



## ISDA/IIFM TAHAWWUT MASTER AGREEMENT

Users of this document should note that, when entering into Transactions or DFT Terms Agreements under this ISDA/IIFM Tahawwut Master Agreement or into credit support arrangements in relation to it, they must first take all action required to satisfy themselves as to the Shari'ah compliance of such Transactions, DFT Terms Agreements or credit support arrangements, as the case may be, and of the Shari'ah compliance of such Transactions, DFT Terms Agreements or credit support arrangements, as the case may be, when taken together with the ISDA/IIFM Tahawwut Master Agreement. Users making any amendment or addition to this ISDA/IIFM Tahawwut Master Agreement (whether through Part 6 of the Schedule or otherwise) should also first take all action required to satisfy themselves as to the Shari'ah compliance of such amendment or addition and of the ISDA/IIFM Tahawwut Master Agreement incorporating such amendment or addition.

No Shari'ah approval is given by the IIFM Shari'ah Advisory Panel with respect to any Transactions, DFT Terms Agreements or credit support arrangements or any amendment or addition to this ISDA/IIFM Tahawwut Master Agreement.

The attention of users of this document is drawn to the footnotes to this document, which provide explanatory information but do not constitute a part of the ISDA/IIFM Tahawwut Master Agreement itself.

**ISDA/IIFM TAHAWWUT MASTER AGREEMENT**

dated as of.....

..... and .....

**Party A** **Party B**

may from time to time enter into one or more transactions (each a "**Transaction**") that are or will be governed by this ISDA/IIFM Tahawwut Master Agreement, which includes the schedule (the "**Schedule**")<sup>1</sup>, and the documents and other confirming evidence (each a "**Confirmation**") exchanged between the parties or otherwise effective for the purpose of confirming or evidencing those Transactions.<sup>2</sup> This ISDA/IIFM Tahawwut Master Agreement and the Schedule are together referred to as this "**Master Agreement**".

In addition, the parties may from time to time agree (the documents and other confirming evidence exchanged between the parties or otherwise effective for the purpose of confirming or evidencing any such agreement being a "**DFT Terms confirmation**" and each such agreement being a "**DFT Terms Agreement**") the terms of further transactions in each case being either (i) a transaction which, by such DFT Terms Agreement, the parties agree to enter into between them in the future under this Master Agreement or (ii) a transaction which, by such DFT Terms Agreement, one party (the first party) undertakes<sup>3</sup> to the other (the second party) to enter into under this Master Agreement at the election of the second party at a future date (all of such further transactions being "**Designated Future transactions**"). Except as is expressly provided in this Master Agreement, Designated Future transactions shall not constitute Transactions for the purposes of this Master Agreement unless and until subsequently entered into, and when entered into they shall constitute Transactions, shall be confirmed by way of a Confirmation and shall cease to be Designated Future transactions.

Accordingly, the parties agree as follows:-

**1. Interpretation**

(a) **Definitions.** The terms defined in Section 14 and elsewhere in this Master Agreement will have the meanings therein specified for the purpose of this Master Agreement.

<sup>1</sup> The Schedule, which is at the end of this document, will record details of the parties and will record the agreement of the parties on those items which the main Agreement specifies as to be agreed or elected between the parties and any other provisions which the parties agree between them.

<sup>2</sup> The Transactions would be for example *murabaha* transactions entered into between the parties. These will be the concluded transactions.

<sup>3</sup> Where one party undertakes to enter into a transaction in the future at the election of the other party, that undertaking is a *wa'ad*. The agreement contemplates two distinct sets of *wa'ad* or undertaking. One will be the *wa'ad* to enter into Designated Future transactions; this *wa'ad* will usually be contained in the DFT Terms confirmation entered into at the time the parties agree the specific terms to apply to the specific Designated Future transaction. The other *wa'ad* is the *wa'ad* to enter into a *musawama*; each party separately enters into a *wa'ad* to enter into a *musawama* by virtue of Section 2(e) of this Master Agreement.

(b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement, such Confirmation will prevail for the purpose of the relevant Transaction. In the event of any inconsistency between the provisions of any DFT Terms confirmation and this Master Agreement, such DFT Terms confirmation will prevail for the purpose of the relevant DFT Terms Agreement and the relevant Designated Future transaction.

(c) **Single Agreement.** All Transactions, DFT Terms Agreements and Designated Future transactions are entered into in reliance on the fact that this Master Agreement, all Confirmations and all DFT Terms confirmations (and the DFT Terms Agreements which they evidence) form a single agreement between the parties (collectively referred to as this "**Agreement**"), and the parties would not otherwise enter into any Transactions, DFT Terms Agreements or Designated Future transactions.

(d) **Laws.** For the purposes of this Agreement, any reference to any "law" or "laws" in this Agreement does not include reference to principles of the Shari'ah.

## 2. **Obligations**

### (a) **General Conditions.**

(i) (1) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement. (2) Each party will enter into a Designated Future transaction in accordance with and subject to the terms of the relevant DFT Terms Agreement, subject to the other provisions of this Agreement.

(ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

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

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

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

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

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

obligation upon the party by which the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

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

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

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

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:

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

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

(ii) **Liability.** If:

- (1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);
- (2) X does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against X,

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

(e) **Wa'ad to Enter into Musawama.**<sup>4</sup> Each party hereby undertakes to enter into a purchase transaction on the terms and in the circumstances set out in Section 6(f)(v).

### 3. Representations

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

(a) **Basic Representations.**

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

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document<sup>5</sup> to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

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

(iv) **Consents.** All governmental and other consents (including obtaining any declaration, pronouncement, opinion or other attestation referred to in Section 3(h) below) that are required to have been

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<sup>4</sup> This Master Agreement contemplates two distinct sets of *wa'ad* or undertaking. One will be the *wa'ad* to enter into Designated Future transactions. The other is the *wa'ad* to enter into a *musawama*; each party separately enters into a *wa'ad* to enter into a *musawama* by virtue of Section 2(e) of this Master Agreement. See also Footnote 3 above.

<sup>5</sup> It is expected that in due course credit support documentation will be developed to enable parties to enter into Transactions and DFT Terms Agreements under this Agreement on a collateralised basis. The references to Credit Support Documents anticipate the future existence of such documentation.

obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

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

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

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

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

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

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

(g) **Principal.** It is entering into this Agreement, including each Transaction and each DFT Terms Agreement, as principal and not as agent of any person or entity, and where it (the relevant party) enters into this Agreement, a Transaction or a DFT Terms Agreement through an agent, the obligations arising under this Agreement, in respect of that Transaction or in respect of that DFT Terms Agreement are nevertheless the obligations of the relevant party itself, and not obligations of the agent through which the relevant party enters into this Agreement, such Transaction or such DFT Terms Agreement.

(h) **Satisfaction as to compliance with Shari'ah.** Insofar as it wishes or is required for any reason to enter into transactions, agreements and arrangements which comply or are consistent with the principles of the Shari'ah ("**Shari'ah compliant**" or "**Shari'ah compliance**"), it has made its own investigation into and satisfied itself as to the Shari'ah compliance of this Agreement, each Transaction, each DFT Terms Agreement entered into under this Agreement and each Designated Future transaction to be entered into pursuant to this Agreement, and all necessary action to confirm that this Agreement, each Transaction, each DFT Terms Agreement and each Designated Future transaction is a Shari'ah compliant Agreement, Transaction, DFT Terms Agreement or Designated Future transaction which it may enter into has been taken (including the obtaining of a declaration, pronouncement, opinion or other attestation of the Shari'ah adviser, board or panel relevant to it where required).

(i) **Non-reliance.** It has not relied, directly or indirectly, on the other party or any declaration, pronouncement, opinion or other attestation or document prepared by, on behalf or at the request of the other party for the purposes of a determination or confirmation that this Agreement, each Transaction, each DFT Terms Agreement and each Designated Future transaction is Shari'ah compliant.

#### 4. Agreements

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

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

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

(ii) any other documents specified in the Schedule, any Confirmation or any DFT Terms confirmation; and

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

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

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

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

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

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

#### 5. Events of Default and Termination Events

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

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

(ii) **Breach of Agreement; Repudiation of Agreement; Failure to enter into a Designated Future transaction.**

(1) Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or make any delivery under Section 2(a)(i) or an obligation to enter into a Designated Future transaction pursuant to Section 2(a)(i) or the terms of a DFT Terms Agreement or an obligation to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) required to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied within 30 days after notice of such failure is given to the party;

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

(3) failure by the party to enter into a Designated Future transaction in compliance with and in accordance with the terms of Section 2(a)(i) or any DFT Terms Agreement if such failure is not remedied on or before the first Local Business Day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

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

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

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

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

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

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

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

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

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

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

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

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

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or

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

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

- (1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party; or
- (2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

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

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

day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day (in each case, other than as a result of a breach by the party of Section 4(b)):

(1) (A) for the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction to perform any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or (B) for the Office through which such party (which will be the Affected Party) would enter into any Designated Future transaction to perform any obligation pursuant to the relevant DFT Terms Agreement or Section 2(a)(i)(2) to enter into such Designated Future transaction or to perform any obligation to make a payment or delivery or to receive a payment or delivery that would arise by virtue of its entry into such Designated Future transaction or to comply with any other material provision of this Agreement relating to such DFT Terms Agreement or the Designated Future transaction that would arise by virtue of its entry into such Designated Future transaction; or

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

(ii) **Force Majeure Event.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation, the relevant DFT Terms confirmation or elsewhere in this Agreement, by reason of force majeure or act of state occurring after a Transaction (or, in relation to a Transaction entered into pursuant to a DFT Terms Agreement, the relevant DFT Terms Agreement) or DFT Terms Agreement is entered into, on any day:

(1) (A) the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction is prevented from performing any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, from receiving a payment or delivery in respect of such Transaction or from complying with any other material provision of this Agreement relating to such Transaction (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for such Office so to perform, receive or comply (or it would be impossible or impracticable for such Office so to perform, receive or comply if such payment, delivery or compliance were required on that day); or (B) the Office through which such party (which will be the Affected Party) would enter into a Designated Future transaction pursuant to such DFT Terms Agreement or Section 2(a)(i)(2) is prevented from complying with any obligation to enter into such Designated Future transaction (or would be so prevented if entry into the relevant Designated Future transaction were required on that day) or such Office would be prevented from performing any absolute or contingent obligation to make a payment or delivery, to receive a payment or delivery or to comply with any other material obligation under this Agreement in respect of any Designated Future transaction were that Designated Future transaction entered into on that day or it becomes impossible or impracticable for such Office to comply with such obligation (or it would be impossible or impracticable for such Office so to comply if compliance were required on that day); or

(2) such party or any Credit Support Provider of such party (which will be the Affected Party) is prevented from performing any absolute or contingent obligation to make a payment or delivery

which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, or would have relating to such Designated Future transaction if it had been entered into on that day, from receiving a payment or delivery under such Credit Support Document or from complying with any other material provision of such Credit Support Document (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply (or it would be impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply if such payment, delivery or compliance were required on that day),

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

(iii) **Tax Event.** Due to (1) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction (or, in relation to a Transaction entered into pursuant to a DFT Terms Agreement, the relevant DFT Terms Agreement) or a DFT Terms Agreement is entered into (in each case regardless of whether such action is taken or brought with respect to a party to this Agreement) or (2) a Change in Tax Law, the party (which will be the Affected Party), in the case of a Transaction will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Settlement Date or, in the case of a DFT Terms Agreement, would, or there is a substantial likelihood that it would, in the event of entry into the relevant Designated Future transaction, on any date for payment under such transaction (A) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) or (B) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax and no additional amount is or would be required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

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

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

(1) X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or any substantial part of the assets comprising the business conducted by X as of the

date of this Master Agreement) to, or reorganises, reincorporates or reconstitutes into or as, another entity;

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

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

(vi) **Additional Termination Event.** If any "Additional Termination Event" is specified in the Schedule, any Confirmation or any DFT Terms confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties will be as specified for such Additional Termination Event in the Schedule, such Confirmation or such DFT Terms confirmation).

(c) **Hierarchy of Events.**

(i) An event or circumstance that constitutes or gives rise to an Illegality or a Force Majeure Event will not, for so long as that is the case, also constitute or give rise to an Event of Default under Section 5(a)(i), 5(a)(ii)(1), 5(a)(ii)(3) or 5(a)(iii)(1) insofar as such event or circumstance relates to the failure to make any payment or delivery, a failure to enter into a Designated Future transaction or a failure to comply with any other material provision of this Agreement or a Credit Support Document, as the case may be.

(ii) Except in circumstances contemplated by clause (i) above, if an event or circumstance which would otherwise constitute or give rise to an Illegality or a Force Majeure Event also constitutes an Event of Default or any other Termination Event, it will be treated as an Event of Default or such other Termination Event, as the case may be, and will not constitute or give rise to an Illegality or a Force Majeure Event.

(iii) If an event or circumstance which would otherwise constitute or give rise to a Force Majeure Event also constitutes an Illegality, it will be treated as an Illegality, except as described in clause (ii) above, and not a Force Majeure Event.

(d) **Deferral of Payments and Deliveries and Deferral of Entry into Designated Future transactions During Waiting Period.** If an Illegality or a Force Majeure Event has occurred and is continuing with respect to a Transaction or DFT Terms Agreement, each payment or delivery which would otherwise be required to be made under that Transaction or each obligation that would otherwise arise under that DFT Terms Agreement or Section 2(a)(i)(2) to enter into a Designated Future transaction will be deferred to, and will not be due until:

(i) the first Local Business Day or, in the case of a delivery, the first Local Delivery Day (or the first day that would have been a Local Business Day or Local Delivery Day, as appropriate, but for the occurrence of the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event) following the end of any applicable Waiting Period in respect of that Illegality or Force Majeure Event, as the case may be; or

(ii) if earlier, the date on which the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event ceases to exist or, if such date is not a Local Business Day or, in the case of a delivery, a Local Delivery Day, the first following day that is a Local Business Day or Local Delivery Day, as appropriate.

(e) ***Inability of Head or Home Office to Perform Obligations of Branch.*** If (i) an Illegality or a Force Majeure Event occurs under Section 5(b)(i)(1) or 5(b)(ii)(1) and the relevant Office is not the Affected Party's head or home office, (ii) Section 10(a) applies, (iii) the other party seeks performance of the relevant obligation or compliance with the relevant provision by the Affected Party's head or home office and (iv) the Affected Party's head or home office fails so to perform or comply due to the occurrence of an event or circumstance which would, if that head or home office were the Office through which the Affected Party makes and receives payments and deliveries with respect to the relevant Transaction or would make and receive payments and deliveries, with respect to the relevant Designated Future transaction, or would enter into the relevant DFT Terms Agreement, constitute or give rise to an Illegality or a Force Majeure Event, and such failure would otherwise constitute an Event of Default under Section 5(a)(i), 5(a)(ii)(3) or 5(a)(iii)(1) with respect to such party, then, for so long as the relevant event or circumstance continues to exist with respect to both the Office referred to in Section 5(b)(i)(1) or 5(b)(ii)(1), as the case may be, and the Affected Party's head or home office, such failure will not constitute an Event of Default under Section 5(a)(i), 5(a)(ii)(3) or 5(a)(iii)(1).

## 6. Early Termination<sup>6</sup>

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

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

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

(ii) ***Redesignation to Avoid Termination Event.*** If a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, other than immaterial, incidental expenses) within 20 days after it gives notice under Section 6(b)(i) to redesignate all its rights and obligations under this Agreement in respect of the Affected Transactions and the Affected DFT Terms Agreements as rights and obligations of another of its Offices so that such Termination Event ceases to exist.

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<sup>6</sup> This Early Termination clause is the one through which net risk management is effected. It allows all Transactions and DFT Terms Agreements to be terminated. Broadly speaking, the Transactions (which are the concluded transactions) under which no deliveries remain to be made will be replaced by the obligation to pay an Early Termination Amount (See Sections 6(c)(ii) and 6(e)). In relation to the DFT Terms Agreements and Transactions under which deliveries remain to be made, the Relevant Index will be calculated and the *wa'ad* to enter into a *musawama* transaction will provide the mechanism for a net amount in respect of those DFT Terms Agreements and those Non-Fully Delivered Terminated Transactions to be paid (See Section 6(f)(v)). The intention is that where a payment is to be made by one party in respect of the concluded transactions and a payment is to be made by the other party in respect of the *musawama* entered into, those payments should be capable of being set off.

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

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

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

(iv) **Right to Terminate.**

(1) If:

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

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

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

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

(A) Subject to clause (B) below, either party may, by not more than 20 days notice to the other party, designate (I) a day not earlier than the day on which such notice becomes effective as an Early Termination Date in respect of all Affected Transactions and all Affected DFT Terms Agreements or (II) by specifying in that notice the Affected Transactions and the Affected DFT Terms Agreements in respect of which it is designating the relevant day as an Early Termination Date, a day not earlier than two Local Business Days following the day on which such notice becomes effective as an Early Termination Date in respect of less than all Affected Transactions and/or less than all Affected DFT Terms Agreements. Upon receipt of a notice designating an Early Termination Date in respect of less than all Affected Transactions and/or less than all Affected DFT Terms Agreements, the other party may, by notice to the designating party, if such notice is effective on or before the day so designated, designate that same day as an Early Termination Date in respect of any or all other Affected Transactions and any or all other Affected DFT Terms Agreements.

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

(c) ***Effect of Designation.***

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

(ii) ***Effect of Occurrence of Early Termination Date.*** Without prejudice to the other provisions of this Agreement, upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i)(1) in respect of the Terminated Transactions or performance under Section 2(a)(i)(2) in respect of the Terminated DFT Terms Agreements will be required to be made except as provided by and pursuant to Sections 6(d), 6(e) and 6(f), which Sections will apply to all Terminated Transactions and all Terminated DFT Terms Agreements.

(d) ***Effect of Early Termination Date: Fully Delivered Terminated Transactions.***

(i) ***Acceleration of Specified Payments under Fully Delivered Terminated Transactions.*** Upon the occurrence or effective designation of an Early Termination Date, all payments (the "**Specified Payments**") which would otherwise fall due for payment in respect of the Fully Delivered Terminated Transactions at any time after the Early Termination Date (assuming satisfaction of the conditions precedent in Section 2(a)(iii)) shall become due and payable on the Early Termination Date in accordance with this Section 6(d) and the provisions for payment of the Early Termination Amount set out in Section 6(e).

Where this Section 6(d) applies, performance of the respective obligations of the parties with respect to the Specified Payments shall be effected only subject to and in accordance with the provisions of this Section 6(d) and Section 6(e), and for this purpose an amount (the "**Close-out Amount**") shall be determined with respect to the Fully Delivered Terminated Transactions equal to (1) the sum of the Termination Currency Equivalent of all Specified Payments so due and payable by Party A on the Early Termination Date less (2) the sum of the Termination Currency Equivalent of all Specified Payments so due and payable by Party B on the Early Termination Date.

(ii) ***Determination of Close-out Amount.***

(1) Upon the occurrence or effective designation of an Early Termination Date under Section 6(a), the Non-defaulting Party shall determine the Close-out Amount, if any.

(2) Upon the effective designation of an Early Termination Date under Section 6(b), the Close-out Amount (if any) shall be determined by the party or parties which pursuant to Section 6(e)(ii) is or are to determine the Close-out Amount.

(3) In determining a Close-out Amount, a party (or its agent) will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. A party

may determine a Close-out Amount for any group of Fully Delivered Terminated Transactions or any individual Fully Delivered Terminated Transaction but, in the aggregate, for not less than all Fully Delivered Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable. Unpaid Amounts in respect of a Fully Delivered Terminated Transaction or group of Fully Delivered Terminated Transactions and legal fees and out-of-pocket expenses referred to in Section 11 are to be excluded in all determinations of Close-out Amounts.

(e) **Early Termination Amount Payable In Respect of Terminated Transactions.** If an Early Termination Date occurs, there will be payable (subject to Section 6(h)) in respect of the Terminated Transactions (if any) and that Early Termination Date an amount (the "**Early Termination Amount**"), if any, determined pursuant to this Section 6(e).

(i) **Events of Default.** If the Early Termination Date results from an Event of Default, the Early Termination Amount will be an amount equal to (1) the sum of (A) the Close-out Amount determined by the Non-defaulting Party with respect to the Fully Delivered Terminated Transactions (a Close-out Amount owed to the Non-defaulting Party being expressed as a positive number and a Close-out Amount owed by the Non-defaulting Party being expressed as a negative number) and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (2) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If the Early Termination Amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of the Early Termination Amount to the Defaulting Party.

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

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

(2) **Two Affected Parties.** If there are two Affected Parties, each party will determine the Close-out Amount (whether positive or negative) for the Fully Delivered Terminated Transactions, and the Early Termination Amount will be an amount equal to (A) the Close-out Amount plus (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Party B less (C) the Termination Currency Equivalent of the Unpaid Amounts owing to Party A. If the Early Termination Amount is a positive number, Party A will pay it to Party B; if it is a negative number, Party B will pay the absolute value of the Early Termination Amount to Party A.

(iii) **Payment Date.** Subject to Section 6(h), an Early Termination Amount due in respect of any Early Termination Date shall be payable (1) on the day on which notice of the amount payable is effective in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default and (2) on the day which is two Local Business Days after the day on which notice of the amount payable is effective (or, if there are two Affected Parties, after the day on which the statement provided pursuant to Section 6(g)(i) by the second party to provide such a statement is effective) in the case of an Early Termination Date which is designated as a result of a Termination Event.

(f) ***Effect of Early Termination Date: Non-Fully Delivered Terminated Transactions and Terminated DFT Agreements.***

(i) Upon the occurrence or effective designation of an Early Termination Date under Section 6(a), the Non-defaulting Party shall determine the value of the Relevant Index and the Relevant Index Amounts (if any).

(ii) Upon the effective designation of an Early Termination Date under Section 6(b), the party or parties determining the Close-out Amount as provided by Section 6(e)(ii) shall determine the value of the Relevant Index and the Relevant Index Amounts (if any).

(iii) In determining the value of the Relevant Index and any Relevant Index Amount, a party (or its agent) will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. A party may determine a Relevant Index Amount for any group of Non-Fully Delivered Terminated Transactions or any individual Non-Fully Delivered Terminated Transaction and for any group of Terminated DFT Terms Agreements or any individual Terminated DFT Terms Agreement but, in the aggregate, for not less than all Non-Fully Delivered Terminated Transactions and not less than all Terminated DFT Terms Agreements. The value of the Relevant Index and each Relevant Index Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable. Legal fees and out-of-pocket expenses referred to in Section 11 are to be excluded in all determinations of the value of the Relevant Index and each Relevant Index Amount.

(iv) If the Early Termination Date results from a Termination Event which is an Illegality or a Force Majeure Event, then, for the purpose of determining the value of the Relevant Index and any Relevant Index Amount, the Determining Party will:

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

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

(v) ***Exercise of Wa'ad to enter into Musawama.***

(1) Each party hereby undertakes that upon the occurrence or effective designation of an Early Termination Date,

(A) where the Relevant Index Determining Party is one party and it determines that the value of the Relevant Index is a positive number, it may, by notice to the other party given at any time up to and including the day which is the first anniversary of the Early Termination Date (or if later than such first anniversary, 30 days after delivery of the statement referred to in Section 6(g)(i)), exercise the right pursuant to Section 2(e) to require the other party to purchase from it on the date specified for such purpose in such notice (which date shall be a Local Delivery Day not less than three days and not more than 20 days after the date such notice is given) the Designated Assets at the Positive Indexed Value;

- (B) where the Relevant Index Determining Party is one party and it determines that the value of the Relevant Index is a negative number, the other party may, by notice to the Relevant Index Determining Party given at any time up to and including the day which is the first anniversary of the Early Termination Date (or if later than such first anniversary, 30 days after delivery of the statement referred to in Section 6(g)(i)), exercise the right pursuant to Section 2(e) to require such Relevant Index Determining Party to purchase from it on the date specified for such purpose in such notice (which shall be a Local Delivery Day not less than three days and not more than 20 days after the date such notice is given) the Designated Assets at the Negative Indexed Value; or
- (C) where the Relevant Index Determining Party is both parties, each party will determine the value of the Relevant Index (whether positive or negative) and the value of the Relevant Index will be a value equal to one-half of the difference between the higher value so determined and the lower value so determined. If the value of the Relevant Index is a positive number for a party ("X"), X may, by notice to the other party ("Y") given at any time up to and including the day which is the first anniversary of the Early Termination Date (or if later than such first anniversary, 30 days after the day on which the statement provided pursuant to Section 6(g)(i) by the second party to provide such a statement is effective), exercise the right pursuant to Section 2(e) to require Y to purchase from it on the date specified for such purpose in such notice (which shall be a Local Delivery Day not less than three days and not more than 20 days after the date such notice is given) the Designated Assets at the Positive Indexed Value.

(2) Where the party to which a notice has been given pursuant to section 6(f)(v)(1) fails to comply with its undertaking set out in Section 2(e) as exercised pursuant to Section 6(f)(v)(1) (and failure by it to make the purchase price payment required to be made by it on the due date shall be treated as such a failure to comply) or it notifies the Exercising Party that it is not willing to comply with, or it is deemed, pursuant to Section 6(f)(v)(3), not willing to comply with, its undertaking set out in Section 2(e) as exercised pursuant to Section 6(f)(v)(1), the Exercising Party shall be discharged from its obligation to deliver the Designated Assets and shall be entitled by way of liquidated damages to payment on the date the Designated Assets were to be purchased pursuant to Section 6(f)(v)(1) of an amount equal to the value of the Relevant Index (where the Designated Assets were to be purchased at the Positive Indexed Value) or the absolute value of the value of the Relevant Index (where the Designated Assets were to be purchased at the Negative Indexed Value).

(3) If within one Local Delivery Day of the giving of a notice pursuant to Section 6(f)(v)(1) the party to which such notice has been given has not confirmed in writing to the Exercising Party that it will purchase the Designated Assets on the due date at the Positive Indexed Value or the Negative Indexed Value, as the case may be, the party to which such notice has been given shall be deemed not willing to comply with its undertaking set out in Section 2(e) as exercised pursuant to Section 6(f)(v)(1).

(4) Any notice given pursuant to Section 6(f)(v)(1) shall specify the Designated Assets and give details relating to their delivery and details of the account to which the purchase price is to be paid.

(g) ***Calculations and Adjustments.***

(i) ***Calculations and Statement.*** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations and determinations on its part, if any,

contemplated by Sections 6(d), 6(e) and 6(f) and will provide to the other party a statement (l) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations), (2) specifying (except where there are two Affected Parties) any Early Termination Amount payable, the value of the Relevant Index, the Relevant Index Amounts and the Positive Indexed Value or the Negative Indexed Value and (3) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation or market data obtained in determining a Close-out Amount, the value of the Relevant Index, the Relevant Index Amounts, a Positive Indexed Value or a Negative Indexed Value, the records of the party obtaining such quotation or market data shall be conclusive evidence of the existence and accuracy of such quotation or market data.

(ii) **Adjustment of Early Termination Amount and the value of the Relevant Index for Bankruptcy.** In circumstances where an Early Termination Date occurs because Automatic Early Termination applies in respect of a party, the Early Termination Amount and the value of the Relevant Index will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(e)(iii) where there is an Early Termination Amount, or the date on which the statement provided pursuant to Section 6(g)(i) by the second party to provide such a statement is effective where there is no Early Termination Amount.

(iii) **Adjustment for Illegality or Force Majeure Event.** The failure by a party or any Credit Support Provider of such party to pay, when due, any Early Termination Amount, Positive Indexed Value or Negative Indexed Value will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) if such failure is due to the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction or a DFT Terms Agreement, constitute or give rise to an Illegality or a Force Majeure Event. If subsequently an Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions and all outstanding DFT Terms Agreements are Affected DFT Terms Agreements:

- (A) where such amount is an Early Termination Amount, it will be treated as an Unpaid Amount owing to the other party;
- (B) where such amount is a Positive Indexed Amount, the value of the Relevant Index will be treated as an Unpaid Amount owing the other party (and the other party's obligation to deliver Designated Assets shall be discharged); and
- (C) where such amount is a Negative Indexed Amount, the absolute value of the value of the Relevant Index will be treated as an Unpaid Amount owing to the other party (and the other party's obligation to deliver Designated Assets shall be discharged).

(h) **Set-Off.**

(i) Any Early Termination Amount, Positive Indexed Value or Negative Indexed Value payable to one party (the "**Payee**") by the other party (the "**Payer**"), in circumstances where there is a Defaulting Party or where there is one Affected Party in the case where either a Credit Event Upon Merger has occurred or any other Termination Event in respect of which all outstanding Transactions are Affected Transactions and all outstanding DFT Terms Agreements are Affected DFT Terms Agreements has occurred, will, subject as provided below, at the option of the Non-defaulting Party or the Non-affected Party, as the case may be ("X") (and without prior notice to the Defaulting Party or the Affected Party, as the case may be), be reduced by its set-off against any amounts ("**Other Amounts**"), including any Early Termination Amount, Positive Indexed Value or Negative Indexed Value, payable by the Payee to the Payer (whether or not arising under this

Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so set-off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party of any set-off effected under this Section 6(h). Where the Other Amount is an Early Termination Amount, Positive Indexed Value or Negative Indexed Value, then, to the extent permitted by applicable law, X will effect such set-off.

(ii) Where

- (1) an Early Termination Amount would otherwise have become payable by a Payer;
- (2) there is a Relevant Index Amount;
- (3) the party entitled to exercise the right pursuant to Section 2(e) to require the other party to purchase Designated Assets is the Payer; and
- (4) the Payer has not exercised such right;

then, at the option of the Non-defaulting Party or the Non-affected Party, as the case may be ("X"), the Payer's obligation to pay the specified proportion of the Early Termination Amount shall be deferred (and shall not become due) until the earliest to occur of:

- (X) the first day on which a Positive Indexed Value or Negative Indexed Value becomes payable pursuant to the exercise by the Payer of its right pursuant to Section 2(e);
- (Y) the first day on which an Exercising Party is entitled to payment of liquidated damages pursuant to Section 6(f)(v)(2); and
- (Z) the lapse without exercise of the Payer's right pursuant to Section 2(e).

Such deferral shall be without prejudice to any obligation of the Payer to pay any part of the Early Termination Amount exceeding the specified proportion. For these purposes, the specified proportion means an amount equal to the lesser of the value of the Relevant Index (or its absolute value, if negative) and the Early Termination Amount.

(iii) For the purposes Section 6(h), any of the Early Termination Amount, Positive Indexed Value or Negative Indexed Value or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

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

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

(i) **Pre-Estimate.**<sup>7</sup> The parties agree that the amounts recoverable under this Section 6 are a reasonable pre-estimate of damages and not a penalty. Except as otherwise provided in this Agreement, neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions or Terminated DFT Terms Agreements.

## 7. Transfer<sup>8</sup>

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

(a) subject and without prejudice to Section 6(h), a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement);

(b) subject and without prejudice to Section 6(h), a party may make such a transfer of all or any part of its entitlement to any Early Termination Amount payable to it by a Defaulting Party, together with any amounts payable on or with respect to that entitlement and any other rights associated with that entitlement pursuant to Section 8 and Section 11; and

(c) a party may make such a transfer of all or part of its entitlement to any purchase price payable to it by a Defaulting Party in respect of a *musawama* entered into pursuant to Section 2(e) and Section 6(f)(v), together with any amounts payable on or with respect to that entitlement or with respect to any liquidated damages and any other rights associated with any such entitlement pursuant to Section 8 and Section 11.

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

## 8. Contractual Currency

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

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to or connected with any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in clause (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the

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<sup>7</sup> The inclusion of this paragraph will assist in the case of proceedings under English law or New York law.

<sup>8</sup> Any party effecting a transfer which it requires to be Shari'ah compliant should establish whether the price at which it transfers satisfies Shari'ah requirements, in particular whether the transfer is required to be at par.

judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purpose of such judgment or order and the rate of exchange at which such party is able, acting in good faith and using commercially reasonable procedures in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party.

(c) **Separate Indemnities.** To the extent permitted by applicable law, the indemnities in this Section 8 constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

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

## 9. Miscellaneous

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

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

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

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

(e) **Counterparts and Confirmations.**

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

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

telex, electronic message or e-mail constitutes a Confirmation or a DFT Terms confirmation, as the case may be.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

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

(h) **No interest payable.** The parties intend and agree that no interest will be payable or receivable under or in connection with this Agreement, and in the event that as a result of any arbitral or judicial award or by operation of any applicable law or otherwise it is determined that any interest is payable in connection with this Agreement, each party agrees to waive any rights it may have to claim or receive such interest and agrees that if any such interest is actually received by it, it shall donate the same to a registered, or otherwise officially recognised, charitable organisation selected by it and whose name shall be disclosed by it to the other party.

## **10. Offices; Multibranch Parties**

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction or DFT Terms Agreement through an Office other than its head or home office represents to and agrees with the other party that, notwithstanding the place of booking or its jurisdiction of incorporation or organisation, its obligations are the same in terms of recourse against it as if it had entered into the Transaction or the DFT Terms Agreement through its head or home office, except that a party will not have recourse to the head or home office of the other party in respect of any payment or delivery deferred pursuant to Section 5(d) for so long as the payment or delivery is so deferred. This representation and agreement will be deemed to be repeated by each party on each date on which the parties enter into a Transaction and on each date on which the parties enter into a DFT Terms Agreement.

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

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

## **11. Expenses**

A Defaulting Party will on demand indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, execution fees, Stamp Tax and actual costs of collection, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support

Document to which the Defaulting Party is a party (including any right to terminate early any Transaction or DFT Terms Agreement).

## 12. Notices

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

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by facsimile transmission, on the date it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iii) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered or its delivery is attempted;
- (iv) if sent by telex, on the date the recipient's answerback is received;
- (v) if sent by electronic messaging system, on the date it is received; or
- (vi) if sent by e-mail, on the date it is delivered,

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

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

## 13. Governing Law and dispute resolution forum

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

(b) **Jurisdiction and Service of Process.** Unless the parties have specified in the Schedule that Section 13(c) is to apply, with respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Agreement including any question regarding its existence, validity or termination ("**Proceedings**"), each party irrevocably:-

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

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

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

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

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

(c) **Arbitration.** If the parties have specified in the Schedule that Section 13(c) is to apply, each party agrees that:<sup>9</sup>

(i) all disputes arising out of or in connection with this Agreement including any question regarding its existence, validity or termination shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce or such other rules of arbitration as may be specified in the Schedule by 3 arbitrators, or such other number of arbitrators as may be specified in the Schedule, appointed in accordance with the said rules;

(ii) if this Agreement is expressed to be governed by:

(1) English law, the governing law of the arbitration agreement shall be English law and the seat of arbitration and the location of all hearings shall be London, England; or

(2) the laws of the State of New York, the governing law of the arbitration agreement shall be the laws of the State of New York and the seat of arbitration and the location of all hearings shall be New York City, New York;

and in either case, the language of the arbitration shall be English, unless otherwise agreed in writing by both parties;

(iii) the arbitration and all matters related thereto, including any awards, shall be confidential, unless otherwise agreed in writing by both parties or to the extent disclosure is required of a party by legal duty or to protect or pursue a legal right; and

(iv) it waives any right to refer any point of law to the courts or to appeal any award on a question of law.

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<sup>9</sup> If the parties wish to select arbitration but prefer an alternative to the International Chamber of Commerce, they may do so, but they should specify details of the alternative body they have selected in the Schedule, and in the Schedule they should specify the amendment to Section 13 which they are making. Notwithstanding the inclusion of reference to the Rules of Arbitration of the International Chamber of Commerce, it should be clearly understood that whether or not such Rules are Shari'ah compliant has not been considered by the IIFM Shari'ah Advisory Panel and users should make their own investigation of this.

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

#### 14. Definitions

As used in this Agreement:

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

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

"**Affected DFT Terms Agreement**"<sup>10</sup> means (a) with respect to any Termination Event consisting of an Illegality, Force Majeure Event, Tax Event or Tax Event Upon Merger, all DFT Terms Agreements affected by the occurrence of such Termination Event (which, in the case of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2), means all DFT Terms Agreements unless the relevant Credit Support Document references only certain DFT Terms Agreements, in which case those DFT Terms Agreements) and (b) with respect to any other Termination Event, all DFT Terms Agreements.

A DFT Terms Agreement shall be treated as affected by a Termination Event where the Termination Event affects or will affect the Designated Future transaction to which the DFT Terms Agreement relates as well as where the Termination Event affects the DFT Terms Agreement itself.

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

"**Affected Transactions**"<sup>10</sup> means (a) with respect to any Termination Event consisting of an Illegality, Force Majeure Event, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event (which, in the case of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2), means all Transactions unless the relevant Credit Support Document references only certain Transactions, in which case those Transactions and, if the relevant Credit Support Document constitutes a Confirmation for a Transaction, that Transaction) and (b) with respect to any other Termination Event, all Transactions.

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

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

"**Automatic Early Termination**" has the meaning specified in Section 6(a).

"**Burdened Party**" has the meaning specified in Section 5(b)(iv).

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<sup>10</sup> The Affected DFT Terms Agreements and the Affected Transactions are the ones that are affected for example where any Illegality or Tax Event or Force Majeure etc occurs

"**Change in Tax Law**" means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs after the parties enter into the relevant Transaction (or, in relation to a Transaction entered into pursuant to a DFT Terms Agreement, the relevant DFT Terms Agreement) or the relevant DFT Terms Agreement, as the case may be.

"**Close-out Amount**" has the meaning specified in Section 6(d)(i).

"**Confirmation**" has the meaning specified in the preamble.

"**consent**" includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

"**Contractual Currency**" has the meaning specified in Section 8(a).

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

"**Credit Event Upon Merger**" has the meaning specified in Section 5(b).

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

"**Credit Support Provider**" has the meaning specified in the Schedule.

"**Cross-Default**" means the event specified in Section 5(a)(vi).

"**Defaulting Party**" has the meaning specified in Section 6(a).

"**Designated Assets**" means the Designated Quantity of the type of Shari'ah compliant assets selected for the purposes of Section 6(f)(v) by agreement between the parties and specified in the Schedule.<sup>11</sup>

"**Designated Event**" has the meaning specified in Section 5(b)(v).

"**Designated Future transactions**" has the meaning specified in the preamble.

"**Designated Quantity**" means the quantity of assets selected for the purposes of Section 6(f)(v) by agreement between the parties and specified in the Schedule.<sup>11</sup>

"**Determining Party**" means the party determining a Close-out Amount, an Early Termination Amount, a Relevant Index Amount or the value of the Relevant Index, as the case may be.

"**DFT Terms Agreement**" and "**DFT Terms confirmation**" have the meanings respectively specified in the preamble.

"**Early Termination Amount**" has the meaning specified in Section 6(e).

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<sup>11</sup> To avoid uncertainty regarding the asset which will be the subject of the *musawama*, the parties must agree, in the Schedule, the type and quantity of the Designated Asset to be purchased under the *musawama*. It is anticipated that parties will limit the quantity of the Designated Asset to a nominal value in order that inflated/impractical amounts of commodities are not required to be purchased under the *musawama*. As an alternative to agreeing a single Designated Asset and a single Designated Quantity, the parties may, if they prefer, agree a list of Designated Assets and their respective Designated Quantities, leaving the selection of which out of this list of Designated Assets is to be purchased to be determined by the Exercising Party at the time the *wa'ad* to enter into the *musawama* is exercised.

"**Early Termination Date**" means the date determined in accordance with Section 6(a) or 6(b)(iv).

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

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

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

"**Exercising Party**" means the party which, by notice given pursuant to Section 6(f)(v), requires the other party to purchase the Designated Assets.

"**Force Majeure Event**" has the meaning specified in Section 5(b).

"**Fully Delivered Terminated Transaction**" means, with respect to any Early Termination Date, any Terminated Transaction under which all goods or assets falling to be delivered have been delivered, irrespective of whether any payments fall to be made.

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

"**Illegality**" has the meaning specified in Section 5(b).

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

"**Islamic Financing**"<sup>12</sup> means any financing transaction or arrangement entered into which is expressed to be made in accordance with the principles and rules of the Shari'ah (but which, for the avoidance of doubt, may be governed by another system of law).

"**law**" includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority), and "**unlawful**" will be construed accordingly.<sup>13</sup>

"**Local Business Day**" means (a) in relation to any obligation under Section 2(a)(i), a General Business Day in the place or places specified in the relevant Confirmation or DFT Terms confirmation and, in relation to any obligation under Section 2(a)(i)(1), a day on which a relevant settlement system is open or operating as specified in the relevant Confirmation or, in any such case, if a place or a settlement system is not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) for the purpose of determining when a Waiting Period expires, a General Business Day in the place where the event or circumstance that constitutes or gives rise to the Illegality or Force Majeure Event, as the case may be, occurs, (c) in

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<sup>12</sup> The purpose of including the term "Islamic Financing" (used in the definition of Specified Obligation) is so that financing type arrangements effected through *Shari'ah* compliant structures are covered by the standard cross-default Event of Default, if applicable.

<sup>13</sup> The term "law" does not include principles of the *Shari'ah* (see Section 1(d)). Accordingly, in this Agreement, "unlawful" means contrary to law as opposed to contrary to *Shari'ah*.

relation to any other payment, a General Business Day in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment and, if that currency does not have a single recognised principal financial centre, a day on which the settlement system necessary to accomplish such payment is open, (d) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), a General Business Day (or a day that would have been a General Business Day but for the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event) in the place specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (e) in relation to Section 5(a)(v)(2), a General Business Day in the relevant locations for performance with respect to such Specified Transaction.

**"Local Delivery Day"** means, for purposes of Sections 5(a)(i), 5(d) and 6(f)(v), a day on which settlement systems necessary to accomplish the relevant delivery are generally open for business so that the delivery is capable of being accomplished in accordance with customary market practice, in the place specified in the relevant Confirmation or notice pursuant to Section 6(f)(v)(1) or, if not so specified, in a location as determined in accordance with customary market practice for the relevant delivery.

**"Loss"** means, with respect to one or more Non-Fully Delivered Terminated Transactions or, as the case may be, one or more Terminated DFT Terms Agreements and a party, the Termination Currency Equivalent of an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with that Non-Fully Delivered Terminated Transaction or group of Non-Fully Delivered Terminated Transactions or Terminated DFT Terms Agreement or group of Terminated DFT Terms Agreements, as the case may be. Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if a Market Quotation has been determined for the payment or delivery. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

**"Market Quotation"** means, with respect to one or more Non-Fully Delivered Terminated Transactions or one or more Terminated DFT Terms Agreements and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the **"Replacement Transaction"**) that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Non-Fully Delivered Terminated Transaction or group of Non-Fully Delivered Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date and, in the case of a Non-Fully Delivered Terminated Transaction under which an obligation under Section 2(a)(i) was (or would have been but for Section 2(a)(iii) or Section 5(d)) required to be settled by delivery on or prior to such Early Termination Date and which has not been so settled, the economic equivalent of such obligation to deliver (assuming the satisfaction of each applicable condition precedent) or, as the case may be, the economic equivalent of such Terminated DFT Terms Agreement or group of Terminated DFT Terms Agreements (assuming satisfaction of each applicable condition precedent). For this purpose, Unpaid Amounts in respect of the Non-Fully Delivered Terminated Transaction or group of Non-Fully Delivered Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included and any delivery that was (or would have been but for Section 2(a)(iii) or Section 5(d)) required to be settled on or prior to the relevant Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference

Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Non-Fully Delivered Terminated Transaction or group of Non-Fully Delivered Terminated Transactions or, as the case may be, Terminated DFT Terms Agreement or group of Terminated DFT Terms Agreements cannot be determined.

"**Master Agreement**" has the meaning specified in the preamble.

"**Merger Without Assumption**" means the event specified in Section 5(a)(viii).

"**Multiple Transaction Payment Netting**" has the meaning specified in Section 2(c).

"**Negative Indexed Value**" means, where the value of the Relevant Index is a negative number and in relation to the Designated Assets, the sum of (i) the market value of such Designated Assets, as determined by the Exercising Party acting in good faith and in a commercially reasonable manner, (ii) the absolute value of the value of the Relevant Index and (iii) any value added tax, sales tax or other similar tax required by applicable law to be charged in respect of the sale of the Designated Assets.

"**Non-affected Party**" means, so long as there is only one Affected Party, the other party to this Agreement.

"**Non-defaulting Party**" has the meaning specified in Section 6(a).

"**Non-Fully Delivered Terminated Transaction**" means, with respect to any Early Termination Date, any Terminated Transaction which is not a Fully Delivered Terminated Transaction.

"**Office**" means a branch or office of a party, which may be such party's head or home office.

"**Other Amounts**" has the meaning specified in Section 6(h).

"**Payee**" has the meaning specified in Section 6(h).

"**Payer**" has the meaning specified in Section 6(h).

"**Positive Indexed Value**" means, where the value of the Relevant Index is a positive number and in relation to the Designated Assets, the sum of (i) the market value of such Designated Assets, as determined by the Exercising Party acting in good faith and in a commercially reasonable manner, (ii) the value of the Relevant Index and (iii) any value added tax, sales tax or other similar tax required by applicable law to be charged in respect of the sale of the Designated Assets.

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

"**Proceedings**" has the meaning specified in Section 13(b).

"**Process Agent**" has the meaning specified in the Schedule.

**"rate of exchange"** includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

**"Reference Market-makers"**<sup>14</sup> means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit or of financing and (b) to the extent practicable, from among such dealers having an office in the same city.

**"Relevant Index"** means an index whose value shall be determined by the Relevant Index Determining Party following the occurrence or effective designation of an Early Termination Date and shall be equal to the aggregate (which may be a positive or a negative) of the Relevant Index Amounts for that party in respect of the relevant Terminated DFT Terms Agreements and the relevant Non-Fully Delivered Terminated Transactions.

**"Relevant Index Amount"** means, with respect to each Terminated DFT Terms Agreement, each group of Terminated DFT Terms Agreements, each Non-Fully Delivered Terminated Transaction or each group of Non-Fully Delivered Terminated Transactions and a Relevant Index Determining Party:

(a) the Termination Currency Equivalent of the Market Quotation (whether positive or negative) for each such Terminated DFT Terms Agreement, group of Terminated DFT Terms Agreements, Non-Fully Delivered Terminated Transaction or group of Non-Fully Delivered Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each such Terminated DFT Terms Agreement, group of Terminated DFT Terms Agreements, Non-Fully Delivered Terminated Transaction or group of Non-Fully Delivered Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) provide a commercially reasonable result.

**"Relevant Index Determining Party"** means the party or parties determining the value of the Relevant Index as designated in Section 6(f).

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

**"Schedule"** has the meaning specified in the preamble.

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

**"Shari'ah compliance"** and **"Shari'ah compliant"** have the respective meanings specified in Section 3(h)

**"Specified Entity"** has the meaning specified in the Schedule.

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<sup>14</sup> This definition provides that from the outset, the parties agree that, whichever of them may subsequently be required to select the dealers who will be the reference market makers, that party will make such selection in good faith.

"**Specified Obligations**"<sup>15</sup> means, subject to the Schedule, (i) any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money; and (ii) any amount raised under any transaction (including any Islamic Financing) having the commercial effect of a borrowing.

"**Specified Payments**" has the meaning specified in Section 6(d)(i).

"**Specified Transaction**"<sup>15</sup> means, subject to the Schedule, (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party which is not a Transaction or DFT Terms Agreement under this Agreement but (i) which is a rate swap transaction, swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest or any transaction listed in Part 5 of the Schedule or any other similar transactions (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation. **For the avoidance of doubt the transaction types listed above are included solely for the purpose of Section 5(a)(v) and such list is not intended to indicate the types of transaction which may be entered into as Shari'ah compliant transactions under this Master Agreement nor should it be construed to imply that the parties hereto will or may enter into any or all of such transactions.**

"**Stamp Tax**" means any stamp, registration, documentation or similar tax.

"**Stamp Tax Jurisdiction**" has the meaning specified in Section 4(e).

"**Tax**" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest,<sup>16</sup> penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

"**Tax Event**" has the meaning specified in Section 5(b).

"**Tax Event Upon Merger**" has the meaning specified in Section 5(b).

"**Terminated DFT Terms Agreement**" means, with respect to an Early Termination Date, (a) if resulting from an Illegality or a Force Majeure Event, all Affected DFT Terms Agreements specified in the notice given pursuant to Section 6(b)(iv), (b) if resulting from any other Termination Event, all Affected DFT Terms Agreements and (c) if

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<sup>15</sup> For the avoidance of doubt, the transaction types listed in the definition of Specified Obligations are included solely for the purposes of Section 5(a)(iii) (*Cross Default*) and the transaction types listed in the definition of Specified Transaction are included solely for the purpose of Section 5(a)(v) (*Default Under Specified Transaction*). Such lists are not intended to indicate the types of transaction which may be entered into as Shari'ah compliant transactions under this Master Agreement nor should they be construed to imply that the parties will or may enter into any or all of such transactions

<sup>16</sup> The reference here to interest is purely to interest that may be imposed on a party by a tax authority. No interest is payable under this Agreement.

resulting from an Event of Default, all DFT Terms Agreement in effect either immediately before the effectiveness of the notice designating that Early Termination Date or, if Automatic Early Termination applies, immediately before that Early Termination Date.

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

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

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

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

**"Threshold Amount"** means the amount, if any, specified as such in the Schedule.

**"Transaction"** has the meaning specified in the preamble.

**"Unpaid Amounts"** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii) or due but for Section 5(d)) to such party under Section 2(a)(i) or 2(d)(i)(4) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date, and (b) if the Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions, any Early Termination Amount due prior to such Early Termination Date and which remains unpaid as of such Early Termination Date.

**"Waiting Period"** means:

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

(b) in respect of an event or circumstance under Section 5(b)(ii), other than in the case of Section 5(b)(ii)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting

Period will apply), a period of eight Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance.

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

.....  
(Name of Party)

.....  
(Name of Party)

By: .....

By: .....

Name:

Name:

Title:

Title:

Date:

Date:

**SCHEDULE  
to the  
ISDA/IIFM Tahawwut Master Agreement**

dated as of .....

between ..... and .....

("Party A")

("Party B")

[established as a [COUNTERPARTY TYPE]]

[established as a [COUNTERPARTY TYPE]]

[with company number [NUMBER]]

[with company number [NUMBER]]

[under the laws of [JURISDICTION]]

[under the laws of [JURISDICTION]]

[acting through its [BRANCH]]\*

[acting through its [BRANCH]]\*

**Part 1. Termination Provisions.**

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

Section 5(a)(v), .....

Section 5(a)(vi), .....

Section 5(a)(vii), .....

Section 5(b)(v), .....

and in relation to Party B for the purpose of:

Section 5(a)(v), .....

Section 5(a)(vi), .....

Section 5(a)(vii), .....

Section 5(b)(v), .....

(b) "**Specified Transaction**" will have the meaning specified in Section 14 of this Agreement unless another meaning is specified here

[In addition to the meaning specified in Section 14 of the Agreement, any transaction of a type referred to in paragraphs (a) or (b) of Part 5 of this Schedule shall also be a Specified Transaction.]



account of any Tax from any payment (other than compensation under Section 9(h) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, except that it will not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.]\*

[(ii)] [Party A] [and] [Party B] [each] make[s] the following representation[s]: .....  
 .....  
 ..... ]]\*

(b) **Payee Representations.** For the purpose of Section 3(f) of this Agreement[, Party A and Party B do not make any representations.]:

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

It is fully eligible for the benefits of the "Business Profits" or "Industrial and Commercial Profits" provision, as the case may be, the "compensation" provision or the "Other Income" provision, if any, of the Specified Treaty with respect to any payment described in such provisions and received or to be received by it in connection with this Agreement and no such payment is attributable to a trade or business carried on by it through a permanent establishment in the Specified Jurisdiction.

"Specified Treaty" means with respect to Party A .....

"Specified Jurisdiction" means with respect to Party A .....

"Specified Treaty" means with respect to Party B .....

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

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

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

"Specified Jurisdiction" means with respect to Party A .....

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

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

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

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

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

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

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

With respect to payments made to an address outside the United States or made by a transfer of funds to an account outside the United States, it is a "non-U.S. branch of a foreign person" (as that term is used in section 1.1441-4(a)(3)(ii) of United States Treasury Regulations) for United States federal income tax purposes.]\*

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

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

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

.....  
.....  
.....]

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

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

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

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

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

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

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

.....	.....	.....	[Yes][No]
.....	.....	.....	[Yes][No]
.....	.....	.....	[Yes][No]
.....	.....	.....	[Yes][No]**

Part 4. **Miscellaneous.**

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

Address for notices or communications to Party A:

Address: .....

Attention: .....

Telex No.: ..... Answerback: .....

Facsimile No.: ..... Telephone No.: .....

E-mail: .....

Electronic Messaging System Details: .....

Specific Instructions: .....

Address for notices or communications to Party B:

Address: .....

Attention: .....

Telex No.: ..... Answerback: .....

Facsimile No.: ..... Telephone No.: .....

E-mail: .....

Electronic Messaging System Details: .....

Specific Instructions: .....

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

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

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

.....

.....]\*

\* Delete as applicable

\*\* Include if applicable

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

..... ]\*

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

[(e) **Credit Support Document.** Details of any Credit Support Document: [none][ ..... ]\*

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

[(g) **Governing Law.** This Agreement will be governed by and construed in accordance with [English law][the laws of the State of New York (without reference to choice of law doctrine)]\*  
[Where the laws of the state of New York are to apply, each party waives to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any proceedings relating to this Agreement or any credit support document.]

[(h) **Process Agent.** For the purpose of Section 13(b) of this Agreement:-  
[Party A appoints as its Process Agent: [ ] of [ ]]  
[Party B appoints as its Process Agent: [ ] of [ ]]

[(i) **Arbitration.** The parties agree that Section 13(c) shall apply to the Agreement and for this purpose the parties agree that for the purposes of Section 13(c), the "rules" shall be the rules and/or regulations of [ ] and the specified number of arbitrators shall be [as specified in 13(c)/[ ]].]\*

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

[(k) **Affiliate** [will have the meaning specified in Section 14 of this Agreement.][means

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

]\*

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

"Specified Entity" means in relation to Party A,

"Specified Entity" means in relation to Party B,

[(m)] **Principal.** The provisions of Section 3(g) [will][will not]\* apply to this Agreement.

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

[(i)] **Relationship Between Parties.** Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):

[(1)] **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction, it being understood that information and explanations related to the terms and conditions of a Transaction will not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party will be deemed to be an assurance or guarantee as to the expected results of that Transaction.

[(2)] **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.

[(3)] **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction.]]\*

[(o)] **Recording of Conversations.** Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings.]\*\*

\* Delete as applicable

\*\* Include if applicable

**Part 5. Shari'ah Compliant Transactions.**

Without prejudice to Sections 3(h) and 3(i), parties who intend to enter into Shari'ah compliant transactions under this Agreement, agree that transactions of the following kind may be entered into from time to time under this Agreement:

- (a) *murabaha* transactions involving (i) a purchase or sale of commodities, or (ii) a purchase or sale of moveable or immoveable property or (iii) a purchase or sale of Shari'ah compliant securities; and
- (b) such other transactions as may be agreed by and between the parties.

**Part 6. Other Provisions<sup>17</sup>**

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<sup>17</sup> Users making any amendment or addition to this ISDA/IIFM Tahawwut Master Agreement (whether through Part 6 or otherwise) should first take all action required to satisfy themselves as to the Shari'ah compliance of such amendment or addition and of the ISDA/IIFM Tahawwut Master Agreement incorporating such amendment or addition. No Shari'ah approval is given by the IIFM Shari'ah Advisory Panel with respect to any such amendment or addition.

.....

(Name of Party)

.....

(Name of Party)

By: .....

Name:

Title:

Date:

By: .....

Name:

Title:

Date:

,