



## EMIR PORTFOLIO RECONCILIATION, DISPUTE RESOLUTION AND DISCLOSURE

**THIS AGREEMENT** is dated as of [INSERT] and is made

**BETWEEN:**

- (1) **HSBC UK BANK PLC (HSBC)**; and
- (2) \_\_\_\_\_ (full legal name of company) (the **Counterparty**).

**IT IS AGREED** as follows:

### 1. INTERPRETATION

#### 1.1 Definitions

- (a) In this Agreement:

**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.

**Agreed Process** means any process agreed between the parties in respect of a Dispute other than the Dispute Resolution Procedure including, without limitation, the process in (a) Section 13 of the ISDA Master Agreement (b) Paragraph 4 of the ISDA Credit Support Annex (Bilateral Form – Transfer) or (c) Paragraph 5 of each of the ISDA Credit Support Deed (Bilateral Form – Security Interest) and the ISDA Credit Support Annex (Bilateral Form), in each case as may be amended between the parties.

**Data Delivery Date** means each date specified as such by HSBC and notified to the Counterparty.

**Data Reconciliation** means, in respect of the Counterparty, a comparison of the Portfolio Data provided by HSBC against the Counterparty's own books and records of all outstanding Relevant Transactions between the parties in order to identify promptly any misunderstandings of Key Terms.

**Dispute** means any dispute between the parties (a) which, in the sole opinion of the party delivering the relevant Dispute Notice, is required to be subject to the Dispute Resolution Procedure (or other Agreed Process) pursuant to the Dispute Resolution Risk Mitigation Techniques; and (b) in respect of which a Dispute Notice has been effectively delivered.

**Dispute Date** means, with respect to a Dispute, the date on which a Dispute Notice is effectively delivered by one party to the other party save that if, with respect to a Dispute, both parties deliver a Dispute Notice, the date on which the first in time of such notices is effectively delivered will be the Dispute Date.

**Dispute Notice** means a notice in writing which states that it is a dispute notice for the purposes of Clause 3 of this Agreement and which sets out in reasonable detail the issue in dispute (including, without limitation, the Relevant Transaction(s) to which the issue relates).

**Dispute Resolution Procedure** means the identification and resolution procedure set out in Clause 3.1.

**Dispute Resolution Risk Mitigation Techniques** means the dispute resolution risk mitigation techniques for OTC derivative transactions set out in Article 11(1)(b) of EMIR as supplemented by Article 15 of Chapter VIII of the Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 and published on 23 February 2013 in the Official Journal of the European Union.

**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.

**EMIR and Supporting Regulation** has the meaning given to it in Clause 5(a).

**European Union** 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.

**Joint Business Day** means a day that is a Local Business Day in respect of each party.

**Key Terms** means, with respect to a Relevant Transaction, the valuation of such Relevant Transaction (in U.S. dollars) and such other details HSBC deems relevant from time to time which may include the legal entity identifier, the effective date, the scheduled maturity date, any payment or settlement dates, the notional value of the contract and currency of the Relevant Transaction, the underlying instrument, the position of the counterparties, the business day convention and any relevant fixed or floating rates of the Relevant Transaction. For the avoidance of doubt, "Key Terms" does not include details of the calculations or methodologies underlying any term.

**Local Business Day** means, unless otherwise agreed between the parties in writing, a day on which commercial banks and foreign exchange markets settle payments and are open for general business in London and New York and any day on which the Trans-European Automated Real-time Gross settlement Express Transfer system is open.

**PDD Protocol** means the ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol published by the International Swaps and Derivatives Association, Inc. on 19 July 2013.

**Portfolio Data** means the Key Terms in relation to all outstanding Relevant Transactions between the parties in a form and standard that is capable of being reconciled (which may include use of Excel spreadsheets), with a scope and level of detail that would be reasonable to HSBC if it were the receiving party. Unless otherwise agreed between the parties, the information comprising the Portfolio Data to be provided by HSBC on a Data Delivery Date will be prepared as at the close of business on the immediately preceding Local Business Day of, and as specified in writing by, HSBC.

**Portfolio Reconciliation Requirements** means the requirements one or both parties are subject to in accordance with the Portfolio Reconciliation Risk Mitigation Techniques.

**Portfolio Reconciliation Risk Mitigation Techniques** means the portfolio reconciliation risk mitigation techniques for OTC derivative transactions set out in Article 11(1)(b) of EMIR as supplemented by Article 13 of Chapter VIII of the Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 and published on 23 February 2013 in the Official Journal of the European Union.

**PR Due Date** means each date specified as such by HSBC and notified to the Counterparty. The first PR Due Date will occur no earlier than 16 September 2013 unless otherwise agreed by the parties.

**Relevant Transaction** means any "OTC derivative" or "OTC derivative contract" (as defined in Article 2(7) of EMIR) between the parties which is subject to the Portfolio Reconciliation Risk Mitigation Techniques and/or the Dispute Resolution Risk Mitigation Techniques.

**Reporting Requirement** has the meaning given to it in Clause 5(a).

**TR** has the meaning given to it in Clause 5.

## 1.2 Construction

- (a) 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;
  - (v) a currency is a reference to the lawful currency for the time being of the relevant country; and
  - (vi) a provision of law is a reference to that provision as amended and includes any subordinate legislation.
- (b) A Clause is a reference to a clause of this Agreement.
- (c) 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.

## 1.3 Third party rights

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.

## 2. PORTFOLIO RECONCILIATION

### 2.1 Reconciliation Process

The parties agree to reconcile portfolios as required by the Portfolio Reconciliation Risk Mitigation Techniques using the following process:

- (a) on each Data Delivery Date, HSBC will provide Portfolio Data to the Counterparty;
- (b) on each PR Due Date, the Counterparty will perform a Data Reconciliation;
- (c) if the Counterparty identifies one or more discrepancies which it determines, acting reasonably and in good faith, are material to the rights and obligations of the parties in respect of one or more Relevant Transaction(s), it will notify HSBC in writing as soon as reasonably practicable and the parties will consult with each other in an attempt to resolve such discrepancies in a timely fashion for so long as such discrepancies remain outstanding, using, without limitation, any applicable updated reconciliation data produced during the period in which such discrepancy remains outstanding; and
- (d) if the Counterparty does not notify HSBC that the Portfolio Data contains discrepancies by 4p.m. local time in the place of business of HSBC on the fifth Joint Business Day following the later of the PR Due Date and the date on which HSBC provided such Portfolio Data to the Counterparty, the Counterparty will be deemed to have affirmed such Portfolio Data.

## **2.2 Reconciliation Subsets**

Notwithstanding the reference to “all outstanding Relevant Transactions” in the definition of Portfolio Data, HSBC may divide the Portfolio Data into two or more subsets of Relevant Transactions and, if so divided, the process set out in Clause 2.1 above will occur separately for each subset and the related definitions will be construed accordingly.

## **3. DISPUTE RESOLUTION**

### **3.1 Dispute Identification and Resolution Procedure**

The parties agree that they will use the following procedure to identify and resolve Disputes between them:

- (a) either party may identify a Dispute by sending a Dispute Notice to the other party;
- (b) on or following the Dispute Date, the parties will consult in good faith in an attempt to resolve the Dispute in a timely manner, including, without limitation, by exchanging any relevant information and by identifying and using any Agreed Process which can be applied to the subject of the Dispute or, where no such Agreed Process exists or the parties agree that such Agreed Process would be unsuitable, determining and applying a resolution method for the Dispute; and
- (c) with respect to any Dispute that is not resolved within five Joint Business Days of the Dispute Date, refer issues internally to appropriately senior members of staff of such party or of its Affiliate, adviser or agent in addition to actions under (b) immediately above (including actions under any Agreed Process identified and used under (b) immediately above) and to the extent such referral has not occurred as a result of action under (b) immediately above (including any Agreed Process).

### **3.2 Internal processes for recording and monitoring Disputes**

Each party agrees that, to the extent the Dispute Resolution Risk Mitigation Techniques apply to each party, it will have internal procedures and processes in place to record and monitor any Dispute for as long as the Dispute remains outstanding.

## **4. RELATIONSHIP TO OTHER PORTFOLIO RECONCILIATION AND DISPUTE RESOLUTION PROCESSES**

### **4.1 Without prejudice**

Subject to Clause 4.2 immediately below, Clauses 2 and 3 and any action or inaction of either party in respect of them are without prejudice to any rights or obligations the parties may possess in respect of each other under any Agreed Process or other contractual agreement, by operation of law or otherwise. Action or inaction by a party in respect of Clauses 2 and 3 will not be presumed to operate as an exercise or waiver, in whole or part, of any right, power or privilege such party may possess in respect of each other under any Agreed Process or other contractual agreement, by operation of law or otherwise. In particular, but without limitation, (a) any valuation in respect of one or more Relevant Transactions for the purposes of Clauses 2 and 3 will be without prejudice to any other valuation with respect to such Relevant Transaction(s) made for collateral, close out, dispute or other purpose; (b) the parties may seek to identify and resolve issues and discrepancies between themselves before either party delivers a Dispute Notice; and (c) nothing in Clauses 2 and 3 obliges a party to deliver a Dispute Notice following the identification of any such issue or discrepancy (notwithstanding that such issue or discrepancy may remain unresolved) or limits the rights of the parties to serve a Dispute Notice, to commence or continue an Agreed Process (whether or not any action under Clause 3.1 has occurred) or otherwise to pursue any dispute resolution process in respect of any such issue or discrepancy (whether or not any action under Clause 3.1 has occurred).

### **4.2 Relationship to the ISDA PDD Protocol**

Notwithstanding Clause 4.1 above, if both parties are or become adherents to the ISDA PDD Protocol, the parties agree that this Agreement prevails and that:

- (a) in respect of any Protocol Covered Agreement (as defined in the ISDA PDD Protocol) which is amended in accordance with the ISDA PDD Protocol before this Agreement is effective, the amendments made in accordance with the ISDA PDD Protocol will be deemed satisfied in full by the parties fulfilling their obligations under this Agreement; and
- (b) in respect of any agreement which, if not for this Clause 4.2(b), would be a Protocol Covered Agreement amended in accordance with the ISDA PDD Protocol on or after the date this Agreement is effective, such agreement will not be a Protocol Covered Agreement.

This Clause 4.2 applies notwithstanding paragraph 3(a)(i) of the ISDA PDD Protocol and, to the extent applicable, is made in accordance with paragraph 3(b) of the ISDA PDD Protocol.

## **5. 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:

- (a) to the extent required or permitted under, or made in accordance with, the provisions of EMIR and any applicable supporting law, rule or regulation (**EMIR and Supporting Regulation**) which mandate 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 in relation to (and including) EMIR and Supporting Regulation 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 (**Reporting Requirements**); or

- (b) 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 EMIR and Supporting Regulation, 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 registered in accordance with Article 55 of EMIR or recognised in accordance with Article 77 of EMIR or one or more systems or services operated by any such trade repository (**TR**) and any relevant regulators (including without limitation, the European Securities and Markets Authority and national regulators in the European Union) under EMIR and Supporting Regulation 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 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 personal data as the counterparty's home jurisdiction. For the avoidance of doubt, (i) 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; (ii) 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 (iii) 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.

## 6. REPRESENTATIONS

Each party makes the following representations to the other party on the date this Agreement is entered into.

- (a) **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.
- (b) **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.
- (c) **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.

- (d) **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.
- (e) **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)).
- (f) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it 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 its ability to perform its obligations under this Agreement.
- (g) **No Agency.** It is entering into this Agreement as principal and not as agent of any person or entity.
- (h) **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.
- (i) **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of this Agreement.

## 7. MISCELLANEOUS

### 7.1 Consideration

Each party hereby agrees and acknowledges that it is entering into this Agreement in consideration of (a) the mutual representations, warranties and covenants contained in this Agreement; (b) maintaining a trading relationship with a counterparty with which it can enter into further Relevant Transactions and (c) other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties).

### 7.2 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.

### **7.3 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.

### **7.4 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 that will not affect:

- (a) the legality, validity or enforceability in that jurisdiction of any other term of this Agreement; or
- (b) the legality, validity or enforceability in other jurisdictions of that or any other term of this Agreement.

### **7.5 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.

### **7.6 Counterparts**

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

### **7.7 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.

## **8. NOTICES**

Any notice or other communication in respect of this Agreement may only be given by email to the email address provided or determined as below (as may be updated by written notice) and will be deemed effective on the date it is delivered unless the date of that delivery (or attempted delivery) is not a Local Business Day (in respect of the receiving party) or, subject to Clause 2.1(d), that communication is delivered (or attempted) after the close of business on a Local Business Day (in respect of the receiving party), in which case that communication will be deemed given and effective on the first following day that is a Local Business Day (in respect of the receiving party).

- (a) The following items may be delivered to HSBC at the contact details shown:

Notice of a discrepancy: [gscmcollateralmanagementcpr@hsbc.com.my](mailto:gscmcollateralmanagementcpr@hsbc.com.my)

Dispute Notice: [gscmcollateralmanagementcpr@hsbc.com.my](mailto:gscmcollateralmanagementcpr@hsbc.com.my)

- (b) Unless and until the Counterparty provides an email address to HSBC for delivery of Portfolio Data and Dispute Notices, HSBC may deliver to the Counterparty using the email



address it considers appropriate from the documentation in respect of any existing Relevant Transaction.

## **9. GOVERNING LAW AND JURISDICTION**

### **9.1 Governing Law**

- (a) This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.
- (b) The English courts have non-exclusive jurisdiction to settle any dispute arising out of, relating to or having any connection with this Agreement including any dispute relating to any non-contractual obligations arising out of or in connection with it and each party submits to the non-exclusive jurisdiction of the English courts. For the purposes of this Clause 9.1(b), each party waives any objection to the English courts on the grounds that they are an inconvenient or inappropriate forum to settle any dispute.

### **9.2 Service of Process**

If the Counterparty is not incorporated in England or Wales, it will notify HSBC of the process agent the Counterparty has appointed in respect of this Agreement. If HSBC does not receive such notification within twenty Joint Business Days of 15 September 2013, HSBC may appoint a process agent to act on the Counterparty's behalf and notify the Counterparty of the appointment and process agent details. The costs and expenses of such appointment will be borne by HSBC. The Counterparty irrevocably consents to service of process given in the manner provided for notices in Clause 8. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by applicable law.

**THIS AGREEMENT** has been entered into on the date stated at the beginning of this Agreement.

## SIGNATORIES

### Counterparty

Full legal name of company: \_\_\_\_\_

Legal Entity Identifier (LEI number), if available: \_\_\_\_\_

Email address for receiving Portfolio Data: \_\_\_\_\_

Email address for receiving Dispute Notices: \_\_\_\_\_

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

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

**HSBC**

HSBC UK BANK PLC

Legal Entity Identifier (LEI number), if available:

By:

Date:

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