

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

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

(d) The Determining Party will consider, taking into account the standards and procedures described in this definition, quotations pursuant to Section 12.8(c)(i) above or relevant market data pursuant to Section 12.8(c)(ii) above unless the Determining Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in Section 12.8(c)(i), (c)(ii) or (c)(iii) above, the Determining Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilized. Third parties supplying quotations pursuant to Section 12.8(c)(i) above or market data pursuant to Section 12.8(c)(ii) above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

(e) Without duplication of amounts calculated based on information described in Section 12.8(c)(i), 12.8(c)(ii) or 12.8(c)(iii) above, or other relevant information, and when it is commercially reasonable to do so, the Determining Party may in addition consider in calculating a **Cancellation Amount** any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to such **Transaction** (or any gain resulting from any of them).

(f) "Determining Party" means the party or parties specified as such in the related **Confirmation**.

(g) Commercially reasonable procedures used in determining a **Cancellation Amount** may include the following:

(i) application to relevant market data from third parties pursuant to Section 12.8(c)(ii) above or information from internal sources pursuant to Section 12.8(c)(iii) above of pricing or other valuation models that are, at the time of the determination of the **Cancellation Amount**, used by the Determining Party in the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the relevant **Transaction**; and

(ii) application of different valuation methods to the relevant **Transaction** depending on the type, complexity or size of the relevant **Transaction**.

#### **Section 12.9. Additional Disruption Events.**

(a) Each of the following terms shall have the meaning set forth below:

(i) "Additional Disruption Event" means any of the events set forth in paragraphs (ii) through (viii) below;

(ii) "Change in Law" means that, on or after the Trade Date of any Transaction (A) due to the adoption of or any change in any applicable law or regulation (including, without limitation, any tax law), or (B) due to the promulgation of or any change in the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law or regulation (including any action taken by a taxing authority), a party to such Transaction determines in good faith that (X) it has become illegal to hold, acquire or dispose of Shares relating to such Transaction, or (Y) it will incur a materially increased cost in performing its obligations under such Transaction (including, without limitation, due to any increase in tax liability, decrease in tax benefit or other adverse effect on its tax position);

(iii) "Failure to Deliver" means the failure of a party to deliver, when due, the relevant Shares under that Transaction, where such failure to deliver is due to illiquidity in the market for such Shares;

(iv) "Insolvency Filing" means that the Issuer institutes or has instituted against it by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, or it consents to a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official or it consents to such a petition, provided that proceedings instituted or petitions presented by creditors and not consented to by the Issuer shall not be deemed an Insolvency Filing;

(v) "Hedging Disruption" means that the Hedging Party is unable, after using commercially reasonable efforts, to (A) acquire, establish, re-establish, substitute, maintain, unwind or dispose of any transaction(s) or asset(s) it deems necessary to hedge the equity price risk of entering into and performing its obligations with respect to the relevant Transaction, or (B) realize, recover or remit the proceeds of any such transaction(s) or asset(s);

(vi) "Increased Cost of Hedging" means that the Hedging Party would incur a materially increased (as compared with circumstances existing on the Trade Date) amount of tax, duty, expense or fee (other than brokerage commissions) to (A) acquire, establish, re-establish, substitute, maintain, unwind or dispose of any transaction(s) or asset(s) it deems necessary to hedge the equity price risk of entering into and performing its obligations with respect to the relevant Transaction, or (B) realize, recover or remit the proceeds of any such transaction(s) or asset(s), provided that any such materially increased amount that is incurred solely due to the deterioration of the creditworthiness of the Hedging Party shall not be deemed an Increased Cost of Hedging;

(vii) "Loss of Stock Borrow" means that the Hedging Party is unable, after using commercially reasonable efforts, to borrow (or maintain a borrowing of) Shares with respect to such Transaction in an amount equal to the Hedging Shares (not to exceed the number of Shares underlying the Transaction) at a rate equal to or less than the Maximum Stock Loan Rate;

(viii) "Increased Cost of Stock Borrow" means that the Hedging Party would incur a rate to borrow Shares in respect of such Transaction that is greater than the Initial Stock Loan Rate;

(ix) "Hedging Party" means the party specified in the related Confirmation as the Hedging Party or, if no Hedging Party is specified, either party to the Transaction;

(x) "Hedging Shares" means the number of Shares that the Hedging Party deems necessary to hedge the equity price risk of entering into and performing its obligations with respect to a Transaction to which "Loss of Stock Borrow" or "Increased Cost of Stock Borrow" is applicable;

(xi) "Lending Party" means a third party that the Hedging Party considers to be a satisfactory counterparty (acting in good faith and in a commercially reasonable manner in light of other transactions that the Hedging Party may have entered into with such party);

(xii) "Non-Hedging Party" means the party that is not the Hedging Party;

(xiii) "Maximum Stock Loan Rate" means, in respect of a Transaction to which "Loss of Stock Borrow" is applicable, the stock loan rate specified as such in the related Confirmation;

(xiv) "Initial Stock Loan Rate" means, in respect of a Transaction to which "Increased Cost of Stock Borrow" is applicable, the stock loan rate specified as such in the related Confirmation; and

(xv) "Price Adjustment" means an adjustment to the Strike Price, Initial Price, Forward Price, Forward Floor Price, Forward Cap Price, Knock-in Price, Knock-out Price, spread or other variable with respect to the relevant Transaction.

(b) For the purpose of determining the consequence of an Additional Disruption Event:

(i) If "Change in Law" or "Insolvency Filing" is specified in the related Confirmation to be applicable to a Transaction, then upon the occurrence of such an event either party may elect to terminate the Transaction upon at least two Scheduled Trading Days' notice to the other party specifying the date of such termination (or such lesser notice as may be required to comply with the Change in Law), in which event the Transaction will terminate and the Determining Party will determine the Cancellation Amount payable by one party to the other.

(ii) If "Failure to Deliver" is specified in the related Confirmation to be applicable to a Transaction, then such event shall not constitute an Event of Default under the ISDA Master Agreement, but upon the occurrence of such an event, the party required to deliver the relevant Shares (the "Delivering Party") shall (A) give the other party (the "Receiving Party") notice that a Failure to Deliver has occurred within one Clearance System Business Day of the relevant Exercise Date in the case of an Option Transaction and at least one Settlement Cycle prior to the Settlement Date in the case of a Forward Transaction or Equity Swap Transaction and (B) deliver on the Settlement Date to the Receiving Party such number of Shares that it can deliver on such date. The Receiving Party's obligation to make any corresponding payment or delivery to the Delivering Party shall be reduced in proportion to the number of Shares it receives from the

**Delivering Party**. In respect of a **European Option** or a **Forward Transaction**, the **Receiving Party** may then elect to terminate the **Transaction** by giving notice to the **Delivering Party** and the **Transaction** will terminate on the date that such notice is effective. The **Receiving Party** (who shall be the **Determining Party**) shall determine the **Cancellation Amount** payable in relation to such terminated **Transaction** (after consideration of any partial delivery). In respect of an **American Option** or a **Bermuda Option**, the **Receiving Party** may then elect to terminate that part of the **Transaction** consisting of the exercised **Options** by giving notice to the **Delivering Party**. On the date that such notice is effective, a **Transaction** consisting of the exercised **Options** only shall be terminated and the **Receiving Party** (who shall be the **Determining Party**) shall determine the **Cancellation Amount** payable in relation to such terminated **Transaction** (after consideration of any partial delivery). In respect of an **Equity Swap Transaction**, the **Receiving Party** may then elect to terminate that part of the **Transaction** consisting of the **Number of Shares to be Delivered** or **Number of Baskets to be Delivered**, as the case may be, on that **Settlement Date** by giving notice to the **Delivering Party**. On the date that such notice is effective, a **Transaction** consisting of the **Number of Shares to be Delivered** or **Number of Baskets to be Delivered**, as the case may be, on that **Settlement Date** only shall be deemed to have been terminated on such **Settlement Date** and the **Receiving Party** (who shall be the **Determining Party**) shall determine the **Cancellation Amount** payable in relation to such terminated **Transaction** (after consideration of any partial delivery). In respect of an **American Option** or a **Bermuda Option**, in each case to which **Multiple Exercise** is applicable and upon which less than all **Options** have been exercised or deemed exercised on the relevant **Exercise Date**, or in respect of an **Equity Swap Transaction** in relation to which one or more **Settlement Dates** have not occurred, the **Receiving Party** may elect within one **Settlement Cycle** of the **Settlement Date** on which the **Transaction** was partially terminated to terminate the remaining **Transaction** upon two **Scheduled Trading Days'** notice to the **Delivering Party**, in which event the **Transaction** shall terminate on the date that such notice is effective and the **Receiving Party** (who shall be the **Determining Party**) shall determine the **Cancellation Amount** payable in relation to such terminated **Transaction**.

(iii) If "**Hedging Disruption**" is specified in the related **Confirmation** to be applicable to a **Transaction**, then upon the occurrence of such an event the **Hedging Party** may elect, while the **Hedging Disruption** is continuing, to terminate the **Transaction**, upon at least two **Scheduled Trading Days'** notice to the **Non-Hedging Party** specifying the date of such termination, in which event the **Determining Party** will determine the **Cancellation Amount** payable by one party to the other.

(iv) If "**Loss of Stock Borrow**" is specified in the related **Confirmation** to be applicable to a **Transaction**, then upon the occurrence of such an event the **Hedging Party** may give notice that a **Loss of Stock Borrow** has occurred to the **Non-Hedging Party**, who may (A) lend the **Hedging Party**, subject to the conditions below, **Shares** in an amount equal to the **Hedging Shares** at a rate equal to or less than the **Maximum Stock Loan Rate** or (B) refer the **Hedging Party** to a **Lending Party** that will lend the **Hedging Party Shares** in an amount equal to the **Hedging Shares** at a rate equal to or less than the **Maximum Stock Loan Rate**, in each case within two **Scheduled Trading Days** of receipt of the notice of **Loss of Stock Borrow**. If neither the **Non-Hedging Party** nor the **Lending Party** lends **Shares** in the amount of the **Hedging Shares** or a satisfactory **Lending Party** is not identified within this period, the **Hedging Party** may give notice that it elects to terminate the **Transaction**, specifying the date of such termination, which may be the same day that the notice of termination is effective. The **Determining Party** will then determine the **Cancellation Amount** payable by one party to the other.

(v) If "Increased Cost of Stock Borrow" is specified in the related Confirmation to be applicable to a Transaction, then upon the occurrence of such an event the Hedging Party will give prompt notice to the Non-Hedging Party that an Increased Cost of Stock Borrow has occurred and that a Price Adjustment will be made to the Transaction. The Non-Hedging Party shall, within two Scheduled Trading Days of receipt of the notice of Increased Cost of Stock Borrow and corresponding Price Adjustment, notify the Hedging Party that it elects to (A) agree to amend the relevant Transaction to take into account the Price Adjustment, (B) pay the Hedging Party an amount determined by the Calculation Agent that corresponds to the Price Adjustment or (C) terminate the Transaction as of that second Scheduled Trading Day. If such notice is not given by the end of that second Scheduled Trading Day, then the Hedging Party may give notice that it elects to terminate the Transaction, specifying the date of such termination, which may be the same day that the notice of termination is effective. If either party elects to terminate the Transaction, the Determining Party will determine the Cancellation Amount payable by one party to the other. Within this period, the Non-Hedging Party may, in order to avoid a Price Adjustment or termination with respect to the Transaction, (X) lend the Hedging Party, subject to the conditions below, Shares in an amount equal to the Hedging Shares at a rate equal to or less than the Initial Stock Loan Rate or (Y) refer the Hedging Party to a Lending Party that lends the Hedging Party Shares in an amount equal to the Hedging Shares at a rate equal to or less than the Initial Stock Loan Rate.

(vi) If "Increased Cost of Hedging" is specified in the related Confirmation to be applicable to a Transaction, then upon the occurrence of such an event the Hedging Party will give prompt notice to the Non-Hedging Party that such increased costs have been incurred and that a Price Adjustment will be made to the Transaction. The Non-Hedging Party shall, within two Scheduled Trading Days of receipt of the notice of Increased Cost of Hedging and corresponding Price Adjustment, notify the Hedging Party that it elects to (A) agree to amend the relevant Transaction to take into account the Price Adjustment, (B) pay the Hedging Party an amount determined by the Calculation Agent that corresponds to the Price Adjustment or (C) terminate the Transaction as of that second Scheduled Trading Day. If such notice is not given by the end of that second Scheduled Trading Day, then the Hedging Party may give notice that it elects to terminate the Transaction, specifying the date of such termination, which may be the same day that the notice of termination is effective. If either party elects to terminate the Transaction, the Determining Party will determine the Cancellation Amount payable by one party to the other.

(vii) If both "Hedging Disruption" and "Loss of Stock Borrow" are specified to be applicable to a Transaction and an event or circumstance that would otherwise constitute or give rise to a Hedging Disruption also constitutes a Loss of Stock Borrow, it will be treated as a Loss of Stock Borrow and will not constitute a Hedging Disruption.

(viii) Any Shares provided by the Non-Hedging Party or the Lending Party, as the case may be, in respect of a Loss of Stock Borrow or Increased Cost of Stock Borrow shall be in book-entry form and freely tradable without any restrictions under relevant law and the lending of such Shares shall be documented under documentation acceptable to the Hedging Party.

(ix) Any Cancellation Amount payable by one party to the other shall be paid by the party to pay such amount not later than three Currency Business Days following the date that

notice of the determination by the **Determining Party** of such amount (denominated in the currency for settlement of the **Transaction** as determined by the **Determining Party**) and the party to pay such amount is effective, which notice shall be provided promptly following such determination.

## ARTICLE 13

### MISCELLANEOUS

**Section 13.1. Non-Reliance.** If "Non-Reliance" is specified as applicable in the related **Confirmation**, then unless agreed to the contrary expressly and in writing in the related **Confirmation** for a **Transaction** and notwithstanding any communication that each party (and/or its Affiliates) may have had with the other party, each party to a **Transaction** represents to the other party that: (a) it is entering into such **Transaction** as principal (and not as agent or in any other capacity); (b) neither the other party nor any of its Affiliates or agents are acting as a fiduciary for it; (c) it is not relying upon any representations except those expressly set forth herein or in the **ISDA Master Agreement** (including the related **Confirmations** between them); (d) it has consulted with its own legal, regulatory, tax, business, investments, financial, and accounting advisors to the extent that it has deemed necessary, and it has made its own investments, hedging, and trading decisions based upon its own judgment and upon any advice from such advisors as it has deemed necessary and not upon any view expressed by the other party or any of its Affiliates or agents; and (e) it is entering into such **Transaction** with a full understanding of the terms, conditions and risks thereof and it is capable of and willing to assume those risks.

### **Section 13.2. Agreements and Acknowledgments Regarding Hedging Activities.**

(a) If "Agreements and Acknowledgments Regarding Hedging Activities" is specified as applicable in the related **Confirmation**, then unless agreed to the contrary expressly and in writing in the related **Confirmation** for a **Transaction** and notwithstanding any communication that each party (and/or its Affiliates) may have had with the other party, each party to a **Transaction** agrees and acknowledges that (i) when entering into, or continuing to maintain, such **Transaction**, neither party is relying on (A) the manner or method in which the other party or any of its Affiliates may establish, maintain, adjust or unwind its **Hedge Positions**, (B) any communication, whether written or oral, between the parties or any of their respective Affiliates with respect to any **Hedging Activities** of the other party or any of its Affiliates, or (C) any representation, warranty or statement being made by such party or any of its Affiliates as to whether, when, how or in what manner or method such party or any of its Affiliates may engage in any **Hedging Activities** and that (ii) (A) each party and its Affiliates may, but are not obliged to, hedge any **Transaction** on a dynamic, static or portfolio basis, by holding a corresponding position in the securities or indices referenced by or underlying such **Transaction** or in any other securities or indices or by entering into any **Hedge Position**; (B) any **Hedge Position** established by either party or any of its Affiliates is a proprietary trading position and activity of such party or such Affiliate; (C) each party or such Affiliate is not holding the **Hedge Positions** or engaging in the **Hedging Activities** on behalf or for the account of or as agent or fiduciary for the other party, and the other party will not have any direct economic or other interest in, or beneficial ownership of, the **Hedge Positions** or **Hedging Activities**; and (D) the decision to engage in **Hedging Activities** is in the sole discretion of each party, and each party and its Affiliates may commence or, once commenced, suspend or cease the **Hedging Activities** at any time as it may solely determine.