

Bratislavská, a.s.  
Č.značka:  
46000 02670

# ISDA<sup>®</sup>

International Swaps and Derivatives Association, Inc.

## 2002 MASTER AGREEMENT

dated as of October 15, 2021

<b>Mitsui Bussan Commodities (France) SA</b>		<b>Bratislavská teplárenská, a.s.</b>
	and	
<i>Party A</i>		<i>Party B</i>

have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this 2002 Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties or otherwise effective for the purpose of confirming or evidencing those Transactions. This 2002 Master Agreement and the Schedule are together referred to as this "Master Agreement".

Accordingly, the parties agree as follows:—

### 1. Interpretation

- (a) **Definitions.** The terms defined in Section 14 and elsewhere in this Master Agreement will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement, such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions.

### 2. Obligations

(a) **General Conditions.**

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

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

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

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

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

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

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

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

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

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and

(4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

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

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

(ii) **Liability.** If:—

(1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);

(2) X does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against X,

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

### 3. Representations

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

(a) **Basic Representations.**

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

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

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

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

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

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

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

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

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

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

(g) **No Agency.** It is entering into this Agreement, including each Transaction, as principal and not as agent of any person or entity.

#### 4. Agreements

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

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

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

(ii) any other documents specified in the Schedule or any Confirmation; and

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

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

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

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

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

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

## 5. Events of Default and Termination Events

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

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) required to be made by it if such failure is not remedied on or before the first Local Business Day in the case of any such payment or the first Local Delivery Day in the case of any such delivery after, in each case, notice of such failure is given to the party;

(ii) **Breach of Agreement; Repudiation of Agreement.**

(1) Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4 (a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied within 30 days after notice of such failure is given to the party; or

(2) the party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, this Master Agreement, any Confirmation executed and delivered by that party or any

Transaction evidenced by such a Confirmation (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iii) **Credit Support Default.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (1) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (II) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

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

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

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

(i) **Illegality.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, due to an event or circumstance (other than any action taken by a party or, if applicable, any Credit Support Provider of such party) occurring after a Transaction is entered into, it becomes unlawful under any applicable law (including without limitation the laws of any country in which payment, delivery or compliance is required by either party or any Credit Support Provider, as the case may be), on any day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day (in each case, other than as a result of a breach by the party of Section 4(b)):—

(1) for the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction to perform any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

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

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

(1) the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction is prevented from performing any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, from receiving a payment or delivery in respect of such Transaction or from complying with any other material provision of this Agreement relating to such Transaction (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or



impracticable for such Office so to perform, receive or comply (or it would be impossible or impracticable for such Office so to perform, receive or comply if such payment, delivery or compliance were required on that day); or

(2) such party or any Credit Support Provider of such party (which will be the Affected Party) is prevented from performing any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, from receiving a payment or delivery under such Credit Support Document or from complying with any other material provision of such Credit Support Document (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply (or it would be impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply if such payment, delivery or compliance were required on that day),

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

(iii) **Tax Event.** Due to (1) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (2) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Settlement Date (A) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (B) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 9(h)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iv) **Tax Event Upon Merger.** The party (the "Burdened Party") on the next succeeding Scheduled Settlement Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets (or any substantial part of the assets comprising the business conducted by it as of the date of this Master Agreement) to, or reorganising, reincorporating or reconstituting into or as, another entity (which will be the Affected Party) where such action does not constitute a Merger Without Assumption;

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

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

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

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

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

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

(c) **Hierarchy of Events.**

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

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

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

(d) **Deferral of Payments and Deliveries During Waiting Period.** If an Illegality or a Force Majeure Event has occurred and is continuing with respect to a Transaction, each payment or delivery which would otherwise be required to be made under that Transaction will be deferred to, and will not be due until:—

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

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

(e) **Inability of Head or Home Office to Perform Obligations of Branch.** If (i) an Illegality or a Force Majeure Event occurs under Section 5(b)(i)(1) or 5(b)(ii)(1) and the relevant Office is not the Affected Party's head or home office, (ii) Section 10(a) applies, (iii) the other party seeks performance of the relevant obligation or

compliance with the relevant provision by the Affected Party's head or home office and (iv) the Affected Party's head or home office fails so to perform or comply due to the occurrence of an event or circumstance which would, if that head or home office were the Office through which the Affected Party makes and receives payments and deliveries with respect to the relevant Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and such failure would otherwise constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) with respect to such party, then, for so long as the relevant event or circumstance continues to exist with respect to both the Office referred to in Section 5(b)(i)(1) or 5(b)(ii)(1), as the case may be, and the Affected Party's head or home office, such failure will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1).

## **6. Early Termination; Close-Out Netting**

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

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

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

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

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

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

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

(iv) ***Right to Terminate.***

(1) If:—

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

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

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

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

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

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

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

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

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 9(h)(i) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date will be determined pursuant to Sections 6(e) and 9(h)(ii).

(d) **Calculations; Payment Date.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (I) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations),  
(2) specifying (except where there are two Affected Parties) any Early Termination Amount payable and  
(3) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation or market data obtained in determining a Close-out Amount, the records of the party obtaining such quotation or market data will be conclusive evidence of the existence and accuracy of such quotation or market data.

(ii) **Payment Date.** An Early Termination Amount due in respect of any Early Termination Date will, together with any amount of interest payable pursuant to Section 9(h)(ii)(2), be payable (1) on the day on which notice of the amount payable is effective in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default and (2) on the day which is two Local Business Days after the day on which notice of the amount payable is effective (or, if there are two Affected Parties, after the day on which the statement provided pursuant to clause (i) above by the second party to provide such a statement is effective) in the case of an Early Termination Date which is designated as a result of a Termination Event.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the amount, if any, payable in respect of that Early Termination Date (the "Early Termination Amount") will be determined pursuant to this Section 6(e) and will be subject to Section 6(f).

(i) **Events of Default.** If the Early Termination Date results from an Event of Default, the Early Termination Amount will be an amount equal to (1) the sum of (A) the Termination Currency Equivalent of the Close-out Amount or Close-out Amounts (whether positive or negative) determined by the Non-defaulting Party for each Terminated Transaction or group of Terminated Transactions, as the case may be, and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (2) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If the Early Termination Amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of the Early Termination Amount to the Defaulting Party.

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

(1) **One Affected Party.** Subject to clause (3) below, if there is one Affected Party, the Early Termination Amount will be determined in accordance with Section 6(e)(i), except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.

(2) **Two Affected Parties.** Subject to clause (3) below, if there are two Affected Parties, each party will determine an amount equal to the Termination Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an amount equal to (A) the sum of (I) one-half of the difference between the higher amount so determined (by party "X") and the lower amount so determined (by party "Y") and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.

(3) *Mid-Market Events.* If that Termination Event is an Illegality or a Force Majeure Event, then the Early Termination Amount will be determined in accordance with clause (1) or (2) above, as appropriate, except that, for the purpose of determining a Close-out Amount or Close-out Amounts, the Determining Party will:—

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

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

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because Automatic Early Termination applies in respect of a party, the Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Adjustment for Illegality or Force Majeure Event.* The failure by a party or any Credit Support Provider of such party to pay, when due, any Early Termination Amount will not constitute an Event of Default under Section 5 (a)(i) or 5 (a)(iii)(1) if such failure is due to the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event. Such amount will (1) accrue interest and otherwise be treated as an Unpaid Amount owing to the other party if subsequently an Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions and  
(2) otherwise accrue interest in accordance with Section 9(h)(ii)(2).

(v) *Pre-Estimate.* The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks, and, except as otherwise provided in this Agreement, neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions.

(f) *Set-Off.* Any Early Termination Amount payable to one party (the "Payee") by the other party (the "Payer"), in circumstances where there is a Defaulting Party or where there is one Affected Party in the case where either a Credit Event Upon Merger has occurred or any other Termination Event in respect of which all outstanding Transactions are Affected Transactions has occurred, will, at the option of the Non-defaulting Party or the Nonaffected Party, as the case may be ("X") (and without prior notice to the Defaulting Party or the Affected Party, as the case may be), be reduced by its set-off against any other amounts ("Other Amounts") payable by the Payee to the Payer (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party of any set-off effected under this Section 6(f).

For this purpose, either the Early Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

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

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

## **7. Transfer**

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

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

(b) a party may make such a transfer of all or any part of its interest in any Early Termination Amount payable to it by a Defaulting Party, together with any amounts payable on or with respect to that interest and any other rights associated with that interest pursuant to Sections 8, 9(h) and 11.

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

## **8. Contractual Currency**

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

(b) **Judgments.** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in clause (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purpose of such judgment or order and the rate of exchange at which such party is able, acting in good faith and using

commercially reasonable procedures in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party.

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

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

## 9. Miscellaneous

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

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

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

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

(e) **Counterparts and Confirmations.**

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

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

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

(g) **Headings.** 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.



(h) **Interest and Compensation.**

(i) **Prior to Early Termination.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction:—

(1) **Interest on Defaulted Payments.** If a party defaults in the performance of any payment obligation, it will, to the extent permitted by applicable law and subject to Section 6(c), pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (3)(B) or (C) below), at the Default Rate.

(2) **Compensation for Defaulted Deliveries.** If a party defaults in the performance of any obligation required to be settled by delivery, it will on demand (A) compensate the other party to the extent provided for in the relevant Confirmation or elsewhere in this Agreement and (B) unless otherwise provided in the relevant Confirmation or elsewhere in this Agreement, to the extent permitted by applicable law and subject to Section 6(c), pay to the other party interest (before as well as after judgment) on an amount equal to the fair market value of that which was required to be delivered in the same currency as that amount, for the period from (and including) the originally scheduled date for delivery to (but excluding) the date of actual delivery (and excluding any period in respect of which interest or compensation in respect of that amount is due pursuant to clause (4) below), at the Default Rate. The fair market value of any obligation referred to above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party that was entitled to take delivery.

(3) **Interest on Deferred Payments.** If:—

(A) a party does not pay any amount that, but for Section 2(a)(iii), would have been payable, it will, to the extent permitted by applicable law and subject to Section 6(c) and clauses (B) and (C) below, pay interest (before as well as after judgment) on that amount to the other party on demand (after such amount becomes payable) in the same currency as that amount, for the period from (and including) the date the amount would, but for Section 2(a)(iii), have been payable to (but excluding) the date the amount actually becomes payable, at the Applicable Deferral Rate;

(B) a payment is deferred pursuant to Section 5(d), the party which would otherwise have been required to make that payment will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the amount of the deferred payment to the other party on demand (after such amount becomes payable) in the same currency as the deferred payment, for the period from (and including) the date the amount would, but for Section 5(d), have been payable to (but excluding) the earlier of the date the payment is no longer deferred pursuant to Section 5(d) and the date during the deferral period upon which an Event of Default or Potential Event of Default with respect to that party occurs, at the Applicable Deferral Rate; or

(C) a party fails to make any payment due to the occurrence of an Illegality or a Force Majeure Event (after giving effect to any deferral period contemplated by clause (B) above), it will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as the event or circumstance giving rise to that Illegality or Force Majeure Event

continues and no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the date the party fails to make the payment due to the occurrence of the relevant Illegality or Force Majeure Event (or, if later, the date the payment is no longer deferred pursuant to Section 5(d)) to (but excluding) the earlier of the date the event or circumstance giving rise to that Illegality or Force Majeure Event ceases to exist and the date during the period upon which an Event of Default or Potential Event of Default with respect to that party occurs (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (B) above), at the Applicable Deferral Rate.

(4) *Compensation for Deferred Deliveries.* If:—

(A) a party does not perform any obligation that, but for Section 2(a)(iii), would have been required to be settled by delivery;

(B) a delivery is deferred pursuant to Section 5(d); or

(C) a party fails to make a delivery due to the occurrence of an Illegality or a Force Majeure Event at a time when any applicable Waiting Period has expired,

the party required (or that would otherwise have been required) to make the delivery will, to the extent permitted by applicable law and subject to Section 6(c), compensate and pay interest to the other party on demand (after, in the case of clauses (A) and (B) above, such delivery is required) if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

(ii) *Early Termination.* Upon the occurrence or effective designation of an Early Termination Date in respect of a Transaction:—

(1) *Unpaid Amounts.* For the purpose of determining an Unpaid Amount in respect of the relevant Transaction, and to the extent permitted by applicable law, interest will accrue on the amount of any payment obligation or the amount equal to the fair market value of any obligation required to be settled by delivery included in such determination in the same currency as that amount, for the period from (and including) the date the relevant obligation was (or would have been but for Section 2(a)(iii) or 5(d)) required to have been performed to (but excluding) the relevant Early Termination Date, at the Applicable Close-out Rate.

(2) *Interest on Early Termination Amounts.* If an Early Termination Amount is due in respect of such Early Termination Date, that amount will, to the extent permitted by applicable law, be paid together with interest (before as well as after judgment) on that amount in the Termination Currency, for the period from (and including) such Early Termination Date to (but excluding) the date the amount is paid, at the Applicable Close-out Rate.

(iii) *Interest Calculation.* Any interest pursuant to this Section 9(h) will be calculated on the basis of daily compounding and the actual number of days elapsed.

## 10. Offices; Multibranch Parties

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

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

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

## 11. Expenses

A Defaulting Party will on demand indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, execution fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

## 12. Notices

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

- (i) if in writing and delivered in person or by courier, on the date it is delivered;
- (ii) if sent by telex, on the date the recipient's answerback is received;
- (iii) 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);
- (iv) 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;
- (v) if sent by electronic messaging system, on the date it is received; or

- (vi) if sent by e-mail, on the date it is delivered,

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

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

### 13. Governing Law and Jurisdiction

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

- (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 irrevocably:—

- (i) submits:—

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

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

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

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

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

#### 14. Definitions

As used in this Agreement:—

**“Additional Representation”** has the meaning specified in Section 3. **“Additional**

**Termination Event”** has the meaning specified in Section 5(b). **“Affected Party”**

has the meaning specified in Section 5(b).

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

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

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

**“Applicable Close-out Rate”** means:—

- (a) in respect of the determination of an Unpaid Amount:—
  - (i) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;
  - (ii) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate;
  - (iii) in respect of obligations deferred pursuant to Section 5(d), if there is no Defaulting Party and for so long as the deferral period continues, the Applicable Deferral Rate; and
  - (iv) in all other cases following the occurrence of a Termination Event (except where interest accrues pursuant to clause (iii) above), the Applicable Deferral Rate; and
- (b) in respect of an Early Termination Amount:—
  - (i) for the period from (and including) the relevant Early Termination Date to (but excluding) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable:—
    - (1) if the Early Termination Amount is payable by a Defaulting Party, the Default Rate;
    - (2) if the Early Termination Amount is payable by a Non-defaulting Party, the Non-default Rate; and
    - (3) in all other cases, the Applicable Deferral Rate; and

(ii) for the period from (and including) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable to (but excluding) the date of actual payment:—

(1) if a party fails to pay the Early Termination Amount due to the occurrence of an event or circumstance which would, if it occurred with respect to a payment or delivery under a Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and for so long as the Early Termination Amount remains unpaid due to the continuing existence of such event or circumstance, the Applicable Deferral Rate;

(2) if the Early Termination Amount is payable by a Defaulting Party (but excluding any period in respect of which clause (1) above applies), the Default Rate;

(3) if the Early Termination Amount is payable by a Non-defaulting Party (but excluding any period in respect of which clause (1) above applies), the Non-default Rate; and

(4) in all other cases, the Termination Rate.

**“Applicable Deferral Rate”** means:—

(a) for the purpose of Section 9(h)(i)(3)(A), the rate certified by the relevant payer to be a rate offered to the payer by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market;

(b) for purposes of Section 9(h)(i)(3)(B) and clause (a)(iii) of the definition of Applicable Close-out Rate, the rate certified by the relevant payer to be a rate offered to prime banks by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer after consultation with the other party, if practicable, for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market; and

(c) for purposes of Section 9(h)(i)(3)(C) and clauses (a)(iv), (b)(i)(3) and (b)(ii)(1) of the definition of Applicable Close-out Rate, a rate equal to the arithmetic mean of the rate determined pursuant to clause (a) above and a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount.

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

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

**“Change in Tax Law”** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs after the parties enter into the relevant Transaction.

**“Close-out Amount”** means, with respect to each Terminated Transaction or each group of Terminated Transactions and a Determining Party, the amount of the losses or costs of the Determining Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Determining Party that are or would be realised under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Determining Party the economic equivalent of, (a) the material terms of that Terminated Transaction or group of Terminated Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of that Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in

Section 2(a)(iii) and (b) the option rights of the parties in respect of that Terminated Transaction or group of Terminated Transactions.

Any Close-out Amount will be determined by the Determining Party (or its agent), which will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. The Determining Party may determine a Close-out Amount for any group of Terminated Transactions or any individual Terminated Transaction but, in the aggregate, for not less than all Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

Unpaid Amounts in respect of a Terminated Transaction or group of Terminated Transactions and legal fees and out of-pocket expenses referred to in Section 11 are to be excluded in all determinations of Close-out Amounts.

In determining a Close-out Amount, the Determining Party may consider any relevant information, including, without limitation, one or more of the following types of information:—

(i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;

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

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

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

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

Commercially reasonable procedures used in determining a Close-out Amount may include the following:—

(1) application to relevant market data from third parties pursuant to clause (ii) above or information from internal sources pursuant to clause (iii) above of pricing or other valuation models that are, at the time of the determination of the Close-out Amount, used by the Determining Party in the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the Terminated Transaction or group of Terminated Transactions; and

(2) application of different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.

**“Confirmation”** has the meaning specified in the preamble.

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

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

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

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

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

**“Credit Support Provider”** has the meaning specified in the Schedule.

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

**“Default Rate”** means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

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

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

**“Determining Party”** means the party determining a Close-out Amount.

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

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

**“electronic messages”** does not include e-mails but does include documents expressed in markup languages, and

**“electronic messaging system”** will be construed accordingly.

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

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

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

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

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



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

**"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) in relation to any obligation under Section 2(a)(i), a General Business Day in the place or places specified in the relevant Confirmation and a day on which a relevant settlement system is open or operating as specified in the relevant Confirmation or, if a place or a settlement system is not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) for the purpose of determining when a Waiting Period expires, a General Business Day in the place where the event or circumstance that constitutes or gives rise to the Illegality or Force Majeure Event, as the case may be, occurs, (c) in relation to any other payment, a General Business Day in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment and, if that currency does not have a single recognised principal financial centre, a day on which the settlement system necessary to accomplish such payment is open, (d) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), a General Business Day (or a day that would have been a General Business Day but for the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event) in the place specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (e) in relation to Section 5(a)(v)(2), a General Business Day in the relevant locations for performance with respect to such Specified Transaction.

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

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

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

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

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

**"Non-default Rate"** means the rate certified by the Non-defaulting Party to be a rate offered to the Non-defaulting Party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the Non-defaulting Party for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market.

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

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

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

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

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

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

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

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

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

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

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

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

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

**"Specified Indebtedness"** means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

**"Specified Transaction"** means, subject to the Schedule, (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is not a Transaction under this Agreement but (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

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

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

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

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

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

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

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

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

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

**"Termination Rate"** means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

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

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

**"Unpaid Amounts"** owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii) or due but for Section 5(d)) to such party under Section 2(a)(i) or 2(d)(i)(4) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date, (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii) or 5 (d)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered and (c) if the Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions, any Early Termination Amount due prior to such Early Termination Date and which remains unpaid as of such Early Termination Date, in each case together with any amount of interest accrued or other

compensation in respect of that obligation or deferred obligation, as the case may be, pursuant to Section 9(h)(ii)(1) or (2), as appropriate. The fair market value of any obligation referred to in clause (b) above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it will be the average of the Termination Currency Equivalents of the fair market values so determined by both parties.

**“Waiting Period”** means:—

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

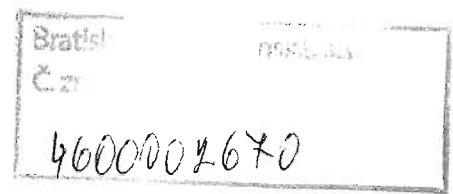
(b) in respect of an event or circumstance under Section 5(b)(ii), other than in the case of Section 5(b)(ii)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of eight Local Business Days (or days that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

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

<b>MITSUI BUSSAN COMMODITIES (FRANCE) SA</b>		<b>Bratislavská teplárenská, a.s.</b>
<i>Party A</i>		<i>Party B 1/1</i>
By:		By:
Name: Masato Ishikawa		Name: <i>DUSAN BANDUSKA</i>
Title: Managing Director		Title: <i>CHAIRMAN OF THE BOARD</i>
Date: 10/15/2021		Date: <i>10/15/2021</i>
		By:
		Name: <i>MIROSLAVA CALFOVA</i>
		Title: <i>MEMBER OF THE BOARD</i>
		Date: <i>10/18/2021</i>







**SCHEDULE  
to the  
2002 Master Agreement**

dated as of 15.10.2021

between

**Mitsui Bussan Commodities (France) SA** and  
("Party A")

incorporated as a *société anonyme* under the laws of France, with registration number 852 297 878 (R.C.S. Paris) licensed as an investment firm (*entreprise d'investissement*) in France and regulated by the *Autorité de Contrôle Prudentiel et de Résolution*

**Bratislavská teplárenská, a.s.**  
("Party B")

established as a joint stock company under the laws of the Slovak Republic, with company identification number 35 823 542, company register of District court Bratislava I, section Sa, number 2851/B

**Part 1. Termination Provisions.**

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

Section 5(a)(v), none;

Section 5(a)(vi), none;

Section 5(a)(vii), none;

Section 5(b)(v), none;

and in relation to Party B for the purpose of:-

Section 5(a)(v), none;

Section 5(a)(vi), none;

Section 5(a)(vii), none;

Section 5(b)(v), none.

(b) "**Specified Transaction**" will have the meaning specified in Section 14 of this Agreement.

(c) The "**Cross-Default**" provisions of Section 5(a)(vi) will apply to Party A and will apply to Party B.

If such provisions apply:-

"**Specified Indebtedness**" shall have the meaning specified in Section 14.

"**Threshold Amount**" means, in the case of Party A, an amount equal to three percent (3%) of the Shareholders' Equity of Mitsui & Co., Ltd and, in the case of Party B, an amount equal to three percent (3%) of its Shareholders' Equity or in either case, its equivalent in any other currency or currencies.

**"Shareholders' Equity"** means with respect to an entity, at any time, the sum (as shown in the most recent annual audited financial statements of such entity) of (i) its capital stock (including preferred stock), taken at par value, (ii) its capital surplus and (iii) its retained earnings, minus (iv) treasury stock, each to be determined in accordance with generally accepted accounting principles.

- (d) The **"Credit Event Upon Merger"** provisions of Section 5(b)(v) will apply to Party A and will apply to Party B.
- (e) The **"Automatic Early Termination"** provision of Section 6(a) will not apply to Party A and will not apply to Party B.
- (f) **"Termination Currency"** means Euro.
- (g) **Additional Termination Event** will apply with respect to Party B, as follows:

(1) **Minimum Net Tangible Assets.** Party B's Net Tangible Assets fall below EUR 35 million (35 million euros). "Net Tangible Assets" means the sum of all paid up shareholder cash contributions to the share capital account or any other capital account of Party B ascribed for such purposes by Party B and any accumulated earning less any accumulated retained losses and intangible assets including, but not limited to goodwill.

(2) **Ownership Maintenance/ Change of Control** With respect to Party B, at any time and for any reason, MH Manažment, A.S ceases to own beneficially and of record (directly or indirectly) at least one hundred percent (100%) (determined on a fully diluted basis) of the capital stock of each class of Party B.

For the purpose of the foregoing Additional Termination Events, Party B shall be the Affected Party and all Transactions shall be Affected Transactions.

## Part 2. Tax Representations.

- (a) **Payer Representations.** For the purpose of Section 3(e) of this Agreement, Party A and Party B will each make the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 9(h) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of this Agreement, except that it will not be a breach of this representation where reliance is placed on clause (ii) above and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

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



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

For the purpose of Sections 4(a)(i) and 4(a)(ii) of this Agreement, each party agrees to deliver the following documents, as applicable. Each document to be delivered hereunder shall be in English or accompanied by an English translation thereof certified as accurate by an officer of the respective party:-

(a) Tax forms, documents or certificates to be delivered are: None.

(b) Other documents to be delivered are:-

<b>Party required to deliver document</b>	<b>Form/Document/Certificate</b>	<b>Date by which to be delivered</b>	<b>Covered by Section 3(d) Representation</b>
Party A and Party B	Appropriate evidence of the authority and true signatures of each person signing this Agreement, each Credit Support Document and each Confirmation on its behalf.	On signing of this Agreement and, if requested, on signing of each Credit Support Document and each Confirmation.	Yes
Party A	A copy of the most recent annual report of Party A, containing annual, audited, consolidated financial statements for its fiscal year certified by independent certified accountants and prepared in accordance with accounting principles that are generally accepted in the country in which it is organised.	On signing of this Agreement and, thereafter, where such financial statement is not reasonably publicly available on Party A's Credit Support Provider's internet homepage, promptly upon reasonable request.	No
Party A	<i>Statuts Constitutifs and Extrait Kbis.</i>	On signing of this Agreement.	Yes
Party B	A copy of the most recent annual report of Party B containing annual, audited, consolidated financial statements for its fiscal year certified by independent certified accountants and prepared in accordance with accounting principles that are generally accepted in the country in which it is organised.	On signing of this Agreement and, thereafter, where such financial statement is not reasonably publicly available on Party B's internet homepage, promptly upon reasonable request.	No

<b>Party required to deliver document</b>	<b>Form/Document/Certificate</b>	<b>Date by which to be delivered</b>	<b>Covered by Section 3(d) Representation</b>
Party B	Certified copy of resolution of the Board of Directors of Party B authorising the execution and delivery of this Agreement and each Confirmation and performance of its obligations hereunder.	Within 30 days of the signing of this Agreement.	Yes

**Part 4. Miscellaneous.**

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

Address for notices or communications to Party A:-

Address: Mitsui Bussan Commodities (France) SA  
112, avenue Kléber, 75116 Paris, France

Attention: Managing Director

Telephone No. (main switchboard):

Email:

Address for notices or communications to Party B:-

Address: Bratislavská teplárenská, a.s  
Turbínová 3, 829 05 Bratislava – Nové Mesto,  
Slovakia

Attention:

Telephone No.:

E-mail:

(b) **Process Agent.** For the purpose of Section 13(c) of this Agreement:-

Party A appoints as its Process Agent: Mitsui Bussan Commodities Ltd, 6<sup>th</sup> Floor, 1 St Martin's Le Grand, London EC1A 4BB, England

Party B appoints as its Process Agent: Party B does not appoint a Process Agent. In any case where Party A intends to commence court proceedings against Party B, Party B expressly and irrevocably authorises Party A to appoint a Process Agent on behalf of Party B, at the expense of the Party B, if Party B does not appoint a Process Agent and notify Party A

of such appointment (providing necessary contact details) within two (2) Banking days after a request to appoint a Process Agent from Party A. This does not affect Party A's right to serve process in another manner permitted by law.

- (c) **Offices.** The provisions of Section 10(a) will apply to this Agreement.
- (d) **Multibranch Party.** For the purpose of Section 10(b) of this Agreement:  
  
Party A is not a Multibranch Party; and  
  
Party B is not a Multibranch Party.
- (e) **Calculation Agent.** The Calculation Agent is Party A.
- (f) **Credit Support Document.** Details of any Credit Support Document:-  
  
In respect of Party A: none.  
  
In respect of Party B: none
- (g) **Credit Support Provider.**  
  
"**Credit Support Provider**" means in relation to Party A, not applicable.  
  
"**Credit Support Provider**" means in relation to Party B, not applicable.
- (h) **Governing Law.** This Agreement (including Section 13(b) (Arbitration)) and any non-contractual obligations arising out of or in connection with it will be governed by and construed in accordance with English law.
- (i) Section 13(b) of this Agreement shall be deleted in its entirety and replaced with the following:  
  
“(b) **Arbitration.**
  - (i) Any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it (a “Dispute”), shall be referred to and finally resolved by arbitration.
  - (ii) The arbitration shall be conducted in accordance with the LCIA Arbitration Rules (the “Rules”). Capitalised terms used in this Section which are not otherwise defined in this Agreement have the meaning given to them in the Rules.
  - (iii) The Arbitral Tribunal shall consist of three arbitrators. The claimant shall nominate one arbitrator. The respondent shall nominate one arbitrator. The two persons so nominated shall, within 14 days of the second of them confirming to the LCIA that he or she is willing and able to accept appointment, nominate a third arbitrator who shall act as presiding arbitrator of the Arbitral Tribunal. If no such nomination is made within that time limit, then the LCIA Court shall select and appoint the presiding arbitrator of the Arbitral Tribunal.

- (iv) The seat, or legal place of arbitration, shall be London.
- (v) The language used in the arbitral proceedings shall be English.”
- (j) Section 13(c) of this Agreement is hereby amended by deleting the word “Proceedings” in the first sentence of that Section and replacing it with the words “suit, action or proceedings before the English courts relating to the arbitration clause or any arbitration proceedings contemplated thereby or any arbitral award obtained pursuant to such arbitration proceedings”.
- (k) Section 13(d) of this Agreement is hereby amended:
  - (a) after the words “jurisdiction of any court” in the third line thereof, by adding the words “or arbitral tribunal”;
  - (b) after the word “judgment” in Sub-Sections (iv) and (v) in the fifth line thereof, by adding the words “or arbitral award”; and
  - (c) by deleting the words “Proceedings in the courts of any jurisdiction” in the sixth line thereof and replacing them with “suit, action or proceedings relating to any Dispute in the courts of any jurisdiction or before any arbitral tribunal (“Proceedings”)”.
- (l) **Netting of Payments.** "Multiple Transaction Payment Netting" will apply for the purpose of Section 2(c) of this Agreement to all Transactions (in each case starting from the date of this Agreement).
- (m) "**Affiliate**" will have the meaning specified in Section 14 of this Agreement.
- (n) **Absence of Litigation.** For the purpose of Section 3(c) of this Agreement:-
  - "**Specified Entity**" means in relation to Party A: none.
  - "**Specified Entity**" means in relation to Party B: none.
- (o) **No Agency.** The provisions of Section 3(g) will apply to this Agreement.
- (p) **Additional Representation** will apply. For the purpose of Section 3 of this Agreement, the following will constitute an Additional Representation:-

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

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

- (2) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the financial and other risks of that Transaction.
  - (3) **Status of Parties.** The other party is not acting as a fiduciary or an adviser to it in respect of that Transaction.
  - (4) **Purpose.** Party B is entering into the Transaction for the purposes of hedging its assets or liabilities or in connection with a line of its business.
  - (5) **Authorisation and Performance.** The person executing any Confirmation governed by this Agreement is duly authorised to execute and deliver it.
- (q) **EMIR Representations of Party A and Party B.** For the purpose of Section 3 of this Agreement, the following will constitute Additional Representations of each of Party A and Party B, as indicated for the relevant party below. Each Additional Representation that a party makes will be made by each party at the time it enters into the Agreement (and shall be deemed to be repeated by such party on each date thereafter until this Agreement is terminated and all obligations thereunder have been fulfilled):-
- (1) Party A is a financial counterparty as defined in the European Markets Infrastructure Regulations (“EMIR”); and
  - (2) Party B is a non-financial counterparty that does not exceed the clearing threshold for any class of OTC derivative contracts, as defined in accordance with EMIR.
- (r) **Non-Canadian Party.** Party B represents (this representation is given at the time it enters into the Agreement and is deemed to be repeated by Party B on each date on which a Transaction is entered into) that neither Party B nor any of Party B’s affiliates that are responsible for Party B’s liabilities, have their head office or principal place of business in, or are organised under the laws of, any jurisdiction of Canada.
- (s) **Recording of Conversations.** Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any proceedings.

#### Part 5. Other Provisions.

- (a) **Confirmations.** On or promptly following the date on which the parties reach agreement on the terms of a Transaction, as contemplated by the first sentence of Section 9(e)(ii), Party A will send to Party B a Confirmation. Party B will promptly thereafter confirm the accuracy of (in the manner required by Section 9(e)(ii)), or request, in writing, the correction of, such Confirmation (in the later case, indicating how it believes the terms of such Confirmation should be correctly stated and such other terms which should be added to or deleted from such Confirmation to make it correct). If any disputes shall arise as to whether an error exists in a Confirmation, the parties shall resolve the dispute in good faith. If Party B has not accepted or disputed the Confirmation in the manner set forth above within one (1) Local

Business Day after it was received by Party B, the Confirmation shall be deemed binding as sent, absent manifest error.

- (b) **Contracts (Rights of Third Parties) Act 1999.** A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- (c) **Prior Transactions.** In the event that Party A and Party B have entered into swaps, options or similar transactions prior to the date of this Agreement ("Existing Transactions"), the parties hereby agree that these Existing Transactions shall for all purposes be Transactions hereunder and shall be subject to the terms of this Agreement unless otherwise specifically agreed in writing. To the extent that the terms herein conflict with the terms of the agreements governing the Existing Transactions, the terms of this Agreement shall apply.
- (d) **Consent to Disclosure.** Each party hereby agrees that any information in respect of, or relating to, this Agreement and any Transaction, to the extent that such information is not known to the public or disclosed to the public in the future by third parties (the "Information") is confidential and shall be treated as such, and that such party consents to the communication and disclosure by the other party of the Information to the other party's branches, subsidiaries, Affiliates, insurers and advisors and their respective employees, on a need-to-know basis for the purposes of performing this Agreement and the Transactions and to the extent required by law, any government or regulatory authority. This Agreement and any Confirmation could be published in the Central agreement register established under Slovak 211/2000 Freedom of Information Act.
- (e) **Tax.** The following shall be inserted as a new paragraph at the end of Section 2(d)(i) of the Agreement:

"If, following payment by X of any amount pursuant to sub-section 2(d)(i)(4) above an offsetting tax credit or other benefit is capable of being made available as a result of such payment, then Y undertakes to take all reasonable measures to obtain the same and to make payment to X such that X is no better and no worse position that it would have been had no deduction or withholding been required (but without any requirement to disclose any details of its tax affairs)."
- (f) For purposes of this Agreement Section 12(a) is amended as follows:
  - (i) The words "(except that a notice or other communication under Section 5 or 6 may not be given by electronic messaging system or email)" in Section 12(a) shall be deleted;
  - (ii) Section 12(a)(iii) shall be deleted and subparagraphs (iv) and (v) shall be renumbered as (iii) and (iv) respectively; and
  - (iii) Section 12(a)(vi) is deleted in its entirety and replaced with the following:

"Any email notice given in accordance with this provision shall be deemed to have been received by the recipient on delivery to the recipient's server provided no error message is received by the sender and the email is sent before 1700 hours (recipient's time) on a Local Business Day or otherwise on the next Local Business Day at 0900 hours (recipient's time)."
- (g) **2002 Master Agreement Protocol.** The provisions of the Annexes of the 2002 Master Agreement Protocol, as published by the International Swaps and Derivatives Association, Inc. on 15<sup>th</sup> July 2003 (the "2002 Protocol"), shall apply as if each party had adhered to the

2002 Protocol by executing and delivering to ISDA an Adherence Letter (as defined in the 2002 Protocol).

- (h) **ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol.** The provisions of the ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol (including the Attachment thereto), as published by the International Swaps and Derivatives Association, Inc. on 19<sup>th</sup> July 2013 (the “EMIR Protocol”), shall apply as if each party had adhered to the EMIR Protocol by executing and delivering to ISDA an Adherence Letter (as defined in the EMIR Protocol). The parties further agree to exchange the notices specified in Exhibit A to this Schedule.
- (i) **Article 55.** The terms of the ISDA 2016 Bail-in Article 55 BRRD Protocol (Dutch/French/German/Irish/Italian/Luxembourg/Spanish/UK entity-in-resolution version) (the “Protocol”) are incorporated into and form part of this Agreement. For the purposes of the Protocol, (i) this Agreement shall be deemed to be a Covered ISDA Master Agreement; (ii) each of Party A and Party B shall be deemed to be an Adhering Party; and (iii) the Implementation Date shall be the date of this Agreement. In the event of any inconsistencies between this Agreement and the Protocol, the Protocol will prevail.
- (j) **Resolution Stay.** The terms of the French Jurisdictional Module of the ISDA Resolution Stay Jurisdictional Modular Protocol (the “French Module”) are incorporated into and form part of this Agreement. For the purposes of the French Module, (i) this Agreement shall be deemed to be a Covered Agreement, and (ii) the Implementation Date shall be the date of this Agreement. In the event of any inconsistencies between this Agreement and the French Module, the French Module will prevail. Party A shall be deemed to have adhered to the French Module as a Regulated Entity, and Party B shall be deemed to have adhered to the French Module as a Module Adhering Party and to have identified Party A as a Regulated Entity Counterparty.
- (k) **ISDA Master Agreement Pre Printed Pages.** It is the intention of both parties that Sections 1 to 14 of the Master Agreement signed by the parties be on the same terms as the 2002 ISDA Master Agreement Copyright © 2002 by the International Swaps & Derivatives Association, Inc. (“ISDA”). In the event of any inconsistency between Sections 1 to 14 of the 2002 ISDA Master Agreement Copyright © 2002 by ISDA and the Master Agreement purporting to incorporate Sections 1 to 14 of this Agreement, Sections 1 to 14 of the 2002 ISDA Master Agreement Copyright © 2002 by ISDA, shall apply.
- (l) Section 8(b) shall be amended so that each reference in it to “judgment or order” shall be changed to refer to “judgment, arbitral award or order” and the words “or arbitral tribunal” shall be added after the words “another court”.
- (m) Section 8(c) shall be amended by adding the words “or arbitral award” after the word “judgment”.
- (n) Section 9(h) shall be amended by adding the words “or arbitral award” after the words “before as well as after judgment” each time they appear.
- (o) Section 12(a) is amended by deleting the words “or e-mail” will be deleted after the word “system” and before “)” in the third line.
- (p) Section 14 of the Agreement shall be amended by:
  - (i) adding the following definition of “Dispute”: ““Dispute” has the meaning specified in Section 13(b)(i).”; and

- (ii) in the definition of "Proceedings", deleting the words "Section 13(b)" and replacing them with the words "Section 13(d)".
- (q) **Additional Events of Default.** Section 5(a) of this Agreement is amended by adding the following additional Event of Default with respect to Party B only as a new Section 5(a)(ix):  
"ix) The failure by Party B to give Adequate Assurance of its ability to perform its obligations under the Agreement within two (2) Local Business Days of a written request to do so when Party A has reasonable grounds to believe that Party B's ability to perform its obligations under the Agreement is materially impaired.

For the purposes of this section, "*Adequate Assurance*" means cash on terms entitling Party A to set off its obligation to return such cash against any Early Termination Amount payable by Party B to Party A or a Letter of Credit, in either case for an amount and/or term reasonably acceptable to Party A."

## Part 6. Additional Provisions for Commodity Transactions

**Commodity Definitions.** The definitions and provisions included in the 2005 ISDA Commodity Definitions, including the Sub-Annexes thereto as elected below (as may be amended herein, and amended and supplemented from time to time) (the "Commodity Definitions") and the 2006 ISDA Definitions (together with the Commodity Definitions, the "Definitions") each as published by the International Swaps and Derivatives Association, Inc. ("ISDA") are incorporated by reference in, and made part of, this Agreement and each Confirmation as if set forth in full in this Agreement and such Confirmation with respect to any Transaction. In the event of any inconsistency between the 2006 ISDA Definitions and the Commodity Definitions with respect to such Transactions, the Commodity Definitions shall prevail. Subject to Section 1(b), in the event of any inconsistency between the provisions of any Confirmation, this Agreement, and the Definitions, such Confirmation will prevail for the purpose of the relevant Transaction.

- Sub-Annex A Terms relating to Commodity Reference Prices.  
 Sub-Annex B Bullion Transactions.  
 Sub-Annex H EU Emissions Allowance Transactions (as specified in Part 7 of this Schedule).

## Part 7. EU Emissions Allowance Transactions

### (a) Scope

The provisions of this Part 7 apply solely in respect of Transactions that (i) are identified in the related Confirmation as EU Emissions Allowance Transactions or as otherwise being subject to the terms of this Part 7 and (ii) specify in the related Confirmation the Fourth Compliance Period as the applicable "Specified Compliance Period" (each such Transaction, an "EU Emissions Allowance Transaction").

### (b) ISDA Definitions

The definitions and provisions contained in the 2006 ISDA Definitions, as published by the International Swaps and Derivatives Association, Inc. (the "2006 ISDA Definitions"), are incorporated into this Part 7. In the event of any inconsistency between those definitions and provisions and this Part 7, this Part 7 will govern.

### (c) Multiple Delivery Dates



If the Confirmation for an EU Emissions Allowance Transaction specifies more than one Delivery Date and, in respect of each such Delivery Date:

- (i) a Payment Date;
- (ii) an Allowance Purchase Price;
- (iii) the Allowance Type (and Specified Compliance Period); and
- (iv) the Number of Allowances,

is specified in, or is otherwise capable of being determined as provided in that Confirmation then, for the purposes of this Part 7 only the relevant EU Emissions Allowance Transaction shall be deemed to consist of a number of EU Emissions Allowance Transactions: each one corresponding with one of the specified Delivery Dates, and having the Payment Date, Allowance Price, Allowance Type (and Specified Compliance Period) and Number of Allowances specified or otherwise determined as provided in that Confirmation in respect of that Delivery Date.

**(d) Terms**

In respect of each EU Emissions Allowance Transaction:

**(i) Physical Settlement**

**(1) Settlement**

- (A) For purposes of an Allowance Forward Transaction, on the Payment Date, Buyer shall pay to Seller an amount equal to the Allowance Purchase Price multiplied by the Number of Allowances and on the Delivery Date Seller shall deliver to Buyer the Allowances to be Delivered and Buyer shall accept the Allowances to be Delivered, subject to and in accordance with the terms and conditions of this Agreement and the related Confirmation.
- (B) For purposes of an Allowance Option Transaction, in respect of each Exercise Date, on the relevant Payment Date Receiving Party shall pay to Delivering Party an amount equal to the Allowance Strike Price multiplied by the number of Allowances to be Delivered and on the relevant Delivery Date Delivering Party shall deliver to Receiving Party the Allowances to be Delivered, and Receiving Party shall accept the Allowances to be Delivered, subject to and in accordance with the terms and conditions of this Agreement and the related Confirmation.

**(2) Delivery**

- (A) Any obligation of Delivering Party to deliver Allowances pursuant to an EU Emissions Allowance Transaction shall be discharged by the completed transfer of those Allowances from a Holding Account of Delivering Party under and in accordance with the Scheme. A transfer of Allowances shall be considered to be completed for the purpose of a delivery obligation pursuant to an EU Emissions Allowance Transaction when the relevant Allowances are received at

the relevant Specified Holding Account of Receiving Party, whereupon risk of loss related to the Allowances or any portion thereof transfers from Delivering Party to Receiving Party.

- (B) Notwithstanding Part 7(d)(i)(2)(A) above, if Delivering Party has one or more Specified Holding Accounts for the relevant EU Emissions Allowance Transaction, Delivering Party's obligation to deliver Allowances under an EU Emissions Allowance Transaction shall be limited to an obligation to deliver from any such Specified Holding Account of Delivering Party to the relevant Specified Holding Account of Receiving Party.
- (C) Where Receiving Party has more than one Specified Holding Account in respect of an EU Emissions Allowance Transaction, such Specified Holding Accounts are set out in order of preference. Delivering Party shall deliver the Allowances to be Delivered to the first listed Specified Holding Account of Receiving Party on the Delivery Date unless, in respect of such Receiving Party's Specified Holding Account, it is prevented from so doing by an event or circumstance that would be a Settlement Disruption Event or a Suspension Event if the first listed Specified Holding Account of Receiving Party were the only Specified Holding Account so listed. In such circumstances, the provisions of this paragraph will apply iteratively to the next listed Receiving Party's Specified Holding Account (if any).
- (D) If a transfer of Allowances is completed after 4:00 p.m., Central European Time, on a Delivery Business Day or at any time on any day other than a Delivery Business Day, then those Allowances will be deemed to have been delivered at 10:00 a.m., Central European Time, on the next following Delivery Business Day. If a transfer of Allowances is completed before 10:00 a.m., Central European Time, on a Delivery Business Day, then those Allowances will be deemed to have been delivered at 10:00 a.m., Central European Time, on that day.

**(3) Netting**

If on any date Allowances of the same Allowance Type and Specified Compliance Period would otherwise be deliverable in respect of two or more EU Emissions Allowance Transactions by each party to the other and, if applicable, between the same pair of Holding Accounts of the parties, then, on such date, each party's obligation to make delivery of any such Allowances will be automatically satisfied and discharged and, if the aggregate amount of Allowances that would otherwise have been deliverable by one party exceeds the aggregate amount of Allowances that would otherwise have been deliverable by the other party, replaced by an obligation upon the party by which the larger aggregate amount would have been deliverable to deliver to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

**(4) Settlement Disruption Event**

**(A) Notification of Settlement Disruption Event**

Upon the occurrence of a Settlement Disruption Event, either party may notify the other party in writing of the commencement of the Settlement Disruption Event and the EU Emissions Allowance Transaction(s) affected by that Settlement Disruption Event. Where the notification is from the party affected by the Settlement Disruption Event, to the extent available to such party, it shall also provide details of the Settlement Disruption Event and a non-binding estimate of the extent and the expected duration of its inability to perform its obligations due to the Settlement Disruption Event.

**(B) Effect of Settlement Disruption Event**

If a Settlement Disruption Event occurs, the obligations of both parties which would otherwise be required to be performed with respect to the EU Emissions Allowance Transaction(s) affected by the Settlement Disruption Event will be suspended for the duration of the Settlement Disruption Event and, subject to Part 7(d)(i)(4)(D) (*Continuing Settlement Disruption Event*) below, will not be required to be performed until the Settlement Disruption Event is overcome or ceases to exist. During the continuation of the Settlement Disruption Event, the party affected by the Settlement Disruption Event shall continue to use all reasonable endeavours to overcome the Settlement Disruption Event.

**(C) Settlement Disruption Event Delayed Performance**

Subject to Part 7(d)(i)(4)(D) (*Continuing Settlement Disruption Event*) below, upon the Settlement Disruption Event being overcome or ceasing to subsist, both parties will be required, as soon as reasonably practicable but not later than the second Delivery Business Day following the date upon which the Settlement Disruption Event has been overcome or ceases to exist, to resume full performance of their obligations under this Agreement in respect of the relevant EU Emissions Allowance Transaction(s) (including, for the avoidance of doubt, any suspended obligations).

**(D) Continuing Settlement Disruption Event**

In respect of an EU Emissions Allowance Transaction affected by a Settlement Disruption Event, where the Settlement Disruption Event continues:

- (I) during the period ending 9 Delivery Business Days after the original date that, but for the Settlement Disruption Event, would have been the Delivery Date for an EU Emissions Allowance Transaction; or
- (II) if such 9 Delivery Business Day period would end after the Reconciliation Deadline on or immediately following the original date that, but for the Settlement Disruption Event, would have been the Delivery Date for an EU Emissions Allowance Transaction, during the period ending on that Reconciliation Deadline; or

- (III) if such 9 Delivery Business Day period would end after the day that is 3 Delivery Business Days preceding the End of Phase Reconciliation Deadline on or immediately following the original date that, but for the Settlement Disruption Event, would have been the Delivery Date for an EU Emissions Allowance Transaction, during the period ending on the day that is 3 Delivery Business Days preceding that End of Phase Reconciliation Deadline,

then on that 9<sup>th</sup> Delivery Business Day, Reconciliation Deadline or day that is 3 Delivery Business Days preceding the End of Phase Reconciliation Deadline (as the case may be), an Illegality shall be deemed to have occurred in respect of which the relevant EU Emissions Allowance Transaction is the sole Affected Transaction, both parties are Affected Parties, no Waiting Period will apply and, if an Early Termination Date results from that Termination Event, then, for purposes of determining any amount payable under Section 6(e) in respect of that Early Termination Date: (i) if "Payment on Termination for Settlement Disruption" is specified to be applicable in the Annex to this Part 7 or the Confirmation for the relevant EU Emissions Allowance Transaction, it will be deemed that the requirement to perform the suspended obligations resumed on the Early Termination Date; or (ii) if "Payment on Termination for Settlement Disruption" is specified to be inapplicable in the Annex to this Part 7 or the Confirmation for the relevant EU Emissions Allowance Transaction, it will be deemed that the parties had no further delivery or payment obligations in respect of the EU Emissions Allowance Transaction after the occurrence of the Settlement Disruption Event (other than in respect of any payment due by one party in connection with delivery obligations already performed by the other party); provided, however, that (i) Delivering Party shall promptly refund to Receiving Party any amount that may have been paid by Receiving Party in respect of the EU Emissions Allowance Transaction that is an Allowance Forward Transaction or a Call and (ii) Receiving Party shall promptly refund to Delivering Party any amount that may have been paid by Delivering Party in respect of an EU Emissions Allowance Transaction that is a Put (in each case, other than in respect of delivered Allowances) together with interest on that amount in the same currency as that amount for the period from (and including) the date that amount was paid to (but excluding) the date of termination of such EU Emissions Allowance Transaction, at the rate certified by the party required to refund the amount to be a rate offered to such party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by that party for purposes of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in the relevant market.

**(5) Suspension Event**

**(A) Notification of Suspension Event**

Upon the occurrence of a Suspension Event, the party affected by the Suspension Event shall, as soon as reasonably practicable, notify the other party in writing of the commencement of the Suspension Event. To the extent available to the party affected by the Suspension Event, it shall also provide details of the Suspension Event including a non-binding estimate of the duration of its inability to perform its obligations due to the Suspension Event.

**(B) Effect of Suspension Event**

Where a Suspension Event occurs, the obligations of both parties which would otherwise be required to be performed with respect to the EU Emissions Allowance Transaction(s) affected by the Suspension Event will be suspended for the duration of the Suspension Event and, subject to Part 7(d)(i)(5)(D)(*Continuing Suspension Event*) below, will not be required to be performed until the Suspension Event ceases to exist.

**(C) Suspension Event Delayed Performance**

Subject to Part 7(d)(i)(5)(D)(*Continuing Suspension Event*) below, upon the Suspension Event ceasing to exist, both parties will be required to resume full performance of their obligations under this Agreement in respect of the relevant EU Emissions Allowance Transaction (including, for the avoidance of doubt, any suspended obligations) as soon as possible but no later than the day that is the earlier of: (i) the tenth Delivery Business Day following the date on which the Suspension Event ceases to exist; and (ii) 3 Delivery Business Days prior to the End of Phase Reconciliation Deadline (the "**Delayed Delivery Date**").

In the event that the Allowances to be Delivered are delivered to Receiving Party on or before the Delayed Delivery Date following the occurrence of a Suspension Event as contemplated by Part 7(d)(i)(5)(B)(*Effect of a Suspension Event*) above, Receiving Party agrees to pay Delivering Party on the Delayed Payment Date:

- (I) for the purposes of an Allowance Forward Transaction, an amount equal to the sum of: (X) Allowance Purchase Price multiplied by the Number of Allowances delivered on or before the relevant Delayed Delivery Date; and (Y) the Cost of Carry Amount; or
- (II) for the purposes of an Allowance Option Transaction, an amount equal to the sum of: (X) the Allowance Strike Price multiplied by the Number of Allowances delivered on or before the relevant Delayed Delivery Date; and (Y) the Cost of Carry Amount.

For the avoidance of doubt, the Cost of Carry Amount shall be identified in the relevant VAT Invoice sent to Receiving Party.

**(D) Continuing Suspension Event**

Where: (I) a Suspension Event continues to exist on the Long-Stop Date, then an Illegality shall be deemed to have occurred in respect of which the relevant EU Emissions Allowance Transaction is the sole Affected Transaction, both parties are Affected Parties and no Waiting Period will apply. The parties agree that the Long-Stop Date will be the Early Termination Date for the purposes of the relevant EU Emissions Allowance Transaction. For purposes of determining any amount payable under Section 6(e) in respect of that Early Termination Date, it will be deemed that the parties had no further delivery or payment obligations in respect of the EU Emissions Allowance Transaction after the occurrence of the Suspension Event (other than in respect of any payment due by one party in connection with delivery obligations already performed by the other party); provided, however, that (i) Delivering Party shall promptly refund to Receiving Party any amount that may have been paid by Receiving Party in respect of the EU Emissions Allowance Transaction that is an Allowance Forward Transaction or a Call and (ii) Receiving Party shall promptly refund to Delivering Party any amount that may have been paid by Delivering Party in respect of an EU Emissions Allowance Transaction that is a Put (in each case, other than in respect of delivered Allowances) together with interest on that amount in the same currency as that amount for the period from (and including) the date that amount was paid to (but excluding) the date of termination of such EU Emissions Allowance Transaction, at the rate certified by the party required to refund the amount to be a rate offered to such party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by that party for purposes of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in the relevant market.

**(ii) Failure to Deliver**

If Delivering Party fails to deliver the Allowances to be Delivered on the Delivery Date, such failure shall not constitute an Event of Default (as defined in the Agreement) in respect of Delivering Party, but the following provisions shall apply.

**(1) Failure to Deliver by Delivering Party**

If the failure to deliver occurs other than as a result of the failure of Receiving Party to comply with the Requirements under the Scheme as specified below, the existence of an Illegality, the existence of a Settlement Disruption Event, the existence of a Suspension Event or an abandonment of the Scheme as described in Part 7(d)(iv)(1), the Payment Date will be postponed and Receiving Party may, by notice to Delivering Party, require Delivering Party to remedy such failure, and the following provisions shall apply.

**(A) Failure to Deliver Remedied**

If Delivering Party delivers the Allowances to be Delivered on or before the Final Delivery Date:

- (X) in respect of an Allowance Forward Transaction, Receiving Party shall pay to Delivering Party on the Payment Date an amount equal to the Allowance Purchase Price multiplied by the Number of Allowances and, in respect of an Allowance Option Transaction, Receiving Party shall pay to Delivering Party on the Payment Date an amount equal to the Allowance Strike Price multiplied by the number of Allowances to be Delivered (and, in each case, for purposes of determining the Payment Date, the date of actual delivery shall be deemed to be the Delivery Date); and
- (Y) Delivering Party shall pay to Receiving Party on the Payment Date (determined in accordance with Part 7(d)(ii)(1)(A)(X) above) interest on an amount equal to the number of Allowances that were required to be delivered on the Delivery Date (but which were not delivered on such date) multiplied by either the Allowance Purchase Price (in respect of an Allowance Forward Transaction) or the Allowance Strike Price (in respect of an Allowance Option Transaction) for the period from (and including) the original Delivery Date to (but excluding) the date of actual delivery at the Default Rate.

**(B) Failure to Deliver Not Remedied**

If the failure is not remedied on or before the Final Delivery Date:

- (X) if "Excess Emissions Penalty" is specified not to be applicable in the Annex to this Part 7 or the Confirmation for the relevant EU Emissions Allowance Transaction, or if "Excess Emissions Penalty" is specified to be applicable in the Annex to this Part 7 or the Confirmation for the relevant EU Emissions Allowance Transaction and an EEP Risk Period is specified in that Confirmation but the Delivery Date does not fall within that EEP Risk Period, Receiving Party may, by written notice to Delivering Party, terminate the parties' obligations under "Physical Settlement" above and Delivering Party shall pay to Receiving Party an amount determined in accordance with paragraph (1) of Receiving Party's Replacement Cost (if a positive number) on the first succeeding Business Day, adjusted to take into account any amount previously paid (which, for the avoidance of doubt, shall not include any Premium paid by the Buyer in respect of an Allowance Option Transaction) by Receiving Party to Delivering Party in respect of the relevant EU Emissions Allowance Transaction; or

- (Y) if "Excess Emissions Penalty" is specified to be applicable in the Annex to this Part 7 or the Confirmation for the relevant EU Emissions Allowance Transaction and, if an EEP Risk Period is specified in the Confirmation for the relevant EU Emissions Allowance Transaction, the Delivery Date falls within that EEP Risk Period for the relevant EU Emissions Allowance Transaction, Receiving Party may, by written notice to Delivering Party, terminate the parties' obligations under "Physical Settlement" above and Delivering Party shall pay to Receiving Party an amount determined in accordance with paragraph (2) of Receiving Party's Replacement Cost (if a positive number) on the first Business Day following the day on which Receiving Party is able to effect a Buy-In (which may be a Buy-In, on any such date, of less than the entire number of Undelivered Allowances) if and to the extent that paragraphs (2)(A)(I) or (2)(A)(II)(X) of Receiving Party's Replacement Cost apply, or the first Business Day following the day on which Receiving Party is able to effect a purchase of Allowances in accordance with paragraph (2)(A)(II)(Y) of Receiving Party's Replacement Cost, if and to the extent that paragraph applies, in either case adjusted to take into account any amount previously paid (which, for the avoidance of doubt, shall not include any Premium paid by the Buyer in respect of an Allowance Option Transaction) by Receiving Party to Delivering Party in respect of the EU Emissions Allowance Transaction; or
- (Z) if "Failure to Deliver (Alternative Method)" is specified to be applicable in the Annex to this Part 7 or the Confirmation for the relevant EU Emissions Allowance Transaction:
- (aa) Delivering Party shall pay to Receiving Party, on the first succeeding Business Day, an amount determined in accordance with paragraph (3) of Receiving Party's Replacement Cost (if a positive number), adjusted to take into account any amount previously paid (which, for the avoidance of doubt, shall not include any Premium paid by the Buyer in respect of an Allowance Option Transaction) by Receiving Party to Delivering Party in respect of the relevant EU Emissions Allowance Transaction, and upon payment of such amount, Delivering Party's obligation to deliver to Receiving Party the Allowances to be Delivered shall be fully discharged and terminated; and
- (bb) if "Excess Emissions Penalty" is specified to be applicable in the Annex to this Part 7 or the Confirmation for the relevant EU Emissions Allowance Transaction, Delivering Party shall pay to Receiving Party the amount, if any, determined in accordance with the provisions of Part 7 (d)(xi)(*Failure to Deliver (Alternative Method)*) –



*EEP Applicable*) below on the date determined in accordance with those provisions.

**(2) Failure to Comply by Receiving Party**

If the failure to deliver occurs as a result of the failure of Receiving Party to comply with the Requirements under the Scheme as specified below, the Payment Date will be postponed and Delivering Party may, by notice to Receiving Party, require Receiving Party so to comply, and the following provisions shall apply.

**(A) Failure to Comply Remedied**

If Receiving Party complies on or before the Final Compliance Date:

- (X) Delivering Party shall deliver to Receiving Party the Allowances to be Delivered and, in respect of an Allowance Forward Transaction, Receiving Party shall pay to Delivering Party on the Payment Date an amount equal to the Allowance Purchase Price multiplied by the Number of Allowances and, in respect of an Allowance Option Transaction, Receiving Party shall pay to Delivering Party on the Payment Date an amount equal to the Allowance Strike Price multiplied by the number of Allowances to be Delivered (and, in each case, for purposes of determining the Payment Date, the date of actual delivery shall be deemed to be the Delivery Date); and
- (Y) Receiving Party shall pay to Delivering Party on the Payment Date (determined in accordance with Part 7(d)(ii)(2)(A)(X) above) interest on an amount equal to the number of Allowances that were required to be delivered on the Delivery Date (but which were not delivered on that date) multiplied by the Allowance Purchase Price or Allowance Strike Price, as applicable, for the period from (and including) the original Delivery Date to (but excluding) the date of actual delivery at the Default Rate.

**(B) Failure to Comply Not Remedied**

If Receiving Party fails to comply on or before the Final Compliance Date, Delivering Party may, by written notice to Receiving Party, terminate the parties' obligations under "Physical Settlement" above and Receiving Party shall pay to Delivering Party an amount equal to Delivering Party's Replacement Cost (if a positive number) on the first succeeding Business Day, adjusted to take into account any amount previously paid (which for the avoidance of doubt, shall not include any Premium paid by the Buyer in respect of an Allowance Option Transaction) by Receiving Party to Delivering Party in respect of the relevant EU Emissions Allowance Transaction.

**(3) EEP Amount**

Subject to the paragraph below, if "Excess Emissions Penalty" is specified to be applicable in the Annex to this Part 7 or the Confirmation for the relevant EU Emissions Allowance Transaction and as a result of Delivering Party's failure to deliver the Allowances to be Delivered (in whole or in part) on the Delivery Date Receiving Party becomes liable to pay any EEP Amount, then Receiving Party shall provide to Delivering Party, upon its reasonable request, evidence to the reasonable satisfaction of Delivering Party:

- (A) that Receiving Party has incurred an EEP Amount consequent on Delivering Party's failure to deliver the Allowances to be Delivered (in whole or in part); and
- (B) the extent to which the requirement for Receiving Party to pay any EEP Amount results from Delivering Party's failure to make such delivery; and
- (C) that Receiving Party could not have used Allowances to which it had title in any Holding Account(s) in any Registry in order to avoid or reduce its liability to pay any EEP Amount which it claims from Delivering Party as part of Receiving Party's Replacement Cost.

Delivering Party's obligation to pay any EEP Amount in accordance with "Failure to Deliver" under Part 7 of the Schedule to this Agreement is subject to Receiving Party's overriding obligation to use its reasonable endeavours to avoid becoming liable for such EEP Amount or, when liable, to mitigate the payment obligation in relation to such EEP Amount and to allocate any such EEP Amount pro rata between all counterparties of Receiving Party that have failed to deliver Allowances to Receiving Party provided, however, that where Receiving Party confirms it has been unable to avoid becoming liable for any EEP Amount, it shall be for Delivering Party to show that it has been as a result of Receiving Party failing to use its reasonable endeavours to do so.

**(iii) Partial Settlement**

If, on the Delivery Date, Delivering Party delivers to Receiving Party fewer Allowances than the Allowances to be Delivered (such shortfall the "**Allowance Shortfall**"), Receiving Party's obligation to pay pursuant to Physical Settlement above shall be reduced by an amount equal to the Allowance Shortfall multiplied by either the Allowance Purchase Price (in respect of an Allowance Forward Transaction) or the Allowance Strike Price (in respect of an Allowance Option Transaction), and the provisions of "Failure to Deliver" above will apply in respect of the Allowance Shortfall (with references to Number of Allowances (in the case of an Allowance Forward Transaction) and Allowances to be Delivered (in the case of an Allowance Option Transaction) being read as references to the Allowance Shortfall).

**(iv) Abandonment of Scheme**

- (1) If before the Delivery Date the Scheme is, as a result of official written public pronouncement by the European Community, no longer scheduled to proceed or is to be discontinued, either party may, by written notice to the other party, terminate the relevant EU Emissions Allowance Transaction, in which case neither party shall have any further delivery or payment obligations under or in respect of that EU Emissions Allowance Transaction (other than in respect of any payment due by one party in connection with delivery obligations already performed by the other party) and, for the avoidance of doubt, a payment shall not be due under Section 6(e) of the Agreement or otherwise in respect of such termination.
- (2) In the event of a termination in accordance with sub-clause (1) Delivering Party shall promptly refund to Receiving Party any amount that may have been paid by Receiving Party in respect of the EU Emissions Allowance Transaction that is an Allowance Forward Transaction or a Call and Receiving Party shall promptly refund to Delivering Party any amount that may have been paid by Delivering Party in respect of an EU Emissions Allowance Transaction which is a Put together with interest on that amount in the same currency as that amount for the period from (and including) the date that amount was paid to (but excluding) the date of termination of the EU Emissions Allowance Transaction in accordance with sub-clause (1), at the rate certified by the party required to refund the amount to be a rate offered to such party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by that party for purposes of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in the relevant market.

**(v) Invoicing**

On or after the Delivery Date, Delivering Party shall send to Receiving Party a valid VAT invoice (applicable in the jurisdiction of supply) setting forth the number of Allowances delivered, or that would have been delivered but for the provisions of Part 7(d)(i)(3)(*Netting*), above, and the Allowance Purchase Price(s) or Allowance Strike Price(s), as applicable, stating the total amount payable by Receiving Party and stating the amount of VAT, if any, properly chargeable thereon (a "VAT Invoice").

**(vi) Requirements under the Scheme**

Each party agrees with the other that, so long as either party has or may have any obligation under an EU Emissions Allowance Transaction, it shall:

- (1) ensure that on a Delivery Date or Delayed Delivery Date (as the case may be) it has one or more Holding Accounts validly registered in accordance with the Registries Regulation and where it has one or more Specified Holding Accounts, ensure that on a Delivery Date or Delayed Delivery Date (as the case may be) it has all such Specified Holding Accounts validly registered in accordance with the Registries Regulation;
- (2) where it is Delivering Party, ensure that each Specified Holding Account of Receiving Party is nominated as a "trusted account" in its "trusted account list" for each of its Specified Holding Accounts (or other Holding Accounts, as applicable) for the purposes of the Registries Regulation; and

- (3) conduct its affairs so as not to give any Relevant Authority cause to block, suspend, refuse, reject or cancel the transfer (whether in whole or in part) of Allowances requested to be made pursuant to any EU Emissions Allowance Transaction.

**(vii) No Encumbrances**

In respect of each delivery of Allowances, Delivering Party shall deliver Allowances, free and clear of all liens, security interests, claims and encumbrances or any interest in or to them by any person (the "**No Encumbrance Obligation**").

Where a party is in breach of the No Encumbrance Obligation, the following shall apply:

- (1) This Agreement and all other Transactions agreed by the parties under this Agreement shall continue unaffected.
- (2) Without prejudice to any defences available to Delivering Party (including, but not limited to, any defences of statutes of limitation or similar), following written notice of that breach from Receiving Party to Delivering Party (irrespective of how long after the relevant Delivery Date such notice is provided) and subject to Part 7(d)(vii)(4) below, Receiving Party shall:
  - (A) determine the Encumbrance Loss Amount arising from that breach either on the date such notice is deemed to be received or as soon as reasonably practicable thereafter; and
  - (B) shall notify Delivering Party of such Encumbrance Loss Amount due, including detailed support for its calculation.

Receiving Party is not required to enter into replacement transactions in order to determine the Encumbrance Loss Amount.

- (3) By no later than the third (3rd) Business Day after the later of (i) receipt of a valid invoice in connection with such Encumbrance Loss Amount and (ii) receipt of the above-mentioned notice including detailed support of Receiving Party's calculation of the Encumbrance Loss Amount, Delivering Party shall pay the Encumbrance Loss Amount to Receiving Party, which amount shall bear interest at the Default Rate. Upon payment of the Encumbrance Loss Amount by Delivering Party, the parties shall have no further obligations in respect of that EU Emissions Allowance Transaction and that breach. Receiving Party acknowledges that its exclusive remedies in respect of such breach are those set out in this Part 7(d)(vii)(No Encumbrances).
- (4) Where a breach of the No Encumbrances Obligation is caused by the transfer of an Affected Allowance, Delivering Party shall be liable for the Encumbrance Loss Amount if, at the date it first acquired, received or purchased such Affected Allowance, it was not acting in good faith; otherwise, Delivering Party shall only be liable for the Encumbrance Loss Amount (without prejudice to any other defences available to Delivering Party including, but not limited to, any defences of statutes of limitation or similar), if:

- (A) Receiving Party, whether or not the holder of such Affected Allowance, who is subject to a claim of the Original Affected Party, has, in order to resist or avoid any Encumbrance Loss Amount from arising, used its best endeavours to defend such a claim in respect of that Affected Allowance (including, if available, by relying on Article 40 of the Registries Regulation or any equivalent legal principle under applicable national law) and was unsuccessful (other than for reasons of its own lack of good faith); or
- (B) Receiving Party, whether or not the holder of such Affected Allowance, who acted in good faith in respect of its purchase of such Affected Allowance and who is subject to a claim of a third party (other than the Original Affected Party) in respect of that Affected Allowance, has used all reasonable endeavours to mitigate the Encumbrance Loss Amount.

**(viii) Value Added Taxes**

- (1) All amounts referred to in this Part 7 or in a Confirmation for an EU Emissions Allowance Transaction are exclusive of any applicable Value Added Taxes ("VAT") which are or may become chargeable in respect of the supply or supplies for which such sums form the whole or part of the consideration for VAT purposes, and any such VAT shall be payable in addition to any such other consideration in accordance with the provisions set out below.
- (2) Receiving Party shall either (A) subject to receipt of an appropriate VAT Invoice in respect of such supply or supplies stating *inter alia* the amount of VAT properly chargeable thereon (the "VAT Amount"), pay to Delivering Party a sum equal to the VAT Amount on the Payment Date; or (B) where, under the provisions of the applicable VAT legislation, Receiving Party is required to self-assess and account for any VAT chargeable in respect of such supply, account for such VAT.
- (3) On each date on which an EU Emissions Allowance Transaction is entered into, Receiving Party represents to Delivering Party that:
  - (A) for VAT purposes, Receiving Party receives the services supplied pursuant to the EU Emissions Allowance Transaction in connection with an establishment of Receiving Party in that party's VAT Jurisdiction; and
  - (B) it is a taxable person for the purposes of Article 9 of the European Community Directive 2006/112/EC and receives such supply for the purposes of a business carried on by it.
- (4) Subject to each party's obligations relating to VAT, each party shall cause all royalties, Taxes, duties, and other sums (including any environmental tax or levy) legally payable by that party arising in connection with an EU Emissions Allowance Transaction to be paid, and shall reimburse the other party to the extent that party is required to pay any such royalties, Taxes, duties or other sums for which the first party is primarily liable.

**(ix) No Consequential Loss**

Except to the extent included in any amount payable under Section 6(e) of the Agreement, any payment in respect of Receiving Party's Replacement Cost or Delivering Party's Replacement Cost, or any payment in respect of Encumbrance Loss Amount, neither party is liable to the other, whether in contract, tort (including negligence and breach of duty) or otherwise, for any business interruption or loss of use, profits, contracts, production or revenue or for any consequential or indirect loss or damage of any kind however arising.

(x) **Other Fees and Expenses**

All costs, fees and charges assessed or imposed by a Relevant Authority in connection with the transfer of Allowances pursuant to an EU Emissions Allowance Transaction shall be the responsibility of the party upon whom such costs, fees and/or charges are allocated by the Relevant Authority.

(xi) **Failure to Deliver (Alternative Method) - EEP Applicable**

If "Failure to Deliver (Alternative Method)" and "EEP" are specified to be applicable in the Annex to this Part 7 or the Confirmation for the relevant EU Emissions Allowance Transaction, then, with regard to that EU Emissions Allowance Transaction, in the event that Receiving Party **incurs** an Excess Emissions Penalty directly caused by Delivering Party's failure to deliver the Allowances to be Delivered on a Delivery Date falling within the EEP Risk Period other than as a result of the failure of Receiving Party to comply with the Requirements under the Scheme as specified above, the existence of an Illegality, the existence of a Settlement Disruption Event or the existence of a Suspension Event (the "**EEP Non-delivery**" and the amount of such Excess Emissions Penalty so caused, the "**Indemnifiable EEP**"), then Delivering Party shall pay to Receiving Party, in addition to the Receiving Party's Replacement Cost (if any), an amount equal to the amount of the Indemnifiable EEP paid by Receiving Party (the "**EEP Payment**"), provided that such EEP Payment shall not exceed the product of the RPRC Shortfall for that EU Emissions Allowance Transaction and the maximum per Allowance rate of Excess Emissions Penalty applicable at the relevant time.

Delivering Party's obligation to pay the EEP Payment in respect of the EEP Non-delivery shall be conditional upon Receiving Party demonstrating to the reasonable satisfaction of Delivering Party:

- (a) that Receiving Party has incurred and paid the EEP Payment consequent on a shortfall of Allowances as at the Reconciliation Deadline immediately succeeding the Delivery Date (the "**Deadline Shortfall**");
- (b) the extent to which Receiving Party's liability to make the EEP Payment resulted from Delivering Party's EEP Non-delivery;
- (c) the extent to which Receiving Party's liability to make the EEP Payment would have been incurred notwithstanding Delivering Party's EEP Non-delivery; and
- (d) the extent to which Receiving Party's liability to make the EEP Payment arose due to any third party's failure(s) to deliver any Allowance to be Delivered to Receiving Party in accordance with the terms of any agreements between Receiving Party and such third party.

Receiving Party agrees to provide all other information to Delivering Party in order for Delivering Party to make a commercially reasonable assessment of the extent to which the Deadline Shortfall was directly caused by its EEP Non-delivery.

In the event that the Deadline Shortfall is directly caused by the failure of a number of parties (including Delivering Party and Receiving Party), then Delivering Party's liability shall be to pay the EEP Payment in respect of its proportionate share of the Deadline Shortfall as determined by the parties in a commercially reasonable manner. In no circumstances shall Receiving Party seek to claim an EEP Payment from Delivering Party such that when aggregated with all the other claims made by Receiving Party to other parties in respect of its liability to make the EEP Payment and the liability caused by Receiving Party's own action or inaction, it is more than Receiving Party's liability to make the EEP Payment.

If Delivering Party disputes in good faith the amount of the EEP Payment claimed by Receiving Party, Delivering Party shall so notify Receiving Party stating the reasons for the dispute and the obligation to pay the EEP Payment shall be suspended until such dispute is resolved. The parties shall seek to settle the dispute regarding the EEP Payment as soon as reasonably possible.

Once the amount of the EEP Payment is agreed or any dispute in relation thereto resolved, Delivering Party shall pay such determined EEP Payment to Receiving Party within two (2) Business Days against Receiving Party's VAT Invoice in respect thereof.

**(xii) Specified Holding Accounts and Modifications of Party's Specified Holding Accounts**

Each party agrees with the other, so long as either party has or may have any obligation under an EU Emissions Allowance Transaction, as follows:

(1) In respect of Receiving Party:

(A) Receiving Party shall ensure that one or more of such Holding Accounts registered in accordance with Part 7(d)(vi)(*Requirements under the Scheme*) above are specified in the Annex to this Part 7 or in the relevant Confirmation; and

(B) Receiving Party may from time to time (a) amend the order in which its Specified Holding Accounts are listed, (b) add a new Specified Holding Account as the last on the list of Specified Holding Accounts, and/or (c) remove a Specified Holding Account from those listed, in each case in respect of an EU Emissions Allowance Transaction, provided that it notifies Delivering Party in writing of such amendment, addition and/or removal (including the provision of the relevant account details) no less than thirty (30) calendar days prior to the next Delivery Date under that EU Emissions Allowance Transaction, and provided further that in each such case, of (a) and / or (c), Delivering Party notifies Receiving Party in writing that it consents to such changes within five (5) Delivery Business Days of receiving such notice from Receiving Party;

(2) In respect of Delivering Party:

- (A) Delivering Party may specify one or more of such Holding Accounts registered in accordance with Part 7(d)(vi)(*Requirements under the Scheme*) above in the Annex to this Part 7 or in the relevant Confirmation; and
- (B) Delivering Party may from time to time, add a new Holding Account or an additional Holding Account to those listed in the Annex to this Part 7 or in the relevant Confirmation provided that it notifies Receiving Party in writing of such addition (including the relevant account details) on or before the day that is ten (10) Delivery Business Days before the next Delivery Date under that EU Emissions Allowance Transaction.

**(e) Defined Terms and Interpretation**

Terms used in this Part 7 and not otherwise defined, will have the meanings specified below:

Administrator Event:	Means the suspension of some or all of the processes of a Relevant Registry or the EUTL in accordance with the Registries Regulation by the relevant National Administrator or the Central Administrator (as applicable) (i) where that Relevant Registry is not operated and maintained in accordance with the provisions of the Registries Regulation, or any other applicable law, or (ii) for the purpose of carrying out scheduled or emergency maintenance, or (iii) where there has been or following reasonable suspicion of, a breach of security which threatens the integrity of the registries system (including any back up facilities).
AEUA or AEU Allowance:	Means an "allowance" as defined in the Directive and which is issued under Chapter II thereof.
Affected Allowance:	Means an Allowance which is or is alleged to have been the subject of an Unauthorised Transfer as confirmed by an Appropriate Source.
Aircraft Operator:	Means an "aircraft operator" as defined in the Directive.
Allowance:	Means, in respect of an EU Emissions Allowance Transaction, an allowance to emit one tonne of carbon dioxide (CO <sub>2</sub> ) equivalent during a specified period which is valid for meeting emissions related commitment obligations under the Scheme and which is of the specified Allowance Type and relates to the Specified Compliance Period.
Allowance Forward Transaction:	Means an EU Emissions Allowance Transaction identified as an Allowance Forward Transaction in the related Confirmation.
Allowance Option Transaction:	Means an EU Emissions Allowance Transaction identified as an Allowance Option Transaction in the related Confirmation. An Allowance Option Transaction shall be an Option Transaction for purposes of the 2006 ISDA Definitions.
Allowances to be Delivered:	Means, in respect of an EU Emissions Allowance Transaction



that is: (1) an Allowance Forward Transaction, a number of Allowances equal to the Number of Allowances; or (2) an Allowance Option Transaction and in respect of an Exercise Date, a number of Allowances equal to the number of Options exercised or deemed exercised on that Exercise Date multiplied by the Option Entitlement.

Allowance Purchase Price:	Means, in respect of an EU Emissions Allowance Transaction which is an Allowance Forward Transaction, the amount specified or otherwise determined as provided in the related Confirmation.
Allowance Shortfall:	Has the meaning given to such term in Part 7(d)(iii)( <i>Partial Settlement</i> ).
Allowance Strike Price:	Means, in respect of an EU Emissions Allowance Transaction which is an Allowance Option Transaction, the price per Allowance specified or otherwise determined as provided in the related Confirmation.
Allowance Type:	Means, in respect of an EU Emissions Allowance Transaction, an AEU Allowance or an EU Allowance as specified in the related Confirmation.
Appropriate Source:	Means any “competent authority” (as defined in the Registries Regulation) and/or the Central Administrator, National Administrator or any other authority having power pursuant to the Directive and/or the Registries Regulation to block, suspend, refuse, reject, cancel or otherwise affect the transfer (whether in whole or in part) of Allowances, any recognised law enforcement or tax authorities of a Member State, the European Anti-fraud Office of the European Commission or Europol.
Buyer:	Means, in respect of an EU Emissions Allowance Transaction, the party specified as such in the related Confirmation.
Buy-In:	Means the purchase of Allowances by Receiving Party in accordance with the procedures described in paragraph (2) of the definition of Receiving Party's Replacement Cost in this Part 7(e)( <i>Defined Terms and Interpretation</i> ).
Buy-In Period:	Has the meaning given to such term in the definition of Receiving Party's Replacement Cost in this Part 7(e)( <i>Defined Terms and Interpretation</i> ).
Calculation Agent:	Means, in respect of an EU Emissions Allowance Transaction, the party specified as such in the related Confirmation.
Call:	Means a type of an Allowance Option Transaction entitling, but not obligating, Buyer to purchase Allowances from Seller at the Allowance Strike Price per Allowance.
Central Administrator:	Means the person designated by the EU Commission to operate and maintain the EUTL pursuant to Article 20(1) of the

Directive.

Central European Time:	Means Central European Time, including Central European Winter Time and Central European Summer Time as applicable.
Close-out Cost of Carry Amount:	Means an amount in EUR equal to: (a) the Close-out Cost of Carry Rate; multiplied by: (b)(i) in respect of an Allowance Forward Transaction, the Allowance Purchase Price; or (ii) in respect of an Allowance Option Transaction, the Allowance Strike Price; multiplied by: (c) the Close-out Cost of Carry Delay, divided by (d) 360.
Close-out Cost of Carry Delay:	Means the number of days in the period from (and including) the scheduled Payment Date to (but excluding) the date that would be the Payment Date if delivery had been made on the Final Delivery Date or Final Compliance Date (as the case may be).
Close-out Cost of Carry Rate:	Means a rate equal to the Floating Rate that would be determined for the period from the scheduled Payment Date to the Early Termination Date, if the Reset Date were the date that would be the Payment Date if delivery had been made on the Final Delivery Date or Final Compliance Date (as the case may be) and the applicable Floating Rate Option were "EUR-EONIA-OIS-COMPOUND".
Cost of Carry Amount:	Means an amount in EUR equal to: (a) the Cost of Carry Rate multiplied by:  (b)(i) in respect of an Allowance Forward Transaction, the Allowance Purchase Price multiplied by the Number of Allowances delivered on or before the Delayed Delivery Date following the occurrence of a Suspension Event; or  (ii) in respect of an Allowance Option Transaction, the Allowance Strike Price multiplied by the Number of Allowances delivered on or before the Delayed Delivery Date following the occurrence of a Suspension Event;  multiplied by: (c) the Cost of Carry Delay, divided by 360.
Cost of Carry Delay:	Means the number of days in the period from (and including) the scheduled Payment Date to (but excluding) the Delayed Payment Date.
Cost of Carry Rate:	Means a rate equal to the Floating Rate that would be determined for a Calculation Period commencing on (and including) the scheduled Payment Date and ending on (but excluding) the Delayed Payment Date, if the Reset Date were the last day of that Calculation Period and the applicable Floating Rate Option were "EUR-EONIA-OIS-COMPOUND".
Deadline Shortfall:	Has the meaning given to such term in Part 7(d)(xi)( <i>Failure to Deliver (Alternative Method) – EEP Applicable</i> ).

Delayed Delivery Date:	Has the meaning given to that term in Part 7(d)(i)(5)(B)( <i>Effect of a Suspension Event</i> ).
Delayed Payment Date:	Has the meaning given to that term in the definition of Payment Date in this Part 7(e)( <i>Defined Terms and Interpretation</i> ).
Delivering Party:	Means, in respect of an EU Emissions Allowance Transaction that is: (1) an Allowance Forward Transaction, the Seller; (2) an Allowance Option Transaction which is a Call, the Seller; or (3) an Allowance Option Transaction which is a Put, the Buyer.
Delivering Party's Delivery Business Day Location:	Means, in respect of an EU Emissions Allowance Transaction, the place specified as such in the Confirmation for the relevant EU Emissions Allowance Transaction or, if a place is not so specified: (i) the place specified in the Annex to this Part 7 as the Delivery Business Day Location for Delivering Party; or (ii) if no such place is specified, the place in which Seller's address for purposes of receiving notices connected with the relevant EU Emissions Allowance Transaction is located; or (iii) if no such address has been given, the place in which Delivering Party has its registered office.
Delivering Party's Replacement Cost:	Means in respect of a failure of Receiving Party to accept delivery of a number of Allowances (the " <b>DPRC Shortfall</b> "), an amount equal to: <ul style="list-style-type: none"> <li>(i) (1) the Allowance Purchase Price or Allowance Strike Price, as applicable, as set out in the Confirmation for the relevant EU Emissions Allowance Transaction plus, in those circumstances in which the relevant termination of the parties' obligations under "Physical Settlement" occurs following a Suspension Event, the Close-out Cost of Carry Amount; less <ul style="list-style-type: none"> <li>(2) the price (per Allowance) Delivering Party, acting in a commercially reasonable manner, does or would, in the determination of the Calculation Agent, receive in an arm's length transaction concluded on the Final Compliance Date for an equivalent number of Allowances of the relevant Allowance Type to be delivered on the Final Compliance Date or, if later, the Delivery Business Day on which Allowances would be delivered in accordance with prevailing market practice under a spot transaction concluded on the Final Compliance Date; multiplied by:</li> </ul> </li> <li>(ii) the DPRC Shortfall; plus</li> <li>(iii) interest at the Default Rate for the period from (and including) the Delivery Date to (but excluding) the date of termination in accordance with Part 7(d)(ii)(2)(B)(<i>Failure to Comply Not Remedied</i>) on an amount equal to the product of the DPRC Shortfall and</li> </ul>

an amount equal to the excess, if any, of the Allowance Purchase Price or Allowance Strike Price, as applicable, over the price determined pursuant to paragraph (i)(2) above.

Delivery Business Day:	Means, in respect of an EU Emissions Allowance Transaction, any day, which is not a Saturday or Sunday, on which commercial banks are open for general business in both Delivering Party's Delivery Business Day Location and the Receiving Party's Delivery Business Day Location.
Delivery Date:	Means, in respect of an EU Emissions Allowance Transaction, the date or dates specified as such in the related Confirmation (subject to any adjustment in accordance with Part 7(d)(i)(5)( <i>Suspension Event</i> )).
Directive:	Means Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, as amended from time to time.
DPRC Shortfall:	Has the meaning given to such term in the definition of Delivering Party's Replacement Cost in this Part 7(e)( <i>Defined Terms and Interpretation</i> ).
EEP Amount:	Means an amount (expressed as an amount per Allowance) that Receiving Party determines, acting in good faith and using commercially reasonable procedures, to be its total losses and costs which result from Delivering Party's failure to deliver the Shortfall to the extent that those losses and costs are not reflected elsewhere in the definition of Receiving Party's Replacement Cost and to the extent that those losses and costs relate to:  <ol style="list-style-type: none"><li>(1) any Excess Emission Penalty which Receiving Party must pay to the Relevant Authority in accordance with the terms of the Scheme; and/or</li><li>(2) if "EEP Equivalent" is specified to be applicable in the Annex to this Part 7 or the Confirmation for the relevant EU Emissions Allowance Transaction, any amount which Receiving Party must pay to a third party in respect of any such penalty payable to any other party (including a Relevant Authority) by that third party as a result of Delivering Party's failure to deliver the Shortfall.</li></ol>
EEP Non-delivery:	Has the meaning given to such term in Part 7(d)(xi)( <i>Failure to Deliver (Alternative Method) – EEP Applicable</i> ).
EEP Payment:	Has the meaning given to such term in Part 7(d)(xi)( <i>Failure to</i>

*Deliver (Alternative Method) – EEP Applicable).*

EEP Risk Period:	Means, in respect of an EU Emissions Allowance Transaction and any Delivery Date, a period of time prior to the first succeeding Reconciliation Deadline, as specified in the related Confirmation.
Encumbrance Loss Amount:	An amount reasonably determined by Receiving Party in good faith to be its total losses and costs in connection with an EU Emissions Allowance Transaction including, but not limited to, any loss of bargain, cost of funding or, at the election of Receiving Party but without duplication, loss or costs incurred as a result of its terminating, liquidating, obtaining or re-establishing any hedge or related trading position. Such amount includes losses and costs in respect of any payment already made under an EU Emissions Allowance Transaction prior to the delivery of the written notice by Receiving Party and Receiving Party's legal fees and out-of-pocket expenses but does not include Excess Emissions Penalty or any amount which Receiving Party must pay to a third party in respect of any such penalty payable to any other party (or Relevant Authority) by that third party. The parties agree that in circumstances where there was a breach of the No Encumbrances Obligation by Delivering Party caused by the transfer of an Affected Allowance, Receiving Party shall be entitled to include in such amount any losses arising out of or in connection with any claim, demand, action or proceeding brought against Receiving Party by a third party consequent upon the transfer by Receiving Party of an Affected Allowance transferred to it by Delivering Party under an EU Emissions Allowance Transaction.
End of Phase Reconciliation Deadline:	Means, in respect of an EU Emissions Allowance Transaction, the Reconciliation Deadline scheduled to fall in April 2031.
EU:	Means the European Community as it exists from time to time.
EU Allowance:	Means an "allowance" as defined in the Directive that has been issued by a competent authority pursuant to Chapter III of the Directive.
EUTL or European Transaction Log:	Means the independent transaction log provided for in Article 20(1) of the Directive, the operation of which is further detailed in Article 6 of the Registries Regulation.
Excess Emissions Penalty/EEP:	Has the meaning given to it in the Directive.
Expiration Date:	Means, in respect of an EU Emissions Allowance Transaction which is an Allowance Option Transaction, the date specified as such in the related Confirmation (or determined pursuant to a method specified for such purpose) or, if that date is not a Business Day, the next following day that is a Business Day.

Final Compliance Date:	Means, the date that is the second Delivery Business Day after notice is given under Part 7(d)(ii)(2)( <i>Failure to Comply by Receiving Party</i> ) requiring Receiving Party to comply with Part 7(d)(vi)( <i>Requirements under the Scheme</i> ) or, if earlier, the Reconciliation Deadline on or immediately following the relevant Delivery Date.
Final Delivery Date:	Means, the date that is the second Delivery Business Day after notice is given under Part 7(d)(ii)(1)( <i>Failure to Deliver by Delivering Party</i> ) requiring Delivering Party to remedy a failure to deliver or, if earlier, the Reconciliation Deadline on or immediately following the relevant Delivery Date.
Fourth Compliance Period:	Means, in respect of EU Allowances and AEU Allowances, the period starting 1 January 2021 to 31 December 2030.
Holding Account:	Means a form of digital record maintained in a Registry (pursuant to and in accordance with the Registries Regulation) that is able to be used to record the allocation (if applicable), holding and transfer of Allowances of the Allowance Type that is to be delivered under the relevant EU Emissions Allowance Transaction pursuant to and in accordance with the Scheme.
Indemnifiable EEP:	Has the meaning given to such term in Part 7(d)(xi)( <i>Failure to Deliver (Alternative Method) – EEP Applicable</i> ).
Long-Stop Date:	<p>Means, in respect of a Suspension Event that occurs with respect to a delivery or acceptance obligation that would otherwise be required to be performed within the period:</p> <p>(1) from (and including) 1 May 2021 to (and including) 31 December 2022, 1 June 2024 ;</p> <p>(2) from (and including) 1 January 2023 to (and including) 31 December 2024, 1 June 2026;</p> <p>(3) from (and including) 1 January 2025 to (and including) 31 December 2026, 1 June 2028 ;</p> <p>(4) from (and including) 1 January 2027 to (and including) 31 December 2028, it shall be 1 June 2030; and</p> <p>(5) from (and including) 1 January 2029 to (and including) the twenty-fifth (25th) calendar day of the month in which the End of Phase Reconciliation Deadline is scheduled to occur, the twenty-fifth (25th) calendar day of the month in which the End of Phase Reconciliation Deadline is scheduled to occur .</p>
Member State:	Means any one of the signatories of the European Union

from time to time.

Multiple Exercise:

Means:

(1) If "Multiple Exercise" is specified to be applicable to an EU Emissions Allowance Transaction which is an American Allowance Option Transaction or a Bermuda Allowance Option Transaction, Buyer may exercise all or less than all the unexercised Options on one or more Business Days during the Exercise Period but (except as set forth below) on any such Business Day may not exercise less than the Minimum Number of Options or more than the Maximum Number of Options and, if a number is specified as "Integral Multiple" in the related Confirmation, the number of exercised Options must be equal to, or be an integral multiple of, the number so specified. Except as set forth below, any attempt to exercise on any such Business Day:

- (A) more than the Maximum Number of Options will be deemed to be an exercise of the Maximum Number of Options (the number of Options exceeding the Maximum Number of Options being deemed to remain unexercised);
- (B) less than the Minimum Number of Options will be ineffective; and
- (C) an amount of Options not equal to or an integral multiple of the Integral Multiple will be deemed to be an exercise of a number of Options equal to the next lowest integral multiple of the Integral Multiple (the number of Options exceeding that number being deemed to remain unexercised).

(2) Notwithstanding the foregoing, on any such Business Day, Buyer may exercise any number of Options that does not exceed the Maximum Number of Options if it exercises all the Options remaining unexercised. On the Expiration Date, Buyer may exercise any number of Options remaining unexercised.

(3) "Minimum Number of Options" means, in respect of an Allowance Option Transaction to which Multiple Exercise is applicable, the number specified as such in the related Confirmation.

(4) "Maximum Number of Options" means, in respect of an Allowance Option Transaction to which Multiple Exercise is applicable, the number specified as such in the related Confirmation.

National  
Administrator:

Means the entity responsible for managing, on behalf of a Member State, a set of user accounts under the jurisdiction of a Member State in the Union Registry as designated in accordance with Article 8 of the Registries

Regulation.

No Encumbrance Obligation:	Has the meaning given to such term in Part 7(d)(vii)( <i>No Encumbrances</i> ).
Notice of Exercise:	Means, in respect of an EU Emissions Allowance Transaction which is an Allowance Option Transaction, an Option notice given by Buyer to Seller (which may be given orally (including by telephone) unless the parties specify otherwise in the related Confirmation) of its exercise of the right or rights granted pursuant to the Allowance Option Transaction during the hours specified in the relevant Confirmation on a Seller Business Day during the Exercise Period, which shall be irrevocable once effective. If the Notice of Exercise is received on any Seller Business Day after the latest time so specified, the Notice of Exercise will be deemed to have been received on the next following Seller Business Day, if any, in the Exercise Period. Buyer may exercise the right or rights granted pursuant to the Allowance Option Transaction only by giving a Notice of Exercise.
Number of Allowances:	Means, in respect of an EU Emissions Allowance Transaction, the number specified as such in the related Confirmation.
Number of Options:	Means, in respect of an EU Emissions Allowance Transaction which is an Allowance Option Transaction, the number specified as such in the related Confirmation, being the number of Options comprised in the relevant Allowance Option Transaction.
Operator:	Means an "operator" as defined in the Directive.
Option:	Means, in respect of an Allowance Option Transaction, each unit into which the Option Transaction is divided for purposes of exercise or settlement.
Option Entitlement:	Means, in respect of an EU Emissions Allowance Transaction which is an Allowance Option Transaction, the number of Allowances per Option specified as such in the related Confirmation. In the event that no Option Entitlement is specified in the related Confirmation, the Option Entitlement in respect of any Allowance Option Transaction shall be one Allowance per Option.
Original Affected Party:	Means the person from whose account the Unauthorised Transfer of the Affected Allowance occurred.
Payment Date:	Means, in respect of an EU Emissions Allowance Transaction, the date specified as such or otherwise



determined pursuant to a method specified in the related Confirmation, provided that, in the case of delayed delivery pursuant to Part 7(d)(i)(5)(*Suspension Event*), the Payment Date shall be determined accordingly from the Delayed Delivery Date (such Payment Date being the "**Delayed Payment Date**").

Potential Exercise Date:	Means, in respect of an EU Emissions Allowance Transaction which is a Bermuda Allowance Option Transaction, each date specified as such in the related Confirmation or, if that date is not a Business Day, the next following day that is a Business Day.
Premium:	Means, in respect of an EU Emissions Allowance Transaction which is an Allowance Option Transaction, the amount specified or otherwise determined as provided in the related Confirmation. If a Premium per Allowance is specified in the related Confirmation, the Premium shall be the product of the Premium per Allowance, the Number of Options and the Option Entitlement.
Put:	Means a type of Allowance Option Transaction entitling, but not obligating, the Buyer to sell Allowances to Seller at the Allowance Strike Price per Allowance.
Receiving Party:	Means, in respect of an EU Emissions Allowance Transaction that is: (1) an Allowance Forward Transaction, the Buyer; (2) an Allowance Option Transaction which is a Call, the Buyer; or (3) an Allowance Option Transaction which is a Put, the Seller.
Receiving Party's Delivery Business Day Location:	Means, in respect of an EU Emissions Allowance Transaction, the place specified as such in the Confirmation for the relevant EU Emissions Allowance Transaction or, if a place is not so specified: (i) the place specified in the Annex to this Part 7 as the Delivery Business Day Location for Receiving Party; or (ii) if no such place is specified, the place in which Receiving Party's address for purposes of receiving notices connected with the relevant EU Emissions Allowance Transaction is located; or (iii) if no such address has been given, the place in which Receiving Party has its registered office.
Receiving Party's Replacement Cost	Means: <ol style="list-style-type: none"><li>(1) if "Excess Emissions Penalty" is specified not to be applicable in the Annex to this Part 7 or the Confirmation for the relevant EU Emissions Allowance Transaction, or if "Excess Emissions Penalty" is specified to be applicable and if an EEP Risk Period is specified in the Annex to this Part 7 or in the Confirmation for the relevant EU Emissions Allowance</li></ol>

Transaction but the Delivery Date falls outside the EEP Risk Period then, in respect of a failure to deliver a number of Allowances (the "**RPRC Shortfall**"), an amount equal to:

- (A)
  - (I) the price (per Allowance) that Receiving Party, acting in a commercially reasonable manner, does or would, in the determination of the Calculation Agent, pay in an arm's length transaction concluded on the Final Delivery Date for an equivalent number of Allowances to be delivered on the Final Delivery Date or, if later, the Delivery Business Day on which Allowances would be delivered in accordance with prevailing market practice under a spot transaction concluded on the Final Delivery Date; less
  - (II) the Allowance Purchase Price or Allowance Strike Price, as applicable, as set out in the Confirmation for the relevant EU Emissions Allowance Transaction plus, in those circumstances in which the relevant termination of the parties' obligations under "Physical Settlement" occurs following a Suspension Event, the Close-out Cost of Carry Amount; multiplied by:
- (B) the RPRC Shortfall; plus
- (C) interest at the Default Rate for the period from (and including) the Delivery Date to (but excluding) the date of termination in accordance with Part 7(d)(ii)(1)(B)(*Failure to Deliver Not Remedied*) on an amount equal to the product of the RPRC Shortfall and an amount equal to the excess, if any, of the price determined pursuant to paragraph (1)(A)(I) above over the Allowance Purchase Price or the Allowance Strike Price, as applicable; or

(2) if "Excess Emissions Penalty" is specified to be applicable in the Annex to this Part 7 or the Confirmation for an EU Emissions Allowance Transaction and, if an EEP Risk Period is specified in the Annex to this Part 7 or in the Confirmation for the relevant EU Emissions Allowance Transaction, the Delivery Date falls within the EEP Risk Period for the relevant EU Emissions Allowance Transaction, then, in respect of a failure to deliver a number of Allowances (the "**Undelivered Allowances**"), an amount equal to the sum of:

- (A) either:
  - (I) if in one or more arm's length transactions Receiving Party is able, using its reasonable endeavours, to purchase a number of

Allowances to be delivered during the period from (but excluding) the Final Delivery Date to (and including) the Reconciliation Deadline on or immediately following the Delivery Date (the "**Buy-In Period**"), which in respect of each such individual purchase of Allowances, when aggregated with other such purchases, amounts to a purchase of a number of Allowances equal to the number of Undelivered Allowances:

(X) (1) the price (per Allowance) at which Receiving Party is able so to purchase the relevant number of Allowances; less (2) (A) the Allowance Purchase Price or Allowance Strike Price, as applicable, for the Undelivered Allowances set out in the relevant Confirmation plus, (B) in those circumstances in which the relevant termination of the parties' obligations under "Physical Settlement" occurs following a Suspension Event, the Close-out Cost of Carry Amount; multiplied by:

(Y) the number of Allowances to which such purchase relates; plus

(Z) interest at the Default Rate for the period from (and including) the Delivery Date to (but excluding) the date of termination in accordance with Part 7(d)(ii)(1)(B)(*Failure to Deliver Not Remedied*) on an amount equal to the product of the number of Undelivered Allowances and an amount equal to the excess, if any, of the price determined pursuant to paragraph (2)(A)(I)(X)(1) above over the Allowance Purchase Price or Allowance Strike Price, as applicable; or

(II) if in one or more arm's length transactions Receiving Party, using its reasonable efforts, is unable to purchase a number of Allowances equivalent to the Undelivered Allowances to be delivered during the Buy-In Period:

(X) in respect of the number of Allowances for which Receiving Party is able to effect a Buy-In during the Buy-In Period, an amount for such Allowances calculated in accordance with paragraph (I) above; and

(Y) in respect of a number of Allowances equal to the number of Undelivered Allowances minus the number of Allowances referred to in (II)(X) above (the "**Shortfall**"), the sum of:

(a) (I) the price (per Allowance) at

which Receiving Party, using its reasonable efforts and in an arm's length transaction, is able to purchase as soon as reasonably possible for delivery after the Reconciliation Deadline a number of Allowances (such Allowances also being of the same Allowance Type equal to the Shortfall; less

(II) the Allowance Purchase Price or Allowance Strike Price, as applicable, for the Undelivered Allowances set out in the relevant Confirmation plus, in those circumstances in which the relevant termination of the parties' obligations under "Physical Settlement" occurs following a Suspension Event, the Close-out Cost of Carry Amount; plus

(III) the EEP Amount; multiplied by:

(b) the Shortfall; plus

(c) interest at the Default Rate for the period from (and including) the Delivery Date to (but excluding) the date Receiving Party is or would be able to purchase Allowances in accordance with paragraph (II)(Y)(a)(1) above on an amount equal to the product of the number of Undelivered Allowances and an amount equal to the excess, if any, of the price determined pursuant to paragraph (II)(Y)(a)(1) above over the Allowance Purchase Price or the Allowance Strike Price, as applicable; and

(B) such reasonable costs and expenses which Receiving Party incurs as a direct result of Delivering Party's failure to deliver the Shortfall to the extent that those costs and expenses are not reflected in paragraphs (A)(I) or (A)(II) above; or

(3) if "Failure to Deliver (Alternative Method)" is specified to be applicable in the Annex to this Part 7 or the Confirmation for an EU Emissions Allowance Transaction, then, in respect of a failure to deliver a number of Allowances (the number of Allowances not so delivered being the "RPRC Shortfall"), an amount equal to:

(A) (I) the price (per Allowance) Receiving Party, acting in a commercially reasonable manner, does or

would, in the determination of the Calculation Agent, pay in an arm's length transaction concluded in accordance with prevailing market practice on the Final Delivery Date to purchase a number of Allowances equivalent to the RPRC Shortfall for delivery on the first Delivery Business Day on which transactions concluded on the Delivery Date would be settled in accordance with prevailing market practice; less

(II) the Allowance Purchase Price or Allowance Strike Price, as applicable, as set out in the Confirmation for such EU Emissions Allowance Transaction plus, in those circumstances in which the relevant termination of the parties' obligations under "Physical Settlement" occurs following a Suspension Event, the Close-out Cost of Carry Amount; multiplied by:

- (B) the RPRC Shortfall; plus
- (C) interest at the Default Rate for the period from (and including) the Delivery Date to (but excluding) the Final Delivery Date on an amount equal to the product of the Allowance Purchase Price or the Allowance Strike Price, as applicable, and the RPRC Shortfall.

Reconciliation  
Deadline:

Means, in respect of an EU Emissions Allowance Transaction, 30th April in each calendar year in respect of the preceding calendar year or such later date in each year as may be determined in accordance with the Scheme for the surrender of Allowances pursuant to the Scheme.

Registries  
Regulation:

Means the Commission Regulation (EU) no. 389/2013 of 2 May 2013 establishing a Union Registry pursuant to the Directive 2003/87/EC of the European Parliament and of the Council, Decisions No.280/2004/EC and No. 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulation (EU) No. 920/2010 and No. 1193/2011, as amended from time to time.

Registry:

Means the registry established by a Member State, a non-Member State or the EU, in accordance with the International Rules, in order to ensure the accurate accounting of the issue, holding, transfer, acquisition, surrender, cancellation and replacement of Allowances. For the avoidance of doubt, references to a Registry shall include the Union Registry and the Holding Accounts within the Union Registry that are under the jurisdiction of a single National Administrator designated by a Member State and will together be deemed, for the purpose of this Part 7, to be a Registry for that Member State.

Registry Operation:	Means, other than by reason of the occurrence of an Administrator Event: <ul style="list-style-type: none"> <li>(a) the establishment of and continuing functioning of the Relevant Registry;</li> <li>(b) the establishment of and continuing functioning of the EUTL; and/or</li> <li>(c) the establishment of and continuing functioning of the link between each of the Relevant Registry and the EUTL.</li> </ul>
Relevant Authority:	Means any authority having power pursuant to the Directive and/or the Registries Regulation to administer the Scheme, including the Central Administrator and each National Administrator as those terms are defined in the Registries Regulation.
Relevant Registry:	Means the Registry through which a party is obliged to perform a delivery or acceptance obligation under and in accordance with an EU Emissions Allowance Transaction. Where a party has specified more than one Specified Holding Account for delivery or acceptance purposes, the Relevant Registry shall be identified in accordance with Part 7(d)(i)(2)(C).
RPRC Shortfall:	Has the meaning given to such term in the definition of Receiving Party's Replacement Cost in this Part 7(e)( <i>Defined Terms and Interpretation</i> ).
Scheme:	Means the scheme for transferring Allowances established pursuant to the Directive and the Registries Regulation, and as implemented by the national laws of Member States.
Seller:	Means, in respect of an EU Emissions Allowance Transaction, the party specified as such in the related Confirmation.
Seller Business Day:	Means, in respect of an EU Emissions Allowance Transaction which is an Allowance Option Transaction, any day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in the city in which Seller is located for purposes of receiving notices.
Settlement Disruption Event:	Means an event or circumstance beyond the control of the party affected that cannot, after the use of all reasonable efforts, be overcome and which makes it impossible for that party to perform its obligations either to deliver or to accept Allowances in accordance with the terms of an EU Emissions Allowance Transaction. <p style="margin-top: 10px;">For the avoidance of doubt, the inability of a party to deliver Allowances as a result of insufficient Allowances in the relevant Specified Holding Account, whether caused by the low or non-allocation of Allowances by a Member State or any other state,</p>

the delay or failure of a Member State or Central Administrator to replace allowances of the Third Compliance Period with Allowances for the Fourth Compliance Period, or the failure of a party to procure sufficient Allowances to meet its delivery obligations, shall not constitute a Settlement Disruption Event. This is not an exhaustive list of events which will not constitute a Settlement Disruption Event and is provided for the avoidance of doubt only.

If an event or circumstance which would otherwise constitute or give rise to a Settlement Disruption Event also constitutes a Suspension Event, it will be treated as a Suspension Event and will not constitute a Settlement Disruption Event.

- Shortfall:** Has the meaning given to such term in the definition of Receiving Party's Replacement Cost in this Part 7(e)(*Defined Terms and Interpretation*).
- Specified Compliance Period:** Means, in respect of an Allowance and an EU Emissions Allowance Transaction, the period as specified in the Confirmation for the relevant EU Emissions Allowance Transaction.
- Specified Holding Account:** Means, in respect of a party and an EU Emissions Allowance Transaction, the Holding Accounts (if any) specified as such in respect of such party (i) in the Confirmation for the relevant EU Emissions Allowance Transaction; or (ii) where no such accounts are specified in accordance with (i), in the Annex to this Part 7; in either case in accordance with Part 7(d)(xii)(1)(A) or Part 7(d)(xii)(2)(A) (as applicable) and subject to modification in accordance with Part 7(d)(xii)(1)(B) and Part 7(d)(xii)(2)(B).
- Suspension Event:** Means any date a party to the Agreement is unable to perform its delivery or acceptance obligations under and in accordance with an EU Emissions Allowance Transaction and the Scheme through a Relevant Registry as a result of the occurrence of any of the following events:
- (i) absence of Registry Operation; or
  - (ii) the occurrence of an Administrator Event.
- Trade Date:** Means, in respect of an EU Emissions Allowance Transaction, the date specified in the related Confirmation.
- Third Compliance Period:** Means, in respect of EU Allowances and AEU Allowances, the period referred to in Article 16 of the Directive 2009/29/EC starting 1 January 2013 to 31 December 2020.

Unauthorised Transfer:	Means the transfer by debiting of any Allowance from an account holder's Holding Account and the crediting of a Holding Account of another person, where such transfer is not initiated by the relevant authorised representative or additional authorised representative (as referred to in the Registries Regulation) of the first account holder.
Undelivered Allowances:	Has the meaning given to such term in the definition of Receiving Party's Replacement Cost in this Part 7(e)( <i>Defined Terms and Interpretation</i> ).
Union Registry:	Means the Registry referred to as the "Community Registry" in Article 19(1) of the Directive.
VAT:	Has the meaning given to such term in Part 7(d)(viii)( <i>Value Added Taxes</i> ).
VAT Amount:	Has the meaning given to such term in Part 7(d)(viii)( <i>Value Added Taxes</i> ).
VAT Invoice:	Has the meaning given to such term in Part 7(d)(v)( <i>Invoicing</i> ).
VAT Jurisdiction:	Means, in respect of a party and an EU Emissions Allowance Transaction, the place specified as such in the related Confirmation or, if a place is not so specified, the place specified in the Annex to this Part 7 as the VAT Jurisdiction for such party.
Written Confirmation:	Means, in respect of a party and an EU Emissions Allowance Transaction which is an Allowance Option Transaction, if "Written Confirmation" is specified to be applicable or if demanded by Seller (which demand, notwithstanding any provisions regarding notice applicable to the Allowance Option Transaction, may be given orally (including by telephone)), Buyer shall execute a written confirmation (including by facsimile transmission) confirming the substance of the Notice of Exercise and deliver the same to Seller. Buyer shall cause such executed written confirmation to be received by Seller within one Seller Business Day following the date that the Notice of Exercise or Seller's demand, as the case may be, becomes effective.



ANNEX

EU Emissions Allowance Transaction Accounts and Elections

Part A

Specified Holding Account Details of Party A

Account	Account number and Registry
(1)	

Cash Account:

Bank:

Bank Swift BIC:

IBAN:

Beneficiary: Mitsui Bussan Commodities (France) SA

A/C No: 6161406449

Currency: Euros

Notwithstanding that the above account belongs to Mitsui Bussan Commodities Ltd, the parties agree that all deliveries of Allowances to or from the above account shall be valid deliveries under the relevant EU Emissions Allowance Transaction and will fully discharge the delivery obligations of each party under the relevant EU Emissions Allowance Transaction.

Part B

Specified Holding Account Details of Party B

Account	Account number and Registry
(1)	
(2)	
(3)	

Cash Account:

Swift Code:

Account No:

IBAN:

Beneficiary: Bratislavská teplárenská, a.s.

Currency: Euro

**Part C**

Delivery Business Day Location and VAT Jurisdiction for Party A

Delivery Business Day Location:	London and Paris
VAT Jurisdiction:	France

**Part D**

Delivery Business Day Location and VAT Jurisdiction for Party B

Delivery Business Day Location:	Slovakia
VAT Jurisdiction:	Slovakia

**Part E**

Elections for Party A and Party B

Payment on Termination for Settlement Disruption:	Applicable unless specified otherwise in the relevant Confirmation.
Excess Emissions Penalty	Not Applicable unless specified otherwise in the relevant Confirmation.
EEP Risk Period	Not Applicable unless specified otherwise in the relevant Confirmation.
EEP Equivalent	Not Applicable unless specified otherwise in the relevant Confirmation.
Failure to Deliver (Alternative Method)	Not Applicable unless specified otherwise in the relevant Confirmation.

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

**MITSUI BUSSAN COMMODITIES  
(FRANCE) SA**

**Bratislavská tenlárenská/a.s.**

By: \_\_\_\_\_  
Name: Masato Ishikawa  
Title: Managing Director  
Date: 10/15/2021

By: \_\_\_\_\_  
Name: Ing. Dušan Randuška  
Title: Chairman of the Board of Directors  
Date: 10/18/2021

By: \_\_\_\_\_  
Name: Ing. Miroslava Čalfová  
Title: Member of the Board of Directors  
Date: 10/18/2021

**Exhibit A**

**ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol**

For the purpose of the EMIR Protocol, the parties hereby declare the following:

***Parties' portfolio reconciliation status:***

Party A confirms that it is a Portfolio Data Sending Entity.  
Party B confirms that it is a Portfolio Data Receiving Entity.

***Parties' Local Business Days:***

Party A specifies the following place(s) for the purpose of the definition of Local Business Day as it applies to it: London,  
Party B specifies the following place(s) for the purpose of the definition of Local Business Day as it applies to it: Bratislava.

***Party B's Affiliates which are its agent:***

With respect to Part I(3)(a) of the Attachment to the EMIR Protocol, Party B appoints the following Affiliates (as defined in the Attachment to the EMIR Protocol) as their agent: Not applicable

***Parties' use of a third party service provider:***

For the purpose of Part I(3) of the EMIR Protocol:

Party A confirms that it is a party that may use a Third Party Service Provider.  
Party B confirms that it is a party that may use a Third Party Service Provider.

***Parties' contact details for Portfolio Data, discrepancy notices and Dispute Notices:***

The following items may be delivered to each party at the contact details shown:

With respect to Party A:

Portfolio Data, notice of discrepancy  
and Dispute Notice: energyreconciliations@mbcl.com

With respect to Party B:

Portfolio Data, notice of discrepancy  
and Dispute Notice: miroslava.calfova@mhth.sk

Bratislavská Teplarenska, a.s.  
4600002670

## EMIR Reporting Agreement

**THIS AGREEMENT** is dated as of 15.10.2021 and is made BETWEEN:

- (A) **Mitsui Bussan Commodities (France) SA**, a French corporation (*société anonyme*), incorporated in France, having its registered office at 112, avenue Kléber, 75116 Paris with registration number 852 297 878 (R.C.S. Paris) (the "**Reporting Party**"); and
- (B) **Bratislavská Teplarenska, A.S.**, a company organised under the laws of the Slovak Republic, with its registered office at Turbínová 3, 829 05 Bratislava with with company identification number 35 823 542, company register of District court Bratislava I, section Sa, number 2851/B, (the "**Client**").

### WHEREAS

- (1) Certain parties who enter into, modify or terminate certain derivatives transactions are required to report specified data to a trade repository or, if no trade repository is available, to the relevant public body.
- (2) The Client and the Reporting Party have entered into this regulatory reporting agreement to formalise certain terms relating to such reporting and to assist with fulfilling the Client's and/or the Reporting Party's reporting responsibility with respect to certain transactions to which it is a counterparty.

IT IS AGREED as follows:

### 1 Interpretation, Structure and Existing Arrangements

**1.1 Definitions.** The terms defined in Section 8 (*Definitions and Construction*) of the General Provisions and elsewhere in this Agreement will have the meanings specified therein.

#### 1.2 Interpretation

**1.2.1** This regulatory reporting agreement is comprised of a main body, together with one or more Annexes and any Schedules (together, the "**Agreement**"). The terms of the main body and Schedules to this Agreement shall apply separately, and as amended and supplemented by each applicable Annex, to the Relevant Transactions identified in each applicable Annex.

**1.2.2** Each Annex shall be effective from the date of this Agreement.

**1.2.3** To the extent that there is any inconsistency as between the terms of the main agreement or a Schedule and an Annex, the Annex shall prevail for the purposes of applying this Agreement to the Relevant Transactions identified therein.

#### 1.3 Existing Reporting Arrangements

**1.3.1** In respect of each Relevant Transaction identified in an Annex, this Agreement shall be deemed to supersede any other regulatory reporting agreement or delegated reporting agreement that has previously been executed by the parties with respect to EMIR reporting.

## **Delegated Reporting Provisions**

- 1 Purpose.** The Client (the “*Delegating Party*”) has requested that the Reporting Party facilitate the Delegating Party in meeting some or all of its reporting obligations by reporting, on the Delegating Party’s behalf, relevant data to a trade repository or, if no trade repository is available, to the relevant public body.
  
- 2 Delegated Reporting**
  - 2.1** In respect of each Relevant Transaction for which Delegated Reporting is specified to apply in the applicable Annex:
    - 2.1.1** the Delegating Party requests, appoints and authorises that the Reporting Party submit; and
    - 2.1.2** subject to the other provisions of this Agreement, the Reporting Party agrees to submit, the Relevant Data to a Relevant Trade Repository by the Reporting Deadline.
  
  - 2.2** In respect of each Relevant Transaction where the Relevant Data is to include (or is solely) Counterparty Data, the Delegating Party:
    - 2.2.1** agrees it will deliver to the Reporting Party its Counterparty Data (including Static Data as specified in Schedule 1 (*Static Data*)) in time for the Reporting Party to comply with its obligation under Section 2.1 of these Delegated Reporting Provisions, as notified by the Reporting Party;
    - 2.2.2** agrees that, with respect to Static Data, upon it becoming aware of any such data ceasing to be true, accurate and complete in every material respect, it will, to the extent that it uses a third party platform or other central data storage provider in respect of the Relevant Data, update Static Data on such platform or provider and in any event notify the Reporting Party of any change to such data;
    - 2.2.3** agrees and acknowledges that the provision of Static Data under Section 2.2.1 or 2.2.2 of these Delegated Reporting Provisions shall be effective on the day specified in any applicable Annex for such purposes, unless otherwise agreed by the parties;
    - 2.2.4** agrees and acknowledges that if it fails to comply with Section 2.2.1 of these Delegated Reporting Provisions, the Reporting Party will be under no obligation to (but may) submit the Relevant Data to a Relevant Trade Repository by the Reporting Deadline;
    - 2.2.5** represents to the Reporting Party that the information it delivers under Section 2.2.1 of these Delegated Reporting Provisions is, at the time of delivery and in respect of Static Data, on an ongoing basis, true, accurate and complete in every material respect; and
    - 2.2.6** acknowledges that the Reporting Party may rely on the Counterparty Data without investigation.
  
  - 2.3** Without prejudice to Section 5.1 of these Delegated Reporting Provisions, in respect of each Relevant Transaction, the Reporting Party will determine in its sole and absolute discretion whether the Delegating Party’s Reporting Obligation has arisen, the characterisation of the Relevant Transaction and, where the Relevant Data is to include Common Data, the Common Data (which may be by reference to trade information provided by a Reporting Party Affiliate where such Reporting Party Affiliate is party to such Relevant Transaction). If unique reference(s) need(s) to be generated for inclusion in the Relevant Data, the Delegating Party agrees that the Reporting Party may generate such unique reference(s).
  
  - 2.4** If the Reporting Party does not or will not report the Relevant Data by the Reporting Deadline in accordance with Section 2.1 of these Delegated Reporting Provisions, the Reporting Party will notify the Delegating Party as soon as reasonably practicable and the Delegating Party will be entitled to report such Relevant Data to a Trade Repository or to appoint a third party to make such report on such Delegating

Party's behalf. Other than in this instance or as otherwise agreed between the parties in writing, the Delegating Party will not report or arrange the reporting of the Relevant Data to a Trade Repository and will notify the Reporting Party immediately if it has reported or arranged the reporting of the Relevant Data to a Trade Repository other than in accordance with this provision.

- 2.5 The Reporting Party will be under no obligation in respect of this Agreement until it has received from the Delegating Party, in form and substance satisfactory to the Reporting Party, the information listed in Schedule 2.

### 3 Correction of Errors

- 3.1 Notwithstanding Section 3.2 immediately below, the Client acknowledges and agrees that the Reporting Party is not obliged to discover errors in or check the accuracy, authenticity or completeness, of any Relevant Data, whether that information derives from the Delegating Party or any other person (including without limitation any trading venue, central counterparty or similar financial market infrastructure but excluding the Reporting Party and each Reporting Party Affiliate).

- 3.2 If either party becomes aware of a material error in any Relevant Data reported to a Trade Repository in accordance with this Agreement, it will notify the other party if required by and otherwise in accordance with and both parties will use reasonable efforts, acting in good faith and a commercially reasonable manner, to resolve such error.

### 4 Use of Third Parties

- 4.1 The parties agree that the Reporting Party may utilise the services of a Third Party Service Provider to facilitate the submission of Relevant Data or other performance by the Reporting Party of its obligations under this Agreement (including, but not limited to, any service, platform, system, interface or other technology developed by any such Third Party Service Provider for such purpose). Where the Reporting Party has discretion in selecting a Third Party Service Provider, it will use reasonable care in the selection of the Third Party Service Provider.

- 4.2 Where the Third Party Service Provider is an Affiliate of the Reporting Party, the requirements set out in Section 6.1 (*Liability*) of these Delegated Reporting Provisions and the provisions of Section 8 (*Indemnity*) of these Delegated Reporting Provisions and Section 2 (*Confidentiality Waiver*) of the General Provisions apply in respect of such Third Party Service Provider as if such Third Party Service Provider was the Reporting Party.

- 5 **Delegating Party Acknowledgement.** In respect of Delegated Reporting, the Delegating Party acknowledges and agrees that:

- 5.1 the Delegating Party remains solely responsible and liable for (i) submission of all data subject to the Delegating Party's Reporting Obligation which is not included in the Relevant Data; and (ii) compliance with the Delegating Party's Reporting Obligation generally;
- 5.2 any submission by the Reporting Party of Relevant Data under this Agreement is made with a view to facilitating the Delegating Party's reporting of data pursuant to the Delegating Party's Reporting Obligation and is independent of any Reporting Obligation that the Reporting Party or any Reporting Party Affiliate may or may not be subject to;
- 5.3 where the Reporting Party is not itself subject to the Reporting Obligation, any submission by the Reporting Party of Relevant Data is solely for the purpose of fulfilling its obligations under this Agreement;
- 5.4 the Reporting Party will not be required to provide any services or otherwise perform under this Agreement to the extent any failure by it to provide services or otherwise perform is due to a breach of this Agreement



by, or any other act or omission of, the Delegating Party, any Relevant Trade Repository or any Third Party Service Provider;

- 5.5 without prejudice to any other agreement the Delegating Party may have with any Relevant Trade Repository or any Third Party Service Provider, the Delegating Party will not have recourse under or in relation to this Agreement against any Relevant Trade Repository or any Third Party Service Provider in respect of any Relevant Data submitted under this Agreement or any other activities contemplated by this Agreement; and
- 5.6 the Delegating Party's Reporting Obligation and, accordingly, the service the Reporting Party provides in relation thereto under this Agreement, remain at all times subject to change as a result of further regulatory developments and guidance.

## **6 Liability**

- 6.1 In respect of Delegated Reporting, the Reporting Party shall, at all times, perform its obligations and exercise discretion under this Agreement with reasonable care, provided that the Reporting Party shall not be required to do or cause to be done anything which (i) is not permitted or is otherwise contrary to or inconsistent with the operating procedures of any Third Party Service Provider or any Relevant Trade Repository (including any decision by a Third Party Service Provider or any Relevant Trade Repository not to permit the Reporting Party to submit Relevant Data in accordance with the terms of this Agreement) or (ii) is contrary to any law, rule or regulation or the Reporting Party is otherwise prevented from doing by any law, rule or regulation.
- 6.2 Notwithstanding any other provision of this Agreement but subject to the remaining provisions of this Section 6 (*Liability*) of these Delegated Reporting Provisions, the Reporting Party, each Reporting Party Affiliate and the directors, officers, employees, contractors and agents of the Reporting Party and each Reporting Party Affiliate shall not have any liability to the Delegating Party (or any person claiming under or through it), whether in contract, tort (including negligence), breach of statutory or regulatory duty or otherwise, for:
- 6.2.1 any Losses arising directly from, or in connection with:
- (i) the Reporting Party's provision of, or the Delegating Party's use of, the services agreed to be provided by the Reporting Party under this Agreement;
  - (ii) any acts, omissions or failures of any third party including, but not limited to, any Third Party Service Provider or a Relevant Trade Repository (including any decision by a Third Party Service Provider or a Relevant Trade Repository not to permit the Reporting Party to submit Relevant Data via the Third Party Service Provider or to a Relevant Trade Repository on behalf of the Delegating Party);
  - (iii) the Reporting Party's performance of its obligations or exercise of its rights under this Agreement (including, without limitation, the rights of the Reporting Party under Section 2.3 of these Delegated Reporting Provisions and/or the use by the Reporting Party of a platform, system, interface, service or other technology provided by any Third Party Service Provider);
  - (iv) the failure of any platform, system, interface, service or other technology, including any internal platform, system, interface, service or other technology, which the Reporting Party uses or intends to use in the performance of its obligations or exercise of its rights under this Agreement; and
  - (v) a third party accessing or intercepting any information or data of the Delegating Party,

except to the extent that such Losses are due to the gross negligence, wilful default or fraud of the Reporting Party, any Reporting Party Affiliate or the directors, officers, employees, contractors or agents of the Reporting Party or each Reporting Party Affiliate, in which case, to the extent permitted by applicable law, the Reporting Party's liability shall not exceed USD 20,000 or

- 6.2.2 any indirect or consequential loss or damage or for any direct or indirect loss of business, profits, anticipated savings or goodwill.
- 6.3 The parties agree that this Section 6 (*Liability*) of these Delegated Reporting Provisions represents a fair and equitable position. Nothing in this Agreement will exclude or limit any duty or liability which may not be excluded or limited under applicable law or regulation.
- 7 **Force Majeure.** If the Reporting Party is prevented, hindered or delayed from or in performing any of its obligations under this Agreement as a result of a Force Majeure Event, such obligation(s) shall be suspended for so long as that Force Majeure Event continues.
- 8 **Indemnity.** The Delegating Party agrees to indemnify and hold harmless each of the Reporting Party, each Reporting Party Affiliate and the directors, officers, employees, contractors and agents of the Reporting Party and each Reporting Party Affiliate from and against any and all Losses in relation to Delegated Reporting incurred by or awarded against them arising from or in connection with:
- 8.1.1 any claim or action brought by any third party to the extent that such claim or action arises out of or in connection with or is caused, directly or indirectly, by the activities of the parties contemplated by this Agreement;
- 8.1.2 any information provided to the Reporting Party and/or each Reporting Party Affiliate by the Delegating Party including, but not limited to, all information included in any Relevant Data made known to the Reporting Party and/or each Reporting Party Affiliate by the Delegating Party;
- 8.1.3 any regulatory or investigative inquiries or information subpoenas which arise out of or in connection with the activities of the parties contemplated by this Agreement,
- except to the extent that such Losses are the direct result of:
- (A) the gross negligence, wilful default or fraud of the Reporting Party or its directors, officers, employees, contractors or agents; or
- (B) the gross negligence, wilful default or fraud of any Reporting Party Affiliate or its directors, officers, employees, contractors or agents.

## 9 **Amendment and Termination**

- 9.1 The Reporting Party may, by written notice to the Delegating Party, amend (in whole or part) this Agreement and any operational and procedural documents or processes in respect of reporting delegated under this Agreement to accommodate any change in law, rule, regulation or operational requirement, but any such amendment will only be effective if not rejected by the Delegating Party by written notice. If:
- 9.1.1 the Delegating Party rejects an amendment by written notice, this Agreement will terminate without such amendment taking effect; or
- 9.1.2 the Delegating Party does not reject an amendment by written notice, the Delegating Party will be deemed to have agreed to such amendment to this Agreement.

The timings and other requirements, if any, in respect of this provision (including, without limitation, in respect of termination) are as set out in any applicable Annex in respect of the Relevant Transactions.

Notices delivered in respect of this Section 9.1 of these Delegated Reporting Provisions are subject to Section 5 (*Notices*) of the General Provisions.

- 9.2** Either party may terminate this Agreement by giving written notice to the other party in accordance with Section 5 (*Notices*) of the General Provisions. Such termination will be effective at the expiry of the notice period, if any, specified for this purpose in any applicable Annex.
- 9.3** The provisions of Sections 6 (*Liability*) and 8 (*Indemnity*) of these Delegated Reporting Provisions, Sections 2 (*Confidentiality Waiver*), 4 (*Miscellaneous*) and 7 (*Governing Law and Jurisdiction*) of the General Provisions, as well as this Section 9 (*Amendment and Termination*) of these Delegated Reporting Provisions, shall survive the termination of this Agreement.

## Mandatory Reporting Provisions

**1 Purpose.** Pursuant to the regulatory obligations of the Reporting Party or the Reporting Party Affiliate, as applicable, the Reporting Party will report data on behalf of the Client as its counterparty, or the counterparty of its Reporting Party Affiliate, as applicable, where such counterparty meets certain conditions. In order to submit such reports, the Reporting Party requires certain data from the Client.

**2 Mandatory Reporting.** In respect of each Relevant Transaction for which Mandatory Reporting is specified to apply in the applicable Annex, the Client:

**2.1.1** agrees it will deliver to the Reporting Party (either directly or otherwise via a third party platform or other central data storage provider) its Counterparty Data (including Static Data as specified in Schedule 1 (*Static Data*)) in time for the Reporting Party to comply with its Reporting Obligation, as notified by the Reporting Party;

**2.1.2** agrees that, with respect to Static Data, upon it becoming aware of any such data ceasing to be true, accurate and complete in every material respect, it will, to the extent that it uses a third party platform or other central data storage provider in respect of the Relevant Data, update Static Data on such platform or provider and in any event immediately notify the Reporting Party of any change to such data;

**2.1.3** represents to the Reporting Party that the information it delivers under Section 2.1.1 of these Mandatory Reporting Provisions is, at the time of delivery and in respect of Static Data, on an ongoing basis, true, accurate and complete in every material respect;

**2.1.4** acknowledges that the Reporting Party may, if the Client fails to provide Counterparty Data in accordance with Section 2.1.1 of these Mandatory Reporting Provisions, determine the values to be submitted to the Relevant Trade Repository in its sole discretion (which may, for the avoidance of doubt, comprise default values) in order to comply with its Reporting Obligation and the Reporting Party shall not incur any liability to the Client, whether in contract, tort (including negligence), breach of statutory or regulatory duty or otherwise with respect to the accuracy or completeness of any such values and shall be under no obligation to the Client to subsequently correct any such data submitted to the Relevant Trade Repository; and

**2.1.5** acknowledges that the Reporting Party may rely on the Counterparty Data without investigation.

In respect of each Relevant Transaction, the Reporting Party will determine in its sole and absolute discretion whether its Reporting Obligation has arisen and the characterisation of the Relevant Transaction. If unique reference(s) need(s) to be generated for inclusion in the Relevant Data, the Client agrees that the Reporting Party may generate such unique reference(s).

**3 Liability.** To the extent permitted by applicable law, the Client agrees that the Reporting Party, each Reporting Party Affiliate and the directors, officers, employees, contractors and agents of the Reporting Party and each Reporting Party Affiliate shall not have any liability to the Client (or any person claiming under or through it), whether in contract, tort (including negligence), breach of statutory or regulatory duty or otherwise, for any Losses arising directly from, or in connection with the Client's performance of, or failure to perform, its obligations under any applicable law or regulation.

**4 Indemnity.** To the extent permitted by applicable law, the Client agrees to indemnify and hold harmless each of the Reporting Party, each Reporting Party Affiliate and the directors, officers, employees, contractors and agents of the Reporting Party and each Reporting Party Affiliate from and against any and

all Losses in relation to Mandatory Reporting incurred by or awarded against them arising from or in connection with:

- 4.1.1 any information provided to the Reporting Party and/or each Reporting Party Affiliate by the Client including, but not limited to, all information included in any Relevant Data made known to the Reporting Party and/or each Reporting Party Affiliate by the Client or the failure of the Client to provide, on a timely basis or at all, information reasonably required by the Reporting Party to fulfil its reporting obligations, under this Agreement or otherwise; and
- 4.1.2 any corrections required to be made by the Reporting Party to Relevant Data previously submitted to a Relevant Trade Repository in consequence of the Client providing inaccurate information or failing to provide information,

except to the extent that such Losses are the direct result of:

- (A) the gross negligence, wilful default or fraud of the Reporting Party or its directors, officers, employees, contractors or agents; or
- (B) the gross negligence, wilful default or fraud of any Reporting Party Affiliate or its directors, officers, employees, contractors or agents.

## General Provisions

### 1 Transition between Reporting Models

1.1 If 'Automatic Transition to Delegated Reporting' is stated to apply in respect of one or more Relevant Transactions in an Annex and a Delegated Reporting Transition Date occurs, then with effect from that Delegated Reporting Transition Date:

1.1.1 'Delegated Reporting' shall be deemed to be applicable; and

1.1.2 'Mandatory Reporting' shall be deemed not to be applicable,

in each case, pursuant to the terms of that Annex in respect of any such Relevant Transactions concluded on or after the Delegated Reporting Transition Date.

1.2 If 'Automatic Transition to Mandatory Reporting' is stated to apply in respect of one or more Relevant Transactions in an Annex and a Mandatory Reporting Transition Date occurs, then with effect from that Mandatory Reporting Transition Date:

1.2.1 'Mandatory Reporting' shall be deemed to be applicable; and

1.2.2 'Delegated Reporting' shall be deemed not to be applicable,

in each case, pursuant to the terms of that Annex in respect of any such Relevant Transactions concluded on or after the Mandatory Reporting Transition Date.

2 **Confidentiality Waiver.** Notwithstanding anything to the contrary in this Agreement or in any non-disclosure, confidentiality or other agreement between the parties, each party hereby consents to the disclosure of information:

- (i) to the extent required or permitted under, or made in accordance with, the provisions of Primary and Supporting Legislation and also to the extent required in accordance with the terms of this Agreement as determined by the Reporting Party in its sole and absolute discretion, including where the Reporting Party or a Reporting Party Affiliate is not the counterparty to a Relevant Transaction with a Client, disclosure of information to the entity that is counterparty to such Relevant Transaction including via third party service providers ("**Reporting Requirements**"); or
- (ii) to and between the other party's head office, branches or Affiliates, or any persons or entities who provide services to such other party or its head office, branches or Affiliates, in each case, in connection with such Reporting Requirements.

Each party acknowledges that pursuant to Primary and Supporting Legislation, regulators require reporting of trade data to increase market transparency and enable regulators to monitor systemic risk to ensure safeguards are implemented globally.

Each party further acknowledges that disclosures made pursuant hereto may include, without limitation, the disclosure of trade information including a party's identity (by name, address, corporate affiliation, identifier or otherwise) to any Trade Repository or one or more systems or services operated by any such trade repository ("**TR**") and any relevant regulators under Primary and Supporting Legislation and that such disclosures could result in certain anonymous transaction and pricing data becoming available to the public. Each party further acknowledges that, for purposes of complying with regulatory reporting obligations, a party may use a third party service provider to process or transfer trade information into a TR and that a TR may engage the services of a global trade repository regulated by one or more governmental regulators. Each party also acknowledges that disclosures made pursuant hereto may be made to recipients in a jurisdiction other than that of the disclosing party or a jurisdiction that may not necessarily provide an

equivalent or adequate level of protection for data as the counterparty's home jurisdiction. For the avoidance of doubt, (1) to the extent that applicable non-disclosure, confidentiality, bank secrecy, data privacy or other law imposes non-disclosure requirements on transaction and similar information required or permitted to be disclosed as contemplated herein but permits a party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by each party for purposes of such law; (2) any agreement between the parties to maintain confidentiality of information contained in this agreement or in any non-disclosure, confidentiality or other agreement shall continue to apply to the extent that such agreement is not inconsistent with the disclosure of information in connection with the Reporting Requirements as set out herein; and (3) nothing herein is intended to limit the scope of any other consent to disclosure separately given by each party to the other party.

The consenting party represents and warrants that any third party to whom it owes a duty of confidence in respect of the information disclosed has consented to the disclosure of that information.

**3 Representations.** Unless otherwise specified below, each party makes the following representations to the other party on the date this Agreement is entered into and, in the case of the representations in Sections 3.1.3, 3.4 and 3.5 of these General Provisions, at all times until the termination of this Agreement:

**3.1 Basic Representations**

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

**3.1.2 Powers.** It has the power to execute this Agreement, to deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary action to authorise such execution, delivery and performance.

**3.1.3 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, arbitral award 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.

**3.1.4 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.

**3.1.5 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, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

**3.2 Absence of Litigation.** There is no pending or, to its knowledge, threatened action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or its ability to perform its obligations under this Agreement.

**3.3 No Agency.** It is entering into this Agreement as principal and not as agent of any person or entity.

**3.4 Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into this Agreement, it being understood that information and explanations related to the terms and

conditions of this Agreement will not be considered investment advice or a recommendation to enter into this Agreement. No communication (written or oral) received from the other party will be deemed to be an assurance or guarantee as to the expected results of this Agreement.

**3.5 Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of this Agreement.

#### **4 Miscellaneous**

**4.1 Consideration.** Each party hereby agrees and acknowledges that it is entering into this Agreement in consideration of (i) the mutual representations, warranties and covenants contained in this Agreement, (ii) maintaining a trading relationship with a counterparty with which it can enter into further Relevant Transactions and (iii) other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties). The Reporting Party reserves the right to pass to the Client any costs and expenses incurred as a consequence of the performance of the Reporting Party's obligations under this Agreement. Any such cost and expenses will be notified to the Client in writing from time to time.

**4.2 Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto. 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.

**4.3 Amendments.** Unless otherwise expressly permitted by another provision of this Agreement, an amendment, modification or waiver in respect of this Agreement will only be effective if agreed between the parties in writing (including a writing evidenced by a facsimile or email transmission) and executed by each of the parties or confirmed by an exchange of e-mails or by an exchange of electronic messages on an electronic messaging system.

**4.4 Partial Invalidity.** If, at any time, any term of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, this will not affect:

4.4.1 the legality, validity or enforceability in that jurisdiction of any other term of this Agreement; or

4.4.2 the legality, validity or enforceability in other jurisdictions of that or any other term of this Agreement.

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

**4.6 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 email and by electronic messaging system), each of which will be deemed an original.

**4.7 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, whether in respect of a dispute between the parties or otherwise. Relevant Data reported to a Trade Repository in accordance with this Agreement is provided without prejudice to any present or future dispute between the parties in relation to such Relevant Data.



**4.8 Third Party Rights.** Other than in respect of each Reporting Party Affiliate and each other Affiliate of a Reporting Party and the directors, officers, employees, contractors and agents of the Reporting Party, each Reporting Party Affiliate and each other Affiliate of a Reporting Party and the rights that such entities or people are granted under this Agreement, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement. Notwithstanding any term of this Agreement, the consent of any person who is not a party to this Agreement is not required to rescind or vary this Agreement at any time. For the avoidance of doubt, where an Agent is validly acting on behalf of one or more Clients, such action is considered to be the action of each relevant Client so is not barred by the exclusion of third party rights in this provision.

**4.9 Transfer.** Neither party may transfer or assign any interest or obligation in respect of this Agreement without the prior written consent of the other party. Any purported transfer that is not in compliance with this Section 4.9 of these General Provisions will be void.

## **5 Notices**

**5.1 Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner described below to the address or number or in accordance with the electronic messaging system or e-mail details provided in any applicable Annex with respect to the Relevant Transactions set out in such Annex (as may be amended in accordance with Section 5.2 of these General Provisions) and will be deemed effective as indicated:

5.1.1 if in writing and delivered in person or by courier, on the date it is delivered;

5.1.2 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);

5.1.3 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;

5.1.4 if sent by electronic messaging system, on the date it is received; or

5.1.5 if sent by e-mail, on the date it is delivered,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a business day with respect to the receiving party or that communication is delivered (or delivery is attempted) or received, as applicable, after 4 p.m. local time on a business day with respect to the receiving party, in which case that communication will be deemed given and effective on the first following day that is a business day with respect to the receiving party.

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

**6 Execution as Agent.** If this Agreement is executed by an Agent acting for and on behalf of one or more Clients:

6.1 each Client will be bound as principal to this Agreement and references herein to a "party" or "parties" will be to the Client and the Reporting Party, as appropriate, and not to the Agent unless expressly stated to the contrary;

6.2 if there is more than one Client:

- 6.2.1 this document evidences a separate Agreement between the Reporting Party and each Client as though a separate Agreement had been documented and executed between the Reporting Party and each Client. The obligations of each Client under this Agreement shall be several but not joint in respect of the obligations of any other Client and no Client shall, as a result of this Section 6 (*Execution as Agent*) of these General Provisions, be liable to the Reporting Party for the actions of any other Client; and
- 6.2.2 to the extent the elections in any applicable Annex vary between Clients, the Agent will ensure the variation of elections is communicated to the Reporting Party in form and substance satisfactory to the Reporting Party; and
- 6.3 the Agent represents to the Reporting Party that the Agent has the power and authority to execute and deliver this Agreement and to perform its obligations thereto on behalf of its Client(s), the Agent has taken all necessary action to authorise such execution, delivery and performance and the Agent has in its files a written agreement or power of attorney authorising it to act on the Client's behalf in respect thereof.

## 7 Governing Law and Jurisdiction

- 7.1 **Governing Law.** This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by and construed in accordance with English law.
- 7.2 **Arbitration.** Any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity and any dispute relating to any non-contractual obligations arising out of or in connection with it (a "*Dispute*"), shall be referred to and finally resolved by arbitration.
- 7.2.1 The arbitration shall be conducted in accordance with the LCIA Arbitration Rules (the "*Rules*"). Capitalised terms used in this Section which are not otherwise defined in this Agreement have the meaning given to them in the Rules.
- 7.2.2 The Arbitral Tribunal shall consist of three arbitrators. The claimant shall nominate one arbitrator. The respondent shall nominate one arbitrator. The third arbitrator (who shall be presiding arbitrator of the Arbitral Tribunal) shall be selected and appointed by the LCIA Court.
- 7.2.3 The seat, or legal place of arbitration, shall be London.
- 7.2.4 The language used in the arbitral proceedings shall be English.
- 7.3 **Service of Process.** Each party irrevocably appoints the Process Agent, if any, specified opposite its name in the relevant Annex to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 5.1.1, 5.1.2, 5.1.3 or 5.1.5 of these General Provisions. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by applicable law.
- 7.4 **Waiver of Immunities.** Each party irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court or arbitral tribunal, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment of its assets (whether before or after judgment or arbitral award) and (v) execution or enforcement of any judgment or arbitral award to which it or its revenues or assets might otherwise be entitled in any suit, action or proceedings relating to any Dispute in the courts of any jurisdiction or before

any arbitral tribunal (“*Proceedings*”) and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

## **8 Definitions and Construction**

### **8.1 Definitions**

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

“*Annex*” means the Derivatives Annex and each other annex identified as such for the purposes of this Agreement from time to time.

“*CCP*” means a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer.

“*Common Data*” has the meaning given to it in each applicable Annex, as updated from time to time.

“*Counterparty Data*” has the meaning given to it in each applicable Annex, as updated from time to time.

“*Delegated Reporting*” means the services provided by the Reporting Party to the Client, as applicable, pursuant to the Delegated Reporting Provisions.

“*Delegated Reporting Transition Date*” means the 5<sup>th</sup> business day after the Reporting Party receives notice from the Client in accordance with Section 5 (*Notices*) of the General Provisions, or otherwise becomes aware, that the Client’s regulatory status has changed such that the Reporting Party ceases to be required by relevant law or regulation to report Relevant Transactions on behalf of the Client.

“*Delegating Party*” has the meaning given to it in Section 1 (*Purpose*) of the Delegated Reporting Provisions.

“*EMIR*” means Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories dated 4 July 2012, as amended or replaced from time to time.

“*ESMA*” means the European Securities and Markets Authority.

“*European Union*” or “*EU*” means the economic and political union established in 1993 by the Maastricht Treaty, with the aim of achieving closer economic and political union between member states that are primarily located in Europe.

“*Force Majeure Event*” means any event which occurs due to reasons outside of the Reporting Party's control (including, but not limited to, any natural, systems, facilities, technological, political or other cause and whether in respect of a Relevant Trade Repository, Third Party Service Provider, Reporting Party Affiliate, Reporting Party, third party or otherwise) and which cannot be overcome by reasonable diligence and/or without unreasonable expense solely by the Reporting Party.

“*Losses*” means all losses, damages, fines, penalties, costs, expenses or other liabilities (including legal and other professional fees).

“*Maastricht Treaty*” means the Treaty on European Union signed on 7 February 1992.

**“Mandatory Reporting”** means the reporting obligations of the Reporting Party to report data on behalf of the Client as its counterparty pursuant to the Mandatory Reporting Provisions.

**“Mandatory Reporting Transition Date”** means the 5<sup>th</sup> business day with respect to the Reporting Party after the Reporting Party receives notice from the Client in accordance with Section 5 (*Notices*) of the General Provisions, or otherwise becomes aware, that the Client’s regulatory status has changed such that the Reporting Party is subsequently required by relevant law or regulation to report Relevant Transactions on behalf of the Client.

**“Primary and Supporting Legislation”** means any applicable law, rule or regulation and any applicable supporting law, rule or regulation which mandates reporting and/or retention of transaction and similar information or to the extent required or permitted under, or made in accordance with, any order or directive regarding reporting and/or retention of transaction and similar information issued by any authority or body or agency in accordance with which the other party is required or accustomed to act.

**“Proceedings”** has the meaning given to it in Section 7.4 of the General Provisions.

**“Process Agent”** has the meaning given to it in each applicable Annex, as updated from time to time.

**“Relevant Data”** has the meaning given to it in each applicable Annex, as updated from time to time.

**“Relevant Trade Repository”** has the meaning given to it in each applicable Annex, as updated from time to time.

**“Relevant Transaction”** has the meaning given to it in each applicable Annex, as updated from time to time.

**“Reporting Deadline”** means the deadline for reporting the Relevant Transactions as specified in the applicable reporting regime(s), and as determined by the Reporting Party in its sole and absolute discretion.

**“Reporting Obligation”** has the meaning given to it in each applicable Annex, as updated from time to time.

**“Reporting Party Affiliate”** has the meaning given to it in each applicable Annex, as updated from time to time.

**“Reporting Requirements”** has the meaning given to it in Section 2 of the General Provisions.

**“Schedule”** means each of Schedule 1 (*Static Data*), Schedule 2 (*Information to be provided by Client*), as applicable, or such other schedule identified as such for the purposes of this Agreement from time to time.

**“Static Data”** means Counterparty Data for the fields set out in Schedule 1 (*Static Data*), as may be amended by the parties from time to time by written agreement.

**“Third Party Service Provider”** means a third party including, without limitation, a CCP, appointed either by the Reporting Party or the Delegating Party (with respect to the latter, for the purposes of Delegated Reporting only) to provide or process Relevant Data or submit Relevant Data by the Reporting Deadline to a Relevant Trade Repository.

**“TR”** has the meaning given to it in Section 2 of the General Provisions.

**“Trade Repository”** means a legal person that centrally collects and maintains the records of derivatives, or such other relevant products specified in an applicable Annex and registered as such in accordance with the applicable legislation.

## 8.2 Construction

- 8.2.1 Unless this Agreement expressly provides to the contrary, any reference in this Agreement to:
- (i) a party or any other person includes its successors in title, permitted assigns and permitted transferees;
  - (ii) an amendment includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous) and amended will be construed accordingly;
  - (iii) a person includes any individual, firm, company, corporation, government, state or agency of a state or any association or body (including a partnership, trust, fund, joint venture or consortium) or other entity (whether or not having separate legal personality);
  - (iv) a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which persons to which it applies are generally accustomed to comply) of any governmental, inter-governmental or supranational body, agency or department, or of any regulatory, self-regulatory or other authority or organisation; and
  - (v) a provision of law is a reference to that provision as amended from time to time and includes any subordinate legislation.
- 8.2.2 A reference to a "Section" is a reference to a section of this Agreement, a reference to an "Annex" is a reference to an annex to this Agreement, a reference to a "Schedule" is a reference to a schedule to this Agreement and a reference to a "Paragraph" is a reference to a paragraph of an Annex.
- 8.2.3 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.
- 8.2.4 For the avoidance of doubt, the meanings of the terms "contractor" and "agent" as used in Sections 6 (*Liability*) and 8 (*Indemnity*) of the Delegated Reporting Provisions and Sections 3 (*Liability*) and 4 (*Indemnity*) of the Mandatory Reporting Provisions do not include any Third Party Service Provider.

**THIS AGREEMENT has been executed by the parties on the respective dates specified below with effect from the date stated at the beginning of this Agreement.**

For and on behalf of **Mitsui Bussan Commodities (France) SA** (the "Reporting Party")  
(Pre) LEI Nr: 969500OVZ9B3GG4YTQ92

For and on behalf of **Bratislavská Teplarenska, A.S**  
(the "Client")  
(Pre) LEI Nr: - 097900BHLW0000040494

By:  
Name: Masato Ishikawa  
Title: Managing Director  
Date: 10/15/2021

By: \_\_\_\_\_  
Name: Ing. Dušan Randuška  
Title: Chairman of the Board of Directors  
Date: 10/18/2021

By: \_\_\_\_\_  
Name: Ing. Miroslava Čalfová  
Title: Member of the Board of Directors  
Date: 10/18/2021



## Derivatives Annex

### (1) Relevant Transactions and Related Elections

#### (A)

A. Transaction type	B. Reporting Party is	C. Form of reporting
<input checked="" type="checkbox"/> OTC Derivative other than a Cleared OTC Derivative	Client's counterparty	<input type="checkbox"/> Delegated Reporting for Client <input checked="" type="checkbox"/> Mandatory Reporting
<input checked="" type="checkbox"/> Cleared OTC Derivative	<input type="checkbox"/> Client's original counterparty (executing broker) <input checked="" type="checkbox"/> Client's clearing broker	<input type="checkbox"/> Delegated Reporting for Client <input checked="" type="checkbox"/> Mandatory Reporting
<input checked="" type="checkbox"/> Exchange-Traded Derivative	Client's clearing broker	Delegated Reporting for Client
<input checked="" type="checkbox"/> Exchange-traded derivative categorised as OTC Derivative	Client's clearing broker	<input type="checkbox"/> Delegated Reporting for Client <input checked="" type="checkbox"/> Mandatory Reporting

Only transactions outstanding as of or entered into or outstanding as of and after 18<sup>th</sup> June 2020 will be Relevant Transactions.

(B) "**Relevant Transaction**" means, unless otherwise agreed between the parties in writing, each Derivative transaction: (i) to which the Client is party; (ii) that is subject to the Reporting Obligation as determined by the Reporting Party in its sole and absolute discretion; and (iii) that satisfies the related characteristics in columns (A) and (B) above, together with any Additional Criteria.

(C) The parties agree that, in respect of each category of Relevant Transaction identified in columns (A) and (B) above, the related 'Form of reporting' shall be as specified in column (C).

(D) Where the Reporting Party or Reporting Party Affiliate acts as executing broker in respect of the client leg corresponding to a Cleared OTC Derivative, but neither acts as a clearing broker, such Cleared OTC Derivative is not a Relevant Transaction for the purposes of this Annex.

Where the Reporting Party or Reporting Party Affiliate acts as clearing broker in respect of the Cleared OTC Derivative, but neither acts as executing broker, the initial client leg corresponding to such Cleared OTC Derivative is not a Relevant Transaction for the purposes of this Annex.

(E) "**Additional Criteria**" means Commodity Transactions, including, for the avoidance of doubt Emissions Allowances Transactions.

#### (F) Additional Definitions

"**CCP Service**" means in respect of a CCP, an over-the-counter derivative clearing service offered by such CCP.

“**Cleared**” means, in respect of a Relevant Transaction, that such Relevant Transaction has been or will be submitted (including where details of such Relevant Transaction are submitted) to a CCP for clearing in a relevant CCP Service and that such CCP has or is to become a party to a resulting or corresponding transaction, as applicable, pursuant to such CCP’s Rule Set.

“**Derivative**” has the meaning given to it in Article 2(5) of EMIR.

“**Exchange-Traded Derivative**” means a Derivative that is not an OTC Derivative.

“**OTC Derivative**” means a Derivative as defined in Article 2(7) of EMIR.

“**Reporting Obligation**” means the obligation to report details of derivative contracts that are concluded, modified or terminated to a trade repository or ESMA in accordance with Article 9 of EMIR.

“**Rule Set**” means, with respect to a CCP, the relevant rules, conditions, procedures, regulations, standard terms, membership agreements, collateral addenda, notices, guidance, policies or other such documents promulgated by the relevant CCP and amended and supplemented from time to time.

**(2) Disclosure of Client Status**

**(A) Disclosure.** The Client hereby communicates its regulatory status as set out below:

- Client is an NFC other than an NFC- established in  the EU (other than the United Kingdom) or  the United Kingdom.
- Client is an NFC- established in  the EU (other than the United Kingdom) or  the United Kingdom.

The Client will notify the Reporting Party of any change to its regulatory status as set out above or by reference to any external source specified above, such notification to be provided before or as soon as reasonably practicable following a change to the Client’s regulatory status.

**(B) Additional Definitions**

“**NFC**” means a ‘non-financial counterparty’ as described in Article 2(9) of EMIR.

“**NFC-**” means an NFC which does not exceed any relevant clearing threshold.

**(3) Transition between Reporting Models**

- Automatic Transition to Delegated Reporting applies.
- Automatic Transition to Mandatory Reporting applies.

**(4) Relevant Data**

**(A) “Relevant Data”** means, in respect of each Relevant Transaction and unless otherwise agreed between the parties in writing:

- the Counterparty Data
- the Common Data

however, the following data does not form part of the Relevant Data and will not be reported by the Reporting Party (the “**Excluded Data**”): With respect to the Counterparty Data, fields 17-21 (valuation) and 22-26 (collateral value).



(B) “*Counterparty Data*” means, with respect to a Relevant Transaction and a Client, the information with respect to that Client required to complete the fields set out in Table 1 (*Counterparty Data*) of the EMIR Reporting Annexes.

(C) **Additional Definitions**

“*Common Data*” means, with respect to a Relevant Transaction, the information corresponding to the fields listed in Table 2 (*Common Data*) of the EMIR Reporting Annexes, as determined by the Reporting Party in its sole and absolute discretion.

“*EMIR Reporting Annexes*” means (i) the Annex to Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 and published 23 February 2013 in the Official Journal of the European Union; and (ii) the Annex to Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 and published 21 December 2012 in the Official Journal of the European Union, as amended or replaced from time to time.

“*Reporting Party Affiliate*” means each of: None.

(5) **Relevant Trade Repository**

(A) The “*Relevant Trade Repository*” is, in respect of a Relevant Transaction and unless otherwise agreed between the parties in writing:

(i) a Trade Repository listed below or such other Trade Repository as the Reporting Part may decide and notify the Client from time to time:

ICE Trade Vault Europe Ltd     CME Trade Repository Ltd     Unavista Tradecho B.V.

(ii) if the Reporting Party is not permitted to submit the Relevant Data to any such Trade Repository by the Reporting Deadline, the Trade Repository selected by the Reporting Party; or

(iii) if, in accordance with Article 9(3) of EMIR no Trade Repository is available to record the Relevant Data, with respect to EMIR, ESMA.

as determined by the Reporting Party in its sole and absolute discretion.

(B) The Reporting Party may notify the Client, as applicable, of each Relevant Trade Repository determined under (A)(ii) and (iii) above to which it submits Relevant Data as soon as reasonably practicable after such determination.

(C) A Trade Repository determined under (A)(i) above shall (1) in the case of a Trade Repository established in the United Kingdom, be deemed to include any separate legal entity within the same group acting as trade repository in an EU member state other than the United Kingdom and (2) in the case of a Trade Repository established in an EU member state other than the United Kingdom, be deemed to include any separate legal entity within the same group acting as trade repository in the United Kingdom.

(6) **Amendment and Termination**

(A) **Notice Periods in Respect of Amendments.** For the purposes of Section 9.1 of the Delegated Reporting Provisions:

- (i) amendments will be effective on the later of the date specified in the relevant notice and the date that is ten (10) calendar days following the date on which the notice of amendment is deemed to be effective in accordance with Section 5 (*Notices*) of the General Provisions;
- (ii) a rejection notice from the Delegating Party will only be effective if delivered to the Reporting Party on or before the date that is five (5) calendar days following the date on which the amendment notice is deemed to be effective in accordance with Section 5 (*Notices*) of the General Provisions; and
- (iii) if the Delegating Party delivers a rejection notice within the period specified in (ii) immediately above, this Agreement will terminate on the date that is two (2) calendar days following the date on which the rejection notice is deemed to be effective in accordance with Section 5 (*Notices*) of the General Provisions, unless otherwise agreed between the parties.
- (iv) for the avoidance of doubt, if the Delegating Party does not reject an amendment by written notice, the Delegating Party will be deemed to have agreed to such amendment to this Agreement.

**(B) Termination Notice Period.** With reference to Section 9.2 of the Delegated Reporting Provisions, the notice period for termination notices is five (5) calendar days following the date on which the termination notice is deemed to be effective in accordance with Section 5 (*Notices*) of the General Provisions.

**(7) Contact Information.** With reference to Section 5 (*Notices*) of the General Provisions, the contact details for all communications in connection with any Relevant Transaction (as defined above) are:

(A) with respect to the Reporting Party,

Address: 6th Floor, 1 St Martin's Le Grand  
London EC1A 4BB

Email: EMIRTR@mbcl.com; and Regulatoryreporting@mbcl.com

(B) with respect to the Client,

Address: Turbínová 3, 829 Bratislava, Slovakia

Email: miroslava.calfova@mhth.sk

in each case, as may be amended in accordance with this Derivatives Annex.

**(8) Process Agent**

(A) The Reporting Party appoints as its Process Agent: Not applicable.

(B) The Client appoints as its Process Agent: Not applicable.

**(9) Static Data.** For the purposes of Section 2.2.3 of the Delegated Reporting Provisions, the Reporting Party is not obliged to use the Static Data until the second (2<sup>nd</sup>) business day following receipt of such Static Data, or notification of a change to Static Data, from the Delegating Party.

**Schedule 1  
Static Data**

<b>FIELDS</b>	<b>VALUES</b>
<b>Company Name</b>	Bratislavská teplárenská, a.s.
<b>LEI</b>	097900BHLW0000090494
<b>Domicile - Address1, Address2, City, Country, Zip</b>	Turbinová 3, 829 Bratislava, Slovakia
<b>EU Financial Entity</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>EEA Counterparty</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Exceeded Clearing Threshold</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Corporate Sector (Please select one)</b>	<input type="checkbox"/> 1 = Agriculture, forestry and fishing <input type="checkbox"/> 2 = Mining and quarrying <input type="checkbox"/> 3 = Manufacturing <input checked="" type="checkbox"/> 4 = Electricity, gas, steam and air conditioning supply <input type="checkbox"/> 5 = Water supply, sewerage, waste management and remediation activities <input type="checkbox"/> 6 = Construction <input type="checkbox"/> 7 = Wholesale and retail trade, repair of motor vehicles and motorcycles <input type="checkbox"/> 8 = Transportation and storage <input type="checkbox"/> 9 = Accommodation and food service activities <input type="checkbox"/> 10 = Information and communication <input type="checkbox"/> 11 = Financial and insurance activities <input type="checkbox"/> 12 = Real estate activities <input type="checkbox"/> 13 = Professional, scientific and technical activities <input type="checkbox"/> 14 = Administrative and support service activities <input type="checkbox"/> 15 = Public administration and defence; compulsory social security <input type="checkbox"/> 16 = Education <input type="checkbox"/> 17 = Human health and social work activities <input type="checkbox"/> 18 = Arts, entertainment and recreation <input type="checkbox"/> 19 = Other service activities <input type="checkbox"/> 20 = Activities of households as employers; undifferentiated goods – and services –producing activities of households for own use <input type="checkbox"/> 21 = Activities of extraterritorial organisations and bodies
<b>Clearing Member</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Broker</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Master Agreement Type</b>	ISDA Master Agreement
<b>Master Agreement Version</b>	2002
<b>UTI Creator</b>	Reporting Party
<b>EU Reporting Entity</b>	Reporting Party
<b>EU Financial Nature</b>	Non-financial counterparty

**Is the Client a principal to the Relevant Transaction?**

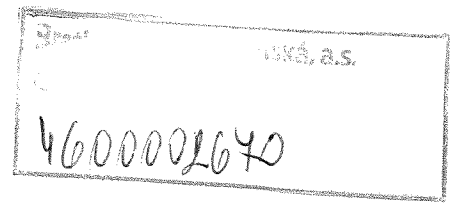
Yes

No

**Schedule 2**  
**Information to be provided by Client**

<b>Information Required</b>	<b>To be provided by</b>
With respect to Relevant Transactions are they being entered into as part of Client's commercial activity or <b>treasury financing</b> ? ( <b>Yes/No</b> ).	The Client, provided that the Reporting Party is entitled to rely on the fact that all Relevant Transactions are entered into by the Client as part of its commercial activity or treasury financing unless otherwise notified by the Client at the moment a Relevant Transaction has been entered into.

With respect to Relevant Transactions the Client represents that they are being entered into as part of Client's commercial activity or treasury financing. The Reporting Party is entitled to rely on that representation unless otherwise notified by the Client at the moment a Relevant Transaction has been entered into.



## TERMS AND CONDITIONS OF BUSINESS

*These Terms of Business, together with any Schedule(s), and accompanying documents (including any consent letter), as amended from time to time, (the "Terms") sets out the terms of business between you and us.*

### 1. GENERAL INFORMATION

- 1.1. **Information about us:** We, Mitsui Bussan Commodities (France) ("MBCF"), are authorised and regulated by the French *Autorité de contrôle prudentiel et de résolution* ("ACPR") and the French *Autorité des marchés financiers* ("AMF") as an investment firm. Our registered office is 112, avenue Kléber, 75016 Paris. The ACPR's registered office is 4 Place de Budapest, 75436 Paris. The AMF's registered office is 17, Place de la Bourse, 75082 Paris. Any reference in these Terms to the 'French Authorities' shall be read as a reference to the ACPR or the AMF (as applicable).
- 1.2. **Communication with us:** You may communicate with us in writing, by e-mail (or other electronic means) or orally (including by telephone). Unless otherwise agreed between us, the language of communication shall be English, and you will receive documents and other communications from us in English.
- 1.3. **Capacity:** We act as principal and not as agent on your behalf. We shall treat you as a Professional Client for the purposes of the French Rules. You have the right to request a different client categorisation. If you meet the definition of an Eligible Counterparty, or request categorisation as an Eligible Counterparty and we agree to such categorisation, we would no longer be required by French Rules to provide certain protections granted to Professional Clients. However, notwithstanding the absence of applicable French Rules, we would endeavour to provide a service which is overall effective and commercially reasonable. The regulatory protections concerned include formal requirements in the following areas: (a) to act in accordance with your best interests; (b) not to give or receive inducements; (c) to achieve best execution in respect of your orders; (d) to execute orders subject to other constraints as regards timing and handling relative to other clients' orders; and (e) to ensure that information we provide is fair, clear and not misleading. If you request to be categorised as a Retail Client thereby requiring a higher level of regulatory protection we will not be able to provide our Services to you. You agree and acknowledge that you are responsible for keeping us informed about any change that could affect your client categorisation. You act as principal and not as agent (or trustee) on behalf of someone else.
- 1.4. **Commencement:** These Terms supersede any previous agreement between you and us on the same subject matter, and takes effect when you signify acceptance of these Terms by signing below. These Terms shall apply to all Transactions contemplated under these Terms.
- 1.5. **Subject to Applicable Regulations:** These Terms and all Transactions are subject to Applicable Regulations so that: (i) if there is any conflict between these Terms and any Applicable Regulations, the latter will prevail; (ii) nothing in these Terms shall exclude or restrict any obligation which we have to you under Applicable Regulations; (iii) we may take or omit to take any action we consider necessary to ensure compliance with any Applicable Regulations; (iv) all Applicable Regulations and whatever we do or fail to do in order to

Authorised and regulated by the ACPR and the AMF  
A subsidiary of Mitsui Bussan Commodities Ltd., incorporated in the United Kingdom  
Registered in France under the RCS No. 852 297 878  
Registered office: 112, avenue Kléber, 75016 Paris  
VAT No. FR 30852297878

comply with them will be binding on you; and (v) such actions that we take or fail to take for the purpose of compliance with any Applicable Regulations shall not render us or any of our directors, officers, employees or agents liable.

- 1.6 **Market action:** If a Market (or intermediate broker or agent, acting at the direction of, or as a result of action taken by, a Market) or regulatory body takes any action which affects a Transaction, then we may take any action which we, in our reasonable discretion, consider desirable to correspond with such action or to mitigate any loss incurred as a result of such action. Any such action shall be binding on you. If a Market or regulatory body makes an enquiry in respect of any of your Transactions (either directly or through an intermediate broker), you agree to co-operate with us and to promptly supply information requested in connection with the enquiry.
- 1.7 **Scope of these Terms:** These Terms set out the basis on which we will enter into Transactions and provide Services as agreed in writing from time to time. These Terms govern each Transaction entered into or outstanding between us on or after the execution of these Terms. Subject to Applicable Regulations and these Terms there shall be no restrictions on the Transactions in respect of which we deal with you.
- 1.8 **Duty and responsibilities:** We are obliged by the French Rules to comply with certain rules of conduct. However, we assume no greater responsibility, other than that imposed by the Applicable Regulations, or the express terms of these Terms.
- 1.9 **Costs and Charges:** In accordance with the French Rules implementing the MiFID II Directive and Commission Delegated Regulation (EU) 2017/565 you agree that we will disclose aggregate information on all costs and related charges encompassing commissions, counterparty charges and third-party costs we incur related to Transactions. Information on costs and charges can be accessed via our website at <https://www.mbcfrance.com/regulatory-disclosures.html>. If you require additional information, this can be made available upon request.
- 1.10 **Provision of information:** We may be required to provide you, from time to time, with information required by the French Rules implementing Articles 23 (*Conflicts of interest*) and 27 (*Obligation to execute orders on terms most favourable to the client*) of the MiFID II Directive; Articles 46 (*General requirements for information to clients*), 47 (*Information about the investment firm and its services for clients and potential clients*), 48 (*Information about financial instruments*), 49 (*Information concerning safeguarding of client financial instruments or client funds*), 50 (*Information on costs and associated charges*) and 66(3) (*Execution policy*) of Commission Delegated Regulation (EU) 2017/565; and Article 27 (*Disclosure of information about the services provided*) of Commission Delegated Regulation (EU) 2017/589, in a “durable medium”. You specifically consent to the provision by us of such information, where not personally addressed to you (and where permitted by Applicable Regulations), by means of a website. In the event of material changes to such information, we will notify you using any of the methods of communication provided for in clause 1.2 (“**Communication with us**”), and we will provide the updated information at the aforementioned website address.
- 1.11 **Fees:** You shall pay such fees to us, as applicable under these Terms as we shall agree with you in writing from time to time.
- 1.12 **Costs resulting from use of distance means:** No costs will be incurred by virtue of the fact that these Terms are entered into via e-mail, telephone or fax.

- 1.13 **Additional costs:** You should be aware of the possibility that other taxes or costs may exist that are not paid through or imposed by us.
- 1.14 **Remuneration and sharing of charges:** We may receive remuneration from, or share charges with, an Associate or other third party in connection with Transactions carried out on your behalf. Details of any such remuneration or sharing arrangements will not be set out in the relevant contract or confirmation note, but the existence, nature and amount or, where the amount cannot be ascertained, the method of calculating that amount is available on request.
- 1.15 **Language:** These Terms are supplied to you in English and we will continue to communicate with you in English for the duration of these Terms.

## 2. NO INVESTMENT ADVICE

- 2.1. **No investment advice:** We are not licensed to provide investment advice to you. As such, we will only accept your order on an execution-only basis.
- 2.2. **Provision of market information:** From time to time, we may, at our discretion, provide market information on our own initiative. However, we shall not be under any obligation to provide on-going market information. Where we do provide market information, we give no representation, warranty or guarantee as to their accuracy or completeness or as to the tax consequences of any Transaction. Unless we specifically agree otherwise in writing with you, you hereby acknowledge: (i) that the provision of market information is incidental to your dealing relationship with us and provided solely to enable you to make your own investment decisions; (ii) that you will not rely on the market information provided by us to you; (iii) that the market information provided to other clients may be different from market information given to you; and (iv) that such market information may not be consistent with our own proprietary investments.
- 2.3. **Investment research and other published information:** We may from time to time send published research reports and other publications to you. If the document contains a restriction on the person or category of persons for whom that document is intended or to whom it is distributed, you agree that you will not pass it on to any such person or category of persons. We make no representations as to the time of receipt by you of research reports and cannot guarantee that you will receive such research reports at the same time as other clients. Before despatch, we may have acted upon it ourselves or made use of the information on which it is based. We shall not be liable for any investment decision you make, based in whole or in part, on any investment research report, or other publication we send to you. Any such published research reports may appear in one or more screen information service. Please refer to our conflicts of interest policy for further information on how we manage conflicts which would affect the impartiality of investment research we provide to you.
- 2.4. **Tax advice:** We will not provide any tax advice. In addition, we shall not at any time be deemed to be under any duty to provide tax advice.
- 2.5. **Information on financial instruments:** We are required by Applicable Regulations to provide clients with information regarding the nature and risks of financial instruments taking into account your categorisation as a Professional Client or Eligible Counterparty (as applicable). Such information can be accessed via our website at <https://www.mbcfrance.com/regulatory-disclosures.html>.

## 3. MATERIAL INTERESTS AND CONFLICTS



- 3.1. **Material interests:** Your attention is drawn to the fact that when we deal with you or for you, we or an Associate or some other person connected with us may have, directly or indirectly an interest, relationship or arrangement that is material and which involves, or may involve, a potential conflict with our duty to you or another of our clients. We are under no duty to account to you for any benefit, profit, commission or other remuneration made or received by reason of any Transaction or any other matching transaction, other than to the extent required by Applicable Regulations.
- 3.2. **No liability to disclose:** We will comply with Applicable Regulations binding on us. We are under no duty to disclose any conflict of interest to you, unless it is a conflict of interest or a potential conflict of interest which we have identified for which the arrangements we have put in place to manage such conflicts of interest are not or will not be sufficient to ensure with reasonable confidence that risks of damage to the interests of a client will be prevented; in such instances we will clearly disclose to you the nature and/or sources of the conflict of interest and the steps taken to mitigate those risks before undertaking business on your behalf.
- 3.3. **Conflicts of Interest:** We operate a conflicts of interest policy in accordance with Applicable Regulations binding on us, which can be accessed via our website at <https://www.mbcfrance.com/regulatory-disclosures.html>.

#### 4. YOUR INFORMATION

- 4.1. **Confidentiality:** Pursuant to Article L. 531-12 of the French monetary and financial code (the “Code”), we are required to keep confidential any non-public information regarding you (whether it relates e.g. to your business, investments, finances or otherwise) (“**Your Information**”) that we may be entrusted or otherwise become possessed within the course of our duties.
- 4.2. **Exceptions:** By exception to the foregoing, we may be required or authorised to disclose Your Information to certain entities or persons under the conditions and limits set forth under Article L. 531-12 of the Code, such as, notably:
  - (a) French regulators or French tax authorities, upon request from them; or
  - (b) Any third party with whom we negotiate, enter into or carry out restrictively enumerated transactions (such as notably transactions, sales of assets or business, assignment of debts or assets, outsourcing).

We are also required, pursuant to Article L. 511-34 of the Code, to communicate to our affiliates any of Your Information to the extent necessary for the purpose of organising our supervision on a consolidated basis, prevention of money laundering, detection of market abuse, and management of conflicts of interest purposes.

- 4.3. **Prior consent:** We may be released from the requirement to keep Your Information confidential, to the extent you have expressly consented to such disclosure as detailed in Schedule 1 of these Terms.
- 4.4. **Limitations:** This does not apply to information (other than personal data) that is not Your Information, or which (i) is or becomes publicly available other than through disclosure in breach of these Terms; (ii) becomes available to us (or any of our affiliates) on a non-confidential basis from a source other than you; (iii) was already in our (or any of our affiliates')

possession before being acquired in connection with these Terms; or (iv) was or is independently developed by us or any of our affiliates without reference to Your Information.

- 4.5. ***Our use of Your Information:*** We and other companies in our group may hold and process by computer or otherwise Your Information and may use any of Your Information to administer and operate your account and to provide any service to you, to monitor and analyse the conduct of your account, to assess any credit limit or other credit decision (as well as the interest rate, fees and other charges to be applied to your account) and to enable us to carry out statistical and other analysis. We may only disclose Your Information to other companies in our group for these purposes, provided that this falls within the situations described in clauses 4.2, 4.3 and 4.4.
- 4.6. ***Marketing:*** Subject to clause 4.3, we may analyse and use Your Information to enable us to give you information (by post, telephone, email or other medium, using the contact details you have given us) about products and Services offered by us which we believe may be of interest to you. If you do not wish to receive marketing information, please let us know by contacting us in writing by email or post at the following address: [energymarketing@mbcfrance.com](mailto:energymarketing@mbcfrance.com) or Mitsui Bussan Commodities (France), 112, avenue Kléber, 75016 Paris, France.

## 5. INSTRUCTIONS AND BASIS OF DEALING

- 5.1. ***Placing of instructions:*** You may give us instructions in writing (including fax), by email or other electronic means or orally (including by telephone), unless we tell you that instructions can only be given in a particular way. If you give instructions by telephone, your conversation will be recorded. If any instructions are received by us by telephone, computer or other medium we may ask you to confirm such instructions in writing. We shall be authorised to follow instructions notwithstanding your failure to confirm them in writing. In these Terms, “instructions” and “orders” have the same meaning.
- 5.2. ***Authority:*** We shall be entitled to act for you upon instructions given or purporting to be given by you or any person authorised on your behalf without further enquiry as to the genuineness, authority or identity of the person giving or purporting to give such instructions.
- 5.3. ***Cancellation/withdrawal of instructions:*** We can only cancel your instructions if we have not acted upon those instructions. Instructions may only be withdrawn or amended by you with our consent.
- 5.4. ***Right not to accept orders:*** We may, but shall not be obliged to, accept instructions to enter into a Transaction. If we decline to enter into a proposed Transaction, we shall not be obliged to give a reason but we shall promptly notify you accordingly.
- 5.5. ***Control of orders prior to execution:*** We have the right (but no obligation) to set limits and/or parameters to control your ability to place orders at our absolute discretion. Such limits and/or parameters may be amended, increased, decreased, removed or added to by us at our absolute discretion and may include (without limitation): (i) controls over maximum order amounts and maximum order sizes; (ii) controls over our total exposure to you; (iii) controls over prices at which orders may be submitted (to include (without limitation) controls over orders which are at a price which differs greatly from the market price at the time the order is submitted to the order book); or (iv) any other limits, parameters or controls which we may be required to implement in accordance with Applicable Regulations.

- 5.6. **Best execution and Execution of Orders:** We will be dealing with you as principal. For all clients, including for those to whom best execution rules do not apply, we must and will act honestly, fairly and professionally in accordance with your best interests when executing orders. If we have classified you as a Professional Client, we will always owe you a duty of best execution when executing an order on your behalf. Where you provide specific instructions to us in relation to one or more execution factors as part of your order, we will be deemed to have taken all sufficient steps to obtain best execution for you with respect to those execution factor(s) by following your instruction. You should be aware that this may mean that we are unable to deliver what we might consider best execution in relation to other execution factors for which you have not provided us with instructions. You confirm that, before placing your first order with us, you have read and agreed to our order execution policy. Our order execution policy can be accessed via our website at <https://www.mbcfrance.com/regulatory-disclosures.html> and you agree that we may provide you with our order execution policy as in effect from time to time via this website. We will consider the continued placement of orders by you to constitute your continued consent to our order execution policy as in effect from time to time.

We shall carry out an order on your behalf only when the Relevant Venue is open for dealing, and we shall deal with any instructions received outside Relevant Venue hours as soon as possible when the appropriate Relevant Venue is next open for business (in accordance with the rules of the Relevant Venue). Certain orders will be executed outside of a regulated market, a multilateral trading facility or an organised trading facility. You confirm that, before placing an order outside of a Relevant Venue, you have agreed that we may execute an order on your behalf outside a regulated market, multilateral trading facility or organised trading facility, in accordance with the express consent you gave us in Schedule 2. By virtue of dealing with you as principal, where we execute an order from you to trade over-the-counter instruments, you agree that we will constitute the sole execution venue in relation to the execution of such orders.

- 5.7. **Confirmations:** Unless we agree to categorise you as an Eligible Counterparty and subsequently enter into a separate agreement with you regarding the content and timing of confirmations, we shall send you confirmations by the end of the next trading day for any Transactions that we have executed on your behalf on that trading day, by electronic mail to the e-mail address on record for you or via ICE e-confirm, as agreed. It is your responsibility to inform us of any change to your e-mail address, the non-receipt of a confirmation, or whether any confirmations are incorrect before settlement. Confirmations shall, in the absence of manifest error, be conclusive and binding on you, unless we receive from you objection in writing within one Business Day of despatch to you of the confirmation or making such confirmation available to you via our client portal or we notify you of an error in the confirmation within the same period.
- 5.8. **Intermediate brokers and other agents:** We may, at our entire discretion, arrange for any Transaction to be effected with or through the agency of an intermediate broker, who may be an Associate of ours, and may not be in France. No responsibility will be accepted for intermediate brokers or agents selected by you.
- 5.9. **Position limits and position management controls:** In respect of certain commodity derivative contracts, position limits may be imposed by the AMF or other national competent authorities, and position management controls may be imposed by a Market. In order to ensure that such position limits and position management controls are complied with, we may require you to limit, terminate or reduce the positions which you may have with us at any time and we may in our sole discretion close out any one or more Transactions.

- 5.10. **Trading and position limits:** In relation to the Services that we provide to you under these Terms, we may also set out and communicate to you appropriate trading and position limits to mitigate and manage our own counterparty, liquidity, operational and other risks. We will monitor your positions against such limits as close to real-time as possible.
- 5.11. **Regulatory Reporting:** Under Applicable Regulations, we may be obliged to make information about certain Transactions public. You agree and acknowledge that any and all proprietary rights in such Transaction information are owned by us and you waive any duty of confidentiality attaching to the information which we reasonably disclose. In addition, where we execute a Transaction with you on an over the counter basis and the Transaction is subject to publication in accordance with Article 21 MiFIR, you agree that where both parties are investment firms, the party acting as seller shall make public the information regarding the Transaction in accordance with Applicable Regulations, unless only one of you or us are a systematic internaliser in the given financial instrument and is also acting as the buyer, in which case the buyer will make the relevant Transaction information public in accordance with Applicable Regulations. Where only we are an investment firm, we will make public the information regarding the Transaction in accordance with Applicable Regulations. We will notify you if, at any time, we register or de-register as a systematic internaliser.
- 5.12. **Trading obligation for OTC derivatives:** In certain circumstances (e.g. where the Transaction relates to a derivative that is subject to the trading obligation) we may conclude such Transactions only on a regulated market, multilateral trading facility, organised trading facility or a third-country trading venue assessed as equivalent.
- 5.13. **Acting as a systematic internaliser:** Where, acting in our capacity as a systematic internaliser, we make public firm quotes in emission allowances or derivatives traded on a regulated market, multilateral trading facility or organised trading facility, in accordance with Article 18(1) MiFIR, you agree that we may limit: (i) the number of Transactions that we undertake to enter into with you at the published quote; and (ii) the total number of Transactions that we undertake to enter into with other clients at the published quote. Where we grant access to quotes provided by us in our capacity as a systematic internaliser, and the quoted size is at or below the size specific to the financial instrument, we may enter into a Transaction with any other client to whom the quote is made available, in accordance with Article 18(5) MiFIR.
- 5.14. **Amendments:** Once given, instructions may only be withdrawn or amended with our consent.
- 5.15. **Hedging:** We will treat all Transactions concluded with you or on your behalf as trades objectively measurable as reducing risks directly relating to your business's commercial activity as defined in article 7 of Commission Delegated Regulation (EU) 2017/591, unless you notify us otherwise prior to the execution of any such Transaction.

## 6. TERMINATION WITHOUT DEFAULT

**Termination:** We may terminate these Terms by sending you a notice in writing of termination which may be effective immediately. Any termination will not affect accrued rights or any commitment already entered into by us with you or for you or any provision of these Terms intended to survive termination. Any termination given by us may take effect immediately or on such later date as the notice may specify. You may also terminate these arrangements by giving notice in writing of termination, which will take effect seven days after the date on which we receive such a notice.

## 7. COVENANT

You covenant to us that:

- (a) you will obtain, provide to us and maintain a legal entity identifier throughout the duration of your trading relationship with us in order to facilitate our compliance with Applicable Regulations, and where your legal entity identifier changes during the course of our trading relationship, you will inform us promptly of the revised legal entity identifier. In the event that you cease to possess a valid legal entity identifier at any point during our trading relationship, we may suspend trading with you, and on your behalf (if applicable); and
- (b) you will notify us prior to placing any order with us if you become authorised as an investment firm as defined in the French Rules; or you register or de-register as a systematic internaliser as defined in the French Rules.

## 8. MISCELLANEOUS

8.1. **Amendments:** We have the right to amend the provisions of these Terms. If we make any material change to these Terms to address a requirement under Applicable Regulation, we will give at least two Business Days written notice to you. Such amendment will become effective on the date specified in the notice. Any other amendment must be agreed in writing between us. Unless otherwise agreed, an amendment will not affect any outstanding order or Transaction or any legal rights or obligations which may already have arisen.

8.2. **Notices:** Unless otherwise agreed, all notices, instructions and other communications to be given by one of us to the other under these Terms shall be given at the address and to the individual or department specified in the account opening form, in respect of you, and, in respect of us, to:

Address: 112, avenue Kléber, 75016 Paris

Telephone:

Contact Name:

Email:

8.3. **Electronic Communications:** Subject to Applicable Regulations, any communication between us using electronic signatures shall be binding as if it were in writing. Orders or instructions given to you via e-mail or other electronic means will constitute evidence of the orders or instructions given. Your communications with us will be recorded. A copy of the record will be available on request for a period of five years or, where requested by the French Authorities, for a period of up to seven years.

8.4. **Recording of calls:** If you give us execution or trade instructions by telephone, your conversation will be recorded. We may record telephone conversations in order to comply with the recording requirements set out under Article L. 533-10 of the Code. You hereby undertake to provide each employee and external consultant involved in the carrying out of a Transaction with the following information:

- Telephone recordings are implemented by us in order to comply with its recording obligation set out under the Code;

- Telephone recordings are necessary for compliance with a legal obligation to which we are subject;
- Telephone recordings might be shared with Mitsui Bussan Commodities Ltd;
- We may transfer the recordings to a third country in compliance with applicable data protection regulation and by use of standard contractual clauses;
- Telephone recordings will not be retained for more than five years or where requested by the French Authorities, for a period of up to seven years.
- Data subjects have a right to object to the telephone recordings. However, in case of objection to telephone recordings, we will not be in a position to provide the services covered in the present Terms.
- Data subjects may exercise their rights including their rights of access and rectification; and
- Data subjects have a right to lodge a complaint with a supervisory authority.

The abovementioned information must be provided to each employee and external consultant involved in the carrying out of a Transaction before they become involved (i.e. upon recruitment and on a regular basis during the time of the employment).

- 8.5. ***Our records:*** Our records, unless shown to be wrong, will be evidence of your dealings with us in connection with our Services. You will not object to the admission of our records as evidence in any legal proceedings because such records are not originals, are not in writing or are documents produced by a computer. You will not rely on us to comply with your record keeping obligations, although records may be made available to you on request at our absolute discretion.
- 8.6. ***Your records:*** You agree to keep adequate records in accordance with Applicable Regulations to demonstrate the nature of orders submitted and the time at which such orders are submitted.
- 8.7. ***Complaints procedure:*** We are obliged to put in place internal procedures for handling complaints fairly and promptly. You may submit a complaint to us, for example by letter, telephone, e-mail, or in person. We will send you a written acknowledgement of your complaint promptly following receipt, enclosing details of our complaints procedures, including when and how you may be able to refer your complaint to the *Médiateur* of the AMF. Further details regarding our complaints procedures are available on our website [https://www.mbcfrance.com/Complaints\\_Handling\\_Process.pdf](https://www.mbcfrance.com/Complaints_Handling_Process.pdf).
- 8.8. ***Third Party Rights:*** A person who is not a party to these Terms has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of these Terms.
- 8.9. ***Assignment:*** These Terms shall be for the benefit of and binding upon us both and our respective successors and assigns. Neither party shall assign, charge or otherwise transfer or purport to assign, charge or otherwise transfer their rights or obligations under these Terms or any interest in these Terms, without prior written consent of the other party, and any purported assignment, charge or transfer in violation of this clause shall be void.
- 8.10. ***Joint and several liability:*** If you are a partnership, or otherwise comprise more than one person, your liability under these Terms shall be joint and several. In the event of the bankruptcy, winding-up or dissolution of any one or more of such persons, then (but without prejudice to the above or our rights in respect of such person and his successors) the obligations and rights of all other such persons under these Terms shall continue in full force and effect.

- 8.11. **Rights and remedies:** The rights and remedies provided under these Terms are cumulative and not exclusive of those provided by law. We shall be under no obligation to exercise any right or remedy either at all or in a manner or at a time beneficial to you. No failure by us to exercise or delay by us in exercising any of our rights under these Terms (including any Transaction) or otherwise shall operate as a waiver of those or any other rights or remedies. No single or partial exercise of a right or remedy shall prevent further exercise of that right or remedy or the exercise of another right or remedy.
- 8.12. **Partial invalidity:** If, at any time, any provision of these Terms is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of these Terms nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired.
- 8.13. **Co-operation for proceedings:** If any action or proceeding is brought by or against us in relation to these Terms or arising out of any act or omission by us required or permitted under these Terms, you agree to co-operate with us to the fullest extent possible in the defence or prosecution of such action or proceeding.
- 8.14. **The French Fonds de garantie des dépôts et de résolution.** The French *Fonds de Garantie des Dépôts et de Résolution* provides compensation cover for eligible claimants who have lost money or financial instruments entrusted to an investment firm going into default. Please note that you may or not be eligible to require compensation from the French *Fonds de Garantie des Dépôts et de Résolution*. The compensation limit for investment business is displayed on the French *Fonds de Garantie des Dépôts et de Résolution* website or can be obtained on request (see website and contact details below). You can get more information from the *Fonds de Garantie des Dépôts et de Résolution* 65, rue de la Victoire - 75009 Paris – France or at <https://www.garantiedesdepots.fr/en>.

## 9. DATA PROTECTION

- 9.1. **Data protection:** Before providing us with any information relating to identifiable living individuals in connection with these Terms you should provide the following information to those individuals (except where they already have the information):
- (a) the categories of personal data that you are providing to us, whether the provision of personal data is a statutory or a contractual requirement, or a requirement necessary to enter into a contract, as well as whether individuals are obliged to provide the personal data and of the possible consequences of failure to provide such data;
  - (b) our identity, and that they can contact us via the telephone number and address listed on our website
  - (c) that we may process their personal data for the purposes of administering and operating your account, complying with Applicable Regulations and marketing business development purposes;
  - (d) that this processing is permitted by applicable data protection law because (a) the processing for the purposes of administering and operating your account is necessary for the performance of these Terms, (b) the processing is necessary for the purposes of our legitimate interests in pursuing the marketing business development purposes (which are

not overridden by prejudice to the relevant individuals' privacy), and (c) the processing is necessary so that we can comply with Applicable Regulations;

- (e) that we may disclose their personal data to persons in the categories identified in the clause entitled Your Information above;
- (f) that this may involve transfer of their personal data to any country, including countries outside the European Economic Area, but that in those cases, except where the relevant country has been determined to ensure an adequate level of data protection by the European Commission or we need to make the transfer in order to perform a contract concluded in the interests of the relevant individual, we will ensure that the transferred personal data are protected by binding corporate rules or other reasonable measures as adjudged by us to be compliant with the EU GDPR (and that further details of these transfers and copies of these rules are available from us on request);
- (g) that, except otherwise required under Applicable Regulations, the personal data processed for the purposes of administering and operating your account will be retained for a period of five years after the end of our business relationship whereas the personal data processed for the marketing development purposes will be retained for a period of no longer than three years after our last contact or after the end of our business relationship and our retention periods will be subject to regular internal review to ensure ongoing compliance with the EU GDPR; and
- (h) that they (a) have rights of access to and rectification or erasure of their personal data and to restrict or object to its processing, as well as the right to portability which they can exercise by contacting us (see paragraph (b) above), (b) can lodge complaints about our processing of their personal data with the competent supervisory authority; and (c) to the extent the French data protection legislation is applicable, have the right to establish instructions in respect of the retention, the deletion and the transmission of their personal data after their death.

9.2. **Your rights:** You may have rights of access to and rectification or erasure of your personal data and to restrict or object to its processing, as well as the right to data portability and to tell us that you do not wish to receive marketing information, under data protection law, which you can exercise by contacting us (see clause 9.1(b) (**Data protection**)). You also have the right to lodge a complaint about our processing of your personal data with the competent supervisory authority. To the extent the French data protection legislation is applicable, you have the right to establish instructions in respect of the retention, the deletion and the transmission of your personal data after your death.

## 10. GOVERNING LAW

10.1 **Governing law:** These Terms and any dispute or claim, including non-contractual disputes or claims, arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England and Wales.

10.2 **Jurisdiction:** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with these Terms or its subject matter or formation.

## 11. ACKNOWLEDGEMENTS



By signing these Terms:

- (a) you agree and acknowledge that in the event that you cease to possess a valid legal entity identifier at any point during our trading relationship, we may suspend trading with you, and on your behalf (if applicable).
- (b) you agree and acknowledge that the language of communication between us shall be English, and that you will receive documents and other information from us in English.
- (c) you acknowledge that you have read and agreed to our order execution policy (as referred to in clause 5.6) and agree and acknowledge that the continued placement of orders will constitute a continued consent to our order execution policy, as in effect from time to time.
- (d) you agree and acknowledge that we may provide you with the information required by the following MiFID II Directive provisions (as implemented under French law) directly on our website, and you acknowledge that you have read and understood such information: Articles 23 (*Conflicts of interest*) and 27 (*Obligation to execute orders on terms most favourable to the client*) of the MiFID II Directive; Articles 46 (*General requirements for information to clients*), 47 (*Information about the investment firm and its services for clients and potential clients*), 48 (*Information about financial instruments*), 49 (*Information concerning safeguarding of client financial instruments or client funds*), 50 (*Information on costs and associated charges*), and 66(3) (*Execution policy*) of Commission Delegated Regulation (EU) 2017/565; and Article 27 (*Disclosure of information about the services provided*) of Commission Delegated Regulation (EU) 2017/589.
- (f) you agree and acknowledge that we will disclose aggregate information on all costs and related charges encompassing commissions, mark-ups and third-party costs we incur related to transactions on our website, in accordance with clause 1.9.

## 12. INTERPRETATION

12.1. **Interpretation:** In these Terms:

**"Applicable Regulations"** means:

- (a) French Rules or any other rules of a relevant regulatory authority; and
- (b) all other applicable laws, rules, procedures, guidance, codes, standards and regulations (including, without limitation, French international public policy rules, accounting rules and anti-money laundering/sanctions legislation);

**"Associate"** means an undertaking in the same group as us, a representative whom we or an undertaking in the same group as us appoint, or any other person with whom we have a relationship that might reasonably be expected to give rise to a community of interest between us and them;

**"Best Execution"** means the Best Execution rules as defined in the French Rules;

**"Business Day"** means a day which is not a Saturday or a Sunday and upon which banks are open for business in London;

**"Eligible Counterparty"** has the meaning set out in the French Rules;

**"EU GDPR"** means the General Data Protection Regulation (Regulation (EU) 2016/679);

**"French Rules"** means French laws and regulations including the rules provided for under the French *Code monétaire et financier* and the rules set out by the AMF in the *Règlement général de l'AMF*, as amended or replaced from time to time, as well as any MiFID II French implementing rules, as well as the provisions of the Order dated 3 November 2014 on internal control and any provision, regulation or guidance that is applicable to a French investment firm;

**"Market"** means any regulated market, clearing house, CCP, multilateral trading facility or organised trading facility, SEF or any analogous body;

**"MiFID II Directive"** means the recast Markets in Financial Instruments Directive (Directive 2014/65/EU);

**"Obligations"** means obligations present or future, actual or contingent or prospective, owing or which may become owing by you to us under any Transaction or designated by us for these purposes in writing;

**"Professional Client"** has the meaning set out in the French Rules;

**"Relevant Venue"** means a regulated market, a multilateral trading facility or an organized trading facility, as may be applicable;

**"Retail Client"** means any client who is not a Professional Client or an Eligible Counterparty;

**"Services"** means:

- (i) investment services for which MBCF is licensed;
- (ii) ancillary services for which MBCF is licensed; and
- (iii) any other non-regulated services we may provide you from time to time

**"SEF"** means a swap execution facility, as defined in the Dodd Frank Wall Street Reform and Consumer Protection Act, as amended from time to time; and

**"Transaction"** means any transaction subject to these Terms.

- 12.2. **General interpretation:** A reference in these Terms to a "clause" or "Schedule" shall be construed as a reference to, respectively, a clause or Schedule of these Terms, unless the context requires otherwise. References in these Terms to any statute or statutory instrument or Applicable Regulations include any modification, amendment, extension or re-enactment thereof. A reference in these Terms to "document" shall be construed to include any electronic document. The masculine includes the feminine and the neuter and the singular includes the plural and vice versa as the context admits or requires.

To the extent permitted by Applicable Regulation, in the event of any inconsistencies between these Terms and any agreement entered into between you and us, the latter will prevail.

12.3. **Schedules:** The clauses contained in the Schedule(s) (as amended from time to time) shall apply. We may from time to time send to you further Schedules in respect of Markets or Transactions. In the event of any conflict between the clauses of any Schedule and these Terms, the clauses of the Schedule shall prevail. The fact that a clause is specifically included in a Schedule in respect of one Market or Transaction shall not preclude a similar clause being expressed or implied in relation to any other Market or Transaction.

12.4. **Headings:** Headings are for ease of reference only and do not form part of these Terms.

**Mitsui Bussan Commodities (France)**

**Bratislavská Teplarenska, A.S**

By: \_\_\_\_\_  
Title: Toshiyumi Hatanaka  
Managing Director  
Date:

By: \_\_\_\_\_  
Title: DUŠAN RANĎUŠKA, MIROSLAVA  
CHAIRMAN OF THE BOARD  
Date: 10/18/2021  
MEMBER OF THE BOARD

Bratislavská teplarenska, a.s.  
Turbinová 3, 829 05 Bratislava  
mestská časť Nové Mesto  
- 22 - II

## SCHEDULE 1

### AUTHORISED DISCLOSURE OF CONFIDENTIAL INFORMATION

All of Your Information gathered when entering into a relationship with us, or subsequently, will be protected by the French professional secrecy obligations to which we are subject to pursuant to Article L. 531-12 of the Code.

Your Information will only be disclosed to MBCF Group Companies only where such disclosure (i) is imposed by French law, (ii) is authorised by French law, or (iii) provided that we have obtained your prior written consent.

#### *Consent to the disclosure of Your Information to MBCF Group Companies for marketing purposes*

We and/or any of the MBCF Group Companies listed below, may analyse and use Your Information, in order to enable us to provide you with information about products and Services we may offer and which we believe may be of interest to you.

For the purposes described above, you agree that the following type of information (which would be considered as Your Information) may be communicated to the MBCF Group Companies: Transaction and credit information.

In this respect, you expressly agree that we may, without prior notice to you, and for the purposes set out in this Schedule, disclose Your Information to the following MBCF affiliates (the “**MBCF Group Companies**”):

- Mitsui Bussan Commodities Ltd: to support MBCF marketing; and
- Mitsui & Co., Ltd.: information for credit assessment and internal audit purposes.
- Mitsui Bussan Commodities (Singapore) Pte. Ltd., Mitsui Bussan Commodities (U.S.A.), Inc.: to support MBCF marketing.

<input type="checkbox"/> By checking this box, I agree to the communication by MBCF to MBCF Group Companies of information covered by the French professional secrecy rules in order to receive commercial offers from MBCF.
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**SCHEDULE 2**

**ACKNOWLEDGEMENT – TRADING OUTSIDE OF A TRADING VENUE**

By checking the box below:

- I agree and acknowledge that MBCF may execute an order on my behalf outside a regulated market, a multilateral trading facility or an organised trading facility.