(B) receive a payment, other than a payment of interest pursuant to Section 3(5), from which an amount is required to be deducted for or on account of a tax or duty and no additional amount is required to be paid in respect of such tax or duty under Section 4(1), other than by reason of Section 4(1)(c);

(ii) Illegality. Impossibility. As a result of the entry into force of any new legislation or regulation or of any change in law or any other provision of mandatory effect or change in the application or official interpretation

thereof or, if so specified in the Special Provisions, as a result of an Impossibility Event, in each case occurring after the date on which a Transaction is entered into, it becomes, or is likely to become, unlawful or impossible for the party

(A) to make, or receive, a payment or delivery in respect of such Transaction when due or to punctually comply with any other material duty under the Agreement relating to such Transaction or

(B) to perform any duty to provide margin or collateral as and when required to be provided by it under the Agreement;

"Impossibility Event" means any catastrophe, armed conflict, act of terrorism, riot or any other circumstance beyond the party's reasonable control affecting the operations of the party;

(iii) Credit Event upon Restructuring. If "Credit Event Upon Transformation" is specified in the Special Provisions as applying to the party,

(A) such party (the "Respective Party") or any Guarantor of the Respective Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to another entity; or

(B) any person or group of cooperating persons or persons acting in concert acquires directly or indirectly (i) the ownership or other similar right to a participation or participations, shares or other participation securities or similar securities of the Respective Party enabling such person or persons to elect a majority of the board of directors or other similar governing body of the Respective Party or (ii) any other direct or indirect ownership interest in the registered capital or voting rights of the Respective Party enabling the person or persons to exercise control of the Respective Party; or

(C) the Respective Party effects any substantial change in its capital structure by means of the issuance of bonds or other debt securities or book-entry securities or incurrence or guarantee of debt or the issuance of (i) preferred shares or other special types of securities or other securities or book-entry securities convertible into or automatically exchangeable for bonds, debt securities or book-entry securities or preferred shares or other special types of shares, or (ii) in the case of entities other than business corporations, any other form of ownership interest,

provided this event does not constitute an event described in Section 6(1)(a)(vii), but the creditworthiness of the successor entity or the entity to which the assets were transferred is substantially lower than the creditworthiness of the Respective Party or such Guarantor immediately before such event (in such an event, the Respective Party or its successor or the entity to which the assets were transferred shall be the Affected Party);

(iv) Additional Change of Circumstances. If any "Additional Change of Circumstances" is specified in the Special Provisions or in any Confirmation as applicable and if any such event or circumstance occurs, such event or circumstance shall mean a Change of Circumstances. In such an event, the Affected Party or Affected Parties

shall be the party or parties so specified for the relevant Additional Change of Circumstances in the Special Provisions or in the relevant Confirmation.

(b) Withdrawal. If a Change of Circumstances occurs with respect to a party (the "Affected Party"), the Affected Party in the case of paragraph (a)(i), (ii) or (iv), and the other party (the "Non-Affected Party") in the case of paragraph (a)(ii), (iii) or (iv) may, subject to the limitations set forth below, by giving not more than twenty days' notice, withdraw from the Transaction or Transactions affected by such change, with effect as from a date (the "Early Termination Date") to be designated by it in such notice, it being understood that, in the case of paragraph (a)(iii), all Transactions are deemed so affected. If, without prejudice to any agreement between the parties on the provision of margin or collateral, either party determines that as a result of such termination its credit exposure under the Agreement to the other party is significantly increased, it may, not later than one week after the effective date of the notice of withdrawal, by giving notice to the other party require such other party to provide, within one week after receipt of such last-mentioned notice, margin or collateral reasonably acceptable to it in such amount as to be at least equal to the increase in credit exposure under the Agreement, as determined by it.

In the event specified in paragraph (a)(iv), the Affected Party shall have the right to withdraw from a Transaction/Transactions only if both parties are Affected Parties, therefore the other party is not a Non-Affected Party. In the cases of paragraph (a)(i) and (ii), the right to withdraw from Transactions shall be subject to the following limitations: (i) the Early Termination Date may not be earlier than thirty days before the date on which the Change of Circumstances becomes effective, and (ii) the Affected Party may, unless it would otherwise be required to pay additional amounts as contemplated by paragraph (a)(i)(A), give notice of withdrawal only after a period of thirty days has expired following a notice by it informing the other party of such event and if the situation (if capable of remedy) has not been remedied within such period (by way of an agreed transfer of the affected Transactions to another Booking Office or otherwise).

In the case that an obligation of the respective party to perform its duties out of a Transaction, as a result of an Impossibility Event, shall be ceased by law, the provision of this letter (b), shall apply *mutatis mutandis* in respect of the right of the party to require margin or collateral from the other party as a result of a credit exposure increase towards the other party.

(3) Applicability to Guarantor. If a Guarantee has been given with respect to a party and any of the events described in subsections 1(a)(iii) through (ix) and 2(a) occurs with respect to the relevant Guarantor or such Guarantee, the occurrence of such event shall have the same effect as if it had occurred with respect to such party or the Agreement, respectively.

(4) Effect of Withdrawal. In the event of a withdrawal from outstanding Transactions pursuant to this Section 6 or other discharge of duties of outstanding Transactions in any manner other than performance, set-off, lapse of time, agreement or as a result of a fact stipulated in Section 6(2)(a)(ii), neither party shall be obliged to make any further payment or delivery under the terminated Transactions which would have become due on or after the Early Termination Date or to provide

or return margin or collateral which would otherwise be required to be provided or returned under the Agreement and related to the terminated Transaction(s). These duties shall be replaced by an obligation of either party to pay the Final Settlement Amount in accordance with Section 7.

To avoid any doubts, the Agreement shall not be terminated upon withdrawal from outstanding Transactions pursuant to Section 6 and no obligation or obligations of the parties of this Agreement shall be cancelled from the beginning. The parties have agreed that they shall not return to each other any performance, payment or delivery made before the withdrawal from any Transaction or Transactions.

(5) Event of Default and Change of Circumstances. If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes a Change of Circumstances as referred to in subsection 2(a)(ii), it will be treated as a Change of Circumstances and will not constitute an Event of Default, except that any event as described in subsection 1(a)(viii) will always be treated as an Event of Default and not as a Change of Circumstances.

(6) Risk of a Change of Circumstances. Both parties accept the risk of a change of circumstances under Section 1765(2) of the Civil Code and waive the right to seek the extinguishment of an obligation under Section 2000 of the Civil Code.

## **7. Final Settlement Amount**

### **(1) Calculation.**

(a) Procedure and Bases of Calculation. Upon withdrawal pursuant to Section 6, the Non-Defaulting Party or, as the case may be, the Non-Affected Party or, if there are two Affected Parties, one or each party (each the "Calculation Party") shall as soon as reasonably possible calculate the Final Settlement Amount.

"Final Settlement Amount" means, subject to subsection 2(b)(i), the amount determined by the Calculation Party to be equal to, as of the Early Termination Date,

(A) the sum of all Transaction Values which are positive for it, the Amounts Due owed to it and its Margin Claims less

(B) the sum of the absolute values of all Transaction Values which are negative for it, the Amounts Due owed by it and the Margin Claims of the other party;

"Amounts Due" owed by a party means

(A) the sum of (i) any amounts that were required to be paid by such party under any Transaction, but not paid, (ii) the Default Value, as of the agreed delivery date, of each asset that was required to be delivered by such party under any Transaction, but not delivered (in either case regardless of whether or not the party was entitled to withhold such payment or delivery, by virtue of Section 3(3) or for any other reason) and (iii) interest (if it is a positive amount) on the amounts specified in (i) and (ii) from (and including) the due date of the relevant payment or delivery to (but excluding) the Early Termination Date at the Interbank Rate or, if Section 3(5) is applicable, the Default Rate, minus

(b) the absolute value of interest (if it is a negative amount) on the amounts set out in paragraphs (A)(i)

and (A)(ii) from (and including) the due date of the relevant payment or delivery until (but excluding) the Early Termination Date at the Interbank Rate;

Margin Claims shall be disregarded for the determination of Amounts Due;

"Default Value" means, in respect of any things or assets (including Securities or, in respect of Derivative Transactions, any other underlying assets of such Transactions) on any given date, an amount equal to

(A) if the things or assets are or were to be delivered by the Calculation Party, the net proceeds (after deducting fees and expenses) which the Calculation Party has or could have reasonably received when selling things or assets of the same kind and quantity in the market on such date,

(B) if the things or assets are or were to be delivered to the Calculation Party, the cost (including fees and expenses) which the Calculation Party has or would have reasonably incurred in purchasing things or assets of the same kind and quantity in the market on such date, and

(C) if a market price for such things or assets cannot be determined, an amount which the Calculation Party determines in good faith to be its total losses and costs (or gains, in which case expressed as a negative number) in connection with such things or assets;

"Margin Claims" means, as of the Early Termination Date, the aggregate of the amount of cash paid and the Default Value of Securities transferred, as margin or collateral, by a party and not repaid or retransferred to it, with addition of all accrued and outstanding interest on such monetary amount (if it is a positive amount) and with deduction of their absolute values (if they are negative amounts) at the rate agreed in respect thereof;

"Transaction Value" means, with respect to any Transaction or group of Transactions, an amount equal to, at the option of the Calculation Party, (i) the loss incurred (expressed as a positive number) or gain realized (expressed as a negative number) by the Calculation Party as a result of the termination of such Transactions), or (ii) the arithmetic mean of the quotations for replacement or hedge transactions on the Quotation Date obtained by the Calculation Party from not less than two leading market participants. In the case of (ii), each such quotation shall be expressed as the amount which the market participant would pay or receive on the Quotation Date if such market participant were to assume, as from the Quotation Date, the rights and duties of the other party (or their economic equivalent) under the relevant Transactions); the resulting amount shall be expressed as a positive number if it would be payable to the market participant, and shall otherwise be expressed as a negative number. If, in such case, no or only one quotation can reasonably be obtained, the Transaction Value shall be determined pursuant to (i).

"Quotation Date" means the Early Termination Date, except that in the event of an automatic termination as provided in Section 6(1)(b), the Quotation Date shall be the date designated as such by the Non-Defaulting Party, which shall be not later than the fifth Business Day after the day on which the Non-Defaulting Party became aware of the event which caused such automatic termination.

(b) Conversion. Any Amounts Due, Default Value,

Margin Claims and Transaction Value not expressed in the Base Currency shall be converted into the Base Currency at the Applicable Exchange Rate.

"Base Currency" means the Czech crown, unless otherwise agreed.

"Applicable Exchange Rate" means the arithmetic mean of the respective rates at which the person calculating or converting an amount pursuant to the Agreement is reasonably able to (i) purchase the relevant other currency with, and (ii) sell such currency for, the Base Currency on the date as of which such amount is calculated or converted.

(2) Monetary Debts.

(a) One Calculation Party. If one party only acts as Calculation Party, the Final Settlement Amount, as calculated by it, shall be paid (i) to that party by the other party if it is a positive number and (ii) by that party to the other party if it is a negative number; in the latter case the amount payable shall be the absolute value of the Final Settlement Amount.

(b) Two Calculation Parties. If both parties act as Calculation Party and their calculations of the Final Settlement Amount differ from each other, the Final Settlement Amount shall (i) be equal to one-half of the difference between the amounts so calculated by both parties (such difference being, for the avoidance of doubt, the sum of the absolute values of such amounts if one is positive and the other negative) and (ii) be paid by the party which has calculated a negative or the lower positive amount. Each Calculation Party shall, for the avoidance of doubt, calculate the Final Settlement Amount as provided in the previous sentence from its own perspective.

(3) Notification and Due Date.

(a) Notification. The Calculation Party shall notify as soon as reasonably possible the other party of the Final Settlement Amount calculated by it and provide to such other party a statement setting forth in reasonable detail the basis upon which the Final Settlement Amount was determined.

(b) Due Date. The Final Settlement Amount shall be payable immediately upon receipt of the notification mentioned in paragraph (a) if termination occurs as a result of an Event of Default, and otherwise within two Business Days following such receipt, but in either case not before the Early Termination Date. It shall be payable together with the accrued interest (if it is a positive amount) as from the Early Termination Date to the date on which the payment is due at the Interbank Rate and thereafter at the Default Rate, but with deduction of the absolute values of the accrued interest (if they are negative amounts) as from the Early Termination Date to the date on which the payment is due at the Interbank Rate.

(4) Set-Off. The Non-Defaulting Party may set off its duty (if any) to pay the Final Settlement Amount against any actual or contingent claims ("Counterclaims") which it has against the Defaulting Party on any legal grounds whatsoever (including by virtue of any financing or other contract). For the purpose of calculating the value of the Counterclaims, the Non-Defaulting Party shall,

(i) to the extent that they are not payable in the Base

Currency, convert them into the Base Currency at the Applicable Exchange Rate,

(ii) to the extent that they are contingent or unascertained, take into account for such calculation their potential amount, if ascertainable, or otherwise a reasonable estimate thereof; the procedure pursuant to paragraph 1(a) of this Section shall apply accordingly,

(iii) to the extent that they are claims other than for the payment of money, determine their value in money and convert them into a money claim expressed in the Base Currency and

(iv) to the extent that they are not yet due and payable, determine their present value (also having regard to interest claims).

The provisions of this subsection 4 relating to Counterclaims of a Non-Defaulting Party against a Defaulting Party shall apply *mutatis mutandis* to Counterclaims of a Non-Affected Party against an Affected Party if termination occurred pursuant to Section 6(2)(a)(ii) or (iii).

## 8. Notices

(1) Manner of Giving Notices. Unless otherwise specified in the Agreement, any notice or other communication in respect of this Agreement shall be made by personal delivery, letter, telex, telefax, registered or similar mail, e-mail or or any electronic messaging system agreed to by the parties in the Special Provisions to the address or number or in accordance with the electronic messaging system or e-mail details provided; written form is not required.

(2) Effectiveness. Any notice or other communication in respect of this Agreement may be given in any manner described in Paragraph 1 (except that a notice or other communication under Section 6 or 7 may not be given by electronic messaging system or e-mail) and shall be deemed effective

(a) if made by personal delivery and by letter, on the date of delivery and receipt by the addressee,

(b) if made by telex, on the date receipt by the sender of the addressee's answerback at the end of transmission,

(c) if made by telefax, on the date when received by a responsible employee of the addressee in legible form (the parties have agreed that the burden of proof of receipt will be on the sender and for proving receipt there will not be sufficient the transmission report created by the sender's fax machine;

(d) if made by registered mail (by air mail if to abroad) or similar mail (with delivery confirmation), on the date of delivery or attempted delivery;

(e) if made by an electronic messaging system, on the date of receipt by the addressee;

(f) if made by e-mail, on the day of delivery,

provided that if such delivery (or attempted delivery) occurs on a non-Business Day, if the communication is delivered (or its delivery is attempted) or received after the close of business on a Business Day, the communication shall be considered made and shall take effect on the first following day that is a Business Day.

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

## **9. Booking Offices**

(1) Extent of Duties. If a party enters into a Transaction through a Booking Office other than its principal office, its obligations in respect of that Transaction shall constitute duties of such party as a whole, to the same extent as if they had been entered through such party's principal office. Such party shall not be obliged, however, to perform such duties through any of its other offices if performance through that Booking Office is unlawful or impossible by virtue of any of the events described in Section 6(2)(a)(ii).

(2) Change of Booking Office. Neither party may change a Booking Office without the prior written consent of the other party.

(3) Definition. "Booking Office" of a party means the office agreed by the parties through which such party is acting for the relevant Transaction, provided that if no such office is agreed in respect of a party, such party's principal office (or, in the absence of a principal office, such party's registered office or place of residence) shall be deemed to be the Booking Office.

## **10. Miscellaneous**

(1) Transfer of Rights and Duties. No rights or duties under the Agreement neither the entire Agreement may be transferred, charged or otherwise disposed of to or in favour of any third person without the prior consent of the other party given in the Special Provisions or in the manner specified in Section 8(1), except that no such consent shall be required in the case of a transfer of all or substantially all assets of a party in connection with a Corporate Restructuring which does not involve a change of the tax status relevant to the Agreement and does not otherwise adversely affect the interests of the other party to any significant extent.

The limitation provided in the preceding sentence shall not apply to a party's right to receive the Final Settlement Amount or to be indemnified pursuant to subsection 2.

(2) Expenses. A Defaulting Party and a party failing to make a payment or delivery when due shall on demand indemnify the other party for all reasonable expenses, including legal fees, incurred by the other party for the enforcement or protection of its rights under the Agreement in connection with an Event of Default or such failure.

(3) Recording. Each party (i) may electronically or otherwise record telephone conversations of the parties in connection with the Agreement or any potential Transaction, (ii) agrees that recordings may be submitted in evidence in any Proceedings relating to the Agreement or any potential Transaction and (iii) shall give notice of such potential recording and using as evidence to its relevant personnel and obtain any consent that may be legally required before permitting such personnel to conduct such telephone conversations.

(4) Documents. So long as either party has or may have any obligation under the Agreement, each party shall, if it is reasonably able and legally in a position to do so and would not thereby materially prejudice its legal or commercial position, promptly make available to the

other or to any appropriate government or taxing authority any form, certificate or other document (properly completed and, where appropriate, certified) that is either

(a) specified in the Agreement, or

(b) reasonably requested in writing in order to allow the other party to make a payment under the Agreement without any deduction or withholding for or on account of any tax or other duty, or with such deduction or withholding at a reduced rate.

(5) Remedies. The rights and remedies provided in the Agreement are cumulative and not exclusive of any rights and remedies provided by law.

(6) No Waiver. A failure or delay in exercising (and any partial exercise of) any right or remedy under the Agreement shall not operate as a waiver (or partial waiver) of, and accordingly not preclude or limit any future exercise of, that right or remedy.

(7) Termination by notice. The Agreement may be terminated by either party upon the giving of not less than twenty days' notice to the other party. Notwithstanding such notice, any Transaction then outstanding shall continue to be subject to the provisions of the Agreement and to that extent the effect of the termination shall occur only when all duties under the last such Transaction shall have been performed.

(8) Contractual Currency. If for any reason a payment is made in a currency other than the Contractual Currency and the amount so paid, converted into the Contractual Currency at the exchange rate prevailing at the time of such payment for the sale of such other currency against the Contractual Currency, as reasonably determined by the payee, falls short of the amount in the Contractual Currency payable under the Agreement, the party owing such amount shall, as a separate and independent obligation, immediately compensate the other party for the shortfall.

(9) Previous Transactions. Transactions entered into prior to the effective date of a Master Agreement will be subject to such Master Agreement, individually or by category, to the extent provided in the Special Provisions. The rights and obligations of the parties under the Transactions entered into prior to the effective date of the Master Agreement shall be changed to the extent arising from that Master Agreement.

(10) Agency Transactions.

(a) Conditions. If agreed in the Special Provisions, a party may enter into a Transaction (an "Agency Transaction") as agent (the "Agent") for a third person (a "Principal") but only if (i) the party has authority on behalf of that Principal to enter into the Transaction, to perform on behalf of that Principal all of that Principal's obligations and to accept performance of the obligations of the other party and receive all notices and other communications under the Agreement and (ii) when entering into the Transaction and in the relevant Confirmation the party specifies that it is acting as Agent in respect of the Transaction and discloses to the other party the identity of the Principal. If these conditions are not fully satisfied, the party shall be deemed to act as principal.

(b) Information on Certain Events. Each party undertakes that, if it enters as Agent into an Agency Transaction, forthwith upon becoming aware (i) of any

event or circumstance which constitutes an event as described in Section 6(1)(a)(viii) with respect to the relevant Principal or (ii) of any breach of any of the representations given in Section 5 and paragraph (f) below or of any event or circumstance which has the result that any such representation would be incorrect on the date as of which it was made, it will inform the other party of that fact and will, if so required by the other party, furnish the other party with such additional information as the other party may reasonably request.

(c) Parties. Each Agency Transaction shall be a transaction solely between the relevant Principal and the other party. All provisions of the Agreement shall apply separately as between the other party and each Principal for whom the Agent has entered into an Agency Transaction, as if each such Principal were a party to a separate Agreement with the other party, except as provided in paragraph (d) below. A Process Agent appointed by the Agent shall be a Process Agent also for each Principal.

(d) Notice of Withdrawal. If an Event of Default or a Change of Circumstances described in Section 6(2)(a)(ii) or (iii) occurs with respect to the Agent, the other party may withdraw from Transactions pursuant to Section 6(1)(b) or 6(2)(b), respectively, to the Principal with the same effect as if an Event of Default or Change of Circumstances, respectively, had occurred with respect to the Principal.

(e) Own Account Transactions. The foregoing provisions do not affect the operation of the Agreement between the parties hereto in respect of any Transactions into which the Agent may enter on its own account as a principal.

(f) Representation. Each party acting as Agent represents to the other in its own name and in the name of the Principal that it will, on each occasion on which it enters or purports to enter into an Agency Transaction, have the authority as described in subsection 10(a)(i) on behalf of the person whom it specifies as the Principal in respect of that Agency Transaction.

(11) Severability. In the event that any provision of the Agreement is invalid, illegal, ineffective or unenforceable under the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions in the Agreement under the law of such jurisdiction, and the validity, effectiveness and enforceability of such and any other provisions under the law of any other jurisdiction shall not in any way be affected thereby. The parties shall, in such event, in good faith negotiate a valid provision the economic effect of which comes as close as possible to that of the invalid, illegal, ineffective or unenforceable provisions.

(12) Portfolio Reconciliation and Dispute Resolution.

(a) Agreement to Reconcile Portfolio Data. The parties agree to reconcile portfolios as required by the portfolio reconciliation risk mitigation techniques for OTC derivative transactions set out in Article 11(1)(b) of EMIR as supplemented by Article 13 of Chapter VIII of the Commission Delegated Regulation (EU) No 149/2013 ("Portfolio Reconciliation Risk Mitigation Techniques").

(i) One-way Delivery of Portfolio Data. If one party is specified in the Special Provisions as a Portfolio Data Sending Entity and the other party is specified in the

Special Provisions as a Portfolio Data Receiving Entity:

(A) on each Data Delivery Date, the Portfolio Data Sending Entity will provide Portfolio Data to the Portfolio Data Receiving Entity;

(B) on each PR Due Date, the Portfolio Data Receiving Entity will perform a Data Reconciliation;

(C) if the Portfolio Data Receiving Entity identifies one or more discrepancies which such party determines, acting reasonably and in good faith, are material to the rights and obligations of the parties in respect of one or more Relevant Transaction(s), it will notify the other party in writing as soon as reasonably practicable and the parties will consult with each other in an attempt to resolve such discrepancies in a timely fashion for so long as such discrepancies remain outstanding, using, without limitation, any applicable updated reconciliation data produced during the period in which such discrepancy remains outstanding; and

(D) if the Portfolio Data Receiving Entity does not notify the Portfolio Data Sending Entity that the Portfolio Data contains discrepancies by 4p.m. local time in the place of business of the Portfolio Data Sending Entity on the fifth Joint Business Day following the later of the PR Due Date and the date on which the Portfolio Data Sending Entity provided such Portfolio Data to the Portfolio Data Receiving Entity, the Portfolio Data Receiving Entity will be deemed to have affirmed such Portfolio Data.

(ii) Exchange of Portfolio Data. If both parties are specified in the Special Provisions as Portfolio Data Sending Entities:

(A) on each Data Delivery Date, each party will provide Portfolio Data to the other party;

(B) on each PR Due Date, each party will perform a Data Reconciliation; and

(C) if a party identifies one or more discrepancies which such party determines, acting reasonably and in good faith, are material to the rights and obligations of the parties in respect of one or more Relevant Transaction(s), it will notify the other party in writing as soon as reasonably practicable and the parties will consult with each other in an attempt to resolve any such discrepancies in a timely fashion for so long as such discrepancies remain outstanding, using, without limitation, any applicable updated reconciliation data produced during the period in which such discrepancy remains outstanding.

(b) Change of Status. Each party may change its own designation with the written agreement of the other party (such agreement not to be unreasonably withheld or delayed and for this purpose the parties agree, without limitation, that it will not be unreasonable for a party to withhold agreement where agreement would result in the other party having different designations in respect of such party and one or more Affiliates of such party).

If a party believes, acting reasonably and in good faith, that the parties are required to perform Data Reconciliation at a greater or lesser frequency than that being used by the parties at such time, it will notify the other party of such in writing, providing evidence on request. From the date such notice is effectively delivered, such greater or lesser frequency will apply and the first following PR Due Date will be the earlier of the

date agreed between the parties and the last Joint Business Day in the PR Period starting on the date on which the immediately preceding Data Reconciliation occurred (or, if no Joint Business Day occurs which is within such PR Period and is on or following the date such notice is effective, the first Joint Business Day following the later of the end of such PR Period and the date such notice is effective).

(c) Use of agents and third party service providers. For the purposes of performing all or part of the actions under Sections 10(12)(a) and (b), each party may appoint:

- (i) an Affiliate to act as agent, immediately on written notice to the other party (including, without limitation, by naming the Affiliate as agent in the Special Provisions); and/or
- (ii) subject to the other party's agreement (such agreement not to be unreasonably withheld or delayed), (x) an entity other than an Affiliate as agent and/or (y) a qualified and duly mandated third party service provider.

A party may indicate that it may use a third party service provider in the Special Provisions.

(d) Dispute Identification and Resolution Procedure. The parties agree that they will use the following procedure to identify and resolve Disputes between them:

- (i) either party may identify a Dispute by sending a Dispute Notice to the other party;
- (ii) on or following the Dispute Date, the parties will consult in good faith in an attempt to resolve the Dispute in a timely manner, including, without limitation, by exchanging any relevant information and by identifying and using any Agreed Process which can be applied to the subject of the Dispute or, where no such Agreed Process exists or the parties agree that such Agreed Process would be unsuitable, determining and applying a resolution method for the Dispute; and
- (iii) with respect to any Dispute that is not resolved within five Joint Business Days of the Dispute Date, refer issues internally to appropriately senior members of staff of such party or of its Affiliate, adviser or agent in addition to actions under (ii) immediately above (including actions under any Agreed Process identified and used under (ii) immediately above) and to the extent such referral has not occurred as a result of action under (ii) immediately above (including any Agreed Process).

(e) Internal processes for recording and monitoring Disputes. Each party agrees that, to the extent the Dispute Resolution Risk Mitigation Techniques apply to each party, it will have internal procedures and processes in place to record and monitor any Dispute for as long as the Dispute remains outstanding.

(f) Relationship to other portfolio reconciliation and dispute resolution processes. This Section 10(12) and any action or inaction of either party in respect of it are without prejudice to any rights or obligations the parties may possess in respect of each other under any Agreed Process or other contractual agreement, by operation of law or otherwise. In particular, but without limitation, (a) any valuation in respect of one or more Relevant Transactions for the purposes of this Section 10(12) will be without prejudice to any other valuation

with respect to such Relevant Transaction(s) made for collateral, close out, dispute or other purpose; (b) the parties may seek to identify and resolve issues and discrepancies between themselves before either party delivers a Dispute Notice; and (c) nothing in this Section 10(12) obliges a party to deliver a Dispute Notice following the identification of any such issue or discrepancy (notwithstanding that such issue or discrepancy may remain unresolved) or limits the rights of the parties to serve a Dispute Notice, to commence or continue an Agreed Process (whether or not any action under Section 10(12)(d) has occurred) or otherwise to pursue any dispute resolution process in respect of any such issue or discrepancy (whether or not any action under Section 10(12)(d) has occurred).

(13) Common Provisions.

(a) Remedies for Breach. Without prejudice to the rights, powers, remedies and privileges provided by law, failure by a party to take any actions required by or to otherwise comply with Section 10(12), in either case, will not constitute an event of default in respect of such party or any other event which permits either party to terminate any Relevant Transaction or other Transaction under this Agreement.

(b) Definitions. For the purposes of Sections 10(12) and 10(13):

"agent" means an entity appointed to act solely on the appointing party's behalf to deal with the other party in relation to all or part of the actions under the relevant provision.

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

"Agreed Process" means any process agreed between the parties in respect of a Dispute other than the Dispute Resolution Procedure including, without limitation, the process in Section 11, as may be amended between the parties, if applicable.

"Data Delivery Date" means each date agreed as such between the parties provided that, in the absence of such agreement, the Data Delivery Date will be the Joint Business Day immediately prior to the PR Due Date.

"Data Reconciliation" means, in respect of a party receiving Portfolio Data, a comparison of the Portfolio Data provided by the other party against such party's own books and records of all outstanding Relevant Transactions between the parties in order to identify promptly any misunderstandings of Key Terms.

"Dispute" means any dispute between the parties (a) which, in the sole opinion of the party delivering the relevant Dispute Notice, is required to be subject to the Dispute Resolution Procedure (or other Agreed Process) pursuant to the Dispute Resolution Risk Mitigation Techniques; and (b) in respect of which a Dispute Notice has been effectively delivered.

"Dispute Date" means, with respect to a Dispute, the date on which a Dispute Notice is effectively delivered by one party to the other party save that if, with respect to a Dispute, both parties deliver a Dispute Notice, the date



on which the first in time of such notices is effectively delivered will be the Dispute Date. Each Dispute Notice will be effectively delivered if delivered in the manner agreed between the parties for the giving of notices in respect of this Agreement.

"Dispute Notice" means a notice in writing which states that it is a dispute notice for the purposes of Section 10(12)(d) and which sets out in reasonable detail the issue in dispute (including, without limitation, the Relevant Transaction(s) to which the issue relates).

"Dispute Resolution Procedure" means the identification and resolution procedure set out in Section 10(12)(d).

"Dispute Resolution Risk Mitigation Techniques" means the dispute resolution risk mitigation techniques for OTC derivative transactions set out in Article 11(1)(b) of EMIR as supplemented by Article 15 of Chapter VIII of the Commission Delegated Regulation (EU) No 149/2013.

"Joint Business Day" means a day that is a Business Day in respect of each party.

"Key Terms" means, with respect to a Relevant Transaction and a party, the valuation of such Relevant Transaction and such other details the relevant party deems relevant from time to time which may include the effective date, the scheduled maturity date, any payment or settlement dates, the notional value of the contract and currency of the Relevant Transaction, the underlying instrument, the position of the counterparties, the business day convention and any relevant fixed or floating rates of the Relevant Transaction. For the avoidance of doubt, "Key Terms" does not include details of the calculations or methodologies underlying any term.

"Portfolio Data" means, in respect of a party providing or required to provide such data, the Key Terms in relation to all outstanding Relevant Transactions between the parties in a form and standard that is capable of being reconciled, with a scope and level of detail that would be reasonable to the Portfolio Data Sending Entity if it were the receiving party. Unless otherwise agreed between the parties, the information comprising the Portfolio Data to be provided by a party on a Data Delivery Date will be prepared as at the close of business on the immediately preceding Business Day of, and as specified in writing by, the party providing the Portfolio Data.

"Portfolio Reconciliation Requirements" means the requirements one or both parties are subject to in accordance with the Portfolio Reconciliation Risk Mitigation Techniques.

"PR Due Date" means each date agreed as such between the parties provided that the PR Due Date will be the PR Fallback Date where either (a) no date is agreed or (b) the agreed date occurs after the PR Fallback Date.

"PR Fallback Date" means: (a) in respect of the PR Period starting on the PR Requirement Start Date, the last Joint Business Day in such PR Period; and, otherwise, (b) the last Joint Business Day in the PR Period starting on the calendar day immediately following the last calendar day of the immediately preceding PR Period. If there is no Joint Business Day in a PR Period, the PR Due Date will be the first Joint Business Day following the end of the PR Period.

"PR Period" means, with respect to the parties:

(a) if the Portfolio Reconciliation Requirements require Data Reconciliation to occur each business day, one Joint Business Day;

(b) if the Portfolio Reconciliation Requirements require Data Reconciliation to occur once per week, one calendar week;

(c) if the Portfolio Reconciliation Requirements require Data Reconciliation to occur once per quarter, three calendar months; or

(d) if the Portfolio Reconciliation Requirements require Data Reconciliation to occur once per year, one calendar year.

"PR Requirement Start Date" means the first calendar day on which the Portfolio Reconciliation Requirements apply to one or both of the parties and Section 10(12) applies to the parties.

"Relevant Transaction" means any transaction which is subject to the Portfolio Reconciliation Risk Mitigation Techniques and/or the Dispute Resolution Risk Mitigation Techniques.

"third party service provider" refers to an entity that the parties agree will perform all or part of the actions under the relevant provision for both parties.

## **11. Governing Law, Settlement of Disputes, Jurisdiction, Arbitration**

(1) Governing Law. Unless agreed otherwise in the Special Provisions, the Agreement shall be governed by and construed in accordance with Czech law.

(2) Settlement of Disputes, Jurisdiction, Arbitration. Each party irrevocably agrees that in respect of any dispute arising under or related to the Agreement (i) the courts specified in the Special Provisions shall have non-exclusive jurisdiction and each party irrevocably submits to such non exclusive jurisdiction, or (ii) if so specified in the Special Provisions, any such dispute shall be finally settled by one or more arbitrators appointed and proceeding in accordance with the rules of arbitration specified in the Special Provisions, each party agreeing to comply with such rules.

Failing either of such specifications, the courts having jurisdiction in the principal financial centre or, in the absence of a generally recognized financial centre, the capital city of the country whose law governs the Agreement shall have non-exclusive jurisdiction with respect to any suit, action or other proceeding relating to the Agreement (the "Proceedings") and each party irrevocably submits to such non-exclusive jurisdiction.

(3) Service of Process. If so specified in the Special Provisions, each party appoints a process agent (the "Process Agent") to receive, for it and on its behalf, service of process in any Proceedings. If for any reason a party's Process Agent is unable to act as such, such party shall promptly notify the other party and within thirty days appoint a substitute process agent which is acceptable to the other party.

(4) Waiver of Immunity. The Agreement constitutes a commercial agreement. To the fullest extent permitted by applicable law, each party waives, with respect to itself and its assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or otherwise from suit, execution or other legal process and agrees that it will not claim any such immunity in any

Proceedings.