

# GLOBAL MASTER REPURCHASE AGREEMENT (2011 VERSION)<sup>1</sup>

## JAPANESE PARTIES ANNEX<sup>2</sup>

This Annex constitutes an Annex to the Global Master Repurchase Agreement dated

\_\_\_\_\_ between \_\_\_\_\_ and  
\_\_\_\_\_ (the “**Agreement**”).

Capitalized terms used but not defined in this Annex shall have the meanings ascribed to them in the Agreement. Paragraph references are to paragraphs in the Agreement unless otherwise set out herein.

1. In the event of any inconsistency between the terms of this Annex and any other term of the Agreement or any Annex to the Agreement, the terms of this Annex shall prevail to the extent of such inconsistency.
2. Notwithstanding paragraph 2(a) of the Agreement, “Act of Insolvency” shall occur with respect to any party hereto immediately upon the voluntary or involuntary filing of a petition in respect of it with any court in Japan for the commencement of bankruptcy proceedings (*hasan tetsuzuki*), corporate reorganisation proceedings (*kaisha kousei tetsuzuki*) or civil rehabilitation proceedings (*minji saisei tetsuzuki*) of such party (the “**Close-out Netting Event**”).
3. Notwithstanding paragraph 10(b) of the Agreement, if “Automatic Early Termination” is specified in Annex I with respect to the Defaulting Party, then an Early Termination Date in respect of all outstanding Transactions will occur at the time immediately upon the occurrence with respect to the Defaulting Party of the Close-out Netting Event.<sup>3</sup>
4. It is understood that the Agreement is intended to constitute a “Master Agreement” (*kihon keiyakusho*) as defined in the Act on Close-out Netting<sup>4</sup> of Specified Financial Transactions Conducted by Financial Institutions, etc. of Japan (Act No.108 of 1998, as amended) (the “**Netting Act**”) and if any provision concerning the netting or set-off contained in the Agreement or any other Annex is inconsistent with or conflicts with the provisions of the Netting Act, the Enforcement Order for the Act on Close-out Netting of Specified Financial Transactions Conducted by Financial Institutions, etc. of Japan (Cabinet Order No.371 of 1998, as amended) (the “**Enforcement Order**”) or the Enforcement Ordinance for the Act on Close-out Netting of Specified Financial Transactions Conducted by Financial Institutions, etc. of Japan (Joint Ministerial Ordinance of the

<sup>1</sup> This Annex (including the footnotes) does not purport to be and should not be considered legal or tax advice. Parties should consult with their legal and tax advisers and any other adviser they deem appropriate prior to using this Annex.

<sup>2</sup> A counterparty to a Japanese party in respect of a GMRA may wish to incorporate this Annex in order to ensure that the netting arrangement under the GMRA will be enforceable where both parties or either party to the GMRA is a Japanese party and the Japanese party becomes subject to any Japanese legal insolvency proceedings. In addition, where the Seller is a Japanese party and the Buyer is a non-Japanese party to a transaction under a GMRA, as the netting enforceability is one of the requirements for the withholding tax exemption for the Price Differential that the non-Japanese Buyer may enjoy under the Japanese Tax Law (as defined in the Annex), both parties may also wish to incorporate this Annex.

<sup>3</sup> In order to benefit from the protection under the Netting Act, “Automatic Early Termination” should be specified as applicable with respect to a party who is likely to become subject to Japanese insolvency proceedings.

<sup>4</sup> While there is no market consensus established on a translation of the Japanese word “*ikkatsu seisan*” (even the Financial Services Agency of Japan and the Ministry of Justice of Japan translate the word “*ikkatsu seisan*” differently (i.e. “Collective Liquidation” or “Collective Clearing”, respectively)), we have chosen the word “Close-out Netting” for ease of understanding. Please note that since the Netting Act is properly identified by the reference legislation number, it is just a matter of translation.

Prime Minister's Office and Ministry of Finance No.48 of 1998, as amended) (the "**Enforcement Ordinance**"), then the provisions of the Netting Act, the Enforcement Order or the Enforcement Ordinance shall prevail.

5. Each party hereto hereby confirms,<sup>5</sup> in respect of and to the extent applicable to a Transaction, that it will comply with all substantive and procedural requirements under the Japanese Tax Law so that (i) the Price Differential in respect of such Transaction will be exempt from Japanese withholding tax and (ii) the Income to be paid by the issuer of the Securities that are the subject of such Transaction will be exempt from Japanese withholding tax<sup>6</sup> to the extent that the type of the Securities so qualifies. For this purpose, the "**Japanese Tax Law**" means sections 42-2, 5-3 and 5-2 and other pertinent sections of the Act on Special Measures Concerning Taxation of Japan (Act No.26 of 1957, as amended) as well as the pertinent sections of the Enforcement Order for the Act on Special Measures Concerning Taxation of Japan (Cabinet Order No. 43 of 1957, as amended) and the Enforcement Ordinance for the Act on Special Measures Concerning Taxation of Japan (Ministerial Ordinance of the Ministry of Finance No.15 of 1957, as amended).

Except as amended herein, the Agreement shall continue to have full force and effect in all respects.

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<sup>5</sup> It is the responsibility of each party to the Transaction to ensure compliance with all substantive and procedural requirements under Tax Law. The requirements include, among others, (i) requirements as a matter of fact outside the contractual terms (e.g., the Seller must be a certain designated Japanese financial or other qualifying institution and the Buyer must be a certain designated foreign financial or other qualifying institution; Buyer must submit an Application Form of Withholding Tax Exemption; the Seller must keep certain designated books and records, etc.) and (ii) requirements that must be incorporated in a Confirmation for a Transaction (e.g., the Securities must be certain designated securities; the Term must be 6 months or less; the Market Value must be equal to or higher than the Purchase Price, etc.). In so ensuring the compliance, each party is expected to be familiar with and fully take into account various amendments made to the Japanese Tax Law by the 2017 tax reform of Japan (which is already in force from April 2017). It is out of the scope of this Annex (including these footnotes) to enumerate every substantive and procedural tax requirement as amended by the 2017 tax reform. It is suggested that each party seek advice of its tax counsel where necessary.

<sup>6</sup> This is separate from the tax exemption of the Price Differential, and is intended to ensure that the Securities will not be Net Paying Securities.