



ISDA AUGUST 2012 DF TERMS AGREEMENT

dated as of.....

..... and¹

wish to apply certain provisions of the ISDA August 2012 DF Supplement published on August 13, 2012 by the International Swaps and Derivatives Association, Inc. (the “**DF Supplement**”) to their trading relationship in respect of Swaps (as defined in the DF Supplement) that are not otherwise governed by such provisions and that are between the parties hereto and/or third parties for whom they execute such Swaps, as further described below.

Accordingly, the parties agree as follows:—

1. Use and Scope of this Agreement

- (a) Each party executing this ISDA August 2012 DF Terms Agreement, including any Annex hereto, (the “**Agreement**”) is doing so on behalf of itself or on behalf of a third party, in either case with respect to Covered Swaps (as defined below). Each party executing this Agreement is referred to herein as an “**Executing Party**.” The party on behalf of whom the Executing Party is executing this Agreement is referred to herein as a “**DF Terms Principal**.” For the avoidance of doubt, (i) a party that executes this Agreement as agent on behalf of a third-party DF Terms Principal will be understood to be the Executing Party for that DF Terms Principal and (ii) a party that executes this Agreement on its own behalf will be understood to be both a DF Terms Principal and the Executing Party for itself as DF Terms Principal.
- (b) This Agreement will apply to the trading relationship between DF Terms Principals in respect of all Covered Swaps executed, or proposed to be executed, by the Executing Parties on behalf of those DF Terms Principals. “**Covered Swap**” means any Swap that is (i) executed, or is proposed to be executed, by the Executing Parties on behalf of their respective DF Terms Principals, (ii) either (A) a Swap between the DF Terms Principals, or (B) a Swap between a DF Terms Principal (the “**Remaining Principal**”) and a third party derivatives dealer (the “**Prime Broker**”) entered into pursuant to an arrangement between the Remaining Principal and the Prime Broker permitting the Remaining Principal and the Executing Party for the other DF Terms Principal to negotiate and/or execute Swaps between the Remaining Principal and the Prime Broker (any such swap, a “**Prime Covered Swap**”), and (iii) not governed by an existing written agreement executed by the Executing Parties on behalf of their respective DF Terms Principals that incorporates provisions of the DF Supplement.

2. Incorporation of the DF Supplement

- (a) **Automatic Incorporation.** Subject to Section 3 of this Agreement, Schedules 1 and 2 of the DF Supplement are incorporated to the same extent as if each such schedule were restated herein in its entirety.
- (b) **Elective Incorporation.** The DF Terms Principals may also agree to incorporate Schedules 3, 4, 5 and/or 6 of the DF Supplement herein by specifying in an Annex hereto that any one or more of such Schedules of the DF Supplement will be incorporated herein. Subject to Section 3 of this Agreement, each such

¹ Insert name of each Executing Party (including “as agent for [name of DF Terms Principal]” if applicable).

Schedule of the DF Supplement that the parties elect to incorporate herein will be incorporated to the same extent as if each such Schedule were restated herein in its entirety.

3. Modification and Interpretation of the DF Supplement

- (a) The DF Terms Principals agree that the DF Supplement will be deemed amended for the purposes of any transactions in Prime Covered Swaps, as follows:
- (i) **Swap Transaction Event.** The definition of “Swap Transaction Event” is hereby amended by replacing the term “Swap” each time it appears therein with the term “Prime Covered Swap.”
 - (ii) **Agreement to Provide Information.** Section 2.4 of the DF Supplement is hereby amended by replacing the term “Swap” therein with the term “Prime Covered Swap.”
 - (iii) **Material Confidential Information.** Subsection b. of Section 2.15 of the DF Supplement is hereby amended by adding “or Prime Broker” immediately following the term “CP” therein.
 - (iv) **Daily Marks.** Section 2.18 of the DF Supplement is hereby amended by adding “or Prime Broker” immediately following the term “CP” in the second line thereof.
 - (v) **Suitability.** Section 3.3, subsection b. of Section 4.2, subsection b. of Section 5.2 and subsection b. of Section 6.2 are each hereby amended by replacing the term “Swap” each time it appears therein with the term “Prime Covered Swap.”
- (b) The DF Terms Principals agree that for the purposes of applying any provision of the DF Supplement to a transaction in Covered Swaps, the provisions of the DF Supplement will be construed so that such provisions will apply to such parties to the same extent, and will have the same effect, for all Covered Swaps, including Prime Covered Swaps, notwithstanding the fact that a Prime Covered Swap will not be a Swap between such parties. The DF Terms Principals also agree that for the purposes of this Agreement any reference in the DF Supplement to a Swap under the Agreement (as defined in the DF Supplement) will be construed to be a reference to a Covered Swap.

4. Representations

- (a) **DF Terms Principal Representations.** Each DF Terms Principal makes the following representations (which representations will be deemed to be repeated by each DF Terms Principal on each date on which a Covered Swap is executed):
- (i) **Status.** It is duly organized and validly existing under the laws of the jurisdiction of its organization 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 has taken all necessary action to authorize 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 that are required to have been obtained by it with respect to this Agreement 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 constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, 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) **Executing Party Representations.** Each Executing Party executing this Agreement as agent on behalf of a third-party DF Terms Principal, if any, makes the following representations (which representations will be deemed to be repeated by each Executing Party on each date on which a Covered Swap is executed):
- (i) **Status.** It is duly organized and validly existing under the laws of the jurisdiction of its organization 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 on behalf of the DF Terms Principal in respect of whom it has executed this Agreement, 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 has taken all necessary action to authorize such execution, delivery and performance, in each case, on behalf of the DF Terms Principal in respect of whom it has executed this Agreement;
 - (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 that are required to have been obtained by it with respect to this Agreement 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 constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, 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)).

5. Agreements

Each DF Terms Principal and each Executing Party executing this Agreement as agent on behalf of a third-party DF Terms Principal, if any, agrees that, so long as either party has or may have any obligation under this Agreement:—

- (a) **Maintain Authorizations.** 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 and will use all reasonable efforts to obtain any that may become necessary in the future.
- (b) **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.

6. Miscellaneous

- (a) **Inconsistency.** In the event of any inconsistency between the provisions of the Annex and the provisions of this Agreement, the Annex will prevail.

- (b) **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.
- (c) **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 or by any other means acceptable to the parties) and executed by each of the parties or confirmed by an exchange of telexes, by an exchange of electronic messages on an electronic messaging system or by any other means acceptable to the parties.
- (d) **Counterparts.** This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission, by electronic messaging system or by any other means acceptable to the parties), each of which will be deemed an original.
- (e) **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.
- (f) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

7. Notices

- (a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner described below, or in any other manner agreed by the parties, to the address or number or in accordance with the electronic messaging system or e-mail or other details provided (in an Annex or otherwise) 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 electronic messaging system, on the date it is received;
 - (v) if sent by e-mail, on the date it is delivered; or
 - (vi) if sent by any other means agreed by the parties, on the date determined in accordance with the relevant agreement of the parties;

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, e-mail or other notice details at which notices or other communications are to be given to it.

8. Governing Law and Jurisdiction

- (a) **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New York (without reference to choice of law doctrine).
- (b) **Jurisdiction.** With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Agreement (“**Proceedings**”), each party:
- (i) irrevocably submits 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; and
 - (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.

9. Definitions

As used in this Agreement:—

“**Agreement**” has the meaning specified in Section 1.

“**Annex**” means any annex or other agreement in writing between the parties that supplements or amends this Agreement.

“**Covered Swap**” has the meaning specified in Section 1.

“**DF Supplement**” has the meaning specified in the preamble.

“**DF Terms Principal**” has the meaning specified in Section 1.

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

“**Executing Party**” has the meaning specified in Section 1.

“**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.

“**Local Business Day**” means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in the place specified in the address for notice provided by the recipient.

“**Prime Broker**” has the meaning specified in Section 1.

“**Prime Covered Swap**” has the meaning specified in Section 1.

“**Proceedings**” has the meaning specified in Section 8.

“**Remaining Principal**” has the meaning specified in Section 1.

IN WITNESS WHEREOF the parties have executed this Agreement with effect from the date specified on the first page of this Agreement.

.....²

By:.....
Name:
Title:

By:.....
Name:
Title:

If Executing Party is executing this Agreement as agent on behalf of a third-party DF Terms Principal, it must execute this Agreement below to make the representations and agreements applicable to it as Executing Party in Sections 4(b) and 5 of this Agreement:

.....
(Name of Executing Party)

.....
(Name of Executing Party)

By:.....
Name:
Title:

By:.....
Name:
Title:

² Insert name of each Executing Party (including “as agent for [*name of DF Terms Principal*]” if applicable).



**ANNEX
to the
ISDA AUGUST 2012 DF TERMS AGREEMENT**

dated as of.....

between and³
("Party A") ("Party B")

Part 1. Incorporation of the DF Supplement.

[Schedule[s] [3][4][5] and/or [6] of the DF Supplement [is][are] incorporated into the Agreement.]⁴ [No additional Schedule of the DF Supplement is incorporated into this Agreement.]

Part 2. Address for Notices.

For the purpose of Section 7 of this Agreement:—

Address for notices or communications to Party A:—

Address:

Attention:

Facsimile No.: Telephone No.:

E-mail:

Electronic Messaging System Details:

Specific Instructions:

³ Insert name of each Executing Party (including "as agent for [name of DF Terms Principal]" if applicable).

⁴ If the parties agree to incorporate Schedule 3 and the non-swap dealer party hereto has identified one or more Designated Evaluation Agents, the non-swap dealer party hereto must cause each of its Designated Evaluation Agent to execute this Annex. If the parties agree to incorporate Schedule 4, the non-swap dealer party hereto must cause each of its Designated QIRs to execute this Annex. If the parties agree to incorporate Schedule 5 and/or 6, the non-swap dealer party hereto must cause each of its Designated Fiduciaries to execute this Annex.

Address for notices or communications to Party B:—

Address:

Attention:

Facsimile No.: Telephone No.:

E-mail:

Electronic Messaging System Details:

Specific Instructions:

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

..... 5

By:
Name:
Title:

By:
Name:
Title:

By executing this Annex on the relevant signature block below, the signatory agrees to make the representations and agreements applicable to it in the relevant Schedule of the DF Supplement:

[INSERT FULL LEGAL NAME OF DESIGNATED EVALUATION AGENT],⁶ solely as [Party B]'s⁷ Designated Evaluation Agent and solely to make the representations and agreements applicable to it as Designated Evaluation Agent in Schedule 3 of the DF Supplement.

By: _____
Name:
Title:

[INSERT FULL LEGAL NAME OF DESIGNATED QIR],⁸ solely as [Party B]'s⁹ Designated QIR and solely with respect to the representations and agreements applicable to it as Designated QIR in Schedule 4 of the DF Supplement.

By: _____
Name:
Title:

⁵ Insert name of each Executing Party (including "as agent for [name of DF Terms Principal]" if applicable).

⁶ Append additional signature blocks or add signature pages as necessary if the non-swap dealer party to this Agreement has multiple Designated Evaluation Agents.

⁷ This should be a reference to the non-swap dealer party to this Agreement.

⁸ Append additional signature blocks or add signature pages as necessary if the non-swap dealer party to this Agreement has multiple Designated QIRs.

⁹ This should be a reference to the non-swap dealer party to this Agreement.

[INSERT FULL LEGAL NAME OF FIDUCIARY],¹⁰ solely as [Party B]'s¹¹ Designated Fiduciary and solely with respect the representations and agreements applicable to it as Designated Fiduciary in Schedule 5 and/or 6, as applicable, of the DF Supplement.

By: _____
Name:
Title:

¹⁰ Append additional signature blocks or add signature pages as necessary if the non-swap dealer party to this Agreement has multiple Designated Fiduciaries.

¹¹ This should be a reference to the non-swap dealer party to this Agreement.