



International Swaps and Derivatives Association, Inc.

## ISDA NON-ECP GUARANTOR EXCLUSIONARY TERMS

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by the International Swaps and Derivatives Association, Inc.

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### Section 1. Incorporation

These ISDA Non-ECP Guarantor Exclusionary Terms (“**Exclusionary Terms**”) may be incorporated into any agreement, document, instrument, confirmation or other writing, whether in physical or electronic form (“**Writing**”) by indicating in the Writing that, or the extent to which, these Exclusionary Terms are incorporated into or otherwise applicable to such Writing. These Exclusionary Terms will be deemed to be part of or otherwise applicable to such a Writing to the same extent as if set forth therein except as otherwise modified or provided in that Writing. Terms defined herein shall have their meanings solely for purposes of these Exclusionary Terms unless otherwise provided in the relevant Writing.

### Section 2. Exclusion

(i) Subject to paragraph (ii) below, each party hereby agrees as an “**Excluding Party**,” for the benefit of each other party as “**Counterparty**,” each Guarantor of each Counterparty and their respective successors and assigns, that, notwithstanding anything to the contrary in this Writing, any Guaranty Document or any related agreement, document or instrument, if the Excluding Party is the beneficiary of any Guaranty of such Guarantor, then such Guaranty shall exclude any and all Swap Obligations (and the Excluding Party hereby relinquishes, waives and releases any rights to enforce such Guaranty in respect of such Swap Obligations) if, and to the extent that, all or a portion of the Guaranty that relates to such Swap Obligations is or becomes illegal under the CEA or any rule, regulation or order of the CFTC by virtue of the failure of the Guarantor for any reason to qualify as an ECP on the Eligibility Date for the related Swap. If a Swap Obligation arises under a master agreement governing more than one Swap, the foregoing exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swaps for which such Guaranty is or becomes illegal as a result of the failure by a Guarantor for any reason to qualify as an ECP.

(ii) Paragraph (i) above shall not apply with respect to an Excluding Party and related Guaranty in respect of Swap Obligations if the relevant Guarantor has made any written representation to the Excluding Party to the effect that such Guarantor is or will be an ECP on the Eligibility Date with respect to the related Swap. In the event that any such representation proves to have been incorrect when made or deemed to have been made, the Excluding Party further reserves all of its contractual and other rights and remedies, at law or in equity, including (to the extent permitted by applicable law) the right to claim and pursue a

separate cause of action for damages as a result of such misrepresentation in an amount up to the amount of the relevant Swap Obligations with respect to such Swap.

### **Section 3. Definitions**

As used herein, the following terms shall have the following meanings:

“**CEA**” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“**CFTC**” means the Commodity Futures Trading Commission.

“**DCM**” means a board of trade designated as a contract market under Section 5 of the CEA.

“**ECP**” means an “eligible contract participant” as defined in the CEA and regulations thereunder.

“**Eligibility Date**” means, with respect to a Guarantor and a Swap, the date on which a Guaranty becomes effective with respect to such Swap. For the avoidance of doubt, the Eligibility Date shall be the date of the execution of a Swap if the corresponding Guaranty is then in effect, and otherwise it shall be the date of execution and delivery of such Guaranty unless the Guaranty specifies a subsequent effective date.

“**Guarantor**” means with respect to a Counterparty, each person specified as such in this writing, and if no such persons are specified, any person or entity issuing or providing a Guaranty in respect of obligations of such Counterparty.

“**Guaranty**” means a guaranty or assumption of liability as surety with respect to obligations of one or more Counterparties.

“**Guaranty Document**” means each guaranty, agreement, document or instrument under which an individual or entity provides a Guaranty or would provide a Guaranty but for the effect of these Exclusionary Terms.

“**Swap**” means any “swap” as defined in Section 1a(47) of the CEA and regulations thereunder other than (i) a swap entered into on, or subject to the rules of, a DCM, or (ii) a commodity option entered into pursuant to CFTC Regulation 32.3(a).

“**Swap Obligation**” means any obligation to pay or perform under any agreement, contract or transaction that constitutes a Swap between an Excluding Party and one or more Counterparties.

The foregoing definitions shall be construed in a manner that is consistent with Section 2(e) of the CEA and any related rule, regulation or order of the CFTC, or the application or official interpretation of any thereof.