

**MASTER PARTICIPATION AGREEMENT
FOR TRADE TRANSACTIONS**

Dated [Date]

Between

[Party A]

And

[Party B]

NB: This template represents a recommended form only, which parties are free to amend as necessary.
Each party must satisfy itself as to the legal, commercial and regulatory implications of its use.

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This Agreement (the "**Agreement**") is made the [Day] day of [Month], [Year]

between:

I. [Party A] a bank incorporated in [♦], [Head Office][Registered Office] at [♦]

and

II. [Party B] a bank incorporated in [♦], [Head Office][Registered Office] at [♦]¹

Whereas:

If one Party offers to the other Party a participation (on a funded or unfunded basis) in respect of a Trade Transaction under Clause 3 and the other Party accepts such Offer under Clause 4, the provisions of this Agreement shall apply to such participation (a "**Participation**"). The Party offering the Participation will be called the "**Grantor**" and the Party taking the Participation will be called the "**Participant**".

Now it is hereby agreed as follows:

1 DEFINITIONS

For the purpose of this Agreement and any Participation Agreement, the following words and expressions shall have the following meanings:

"**Acceptance**" means acceptance by the Participant of an Offer in accordance with Clause 4;

"**Beneficiary**" means the person entitled to payment from the Grantor under a Participated Transaction;

"**Business Day**" means a day (not being a Saturday or a Sunday) (a) on which the dealings in deposits in the Relevant Currency are carried on in the London Interbank Market; and (b) on which banks are open for interbank transactions: (i) in [♦] and [♦]; and (ii) in the financial centre of the Relevant Currency;

"**Clause**" means any clause of this Agreement;

"**Credit Amount**" means in relation to a Participated Transaction, the aggregate principal amount of the Grantor's exposure to the Recourse Parties, as specified in the relevant Participation Agreement;

"**Default**" means:

- (a) any non-receipt of monies due to the Grantor by the Recourse Parties at the Due Date under a Participated Transaction; and
- (b) the Grantor receiving monies from the Recourse Parties under a Participated Transaction which it is subsequently required to return to a Recourse Party or any third party by operation of mandatory rules of law.

¹ If a Bank is contracting with a branch, the need for "multibranch" provisions be considered on an incremental basis and parent company guarantees sought as necessary.

"Defaulted Amount" means:

- (a) a sum due to the Grantor by the Recourse Parties under a Participated Transaction which has not been received by the Grantor; and
- (b) a sum received by the Grantor from the Recourse Parties under a Participated Transaction which the Grantor is subsequently required to return to a Recourse Party or any third party by operation of mandatory rules of law.

"Due Date" means any date on which payment to the Grantor by the Recourse Parties is due under a Participated Transaction;

"Funded Participation" means a Participation on a funded basis;

"General Debt Restructuring" means any rescheduling or reorganisation of the indebtedness (or any class of the indebtedness) of a Recourse Party, including (without limitation) by way of novation, release payment, refinancing or assumption of obligations by third parties which satisfies the following test:

- (a) the holders of more than half of the indebtedness (or of any class of the indebtedness, if applicable) participate in or agree to the same; and
- (b) the same arises in relation to any actual or purported insolvency, payments difficulty, moratorium (unilaterally declared or otherwise), exchange control or transfer restrictions, withholding of foreign currency payments or similar circumstance.

"ISP" means International Standby Practices, ICC Publication No 590 and any subsequent revisions thereof;

"LIBOR" means, in relation to any period for which an interest rate is to be determined, the British Bankers' Association Interest Settlement Rate (where such is available for the Relevant Currency and period) appearing at or about 11:00 hours a.m. London time on the relevant Reuters screen page(s), or if the service ceases to be available, the Party claiming interest may specify another determination of the appropriate rate (acting reasonably after consultation with the other Party);

"Offer" means an offer made by the Grantor to the Participant in accordance with Clause 3;

"Participated Transaction" means the Transaction in which the Participant accepted a participation in accordance with Clause 4;

"Participation Agreement" means the agreement between the Grantor and the Participant on the terms of the Offer, Acceptance and this Agreement (together with any amendments which the Grantor and Participant may agree in writing from time to time) in respect of a Participated Transaction;

"Participation Amount" means, in relation to a Participated Transaction, the aggregate principal liability assumed by the Participant in respect of such Participated Transaction as specified in the relevant Participation Agreement (but, for the avoidance of doubt, not including any costs or expenses for which the Participant is expressly liable under the terms of this Agreement);

"Participation Percentage" means, in respect of a Participated Transaction, the proportion that the Participation Amount bears to the Credit Amount (expressed as a percentage figure);

"Participation Portion" means:

- (a) in relation to an Unfunded Participation, the amount equal to the Participation Percentage of the Defaulted Amount;
- (b) in relation to a Funded Participation, the amount equal to the Participation Percentage of the Requested Amount;

"Party" means a party to this Agreement;

"Recourse Parties" means the persons to whom the Grantor has recourse in respect of a Participated Transaction, as specified in the relevant Offer;

"Reference Interest Rate" which will be applicable to Relevant Currencies other than those quoted by reference to LIBOR, means in relation to any period for which an interest rate is to be determined, the rate per annum determined by leading banks in the financial centre of the Relevant Currency appearing at or about 12:00 noon in that financial centre on the relevant Reuters screen page(s) (or other applicable page customarily used for such purposes in that financial centre as determined by the party claiming interest), for deposits in such currency for a duration comparable to that of the relevant period;

"Relevant Currency" means the currency in which the relevant Transaction is denominated, as specified in the relevant Offer;

"Relevant Dispute" has the meaning given to it in Clause 14.3;

"Request" has the meaning given to it in Clause 6.2.2;

"Request Notice Period" has the meaning given to it in Clause 6.2.3;

"Requested Amount" has the meaning given to it in Clause 6.2.2;

"Retention Share" means the percentage of the Credit Amount of the Participated Transaction retained by the Grantor at its own risk;

"Termination Date" means, in relation to a Participated Transaction, the earlier to occur of:

- (a) 30 calendar days following the final Due Date;
- (b) the date the relevant Participation is terminated in accordance with its terms; or
- (c) the date on which the Grantor's liability (both current and contingent) under that Participated Transaction is reduced to zero.

"Transaction" means any of the transactions specified in Clause 2;

"Transaction Documents" means the documents which set out the material terms of the relevant Transaction;

"UCP" means UCP 500, UCP 600 and any subsequent revisions thereof;

"UCP 500" means the Uniform Customs and Practice for Documentary Credits, ICC Publication No. 500;

"UCP 600" means the Uniform Customs and Practice for Documentary Credits, ICC Publication No. 600; and

"Unfunded Participation" means a Participation on an unfunded basis.

2 TRANSACTIONS

Each Party may from time to time desire to offer and the other Party to this Agreement may desire to accept and adopt Unfunded Participations and/or Funded Participations in the following Transactions:

- 2.1 letters of credit issued or confirmed by the Grantor, drafts accepted and deferred payment or negotiation obligations incurred by the Grantor under letters of credit;
- 2.2 confirmations or guarantees of letters of credit given at the request of the Beneficiary;
- 2.3 purchases of claims by the Grantor under letters of credit, drafts accepted and deferred payment or negotiation obligations incurred by the Grantor under letters of credit;
- 2.4 refinancings of sight payments under letters of credit made by the Grantor;
- 2.5 discounts of drafts accepted and deferred payment or negotiation obligations under letters of credit or under banker's acceptances made by the Grantor;
- 2.6 bankers acceptances created by the Grantor;
- 2.7 bills of exchange and promissory notes purchased, avalised or accepted by the Grantor;
- 2.8 irrevocable reimbursement undertakings, letters of indemnity, guarantees or similar instruments issued by the Grantor;
- 2.9 advance payment guarantees issued by the Grantor;
- 2.10 performance and bid bonds issued by the Grantor;
- 2.11 letters of indemnity, guarantees or similar instruments issued by a Recourse Party in favour of the Grantor; and
- 2.12 any other transaction the Grantor and the Participant may agree upon.

3 OFFER

- 3.1 If the Grantor wishes to offer the Participant a participation in a Transaction it shall send to the Participant an Offer in accordance with Clause 20 and substantially in the form specified in Appendix I.

- 3.2 If the Participant so requests, the Grantor will use reasonable endeavours to promptly provide to the Participant a copy of the Transaction Documents prior to the expiry date set out in the Offer.

4 ACCEPTANCE

- 4.1 Subject to Clause 4.4, a Participation Agreement shall be concluded upon the Grantor receiving the Participant's Acceptance to the Offer in accordance with Clause 20 and substantially in the form set out in Appendix I.
- 4.2 Upon conclusion of a Participation Agreement, the terms of the Offer (together with such amendments as may have been agreed in writing by each Party) shall, together with the terms of this Agreement, constitute the Participation Agreement.
- 4.3 Any purported modifications to the terms of the Offer by the Participant shall not constitute an Acceptance unless accepted in writing by the Grantor within two Business Days of receipt of such proposed modifications (and the expiry date set out in the Offer shall be disregarded in this respect). If the Grantor has not expressly accepted the suggested modifications within such period, the Offer shall become void and no Participation Agreement will be concluded.
- 4.4 If the Participant has not accepted an Offer before the expiry date set out in the Offer, the Offer shall lapse and no purported Acceptance by the Participant of such Offer after such date will be effective.
- 4.5 The Participant is under no obligation to accept any Offer.

5 CONFLICT OF TERMS

In the event of discrepancy or inconsistency between the agreed terms of the Offer and Acceptance and the terms of this Agreement, the terms of the Offer and Acceptance will prevail.

6 PARTICIPATIONS AND FUNDING

- 6.1 In relation to Unfunded Participations:
- 6.1.1 Following a Default, the Participant irrevocably and unconditionally undertakes to pay to the Grantor[, irrespective of any objections or exceptions,] within [four] Business Days of the Grantor's first written demand (as specified in Clause 6.1.2), an amount equal to the relevant Participation Portion.
- 6.1.2 Each demand for payment to be delivered by the Grantor to the Participant under Clause 6.1.1 must be in the form specified in Appendix II hereto, [no earlier than 10 calendar days from the date of the relevant Default but] within 30 calendar days of the relevant Default (such 30 day period being the "**Default Notice Period**"). The Grantor's right to demand payment in respect of a specific Default shall lapse at the end of the relevant Default Notice Period.

- 6.1.3 The Grantor may not make any demand for payment under this Clause 6.1 after the Termination Date (other than as referred to in Clause 10.5).
 - 6.1.4 Payment by the Participant of the Participation Portion shall be in the Relevant Currency.
 - 6.1.5 In the event that the Credit Amount under a Participated Transaction is reduced, the Participation Amount in respect of such Participated Transaction shall decrease by the Participation Percentage of such reduction and the Grantor shall promptly inform the Participant of any such reduction.
- 6.2 In relation to Funded Participations:
- 6.2.1 Provided that the Participant is in compliance with its payment obligations under this Agreement, whenever the Grantor applies an amount received under a Funded Participation towards a payment of principal or interest (including default interest) that relates to the relevant Participated Transaction, the Grantor shall promptly pay to the Participant the relevant Participation Percentage of that amount.
 - 6.2.2 If a demand for payment is made by the Beneficiary upon the Grantor under the relevant Participated Transaction (a "**Request**", with the sum demanded from the Grantor being the "**Requested Amount**"), the Grantor shall be entitled to demand that the Participant pays to the Grantor the relevant Participation Portion. The Participant irrevocably and unconditionally undertakes to pay such sum to the Grantor[, irrespective of any objections or exceptions,] within [four] Business Days of the Grantor's first written demand.
 - 6.2.3 Each demand for payment by the Grantor under Clause 6.2.2 must be in the form specified in Appendix III and be made by the Grantor within thirty (30) calendar days (or such other period as may be agreed between the Parties in writing) of the date of Request (such period being the "**Request Notice Period**"). The Grantor's right to demand payment in respect of a Requested Amount shall lapse at the end of the relevant Request Notice Period.
 - 6.2.4 The Grantor may not make any demand for payment under this Clause 6.2 after the Termination Date (other than as referred to in Clause 10.5).
 - 6.2.5 Payment by the Participant of the Participation Portion of the Requested Amount shall be in the Relevant Currency.
- 6.3 Following the Grantor's demand for payment under Clause 6.1.2 or Clause 6.2.3, at the Participant's reasonable request the Grantor will use reasonable endeavours to promptly provide to the Participant certified copies of the Transaction Documents (other than those (if any) already supplied by the Grantor to the Participant) and any relevant demand for payment served by the Grantor upon a Recourse Party. For the avoidance of doubt, failure by the Grantor to provide such documentation will not affect the Participant's obligations under the relevant Participation Agreement.

7 DEFAULT UNDER THE PARTICIPATED TRANSACTION

- 7.1 Subject to the other provisions of this Clause 7, the Grantor may take or refrain from taking any steps the Grantor sees fit (acting reasonably and relying on such professional opinions as the Grantor thinks appropriate) in recovering all sums due to the Grantor from the Recourse Parties under a Participated Transaction.
- 7.2 Following a Default and provided that the Participant is in compliance with its payment obligations under this Agreement, prior to taking or refraining from taking any steps contemplated by Clause 7.1 the Grantor shall consult in good faith with the Participant for a reasonable period and shall use all reasonable endeavours to reach agreement with the Participant as to what steps (if any) to take or refrain from taking to obtain repayment or reimbursement of a Defaulted Amount from the Recourse Parties under the Participated Transaction. The obligation of the Grantor to consult with the Participant under this paragraph shall not apply if the Grantor, acting reasonably, determines that its interests or the interests of the Participant under the Participated Transaction would be prejudiced or adversely affected by the time taken to conduct such consultation.
- 7.3 The Participant agrees to indemnify the Grantor on demand for the relevant Participation Percentage of all expenses (including all legal expenses), costs and losses reasonably incurred and claims incurred in connection with the exercise or enforcement of any rights in connection with a Participated Transaction which have not been reimbursed by the Recourse Parties.
- 7.4 If agreement cannot be reached as to what steps (if any) are to be taken or refrained from being taken following a Default in accordance with Clause 7.2, the Grantor will, if so requested by the Participant and provided that the Participant has complied with its payment obligations under this Agreement, use reasonable endeavours to assign to the Participant at the [Participant's][Grantor's] cost, the Participation Percentage of:
- 7.4.1 the Grantor's claims, titles, rights and interests against the Recourse Parties in respect of the relevant Defaulted Amount under the relevant Participated Transaction to the extent that the same is capable of assignment[; or (at the Participant's option)]
- 7.4.2 the Grantor's claims, titles, rights and interests related to the Participated Transaction (with the exception of any security), to the extent that the same is capable of assignment[.]
- 7.5 [If agreement cannot be reached as to what steps (if any) are to be taken or refrained from being taken following a Default in accordance with Clause 7.2 and the Participant has not exercised its rights under Clause 7.4, the Grantor may assign to the Participant at the Grantor's cost, the Participation Percentage of:
- 7.5.1 the Grantor's claims, titles, rights and interests against the Recourse Party in respect of the relevant Defaulted Amount under the relevant Participated Trade Transaction to the extent that the same is capable of assignment; or (at the Grantor's option)]

7.5.2 the Grantor's claims, titles, rights and interests related to the Participated Trade Transaction (with the exception of any security), to the extent that the same is capable of assignment.]²

7.6 If [neither] the Participant [does not] [nor the Grantor] opt for assignment under Clause 7.4 [or 7.5 (as applicable)] or the Grantor is unable to effect the assignment in accordance with Clause 7.4 [or 7.5 (as applicable)], the Grantor shall administer and continue to collect at the expense of the Participant the portion of reimbursement that corresponds with the Participation Percentage of the Defaulted Amount, at all times acting as the Grantor sees fit (subject to the requirements of Clause 18.2).

7.7 In any case and if for any reason the Participant receives direct payment from any Recourse Party in relation to the Participated Transaction, the Participant shall be entitled to retain the Participation Percentage thereof and shall pay to the Grantor the balance of such amount within five Business Days after such receipt.

7.8 This Clause 7 shall not apply to any Relevant Dispute. Relevant Disputes shall instead be administered in accordance with Clause 14.

8 COMMISSION, FEES AND RECOVERIES³

8.1 [Subject to the Participant complying with its payment obligations under this Agreement, the Grantor undertakes to pay to the Participant commission and fees as set out in the relevant Offer on a per annum basis on the Participation Percentage of the relevant Participated Transaction from time to time for the period from the start date of the relevant Participation Agreement until the earlier of (a) the final Due Date, (b) the date the relevant Participation Agreement is terminated or (c) the date the relevant Participated Transaction is terminated, in each case adjusted to reflect the duration and quantum of the Participant's exposure.]

8.2 Payments of commission shall be made on:

8.2.1 [subject to Clause 8.3,]each Due Date; and

8.2.2 the earlier of (a) the date the relevant Participation Agreement is terminated and (b) the date the relevant Participated Transaction is terminated.

8.3 [Unless otherwise agreed in the relevant Participation Agreement, commission shall only be payable to the Participant on the dates specified in Clause 8.2.1 following receipt by the Grantor of the corresponding commission or fees payable to the Grantor by the relevant Recourse Party in respect of the relevant Participated Transaction].

8.4 If so stated in the Offer and subject to the Participant complying with its payment obligations in respect of Participations, the Grantor undertakes to pay to the Participant an up-front fee, in the amount stated in the Offer, payable promptly following the conclusion of the relevant Participation Agreement.

² Banks to agree on a case-by-case basis whether this provision should be included.

³ Banks to agree on a case-by-case basis as to which rules should govern commission payments.

- 8.5 The Grantor shall promptly pay the Participant the relevant Participation Percentage of all sums recovered (including, without limitation, through payment by or on behalf of a Recourse Party, a Recourse Party's receiver, liquidator or other insolvency officer, or through the exercise of any rights of set-off).

9 DEFAULT INTEREST

In the event that either Party defaults on the payment of any sum due hereunder, interest shall accrue on the amount in respect of which such default has been made from the date of the default until payment (after as well as before judgment) at the overnight rate of LIBOR or the Reference Interest Rate (as applicable) plus one per cent per annum calculated on a day-to-day basis from the due date for payment until payment is received from the relevant Party.

10 TAX AND PAYMENTS

- 10.1 All payments by the Grantor under this Agreement shall be made net of any deduction or withholding required to be made from such payments by any law or regulation. If any such deduction or withholding is made, the Participant shall bear the risk of such deduction or withholding and shall for the purposes of this Agreement be deemed to have received the amount that it would have received if such deduction or withholding had not been made.
- 10.2 All payments by the Participant under this Agreement shall be made free and clear of any deduction or withholding unless such deduction or withholding is required to be made by any law, regulation or practice. If any such deduction or withholding is made or is required to be made the Participant shall increase the amount to be paid to the Grantor to ensure that the Grantor receives and retains a sum equal to the sum which it would have received and so retained had no such deduction or withholding been made or required to be made.
- 10.3 The Grantor and the Participant shall each use their reasonable endeavours to avoid any such deduction or withholding as is referred to in Clauses 10.1 and 10.2.
- 10.4 All payments under this Agreement shall be made in immediately available funds in the Relevant Currency to the credit of the account specified by the Party to whom such payments are due without set-off or counterclaim.
- 10.5 If at any time (including after the relevant Termination Date) the Grantor pays an amount to the Participant and (a) the Grantor had not actually received the related amount under the Participated Transaction or (b) the Grantor is required to return such amount to a Recourse Party or any third party by operation of mandatory rules of law, then the Participant shall on demand refund the same to the Grantor together with the overnight rate of interest on that amount from the date of payment to the date of receipt by the Grantor, calculated at the overnight rate of LIBOR or the Reference Interest Rate (as applicable), or the rate payable by the Grantor to the relevant Recourse Party, if higher.
- 10.6 If any sum due from either Party under this Agreement to the other or any order or judgment given or made in relation hereto or thereto has to be converted from the currency (the "**first currency**") in which the same is

payable hereunder or under such order or judgment into another currency (the "**second currency**") for the purpose of (a) making or filing a claim or proof against the Participant or a Recourse Party, (b) obtaining an order or judgment given in any court or other tribunal or (c) enforcing any order or judgment given or made in relation hereto or thereto, the paying Party shall indemnify and hold harmless the recipient Party from and against any loss suffered as a result of any discrepancy between (i) the rate of exchange used to convert the sum in question from the first currency into the second currency and (ii) the rate or rates of exchange at which the receiving Party may in the ordinary course of business purchase the first currency with the second currency upon receipt of a sum paid to it in satisfaction, in whole or in part, of any such order or judgment, claim or proof.

11 FRAUD RISK

[Notwithstanding any other Clause in this Agreement, if it is finally, non-appealably legally determined that the Recourse Parties had no obligation to reimburse the Grantor due to the occurrence of fraud in the underlying transaction or related documentation (including, without limitation, any documentation examined by the Grantor in accordance with Clause 14.1) then:

- (a) the Participant shall not be liable to make payment to the Grantor in respect of such (if it has not already made such payment); and
- (b) the Grantor shall reimburse the Participant any monies paid by the Participant under Clause 6.1 or Clause 6.2 (and which have not otherwise been reimbursed by the Grantor in accordance with the terms of the Participation Agreement) in respect of such[, together with interest calculated at the overnight rate of LIBOR or the Reference Interest Rate (as appropriate) accruing from the date such payment was made by the Participant under Clause 6.1 or Clause 6.2, until the date of actual reimbursement].]

[If it is determined that any Recourse Parties had no obligation to reimburse the Grantor due to the occurrence of fraud in the underlying transaction or related documentation (including, without limitation, any documentation examined in accordance with Clause 14.1) then the Participant shall continue to be liable for the relevant Participation Portion notwithstanding that that Recourse Party had no such obligation, provided that the provisions of Clause 14.3 shall continue to apply in respect of the examination of documents.]⁴

12 INFORMATION

12.1 The Grantor shall, within a reasonable timeframe, notify the Participant of (a) any dispute under the Participated Transaction, which in the reasonable opinion of the Grantor has had or may have a material adverse effect on the likelihood of the Recourse Parties paying any amounts due under the relevant Participated Transaction; and (b) in the case of a Funded Participation, any Default.

12.2 The Grantor shall, within a reasonable timeframe, notify the Participant of the expiry, fulfilment or non-fulfilment of each material liability or obligation relating to the Participated Transaction (including, without limitation, in the case of

⁴ Parties to agree appropriate option (i.e. whether Participant participates in the risk of fraud).

letters of credit: presentations of documents, due dates for payment and dates of drawings).

- 12.3 Any failure by the Grantor to comply with the terms of this Clause 12 will not affect the Participant's obligations under the relevant Participation Agreement.

13 VARIATION OF TRANSACTION

- 13.1 The Grantor shall not without the prior written consent of the Participant (without prejudice to the rights of the Participant under Clause 7), take such action that would result in:

- (a) any extension of the date for payment by a Recourse Party in respect of any Participated Transaction;
- (b) any reduction in the liability of any Recourse Party or in the release of any security in respect of any Participated Transaction;
- (c) any material change in the goods or change of country of any named port(s) in respect of any Participated Transaction;
- (d) any change in the currency in respect of any Participated Transaction;
- (e) any reduction of any amount in respect of interest or commission related to a Participated Transaction, which would affect the amount of interest or commission due to the Participant from the Grantor.

- 13.2 The Grantor may without the prior consent of the Participant (without prejudice to the rights of the Participant under Clause 7), take such action that would result in:

- (a) any increase in the Credit Amount; or
- (b) any extension in the date of validity or extension of the expiry date (but not an extension of the date for payment by a Recourse Party in respect of any Participated Transaction),

provided that (i) such action does not affect the rights or obligations of the Participant under the Participation Agreement; and (ii) the Participation Amount in respect of the relevant Participation Agreement shall not change and the Participant shall have no liability in respect of any payment made or liability incurred by the Grantor after the original date of validity or expiry date.

- 13.3 In cases where the Participant does not agree to any such action where its consent is required, the Grantor shall have the option immediately to terminate the Participation Agreement by giving written notice to the Participant. All commission and interest payable to the Participant under the Participation Agreement shall be calculated on a pro rata basis and the principal amount paid by the Participant to the Grantor (in the case of a Funded Participation) shall be reimbursed.

14 DOCUMENTARY DISCREPANCIES

- 14.1 The examination of any documents submitted by the Beneficiary in respect of a Participated Transaction is the sole and full responsibility of the Grantor and shall not be affected by any delegation by the Grantor.
- 14.2 In respect of Participated Transactions the Grantor shall exercise such care and attention in relation to the presentation and form of documents with respect to a Participated Transaction as would a bank acting in accordance with UCP or ISP (if applicable) or otherwise as is in accordance with established market practice in the relevant financial centre for Transactions of a similar nature.
- 14.3 If a dispute arises between a Recourse Party and the Grantor under a Participated Transaction as to whether documents examined by the Grantor complied with the documentary requirements of that Participated Transaction and the Grantor is of the reasonable opinion that the Recourse Party is unjustified in its refusal to repay to the Grantor any sums paid by the Grantor to the Beneficiary (a "**Relevant Dispute**"), the Grantor shall (without prejudice to its obligations under Clause 18.2) use its reasonable endeavours to obtain a final non-appealable legally binding decision, whether obtained in a court of competent jurisdiction, through arbitration or DOCDEX decision (a "**Relevant Decision**") as soon as is reasonably possible.
- 14.4 Should a Relevant Decision not be in favour of the Grantor, the Grantor shall reimburse to the Participant the relevant Participation Portion [including default interest (at the rate specified in Clause 9)][including interest calculated at the overnight rate of LIBOR or the Reference Interest Rate (as appropriate)]⁵ accruing from the date such payment was made by the Participant under either Clause 6.1 or Clause 6.2 (as the case may be) until the date of actual reimbursement. Such reimbursement obligation will continue notwithstanding the expiry or assignment of the relevant Participation Agreement or Participated Transaction.
- 14.5 Where a Relevant Decision holds that the Recourse Party should reimburse the Grantor, the Participant shall promptly pay to the Grantor an amount equal to its Participation Percentage of the costs incurred by the Grantor in relation to obtaining the Relevant Decision (including without limitation all associated legal fees and costs) ("**Relevant Costs**"). The Grantor shall enclose with any such claim a certificate setting out in reasonable detail the calculation of amounts demanded thereunder. In all other cases, all Relevant Costs incurred by the Grantor shall be exclusively borne by the Grantor and the Participant shall have no liability in respect of the same.
- 14.6 Save as expressly set out in this Clause 14, the existence of a Relevant Dispute will not affect the rights and obligations of each Party under Clause 6 in respect of the relevant Participated Transaction.
- 14.7 If the Grantor does not use reasonable endeavours to obtain a Relevant Decision as soon as is reasonably possible following the commencement of a Relevant Dispute, the Participant may exercise its rights under Clause 7.4. For the avoidance of doubt, the Grantor's obligation to reimburse the Participant in accordance with Clause 14.3 will survive any termination or

⁵ Delete as applicable.

expiry of the Participated Transaction, Participation Agreement, this Agreement or any assignment made in accordance with Clause 7.4 [or 7.5].

15 GENERAL DEBT RESTRUCTURING

- 15.1 Subject to Clause 15.7, it is the intent that the Participant will bear the risk of any General Debt Restructuring in relation to a Participated Transaction.
- 15.2 The Grantor shall not be obliged to make payment to the Participant under a Participation Agreement in respect of:
- (a) any sum which is paid into a blocked account or is paid in non-transferable and/or non-convertible currency until that impediment is removed; or
 - (b) any financial or other instrument issued to the Grantor in either case paid or issued in satisfaction or purported satisfaction of the obligation of a Recourse Party to make any payment with respect to a Participated Transaction unless and until such instrument is disposed of, redeemed or otherwise realised for cash and where the proceeds of realisation are themselves not subject to Clause 15.2.
- 15.3 The Grantor will endeavour (at the expense of the Participant) to assign to the Participant the pro rata benefit of any sum referred to in Clause 15.2(a) to the extent that the Grantor is able to do so and to the extent that the same is, in the Grantor's reasonable opinion, attributable to the Participant's interest in relation to the relevant Participated Transaction.
- 15.4 The Grantor may, in connection with any General Debt Restructuring, apply for or accept any note, debenture or other instrument issued or proposed to be issued by the relevant Recourse Party or any other person in respect of any Participated Transaction or any part thereof, or any interest or fees payable in respect of any Participated Transaction or any part thereof.
- 15.5 [The Grantor may participate in any agreement in connection with a General Debt Restructuring and which relates to any principal or interest on or fees in respect of any Participated Transaction. If the Grantor does so, the Grantor shall not be obliged to account to the Participant in respect of that principal or interest or fees. However, the Grantor will endeavour to give the Participant the benefit of the agreement on the same terms as this Agreement to the extent that payments received and applied by the Grantor under the agreement are in the Grantor's reasonable opinion attributable to the Participant's interest in the relevant Participated Transaction.]
- 15.6 [If, in connection with any General Debt Restructuring, the Grantor agrees to increase its exposure, the Grantor shall not be obliged to account to the Participant under this Agreement until that increased exposure has been paid and satisfied unless the Participant agrees to modify this Agreement in form and substance reasonably satisfactory to the Grantor to the effect that the Participant participates in the increased exposure on the terms of this Agreement. The provisions of this Clause 15.6 shall only apply if the Grantor has first offered the Participant the opportunity to modify this Agreement in form and substance reasonably satisfactory to the Grantor to the effect that the Participant participates in the increased exposure on the terms of this Agreement and the Participant has either refused to so participate or fails to

accept the Grantor's offer within [five] Business Days of such offer being made.]

[The Grantor may join any General Debt Restructuring which affects the Grantor's payment claim against a Recourse Party arising from any Participated Transaction without the Participant's prior consent and shall notify the Participant thereof. The Participant shall then, upon the Grantor's first demand, adapt the Participant's undertaking or perform its duties and enjoy its rights under the relevant Participation Agreement irrespective thereof.]⁶

- 15.7 Notwithstanding any other provision of this Agreement, the Participant shall have no obligation to participate in any such increased exposure whether in connection with any General Debt Restructuring or otherwise.

16 CONFIDENTIALITY

- 16.1 Subject to Clause 16.2 and unless otherwise agreed in writing by the Parties: (a) the Participant shall not without prior written consent of the Grantor, disclose the Participated Transaction (unless the Participated Transaction is expressly undertaken on a "disclosed" basis) or any offered Participation or any other information relating thereto or to the Participated Transaction to any Recourse Party or to any third party; and (b) the Grantor and the Participant agree that they will treat this Agreement and any information supplied in connection herewith as being confidential (but, for the avoidance of doubt, each Party is permitted to disclose such information to its affiliates, directors, officers, employees and professional advisers who have a need to know the information and who are made aware of the obligations of confidentiality under this Clause 16). The duty of confidentiality arising from this Agreement continues to apply in full even after the relevant Participation Agreement has been terminated [but will expire two years following such termination].

- 16.2 The provisions of Clause 16.1 do not apply to any information which:

- (a) is or comes into the public domain otherwise than by breach of this Agreement;
- (b) is required to be disclosed in compliance with any applicable law, rule, regulation or order from a court of competent jurisdiction;
- (c) is required or requested to be disclosed to any public authority or governmental body or regulatory body having jurisdiction over the conduct of (as applicable) the Grantor's or Participant's business and/or affairs;
- (d) is disclosed by any Party to its legal advisers or auditors (but in that capacity only) provided that such persons are bound by professional obligations of confidentiality; and
- (e) is disclosed to any potential assignee, transferee or sub-participant provided that the Party intending to disclose any such information to any person shall only disclose such information to the extent necessary for the relevant person to decide whether or not to enter into the

⁶ Parties to decide whether to use 'Frankfurt'-style wording.

assignment, transfer or sub-participation and otherwise to effect the assignment, transfer or sub-participation and upon the terms that all information so disclosed shall be kept confidential by that recipient.

17 ASSIGNABILITY

- 17.1 The Participant may not assign or transfer any of its rights or obligations under this Agreement or under any Participation Agreement without the prior written consent of the Grantor. The Grantor may give or refuse such consent in its absolute discretion.
- 17.2 Unless expressly stated to the contrary in the Participation Agreement, the Participant may enter into sub-participations with third parties in respect of Participation Agreements without the consent of, and without giving notice to, the Grantor.
- 17.3 The Grantor may not assign or transfer any of its rights or obligations under this Agreement or under any Participation Agreement without the prior written consent of the Participant. Such consent may not be unreasonably withheld or delayed.

18 ADDITIONAL DUTIES OF THE GRANTOR

- 18.1 The Grantor may enter into other participations with third parties in respect of Participated Transactions provided that the Grantor retains the Retention Share stipulated in the relevant Offer (if any). If no Retention Share is stipulated in the relevant Offer, then the Grantor shall not be obliged to retain any Retention Share in that Participated Transaction.
- 18.2 The Grantor shall administer the Participated Transaction with the same degree of care which the Grantor normally exercises in administering Transactions in which no participation has been granted.

19 REPRESENTATIONS AND WARRANTIES

- 19.1 Without prejudice to the Grantor's duties under Clause 14, the Grantor does not make any representation or warranty and does not assume any responsibility with respect to the due execution, legality, validity, adequacy or enforceability of the relevant Transaction or of any document related thereto.
- 19.2 Each Party represents and warrants to the other that:
 - (a) it will at all times make its own independent investigation and assessment of the financial condition, creditworthiness, status and affairs of the Recourse Parties and of other relevant factors for the assessment of the credit risk and that it has not relied on the other Party for the making of such assessment; and
 - (b) this Agreement and any Participation Agreement concluded hereunder constitute and will constitute its legally valid and binding obligations enforceable in accordance with their respective terms.
 - (c) [others?]

The representations and warranties set out in Clauses 19.1 and 19.2 shall be deemed repeated as at the date each Participation Agreement is concluded.

- 19.3 In respect of each Participation, the Grantor represents and warrants to the Participant that, to the best of its knowledge as at the date the relevant Participation Agreement begins, it will own beneficially the obligations under the Transaction in which the Participation is granted free from any lien, security interest or other encumbrance, any purchase or option agreement or arrangement, or any agreement to create or effect any of the same.
- 19.4 In respect of each Participation, the Participant represents and warrants to the Grantor that it has undertaken its own assessment of the Participated Transaction (including as to its type and nature) and has received sufficient information from the Grantor in order to undertake such assessment.

20 COMMUNICATION

- 20.1 The Parties agree that the Grantor may send information related to a Transaction via e-mail prior to sending the final Offer to the Participant. The Participant is entitled to assume that all the information received by the Grantor via e-mail is from an authorised individual. However, regarding the conclusion of a Participation Agreement, Clause 4 shall apply.
- 20.2 The Parties confirm that they are aware of the fact that information by way of electronic exchange is transmitted unencrypted over a publicly accessible network, and each acknowledges all associated risks.
- 20.3 Except as otherwise provided herein, notices under this Agreement shall be in writing and must be sent by courier, prepaid registered mail, signed facsimile or by authenticated SWIFT message to the address specified by the Parties below. Each Party shall provide written notice to the other Party of a change of address, which shall become effective five calendar days after such notice is received.

Notice details for [Party A]:

[Address]
Attention: [◆]
Telephone: [◆]
Fax: [◆]
Swift: [◆]

Notice details for [Party B]:

[Address]
Attention: [◆]
Telephone: [◆]
Fax: [◆]
Swift: [◆]

- 20.4 Unless the contrary shall be proved, each such notice shall be deemed to have been given or made and delivered, if by letter or signed facsimile message upon receipt by the addressee, if by delivery when left at the relevant address or if by authenticated SWIFT message when transmitted. However, a notice given in accordance with this Clause that is received on a

non-Business Day or after business hours in the place of receipt will only be deemed to be given on the next Business Day in that place.

20.5 [Where an Acceptance has been sent by the Participant to the Grantor by facsimile, the Participant agrees to promptly provide the Grantor with a hard copy of the original Acceptance.]⁷

20.6 Where an Offer has been sent by the Grantor to the Participant by facsimile, the Grantor agrees to promptly provide the Participant with a hard copy of the original Offer.]⁸

21 TERMINATION

Each Party may terminate this Agreement by giving 30 calendar days' notice in writing to the other Party. Notwithstanding any such termination: (a) this Agreement shall continue to govern any Participation Agreement concluded before the termination of the Agreement, and (b) such termination will be without prejudice to any rights or obligations accrued prior to the date such termination takes effect.

22 MISCELLANEOUS

22.1 [The Grantor does not transfer or assign any rights or obligations under the Transaction Documents and the Participant will have no proprietary interest in the benefit of the Transaction Documents or in any amount received by the Grantor under or in relation to the Transaction Documents.

22.2 The relationship between the Grantor and the Participant is that of debtor and creditor with the right of the Participant to receive amounts from the Grantor restricted to the relevant Participation Percentage of any amount received and applied by the Grantor from any Recourse Party and the Participants' rights against the Grantor under this Agreement.

22.3 The Participant shall not be subrogated to or substituted in respect of the Grantor's claims by virtue of any payment under this Agreement and the Participant shall have no contractual relationship with or rights against any Recourse Party.]

22.4 This Agreement shall not constitute any kind of agency, fiduciary or trust relationship between the Grantor and the Participant and the Grantor shall not have any other duties or responsibilities other than those expressly specified in this Agreement.

22.5 If, at any time, any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, the validity, legality or enforceable character of the remaining provisions will not in any way be affected or impaired.

22.6 A person who is not a Party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of any Participation Agreement or this Agreement.

⁷ To be included if required by the Parties.

⁸ To be included if required by the Parties.

- 22.7 This Agreement and any Participation Agreement thereunder represents the entire agreement between the Parties with respect to its subject matter and supersedes all prior agreements or communications pertaining thereto. [This Agreement shall not affect any participation concluded between the Parties before the date of this Agreement in respect of any Transaction.]
- 22.8 Subject to Clause 22.6, this Agreement may be rescinded or varied at any time by the Parties without the consent of any third party.
- 22.9 No amendment or waiver of any provision of this Agreement or of any Participation Agreement shall be effective unless made in writing by both Parties. Any amendment or waiver shall be effective only in the specific instance and for the specific purpose for which given.
- 22.10 This Agreement does not contain any obligation for and commitment of either Party to issue an Offer or an Acceptance or to agree to an Acceptance towards the other Party.
- 22.11 Save as expressly set out in this Agreement, any Participation is made without recourse to the Grantor. The Grantor shall not have any liability or obligation to the Participant relating to the Participated Transaction or a Participation Agreement except as specifically set out in this Agreement.
- 22.12 Nothing in this Agreement shall oblige the Grantor to carry out any "know your customer" or other checks in relation to any person on behalf of the Participant and the Participant confirms to the Grantor that it is solely responsible for any such checks it is required to carry out and that it shall not rely on any statement in relation to such checks made by the Grantor.
- 22.13 This Agreement and any Participation Agreement may be executed in counterparts, both of which taken together shall constitute one and the same Agreement or Participation Agreement.

23 APPLICABLE LAW AND JURISDICTION

- 23.1 This Agreement and each Participation Agreement hereunder shall be governed by and construed in accordance with English law without reference to conflicts of laws rules.
- 23.2 [Each Party agrees that the courts of England have exclusive jurisdiction to settle any disputes in connection with this Agreement and/or any Participation Agreement and accordingly submits to the jurisdiction of the English courts.]
- 23.2 [Any dispute in connection with this Agreement and/or any Participation Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the arbitration rules of the London Court of International Arbitration, which rules are deemed to be incorporated by reference into this Clause.
- 23.3 The number of arbitrators shall be [one/three], the seat, or legal place of arbitration shall be London and the language to be used in the arbitral proceedings shall be English.]
- 23.4 Each Party:

- (a) waives objection to the English courts on grounds of inconvenient forum or otherwise as regards proceedings in connection with this Agreement and/or any Participation Agreement; and
- (b) agrees that a judgment or order of an English court in connection with this Agreement and/or any Participation Agreement is conclusive and binding on it and may be enforced against it in the courts of any other jurisdiction.

23.5 Without prejudice to any other mode of service allowed under any relevant law, [Party A][Party B]⁹:

- (a) irrevocably appoints [♦] as its agent for service of process in relation to any proceedings before the English courts in connection with this Agreement and any Participation Agreement; and
- (b) agrees that failure by a process agent to notify [Party A][Party B] of the process will not invalidate the proceedings concerned.]

This Agreement is made in two originals, the Parties taking one original each.

Date:	Date:
For [Party A]	For [Party B]
Signature:	Signature:
Name:	Name:
Title:	Title:
Signature:	Signature:
Name:	Name:
Title:	Title:

⁹ Use for either/neither/both party/ies as necessary.

APPENDIX I – OFFER AND ACCEPTANCE

OFFER AND ACCEPTANCE

From: [Grantor]
To: [Participant]
Date: [Date]

OFFER

Pursuant to the terms of our Master Participation Agreement, dated [Date] ("the **Agreement**"), the Grantor hereby offers to the Participant a Participation in the following Transaction.

Type of Transaction:	[Insert detailed description of transaction]
Type of Participation:	[Unfunded/Funded] [disclosed/undisclosed]
[LC Number:	[...]]
Grantor's Reference No.:	[...]
Recourse Party(ies):	[Name, City, Country]
Recourse Party(ies)'s Reference No.:	[...]
Relevant Currency and Credit Amount:	[Currency and Amount]
Participation Amount:	[Currency and Amount]
Participation Percentage:	[Percentage]
Exporter:	[Name, City, Country]
Importer:	[Name, City, Country]
Goods:	[Description of Goods]
Shipment:	from [Country] to [Country]
Start Date of Transaction:	[Date]
Start Date of Participation Agreement:	[Date]
Validity Date of Transaction:	[Date]
Payment Terms of Transaction:	[at sight / deferred payment details]
Latest Date for Shipment in Transaction:	[Date]
Latest possible Due Date of Transaction:	[Date]
Applicable Rules	[e.g. UCP600, ISP98 etc]
Funding Details (if any):	[...]
Special conditions or comments (if any):	[more detailed information about the Transaction if necessary]
Your commission for above Participation:	[... % p.a., calculated on the basis of a year of 360 days and actual number of days elapsed]
Your up-front fee for above Participation:	[]/[Nil]
Retention Share:	[]%
Transaction Documents provided:	[Yes][No]

Please let us know at your earliest convenience - but in no case later than close of business (cob) on [Date] when this Offer will expire - whether you accept the above Offer of Participation. Your Acceptance shall be given to us by countersigning this Offer and notifying us of your acceptance in accordance with Clause 20 of the Agreement. All provisions of the

Agreement, including Clause 23 (Applicable Law and Jurisdiction) are applicable to this Offer.

[Name of the Grantor]

[Grantor's signatures]

ACCEPTANCE

Pursuant to the terms of our Master Participation Agreement, dated [Date] (the "**Agreement**"), and your above-mentioned Offer, we hereby inform you that we will be pleased to participate on the terms of your Offer as outlined.

Kindly remit any sums due to us in relation to this Participation Agreement to:

Participant's account No.:

[account no.]

Participant's correspondent bank:

[Name, City, Country, Swift Code]

Participant's Reference No.:

[reference no.]

All provisions of the Agreement, including Clause 23 (Applicable Law and Jurisdiction) are applicable to this Acceptance.

For the Participant:

Place and Date:

[Place and Date]

[Signatures of the Participant]

APPENDIX II – UNFUNDED PARTICIPATIONS

DEMAND FOR PAYMENT AS REQUIRED UNDER CLAUSES 6.1.1 AND 6.1.2.

Pursuant to the terms of our Master Participation Agreement, dated [Date] (the "**Agreement**"), and your Acceptance, dated [Date], we hereby inform you that a Default has occurred under the following Transaction:

Type of Transaction:	[Description]
Type of Participation:	Unfunded [disclosed/undisclosed]
Grantor's Reference No.:	[...]
Participant's Reference No.:	[...]
Recourse Party(ies):	[Name, City, Country]
Defaulted Amount:	[Currency and Amount]

We confirm that:

- (i) the Defaulted Amount has been claimed from the Recourse Party(ies);
- (ii) payment is due and has not reached us as of today; and
- (iii) we have acted in all [material] respects with the Participation Agreement applicable to the Transaction.

[Please note: statements (i), (ii) and (iii) above must not be amended when making a demand]

[A copy of the claim sent to the relevant Recourse Party is enclosed with this Request for Payment].

We kindly ask you to remit the amount of [Currency and Amount] within [four] Business Days to our account:

Account No.:	[...]
With Bank:	[Name, City, Country, Swift Code]
Our Reference No.:	[...]

Capitalised terms not otherwise defined in this notice shall have the meaning set out in the Agreement, unless the context otherwise requires. All provisions of the Agreement, including Clause 23 (Applicable Law and Jurisdiction) are applicable to this demand.

[Name of the Grantor] [Grantor's signatures]

APPENDIX III – FUNDED PARTICIPATIONS

DEMAND FOR PAYMENT AS REQUIRED UNDER CLAUSES 6.2.2 AND 6.2.3

Pursuant to the terms of our Master Participation Agreement, dated [Date] (the "**Agreement**"), and your Acceptance, dated [Date], we hereby inform you that a Request has been made under the following Transaction:

Type of Transaction:	[Description]
Type of Participation:	Funded [disclosed/undisclosed]
Grantor's Reference No.:	[...]
Participant's Reference No.:	[...]
Recourse Party(ies):	[Name, City, Country]
Requested Amount:	[Currency and Amount]

We confirm that:

- (i) the Requested Amount has been demanded by the Beneficiary; and
- (ii) we have acted in all [material] respects with the Participation Agreement applicable to the Transaction.

[Please note: statements (i) and (ii) above must not be amended when making a demand]

[A copy of the Request received from the Beneficiary is attached].

We kindly ask you to remit the amount of [Currency and Amount] within [two] Business Days to our account:

Account No.:	[...]
With Bank:	[Name, City, Country, Swift Code]
Our Reference No.:	[...]

Capitalised terms not otherwise defined in this notice shall have the meaning set out in the Agreement, unless the context otherwise requires. All provisions of the Agreement, including Clause 23 (Applicable Law and Jurisdiction) are applicable to this demand.

[Name of the Grantor]

[Grantor's signatures]