

## FORM OF ADDENDUM

### CLEARED DERIVATIVES TRANSACTIONS

This Cleared Derivatives Addendum (the “Cleared Derivatives Addendum”), which includes the schedule (the “Schedule”), is dated as of the date specified in the Schedule hereto, supplements the [Customer Agreement] (“Agreement”) between the clearing member (“Clearing Member”) and the customer (“Customer”), each as identified in the Schedule hereto and, except as the parties may otherwise agree in writing, supersedes any prior addendum to the Agreement between the parties with respect to Cleared Derivatives Transactions.

#### 1. Interpretation.

(a) **Cleared Derivatives Transactions.** Customer acknowledges and agrees that, except as provided below, this Cleared Derivatives Addendum shall apply to all swaps, forwards, options or similar transactions that are (i) entered into by Customer in the over-the-counter market, or (ii) executed or traded by Customer on or subject to the rules or protocols of any multilateral or other trading facility, system or platform, including any communication network or auction facility, permitted under [Applicable Law]<sup>1</sup> (each, an “Execution Facility”) or any designated contract market, and, in the case of either (i) or (ii), subsequently submitted to and accepted for clearing at a clearing organization, including but not limited to, a derivatives clearing organization registered as such under the Commodity Exchange Act (“CEA”) (each, a “Clearing Organization”) (collectively, “Cleared Derivatives Transactions”) and carried in the Customer account holding such Cleared Derivatives Transactions (the “Cleared Derivatives Account”).<sup>2</sup>

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<sup>1</sup> Note to Contracting Parties: Please confirm that this defined term is used in the Agreement and that the scope of the definition is appropriate to the way in which it is used in this Cleared Derivatives Addendum.

<sup>2</sup> Note to Contracting Parties: Parties should consider whether the defined term “Cleared Derivatives Account” covers the account that holds Cleared Derivatives Transactions as well as any accounts that may hold the related collateral for Cleared Derivatives Transactions. To the extent that the Cleared Derivatives Transactions and related collateral are not held in the same account, parties may wish to amend the definition of “Cleared Derivatives Account” by replacing “carried in the Customer account holding such Cleared Derivatives Transactions (the “Cleared Derivatives Account”)” with “carried in the Customer account holding such Cleared Derivatives Transactions and any associated account(s) holding Credit Support (as defined in Section 7 of this Cleared Derivatives Addendum) (collectively, the “Cleared Derivatives Account”).”

In addition, parties should take care to confirm that this defined term is consistent with the approach they have adopted with respect to separating the liquidation of listed futures and exchange-traded options and Cleared Derivatives Transactions, or integrating the liquidation of such transactions, as more fully discussed in notes 8 and 9 of this Cleared Derivatives Addendum.

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Cleared Derivatives Transactions under this Cleared Derivatives Addendum shall not include futures contracts and options on futures contracts executed on or subject to the rules of a U.S. designated contract market subject to regulation by the Commodity Futures Trading Commission (“CFTC”) (including derivatives transactions entered into over-the-counter and cleared as futures or options on futures contracts) or on a foreign board of trade subject to regulation in its home jurisdiction.<sup>3</sup> Except as otherwise specifically provided in this Cleared Derivatives Addendum or Customer’s transaction confirmations, Cleared Derivatives Transactions shall be deemed for all purposes of the Agreement to be “Contracts,” “Futures,” “Futures Contracts” or such other defined term used in the Agreement to refer to the products covered thereby (such Contracts, Futures, Futures Contracts or such other term, and including without limitation Cleared Derivatives Transactions, hereinafter, “Contracts”).

**(b) Definitions.** Unless otherwise specified in this Cleared Derivatives Addendum, all capitalized terms used herein shall have the meanings defined in the Agreement.

**2. Representations, Warranties and Covenants.**<sup>4</sup> In addition to the representations, warranties and covenants made by Customer in the Agreement, at the time of entering into this Cleared Derivatives Addendum and again upon each date on which a Cleared Derivatives Transaction is submitted to and accepted for clearing and settlement as a Cleared Derivatives Transaction in accordance with this Cleared Derivatives Addendum:<sup>5</sup>

**(a) Clearing Member Representations, Warranties and Covenants.** Clearing Member represents, warrants and covenants to Customer that:

**(i) Due Authorization.** Clearing Member is, and for so long as it is responsible for Cleared Derivatives Transactions thereon will remain, a clearing member of each applicable Clearing Organization and authorized to clear Cleared Derivatives Transactions. Clearing Member is duly registered with the CFTC as a futures commission merchant under the CEA.

**(ii) No Violation.** Clearing Member is not subject to any order, judgment or decree of any court of competent jurisdiction preventing Clearing Member from engaging in or continuing to engage in clearing and settlement of Cleared Derivatives Transactions.

**(iii) Qualifications.** Clearing Member is not suspended or expelled from membership in the applicable Clearing Organization or any U.S. futures self-regulatory organization.

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<sup>3</sup> The extent to which this Cleared Derivatives Addendum will apply to certain security-based swaps, including CDS on narrow-based indices and single names, will depend on the scope of the regulations to be adopted by the Commodity Futures Trading Commission and the Securities and Exchange Commission. This Cleared Derivatives Addendum may have to be revised to reflect those regulatory requirements.

<sup>4</sup> Note to Contracting Parties: Where relevant, the parties may want to consider including in the Schedule additional terms, representations and warranties relating to the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) or the Internal Revenue Code of 1986, as amended (the “Code”), including matters such as whether the assets involved in the transaction constitute “plan assets” under ERISA or the Code, the availability of an applicable exemption from the prohibited transaction rules under ERISA and the Code and the fiduciary status of the parties. Whether such additional terms, representations and warranties are necessary and advisable is a complex issue, and the parties should consult with counsel and also consider whether they are adequately covered in the Agreement.

<sup>5</sup> Note to Contracting Parties: Please confirm that breaches of the representations, warranties and covenants contained in the Addendum constitute defaults under the underlying Agreement.

**(iv) Customer Collateral.** Clearing Member shall maintain and treat all collateral deposited by Customer to margin Cleared Derivatives Transactions in accordance with Applicable Law.

**(v) Clearing Member Payee Representations.** Clearing Member (or, in the case of a Clearing Member that is a disregarded entity for United States federal income tax purposes, its owner) agrees that each representation specified in the Schedule as being made by it for the purpose of Section 2(a)(v) of this Cleared Derivatives Addendum is accurate and true. Clearing Member will give notice if this representation fails to be accurate and true promptly upon learning of such failure. Such notice will include the new Clearing Member Payee Tax representations and Clearing Member Tax Documents as Clearing Member agrees are accurate and true. Upon delivery of such a notice, the prior Clearing Member Payee Tax representations and Clearing Member Tax Documents are deemed amended as set forth in such notice. The prior Clearing Member Payee Tax representations and Clearing Member Tax Documents shall remain in effect until the date specified in such notice for the purposes of outstanding Cleared Derivatives Transactions.

**(b) Customer Representations, Warranties and Covenants.** Customer represents, warrants and covenants to Clearing Member that:

**(i) Eligible Participant.** Customer is, and at the time it enters into any Cleared Derivatives Transaction it will be, as applicable with respect to such Cleared Derivatives Transaction, an “eligible contract participant” as defined in the CEA, or, if on or prior to December 31, 2012, an “eligible swap participant” as defined in CFTC Rule 35.1 as in effect prior to December 31, 2011.

**(ii) Due Authorization.** Prior to submitting a Cleared Derivatives Transaction for clearing and settlement through Customer’s Cleared Derivatives Account with Clearing Member, Customer will have obtained any approval, authorization, license or permit required by Applicable Law to perform its obligations under this Cleared Derivatives Addendum. Customer will ensure that any such approval, authorization, license or permit remains valid and in force to the extent required under Applicable Law at any time Customer enters into any Cleared Derivatives Transactions or maintains any open Cleared Derivatives Transactions.

**(iii) Relationship Between the Parties.** Customer is acting for its own account, and has made its own independent decisions to enter into the Cleared Derivatives Transactions and submit such Cleared Derivatives Transactions for clearing and settlement through Customer’s Cleared Derivatives Account with Clearing Member, based upon its own judgment and upon advice from such advisers as it has deemed necessary, as to whether such action is appropriate or proper. It is not relying on any communication (written or oral) of Clearing Member as investment advice or as a recommendation to enter into and clear the Cleared Derivatives Transactions. Customer 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 entering into and submitting the Cleared Derivatives Transactions for clearing and settlement in accordance with this Cleared Derivatives Addendum, including, but not limited to, the risk that: (1) the regulations applicable to Cleared Derivatives Transactions, including the rules, regulations and procedures of the applicable Clearing Organization and each Execution Facility or designated contract market, if any, that Customer uses in connection with Cleared Derivatives Transactions, may differ from the regulations applicable to the execution and clearing of futures contracts; and (2) such Cleared Derivatives Transactions may not be afforded the same legal and regulatory treatment as may be afforded the execution and clearing of futures

contracts. Clearing Member is not acting as a fiduciary for or an adviser to Customer in respect of the Cleared Derivatives Transactions.

**(iv) Customer Payee Representations.** Customer agrees that each representation specified in the Schedule as being made by it for the purpose of Section 2(b)(iv) of this Cleared Derivatives Addendum is accurate and true. Customer will give notice if this representation fails to be accurate and true promptly upon learning of such failure. Such notice will include the new Customer Payee Tax representations and Customer Tax Documents as Customer agrees are accurate and true. Upon delivery of such a notice, the prior Customer Payee Tax representations and Customer Tax Documents are deemed amended as set forth in such notice. The prior Customer Payee Tax representations and Customer Tax Documents shall remain in effect until the date specified in such notice for the purposes of outstanding Cleared Derivatives Transactions.

**3. Applicable Law; Other Agreements.** Customer acknowledges and agrees that Cleared Derivatives Transactions are governed by the rules of the relevant Execution Facility, designated contract market, if any, and Clearing Organization, all of which shall be deemed to be Applicable Law, and by the terms and conditions of any user agreement or other agreement with any Execution Facility, designated contract market, if any, or Clearing Organization that Customer enters into in order to transact or clear Cleared Derivatives Transactions. Customer further acknowledges and agrees that Clearing Member is acting hereunder in reliance on Customer having obtained such authorizations and approvals, and having entered into such agreements, as are necessary to perform Customer's obligations under this Cleared Derivatives Addendum.

**4. Transactions Not Accepted for Clearing.** Except as the parties may otherwise agree in writing, either at or prior to the time the relevant transaction is entered into, if a Clearing Organization does not accept a transaction submitted for clearing, Clearing Member shall have no further rights or obligations hereunder with respect to such transaction.

**5. Limitation of Liability.** Except as the parties may otherwise agree in writing, Customer understands and agrees that Clearing Member is not responsible for the performance or non-performance by any Clearing Organization with respect to any transaction or any electronic or other system, whether offered by Clearing Member or otherwise, that Customer employs to enter into any transaction. Further, Clearing Member is not a party to any agreement between Customer and any Execution Facility, designated contract market, if any, or Clearing Organization. Clearing Member specifically disclaims all liability for any loss, cost or damage of any type or nature arising from or relating to Customer's use of any system or device furnished by any Execution Facility or designated contract market, if any, for transactions, unless directly caused by Clearing Member's gross negligence or willful misconduct. Without limiting the foregoing, no party to this Cleared Derivatives Addendum shall be required to pay or be liable to any other party for any consequential, indirect or punitive damages, opportunity costs or lost profits (whether or not arising from its negligence, gross negligence or willful misconduct).

**6. Transfer of Positions.** Except as the parties may otherwise agree in writing or as Applicable Law may hereafter specifically require, upon receipt of a written instruction from Customer containing the information required by National Futures Association Compliance Rule 2-27, as amended, supplemented or interpreted from time to time, or any analogous rule adopted by the National Futures Association intended to apply to Cleared Derivatives Transactions (the "Portability Rule"), Clearing Member, consistent with the requirements of the Portability Rule, shall transfer Customer's Cleared Derivatives Account, or such portion thereof as Customer shall direct (regardless of whether the Portability Rule is applicable), *provided, however*, that Clearing Member shall not be required to transfer

all or any portion of Customer's Cleared Derivatives Account if there has been, and is continuing, a Close-out Event (as defined in Section 7 of this Cleared Derivatives Addendum).

**7. Liquidation Upon a Close-out Event or Tax Liquidation Event.**

**(a) Close-out Methodology/Process.**

**(i)** In the case of:

**(A)** a default, event of default or other similar condition or event<sup>6</sup> (however described) that, under the terms of the Agreement, gives rise to any right of Clearing Member to liquidate all Cleared Derivatives Transactions held in Customer's Cleared Derivatives Account (a "Close-out Event"); or

**(B)** a Tax Liquidation Event (as defined in Section 8 of this Cleared Derivatives Addendum),

(in either case, a "Liquidation Event"), subject to any limitations set forth in the Agreement, Clearing Member shall be entitled to:

**(x)** with respect to a Close-out Event, designate a day not earlier than the date of the occurrence of such Close-out Event as the "Liquidation Date" with respect to all Cleared Derivatives Transactions; and

**(y)** with respect to a Tax Liquidation Event, designate a day not earlier than thirty (30) days from the effective date of written notice to Customer of the occurrence of such Tax Liquidation Event as the "Liquidation Date" with respect to the Affected Transaction(s) that may be terminated in accordance with Section 8(d) of this Cleared Derivatives Addendum.

**(ii)** In order to cause the liquidation of all Designated Transactions, Clearing Member will enter into one or more Close-out Transactions at any time on or as soon as commercially reasonable following such Liquidation Date; *provided, however*, that:

**(A)** Clearing Member, and, in the case of Mitigation Transactions, Clearing Member or its affiliates, shall also be entitled at any time to enter into one or more Risk-reducing Transactions and/or Mitigation Transactions; and

**(B) (1)** if Clearing Member, after undertaking commercially reasonable efforts, reasonably determines in good faith that: **(x)** Close-out Transactions for one or more Designated Transactions or Risk-reducing Transactions (or portions thereof), as the case may be, are not readily available, **(y)** entry into such transactions would produce a result that would not satisfy the Liquidation Standard, or **(z)** determining the ready availability of such transactions would require the active solicitation of quotations in the relevant market and such active solicitation of quotations would result in valuations under Section 7(b)(i)(B) of this Cleared Derivatives Addendum that would not satisfy the Liquidation Standard, Clearing Member will, after making such a determination, be entitled

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<sup>6</sup> Note to Contracting Parties: Parties should confirm that this language appropriately captures the event(s) or condition(s) that permit liquidation under the Agreement.

to value such Designated Transactions or Risk-reducing Transactions (or portions thereof), as the case may be, and

(2) if Clearing Member or any of its affiliates has entered into one or more Mitigation Transactions, Clearing Member or such affiliate will (to the extent it has not liquidated such Mitigation Transactions in accordance with Section 7(b)(i)(A) of this Cleared Derivatives Addendum) value such Mitigation Transactions (or such portions thereof that are not liquidated) corresponding to any Designated Transactions or Risk-Reducing Transactions either liquidated by entry into a Close-out Transaction or deemed liquidated in accordance with Section 7(a)(ii)(B)(xx) of this Cleared Derivatives Addendum,

in each case, by (xx) determining the value of such Designated Transactions, Risk-reducing Transactions and/or Mitigation Transactions (or portions thereof) in accordance with Section 7(b)(i)(B) of this Cleared Derivatives Addendum, at which time such Designated Transactions and/or Risk-reducing Transactions (or portions thereof) will be deemed to have been liquidated for purposes of this Cleared Derivatives Addendum, and such Mitigation Transactions (or portions thereof) will cease to be Mitigation Transactions for purposes of this Cleared Derivatives Addendum and be deemed liquidated; (yy) promptly removing such Designated Transactions and/or Risk-reducing Transactions (or portions thereof) from Customer's Cleared Derivatives Account; and (zz) upon the removal of such Designated Transactions and/or Risk-reducing Transactions (or portions thereof) from Customer's Cleared Derivatives Account, procuring the return of any margin supporting such Designated Transactions and/or Risk-reducing Transactions at the relevant Clearing Organization(s) to Customer's Cleared Derivatives Account, subject to Clearing Member's rights with respect thereto under Section 7(d) of this Cleared Derivatives Addendum.

In determining which actions to take and when such actions should be taken and in taking any such actions in accordance with Section 7 of this Cleared Derivatives Addendum (other than Section 7(a)(i) of this Cleared Derivatives Addendum), Clearing Member (and to the extent relevant, its affiliates) shall act in accordance with the Liquidation Standard. Many factors may be relevant to determining if such action is consistent with the Liquidation Standard, including, but not limited to: managing Clearing Member's market exposure in respect of Designated Transactions and related Credit Support and Customer Balances in connection with a Liquidation Event; effecting the liquidation in a cost effective manner; the amount of Credit Support and Customer Balances available to Clearing Member in connection with the Liquidation Event; a bankruptcy, insolvency or similar proceeding in respect of Customer and any limitations associated therewith; the prevailing market conditions; and the type, complexity, size and number of Designated Transactions. While these factors may be relevant, Clearing Member must always act in good faith, in accordance with Applicable Law and use commercially reasonable procedures in order to produce a commercially reasonable result.

(iii) Customer appoints Clearing Member as Customer's attorney-in-fact to sign, complete, and deliver any and all documents reasonably necessary or appropriate, and to take such other actions or incidental steps that are reasonably necessary, to enter into Close-out Transactions and Risk-reducing Transactions, in each case in order to exercise its rights under Section 7 of this Cleared Derivatives Addendum.

**(b) Termination Amount.**

**(i)** On or as soon as commercially reasonable following the taking of actions in accordance with Section 7(a) of this Cleared Derivatives Addendum, Clearing Member, and, in the case of Mitigation Transactions, Clearing Member or its affiliates, acting in accordance with the Liquidation Standard, will determine an amount or amounts, if any, payable in connection with the liquidation or deemed liquidation of one or more Designated Transactions or Risk-reducing Transactions (each, a “Termination Amount”), which amounts, subject to the Liquidation Standard, may be determined separately for different liquidated or deemed liquidated Designated Transactions and Risk-reducing Transactions or groups thereof. Subject to Section 7(e) of this Cleared Derivatives Addendum, a Termination Amount will be an amount equal to the sum of:

**(A)** the sum of the aggregate amount of trading losses (expressed as a positive number) and trading gains (expressed as a negative number), in each case that are incurred by Clearing Member, and, in the case of Mitigation Transactions, Clearing Member or its affiliates, in entering into Close-out Transactions or Risk-reducing Transactions and entering into or liquidating Mitigation Transactions, including all upfront payments made or received in connection with any such transactions;

**(B)** without duplication of amounts determined under Section 7(b)(i)(A) of this Cleared Derivatives Addendum, in respect of any Designated Transactions, Risk-reducing Transactions and Mitigation Transactions or portions thereof that are deemed liquidated in accordance with Section 7(a)(ii)(B) of this Cleared Derivatives Addendum, the sum of the valuations for such transactions (or relevant portions thereof) as of the relevant Close-out Date, taking into account the terms of such transactions, including any payment or delivery obligations of the parties thereto (whether absolute or contingent) in relation to those transactions (or relevant portions thereof) that would have been required to be performed after the relevant Close-out Date and any option rights in relation to such transactions, as determined by Clearing Member or, in the case of Mitigation Transactions, Clearing Member or its affiliates, in good faith and in a commercially reasonable manner, and for which determination Clearing Member may consider, without limitation, **(x)** quotations (firm or indicative) for Close-out Transactions, or for transactions that would otherwise close out or offset such Designated Transactions, Risk-reducing Transactions or Mitigation Transactions, supplied by one or more third parties, **(y)** relevant market data supplied by one or more third parties, including relevant prices, marks and other market data provided by the Clearing Organization on which a Designated Transaction, Risk-reducing Transaction or, if applicable, Mitigation Transaction is cleared, or **(z)** information of the types described in clause (x) or (y) above from internal sources (including, but not limited to, pricing or other valuation models) that are, at the time of the determination, used by Clearing Member or an affiliate of Clearing Member in the regular course of its business for the valuation of similar transactions; *provided, however*, that Clearing Member will consider relevant quotations, prices, marks and other market data in accordance with (x) and (y) above, unless Clearing Member reasonably believes in good faith that relevant quotations, prices, marks and other market data are not readily available, or that consideration of a quotation, price, mark or piece of market data would produce a result that would not satisfy the Liquidation Standard;

**(C)** without duplication of amounts determined under Sections 7(b)(i)(A) and 7(b)(i)(B) of this Cleared Derivatives Addendum, **(x)** the sum of **(1)** with respect to each

Designated Transaction and Risk-reducing Transaction, all amounts that became due and remain unpaid to Clearing Member or a Clearing Organization from Customer on or prior to the relevant Close-out Date and (2) with respect to each Mitigation Transaction, all amounts that were paid by or became due (and remain unpaid) from Clearing Member or its affiliates to a Clearing Organization or another counterparty on or prior to the relevant Close-out Date (in each case, expressed as a positive number), and (y) the sum of (1) with respect to each Designated Transaction and Risk-reducing Transaction, all amounts that became due and remain unpaid to Customer from a Clearing Organization or Clearing Member on or prior to the relevant Close-out Date and (2) with respect to each Mitigation Transaction, all amounts that were paid or became due (and remain unpaid) to Clearing Member or its affiliates from a Clearing Organization or another counterparty on or prior to the relevant Close-out Date (in each case, expressed as a negative number); and

(D) without duplication of amounts determined under Sections 7(b)(i)(A), 7(b)(i)(B) and 7(b)(i)(C) of this Cleared Derivatives Addendum, any and all reasonable, documented, out-of-pocket expenses (including, without limitation, booking, ticket, commission or similar fees imposed by a Clearing Organization or another clearing member, and external attorneys' fees) and any costs of funding<sup>7</sup> that Clearing Member or an affiliate of Clearing Member incurs in connection with the exercise of remedies under this Section 7 of this Cleared Derivatives Addendum (expressed as a positive number).

(ii) Subject to Sections 7(c) and 7(d) of this Cleared Derivatives Addendum, and except as the parties may have otherwise agreed:

(A) if a Termination Amount is a positive number, Customer will be obligated for such Termination Amount to Clearing Member; or

(B) if a Termination Amount is a negative number, Clearing Member will be obligated for the absolute value of such Termination Amount to Customer.

(iii) The Net Termination Amount in connection with a Close-out Event will be due and payable on the business day on which delivery of the Net Termination Amount Statement is effective. The Net Termination Amount in connection with a Tax Liquidation Event will be due and payable on the second business day following the business day on which delivery of the Net Termination Amount Statement is effective. Subject to Section 7(l) of this Cleared Derivatives Addendum, and except as the parties may have otherwise agreed:

(A) if the Net Termination Amount is a positive number, Customer will be obligated for such Net Termination Amount to Clearing Member; or

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<sup>7</sup> Note to Contracting Parties: Parties may wish to further define "costs of funding". A sample definition of "Funding Costs" is set out below:

"Funding Costs" means, without duplication of any other amounts due from Customer hereunder, including interest costs in accordance with Section 7(g) of this Cleared Derivatives Addendum, the costs for the Clearing Member (or, as relevant, its affiliate) to borrow the amount of its (or, as relevant, its affiliate's) own funds that, after application of any available Credit Support and Customer Balances, it (or, as relevant, its affiliate) has posted as margin or collateral reasonably attributable to a Designated Transaction, Risk-reducing Transaction or Mitigation Transaction, from the Liquidation Date to the Close-out Date[, calculated using an interest rate equal to [•]].



**(B)** if the Net Termination Amount is a negative number, Clearing Member will be obligated for the absolute value of such Net Termination Amount to Customer.

**(c)** On or after the occurrence of a Liquidation Event and except as otherwise provided in the Agreement, Clearing Member, in addition to any other rights it has under the Agreement or otherwise, shall be entitled, acting in good faith, in a commercially reasonable manner and in accordance with Applicable Law, to:

**(i)** **(A)** sell or otherwise dispose of or realize on any Credit Support received by Clearing Member and apply the proceeds of such Credit Support to any Termination Amounts or amounts due and owing from Customer to Clearing Member under the Cleared Derivatives Addendum; **(B)** set off or apply the value of any Credit Support received by Clearing Member against any Termination Amounts or amounts due and owing from Customer to Clearing Member under the Cleared Derivatives Addendum; and **(C)** set off or apply the value of any Credit Support received by Customer against amounts owed to Customer under the Cleared Derivatives Addendum (and Customer shall be liable for the excess, if any, of the amount of Credit Support received by Customer over amounts due and owing to Customer under the Cleared Derivatives Addendum);<sup>8</sup>

**(ii)** sell, set off, apply or otherwise dispose of or realize on any or all of the cash and non-cash balances in Customer's Cleared Derivatives Account in respect of one or more Cleared Derivatives Transactions (regardless of whether such balances were required to be held by Clearing Member in Customer's Cleared Derivatives Account in accordance with Applicable Law or in accordance with the Agreement) (such balances, "Customer Balances")<sup>9</sup> and set off or apply the proceeds of such Customer Balances to any Termination Amounts or other obligations of Customer to Clearing Member under the Cleared Derivatives Addendum; and

**(iii)** take such other or further actions as Clearing Member, acting in good faith and in a commercially reasonable manner, determines reasonably necessary or appropriate for the protection of its rights hereunder to the fullest extent permitted under Applicable Law.

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<sup>8</sup> Note to Contracting Parties: Note that Clearing Member remedies with respect to Credit Support in Section 7(c)(i) of this Cleared Derivatives Addendum are limited to obligations under the Cleared Derivatives Addendum; parties may wish to expand provisions to include a broader set of obligations arising under the Agreement or otherwise. For example, the phrase "any obligations of Customer to Clearing Member under the Cleared Derivatives Addendum" could be amended to be "any obligations of Customer to Clearing Member under this Cleared Derivatives Addendum, the Agreement or otherwise" in each case in which such phrase appears in the provisions relating to Credit Support.

Similarly, the definition of "Credit Support" is limited to collateral or margin transferred in respect of Cleared Derivatives Transactions. Parties may wish to broaden the scope of Credit Support by deleting the phrase "with respect to one or more Cleared Derivatives Transactions" in the definition of "Credit Support".

Parties should also note that there is little coordination between the close-out provisions of the Agreement and those of the Cleared Derivatives Addendum, other than Section 7(l) of this Cleared Derivatives Addendum, and parties may wish to provide for such coordination.

<sup>9</sup> Note to Contracting Parties: "Customer Balances" is limited to cash and non-cash balances in Customer's Cleared Derivatives Account in respect of Cleared Derivatives Transactions. Parties may wish to expand the scope of Customer Balances to include cash and non-cash balances that are not related to Cleared Derivatives Transactions (e.g., futures-related cash and non-cash balances) by deleting the phrase "in respect of one or more Cleared Derivatives Transactions" in the definition of "Customer Balances" and including balances in accounts other than Customer's Cleared Derivatives Account.

**(d)** Following the occurrence of a Liquidation Event, Clearing Member shall be entitled to retain all Credit Support and Customer Balances as security for all obligations of Customer to Clearing Member under the Cleared Derivatives Addendum; *provided, however*, that as soon as reasonably practicable following satisfaction in full of Customer's obligations to Clearing Member under the Cleared Derivatives Addendum, Clearing Member will return to Customer any Credit Support or Customer Balances remaining after the liquidation, setoff and/or application under Section 7(c) of this Cleared Derivatives Addendum. Each party will remain liable for amounts owing, if any, and remaining unpaid by it after any liquidation, setoff and/or application under Section 7(c) of this Cleared Derivatives Addendum.

**(e) (i)** No amounts that would otherwise be expressed as a negative number in Section 7(b) of this Cleared Derivatives Addendum that are due or that may become due from a Clearing Organization shall be taken into account in determining a Termination Amount, unless such amounts have been Paid to Clearing Member at or prior to the time of the calculation of a Termination Amount. If any such amounts are Paid by a Clearing Organization to Clearing Member at any time after the calculation of a Termination Amount, then Clearing Member shall, promptly after any receipt thereof, net and set off such amounts against, and reduce, any amounts owed by Customer in accordance with this Section 7 of this Cleared Derivatives Addendum that remain unpaid at such time, if any, and pay all such amounts that are not so netted or set off to Customer (and such amounts shall be held as Credit Support until netted, set off or paid to Customer in accordance with this Section 7(e) of this Cleared Derivatives Addendum), subject to any other available rights of setoff. For purposes of this Section 7(e) of this Cleared Derivatives Addendum, "Paid" means satisfied or discharged through the receipt of funds or the exercise of any right of setoff or netting.

**(ii)** Costs, losses or reductions in gains attributable to the default of a party to a Mitigation Transaction may not be taken into account in calculating a Termination Amount, unless the defaulting party is a Clearing Organization.

**(f) (i)** The liquidation or deemed liquidation of a Designated Transaction or Risk-reducing Transaction (or portion thereof) under Section 7 of this Cleared Derivatives Addendum shall, if such liquidation or deemed liquidation does not result in an equivalent liquidation of such Designated Transaction or Risk-reducing Transaction (or portion thereof) in accordance with Clearing Organization rules, regulations or procedures, nonetheless be deemed an equivalent liquidation of such transaction for purposes of this Cleared Derivatives Addendum.

**(ii)** Unless previously liquidated or deemed liquidated in accordance with Section 7 of this Cleared Derivatives Addendum, any Designated Transactions or Risk-reducing Transactions removed from Customer's Cleared Derivatives Account by any means other than an Offsetting Transaction shall be deemed liquidated for purposes of Section 7 of this Cleared Derivatives Addendum and valued in accordance with Section 7(b)(i)(B) of this Cleared Derivatives Addendum, unless Applicable Law requires such removal and a valuation in accordance with Section 7(b)(i)(B) of this Cleared Derivatives Addendum would produce a result that would not satisfy the Liquidation Standard, in which event such valuation shall be performed as soon as reasonably practicable thereafter in accordance with the Liquidation Standard.

**(g)** Subject to any limitation of liability provisions (howsoever described) in the Agreement, if Customer defaults in the performance of any payment obligation, Customer will, to the extent permitted by Applicable Law, be required to pay interest (before as well as after judgment) on the overdue amount to Clearing Member on demand in the same currency as such overdue amount, for the period from (and including) the original due date for such payment to (but excluding) the date of actual payment, at the rate

agreed by the parties from time to time. If Customer defaults in the performance of any obligation required to be settled by delivery, it will compensate Clearing Member on demand if, and to the extent, provided for in the terms of the relevant Designated Transaction or elsewhere in the Agreement.

**(h)** Subject to any limitation of liability provisions (howsoever described) in the Agreement, if Clearing Member defaults in the performance of any payment obligation, Clearing Member will, to the extent permitted by Applicable Law, be required to pay interest (before as well as after judgment) on the overdue amount to Customer on demand in the same currency as such overdue amount, for the period from (and including) the original due date for such payment to (but excluding) the date of actual payment, at the rate agreed by the parties from time to time. If Clearing Member defaults in the performance of any obligation required to be settled by delivery, it will compensate Customer on demand if, and to the extent, provided for in the terms of the relevant Designated Transaction or elsewhere in the Agreement.

**(i)** For the avoidance of doubt, Sections 7(g) and 7(h) of this Cleared Derivatives Addendum will apply solely with respect to obligations arising under this Section 7 of this Cleared Derivatives Addendum, and will not apply to interest payable by Customer on debit balances or by Clearing Member on equity balances in Customer's Cleared Derivatives Account in the ordinary course, which will be at the rate agreed by the parties from time to time.

**(j)** From the Liquidation Date and until Clearing Member provides Customer with the statement described in Section 7(k) of this Cleared Derivatives Addendum with respect to such Liquidation Date, Clearing Member will provide Customer, upon Customer's reasonable request, information relating to any Mitigation Transaction that Clearing Member or any of its affiliates intend to take into account in computing a Termination Amount.

**(k)** On or as soon as reasonably practicable following the liquidation or deemed liquidation of all Designated Transactions and Risk-reducing Transactions, Clearing Member will provide to Customer a statement (the "Net Termination Amount Statement"):

**(i)** showing, in reasonable detail, the calculation of all Termination Amounts (including the details of all Close-out Transactions, Risk-reducing Transactions and Mitigation Transactions, realized gains and losses on such transactions; the amount of any Credit Support and Customer Balances sold or otherwise disposed of and the amount of Credit Support and Customer Balances set off or otherwise applied against any Termination Amounts; and any other data or information used in making any such calculations);

**(ii)** specifying all relevant quotations received by Clearing Member and its affiliates in connection with determining all Termination Amounts;

**(iii)** specifying the Net Termination Amount; and

**(iv)** giving details of the relevant account to which any amount payable to Clearing Member is to be paid.

**(l)** Clearing Member shall be entitled to net: (i) any Net Termination Amount payable by it against any amounts due to it and unpaid by Customer under the Agreement and (ii) any amounts due and payable to Customer under the Agreement against any Net Termination Amount payable to Clearing Member. Nothing in this Section 7 of this Cleared Derivatives Addendum is intended to or shall limit or restrict any right that either party may have under this Cleared Derivatives Addendum or any other agreement or Applicable Law to set off any obligation (whether or not arising under this Cleared

Derivatives Addendum) payable by such party against any obligation (whether or not arising under this Cleared Derivatives Addendum) payable to such party.<sup>10</sup>

(m) Clearing Member may take advice from agents and affiliates regarding Clearing Member's exercise of rights and remedies under this Cleared Derivatives Addendum and may delegate to an agent or affiliate the exercise of such rights and remedies; *provided* that Clearing Member shall be liable for actions of its agents and affiliates, and such delegation will not excuse any obligations of or any standards of conduct applicable to Clearing Member.

(n) Each of Clearing Member and Customer intends that Clearing Member's rights and remedies benefit from the [bilateral netting and]<sup>11</sup> clearing organization netting provisions of the Federal Deposit Insurance Corporation Improvement Act of 1991, as amended ("FDICIA") (12 U.S.C. § 4401 et seq.), and any applicable safe harbor provisions of the Bankruptcy Code relating to commodity contracts or similar safe harbor provisions in any other applicable federal or state insolvency law.

(o) **Definitions.** As used in this Cleared Derivatives Addendum:

"Close-out Date" means (i) with respect to each Designated and Risk-reducing Transaction, the date on which a Close-out Transaction was entered into in respect of such Designated Transaction or Risk-reducing Transaction or such Designated Transaction or Risk-reducing Transaction was otherwise liquidated or deemed liquidated and (ii) with respect to each Mitigation Transaction, the date on which such Mitigation Transaction ceases to be a Mitigation Transaction under this Cleared Derivatives Addendum.

"Close-out Transactions" means Offsetting Transactions and Sale/Novation Transactions.

"Credit Support" means with respect to a party to this Cleared Derivatives Addendum, collateral or margin (including any income paid or payable with respect to such collateral or margin) that has been transferred to or received by a party to this Cleared Derivatives Addendum as security or to provide setoff or netting rights with respect to one or more Cleared Derivatives Transactions (whether used to secure or provide setoff or netting rights with respect to current exposure or otherwise, but not as a settlement of gains or losses) and not subsequently returned by that party to the other party to this Cleared Derivatives Addendum. This Cleared Derivatives Addendum is

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<sup>10</sup> Note to Contracting Parties: It may be appropriate in certain cases for the parties to include additional language with respect to portfolio margining and its potential effects on liquidation where the parties have agreed to portfolio margining. Sample language is provided below:

"Where one or more types of Cleared Derivatives Transactions have been margined on a portfolio basis with other transactions (whether cleared or uncleared), application of the Liquidation Standard may require Clearing Member to liquidate all such transactions on a combined (rather than standalone) basis. In recognition of the foregoing, Customer acknowledges and agrees that certain transactions may, in accordance with the Liquidation Standard, appropriately be liquidated later in time than would otherwise be the case had such transactions been margined on a standalone basis. In addition, Customer acknowledges and agrees that Cleared Derivatives Transactions of a particular type may, in accordance with the Liquidation Standard, appropriately be liquidated at different times, including, without limitation, in the case of Cleared Derivatives Transactions of a particular type carried simultaneously in multiple customer account classes in accordance with applicable CFTC and Securities Exchange Commission segregation regimes."

<sup>11</sup> Note to Contracting Parties: Parties should consider whether to include the reference to the bilateral netting provisions applicable to "financial institutions" under FDICIA.

not intended to affect the characterization of Credit Support for purposes other than the mechanics of this Section 7 of this Cleared Derivatives Addendum.

“Designated Transactions” means, with respect to a Close-out Event, all Cleared Derivatives Transactions, and, with respect to a Tax Liquidation Event, all Affected Transactions, in each case in respect of which a Liquidation Date has been designated or deemed designated.

“Liquidation Standard” means, with respect to determining whether and when to take a course of action, and in taking any such course of action, on or following a Liquidation Date, a standard that entails acting in good faith, in accordance with Applicable Law and using commercially reasonable procedures in order to produce a commercially reasonable result; ***provided further***, that Clearing Member may effect Close-out Transactions, Risk-reducing Transactions and Mitigation Transactions with Clearing Member or Clearing Member’s affiliates, and an affiliate of Clearing Member may effect a Mitigation Transaction with Clearing Member or another of Clearing Member’s affiliates, only to the extent that such transactions are executed on an arm’s length basis and at then prevailing market prices, as determined in any commercially reasonable manner by Clearing Member; ***provided, however***, if Clearing Member, acting reasonably and in good faith, determines there are no relevant prevailing market prices for such transactions at such time or that actively soliciting quotations for such transactions would produce prevailing market prices for such transactions that would not satisfy the Liquidation Standard, such transactions may be executed on an arm’s length basis at a commercially reasonable price.

“Mitigation Transactions” means, with respect to one or more Designated Transactions, one or more transactions, which may be cleared or uncleared, and which are not effected in Customer’s Cleared Derivatives Account (and thus are not Risk-reducing Transactions), effected by Clearing Member or an affiliate of Clearing Member on or after the Liquidation Date in order to hedge or reduce the risk of such Designated Transactions (or portions thereof) on an individual or a portfolio basis. For the avoidance of doubt, references to the “liquidation” or “deemed liquidation” of a Mitigation Transaction shall not require the termination or sale/novation of such transaction, but shall refer to the point in time that such transaction is no longer considered a Mitigation Transaction for purposes of this Cleared Derivatives Addendum.

“Net Termination Amount” means the sum of all Termination Amounts calculated in connection with a Liquidation Event, less the sum of the values of any Credit Support and Customer Balances that, in accordance with Section 7(c) of this Cleared Derivatives Addendum, have been set-off or otherwise applied to any Termination Amount or other amount calculated in connection with such Liquidation Event.

“Offsetting Transactions” means, with respect to one or more Designated Transactions or Risk-reducing Transactions, one or more cleared derivatives transactions, effected in Customer’s Cleared Derivatives Account (which transactions may be executed with Clearing Member, an affiliate of Clearing Member or an unaffiliated third party) that (i) are cleared on the same Clearing Organization as such Designated Transactions or Risk-reducing Transactions; (ii) in accordance with applicable Clearing Organization rules, regulations and procedures, result in a proportional liquidation of such Designated Transactions and/or Risk-reducing Transactions; and (iii) are not Sale/Novation Transactions.

“Risk-reducing Transactions” means, with respect to one or more Designated Transactions, one or more cleared transactions effected in Customer’s Cleared Derivatives Account (which transactions may be executed with Clearing Member, an affiliate of Clearing Member or an unaffiliated third party) on or after the Liquidation Date in order to hedge or reduce the risk of

such Designated Transactions (or portions thereof) on an individual or a portfolio basis and that are not Sale/Novation Transactions.

“Sale/Novation Transactions” means, with respect to one or more Designated Transactions or Risk-reducing Transactions, (x) one or more transactions (other than Offsetting Transactions and Risk-reducing Transactions) consisting of a sale, assignment, novation or any similar arrangement in accordance with which Clearing Member, an affiliate of Clearing Member or an unaffiliated third party (an “Assignee”) acquires all or part of such Designated Transactions and/or Risk-reducing Transactions, or (y) the obligations of Customer are otherwise substituted or replaced, in whole or in part, with the obligations of an Assignee (and the old obligations are extinguished).

## 8. Tax Provisions.

(a) **Additional Amounts.** Notwithstanding any provision of any Contract or agreement to the contrary:

(i) As of the date hereof, (A) neither Clearing Member nor Customer expects to deduct or withhold any tax, duty, fee, levy or charge that is imposed by any taxing authority in connection with any Cleared Derivatives Transaction (other than an Other Tax (as defined below)) (“Tax”) from any payment it makes with respect to a Cleared Derivatives Transaction, and (B) Clearing Member does not expect to receive any payment from a Clearing Organization pursuant to a Cleared Derivatives Transaction from which any deduction or withholding has been made for or on account of any Tax. For purposes of the preceding sentence, the word “Tax” shall not include any Tax imposed pursuant to Sections 1471 through 1474 of the Internal Revenue Code, as amended, as of the date hereof or any successor provisions (or the United States Treasury Regulations or other guidance issued thereunder) (“FATCA”). Clearing Member and Customer further agree to take commercially reasonable efforts to timely notify the other party of any changes in the expectations set forth in clauses (A) and (B) of this Section 8(a)(i) of this Cleared Derivatives Addendum.

(ii) In the event that any payment made by Clearing Member or Customer is subject to deduction or withholding for or on account of any Tax, then the party that is so required to deduct or withhold (“X”) will:

(A) pay to the relevant authorities the full amount required to be deducted or withheld promptly upon determining that such deduction or withholding is required; and

(B) promptly forward to the other party (“Y”) an official receipt (or a certified copy) or other documentation required by law, evidencing such payment to such authorities, and upon the reasonable request of Y computations setting forth in reasonable detail the amount of any such deduction or withholding payable by X.

(iii) In the case of a payment made by Customer to Clearing Member, Customer shall pay to Clearing Member such additional amounts as may be necessary to ensure that the amounts received by Clearing Member are equal to the amounts Clearing Member is obligated to pay to the Clearing Organization with respect to such Cleared Derivatives Transaction after taking into account any withholding or deduction of Tax imposed on any such payment and any withholding or deduction of Tax imposed on the corresponding payment by Clearing Member to Clearing Organization; *provided* that Customer will not be required to pay any such additional amounts in

respect of any Tax that would not have been imposed on the payment by Customer to Clearing Member but for:

(A) a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and Clearing Member;

(B) Clearing Member consolidating or amalgamating with, or merging with or into, or transferring all or substantially all of its business assets to, or reorganizing, reincorporating or reconstituting into or as, another entity (a “Clearing Member Merger”);

(C) the failure of Clearing Member to comply with its obligations under Sections 8(e)(i) and 2(a)(v) of this Cleared Derivatives Addendum; or

(D) the Clearing Member’s failure to satisfy the applicable requirements to establish that such payment is exempt from withholding under FATCA (“Clearing Member FATCA noncompliance”);

***provided further*** that Customer will not be required to pay any such additional amounts in respect of any Tax that would not have been imposed on the payment by Clearing Member to Clearing Organization but for a Clearing Member Merger or the failure of Clearing Member to comply with its obligations under Section 8(e)(ii)(B) of this Cleared Derivatives Addendum.

(iv) In the event that a payment made by Clearing Organization to Clearing Member is subject to deduction or withholding for or on account of any Tax (a “Clearing Organization Level Tax”), then the amount of the payment made by Clearing Member to Customer shall be equal to the after-tax amount received from the Clearing Organization with respect to Customer’s Cleared Derivatives Transaction, reduced by the amount of any Tax imposed on the payment from Clearing Member to Customer; ***provided that*** if Customer has complied with its obligations in accordance with Sections 2(b)(iv) and 8(e)(i) of this Cleared Derivatives Addendum, Clearing Member shall be obligated to pay to Customer such additional amounts as may be necessary to ensure that the amounts paid to Customer will equal the full amounts Customer would have received but for:

(A) a Clearing Member Merger;

(B) a Clearing Member FATCA noncompliance; or

(C) failure of Clearing Member to comply with Section 8(e)(ii)(A) of this Cleared Derivatives Addendum.

(v) A Tax for which a party is obligated to pay additional amounts in accordance with Sections 8(a)(iii) or (iv) of this Cleared Derivatives Addendum is referred to as an “Indemnifiable Tax.”

**(b) Tax Indemnity.** If (i) any payment made by X under any Cleared Derivatives Transaction is subject to deduction or withholding for or on account of any Tax which is not an Indemnifiable Tax, (ii) X does not so deduct or withhold, and (iii) any 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 interest and penalties, except where such penalties are solely attributable to the gross negligence or willful

misconduct of X). In addition, if (x) (A) any payment under a Cleared Derivatives Transaction made by Clearing Member to Clearing Organization is subject to deduction or withholding for or on account of any Tax, other than as a result of a Clearing Member Merger or the failure of Clearing Member to comply with its obligations under Section 8(e)(ii)(B) of this Cleared Derivatives Addendum, or on account of any Other Tax or (B) any payment under a Cleared Derivatives Transaction made by Clearing Organization to Clearing Member is subject to deduction or withholding for or on account of any Clearing Organization Level Tax, other than as a result of a Clearing Member Merger, Clearing Member FATCA noncompliance or the failure of Clearing Member to comply with its obligations under Section 8(e)(ii)(A) of this Cleared Derivatives Addendum, or on account of any Other Tax; (y) Clearing Member or Clearing Organization does not so deduct or withhold (or pay the Other Tax); and (z) any liability resulting from such Tax, Clearing Organization Level Tax or Other Tax (including any related liability for interest and penalties) is assessed directly against Clearing Member, or is assessed directly against Clearing Organization and Clearing Organization, pursuant to its rules, requires Clearing Member to indemnify Clearing Organization for any such liability, Customer will promptly pay to Clearing Member an amount equal to such liability (including any withholding or deduction of Tax imposed on or in respect of Clearing Member's payment to satisfy such liability).

(c) **Other Taxes.** Each Customer will pay any stamp, registration, documentation, excise (including insurance premium excise), sales, value added, transaction (including financial transaction) tax or similar tax ("Other Tax") levied or imposed upon it or in respect of its execution, performance or enforcement of any agreement, contract or transaction in connection with any Cleared Derivatives Transaction and will indemnify Clearing Member against any such Other Tax levied or imposed upon Clearing Member or in respect of Clearing Member's execution, performance or enforcement of any agreement, contract or transaction in connection with any Cleared Derivatives Transaction (including, for the avoidance of doubt, as required to fulfill any indemnity to a Clearing Organization relating to an Other Tax). Clearing Member shall use reasonable efforts to avoid the imposition of any Other Taxes; *provided, however* that such efforts shall not require Clearing Member to incur additional costs or regulatory burdens that Clearing Member considers in its good faith reasonable judgment to be material.

(d) **Tax Liquidation Events.** If, as a result of a Clearing Member Merger or a Change in Tax Law (as defined below), on the next succeeding payment date Clearing Member will, or there is a substantial likelihood that it will, either:

(i) not be entitled to receive additional amounts under Section 8(a)(iii) of this Cleared Derivatives Addendum (other than pursuant to Sections 8(a)(iii)(C) and (D) of this Cleared Derivatives Addendum) with respect to a Cleared Derivatives Transaction; or

(ii) be required to pay additional amounts pursuant to Section 8(a)(iv) of this Cleared Derivatives Addendum (other than pursuant to Section 8(a)(iv)(B) and (C) of this Cleared Derivatives Addendum) with respect to a Cleared Derivatives Transaction,

(in either case, a "Tax Liquidation Event"), then such Clearing Member shall have the right to terminate any Cleared Derivatives Transactions so affected by the Tax Liquidation Event (the "Affected Transactions") in accordance with the provisions of Section 7 of this Cleared Derivatives Addendum, unless Customer and Clearing Member agree that:

(x) Customer shall pay to Clearing Member any additional amounts to which Clearing Member would otherwise have been entitled in the absence of Sections 8(a)(iii)(A) and (B) of this Cleared Derivatives Addendum; and



(y) Customer will not be entitled to receive additional amounts pursuant to Section 8(a)(iv) of this Cleared Derivatives Addendum, as applicable.

“Change in Tax Law” shall mean 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 Cleared Derivatives Transaction.

Nothing in this Section 8(d) of this Cleared Derivatives Addendum is intended to restrict any rights Customer otherwise has to transfer its positions in the Affected Transaction(s) to another clearing member (the “Receiving Clearing Member”). Subject to any provision of any Contract or agreement to the contrary, if pursuant to a Clearing Member Merger a Tax Liquidation Event has occurred and is continuing (and provided that no Event of Default with respect to Customer has occurred and is continuing), Clearing Member shall indemnify and hold Customer harmless from and against any booking, ticket, commission or similar fees imposed by the Clearing Member or by a Receiving Clearing Member, or similar fees imposed under the rules of a Clearing Organization, in each case incurred by a Customer as a result of Customer’s transfer of the balances and positions in Customer’s Cleared Derivatives Account to a Receiving Clearing Member.

**(e) Tax Documents.**

**(i) Clearing Member – Customer Tax Documents.** Clearing Member and Customer each agree to deliver to the other party, or, in certain cases under subparagraph (B) below, to such government or taxing authority as the other party reasonably directs:

**(A)** Any forms, documents or certificates relating to taxation (a “Tax Document”) specified in the Schedule; and

**(B)** Upon reasonable demand by the other party, any Tax Document that may be required or reasonably requested in writing in order to allow such other party to make a payment under a Cleared Derivatives Transaction 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 Tax Document would not materially prejudice the legal or commercial position of the party in receipt of such demand);

in each case by the date specified in the Schedule or, if none is specified, as soon as reasonably practicable. A form, document or certificate shall not qualify as a Tax Document provided by a party unless it is valid, accurate and completed in a manner reasonably satisfactory to the other party, and is executed and delivered with any reasonably required certification.

**(ii) Clearing Organization – Clearing Member Tax Documents.**

**(A)** Clearing Member agrees to provide to Clearing Organization (1) any Tax Document specified in the Clearing Organization’s rules and (2), upon reasonable demand by such Clearing Organization, any Tax Document that may be required or reasonably requested in writing in order to allow Clearing Organization to make a payment under a Cleared Derivatives Transaction without any deduction or withholding for or on account of any Clearing Organization Level Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such Tax Document would not materially prejudice the legal or commercial position of the party in receipt of such demand); and

**(B)** Clearing Member agrees to request from Clearing Organization any Tax Document that may be required in order to allow Clearing Member to make a payment to Clearing Organization under a Cleared Derivatives Transaction without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate;

in each case as soon as reasonably practicable.

**(f) Margin.** For purposes of this Section 8 of this Cleared Derivatives Addendum, any interest or other payment made in respect of margin, or to the extent relevant any amount paid on any other amount treated as collateral, that is provided in respect of a Cleared Derivatives Transaction shall be treated as a payment under the Cleared Derivatives Transaction.

**(g) Other Provisions.**

**(i)** For the avoidance of doubt, nothing in this Section 8 of this Cleared Derivatives Addendum is intended to affect in any way the application of any Clearing Organization rules to payments made to, or received by, a Clearing Organization under a Cleared Derivatives Transaction.

**(ii)** For the avoidance of doubt, this Cleared Derivatives Addendum shall be interpreted in a manner consistent with treating any interest paid under a Cleared Derivatives Transaction as paid on an obligation in registered form for purposes of Section 871(h) of the Internal Revenue Code, as amended, as of the date hereof or any successor provision.

**(iii)** In the event that Cleared Derivatives Transactions include any equity swap transaction that is subject to tax imposed on payments treated as dividends from sources within the United States under Section 871(m) of the Internal Revenue Code, as amended, as of the date hereof or any successor provision, with respect to that transaction, Customer and Clearing Member agree to negotiate in good faith to make such modifications to Section 8 of this Cleared Derivatives Addendum as may be appropriate.

**9. Relationship to Agreement; Inconsistency.** In the event of a conflict between the provisions of the Agreement and the provisions of this Cleared Derivatives Addendum, the provisions of this Cleared Derivatives Addendum will govern with respect to the subject matter of this Cleared Derivatives Addendum.

**10. Required Disclosure.** As of the date of this Cleared Derivatives Addendum, the Securities and Exchange Commission ("SEC") requires Clearing Member to disclose to Customer the following:

**(a)** the SEC does not regulate Clearing Member with respect to the capacity in which it is acting hereunder for Cleared Derivatives Transactions;

**(b)** funds and collateral held by Clearing Member for Cleared Derivatives Transactions will be held in an account class designated for Cleared Derivatives Transactions under Applicable Law but will not be afforded protection under SEC Rules 8c-1, 15c2-1, 15c3-2 or 15c3-3 or under the Securities Investor Protection Act of 1970, and will not be entitled to Securities Investor Protection Corporation ("SIPC") coverage or excess SIPC insurance coverage and, in the unlikely event of Clearing Member's insolvency, Customer's rights shall be determined pursuant to the commodity broker liquidation provisions of the Bankruptcy Code and the CFTC's Part 190 Rules; and

(c) in an insolvency proceeding, the insolvency law of the applicable jurisdiction may affect Customer's ability to recover funds and securities, or the speed of any such recovery.

**In Witness Whereof**, the parties have executed this Cleared Derivatives Addendum to the Agreement on the respective dates specified below with effect from the date specified on the first page of this Cleared Derivatives Addendum.

**[CUSTOMER]**

**[CLEARING MEMBER]**

EIN (if any): \_\_\_\_\_

EIN (if any): \_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE**  
**TO THE**  
**CLEARED DERIVATIVES ADDENDUM**

dated as of \_\_\_\_\_, between

\_\_\_\_\_ (the "Clearing Member") and

\_\_\_\_\_ (the "Customer")

The following terms and conditions (the "Schedule") will supplement the Cleared Derivatives Addendum between Clearing Member and Customer with respect to the Cleared Derivatives Transactions (as defined herein).

Accordingly, the parties agree as follows:

(a) Agreement Name: \_\_\_\_\_.

(b) Clearing Member:

Payee Tax Representation. For the purpose of Section 2(a)(v) of the Cleared Derivatives Addendum, Clearing Member makes the following representations: \_\_\_\_\_.

ERISA Representations. For the purpose of Section 2 of the Cleared Derivatives Addendum, Clearing Member [does not make any representations][makes the following representations: \_\_\_\_\_].

Tax Form. For the purpose of Section 8(e)(i)(A) of the Cleared Derivatives Addendum, Clearing Member agrees to deliver the following Tax Documents as of the date hereof or on such other date as is specified: \_\_\_\_\_.

(c) Customer:

Payee Tax Representation. For the purpose of Section 2(b)(iv) of the Cleared Derivatives Addendum, Customer makes the following representations: \_\_\_\_\_.

ERISA Representations. For the purpose of Section 2 of the Cleared Derivatives Addendum, Customer [does not make any representations][makes the following representations: \_\_\_\_\_].

Tax Form. For the purpose of Section 8(e)(i)(A) of the Cleared Derivatives Addendum, Customer agrees to deliver the following Tax Documents as of the date hereof or on such other date as is specified: \_\_\_\_\_.

(d) Other:

**In Witness Whereof**, the parties have executed this Schedule to the Cleared Derivatives Addendum to the Agreement on the respective dates specified below with effect from the date specified on the Schedule to the Cleared Derivatives Addendum.

**[CUSTOMER]**

**EIN (if any):** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**[CLEARING MEMBER]**

**EIN (if any):** \_\_\_\_\_

**By:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_