

November 30, 2010, including the Attachment thereto ("Short Form Protocol"), will be deemed to be incorporated herein, mutatis mutandis, as though such definitions and provisions were set out in full herein, with any such conforming changes as are necessary to deal with what would otherwise be inappropriate or incorrect cross references. The parties further agree that the Implementation Date (as such term is defined in the Short Form Protocol) shall be the date of execution of this Agreement.

- (2) **Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act.** "Tax" as used in Part 2(a) of this Schedule (Payer Tax Representation) and "Indemnifiable Tax" as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a "FATCA Withholding Tax"). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this Agreement.

- (d) **Party B Representations and Acknowledgements, Non-Reliance, Etc.** Party B hereby represents, warrants and acknowledges to Party A as of the date of this Agreement and will be deemed to represent to Party A on the date that Party B enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction) that:

- (i) Party B understands that (x) that Transactions may at times be volatile and are subject to complex and substantial risks that may arise without warning and (y) losses in value for Party B's position in that Transactions may occur quickly and in unanticipated magnitude.
- (ii) Party A has made no representations, guarantees, or assurances whatsoever as to the expected or projected profitability, return, success, performance result, effect, consequence or benefit (whether legal, regulatory, tax, financial, accounting or otherwise) of that Transaction. Party B will be relying upon its own judgment and its own advisors with respect to that Transaction and Party B has not sought and is not relying on any views of Party A with respect to that Transaction. All terms of, and the documentation evidencing, this Agreement and that Transaction have been the result of arm's-length negotiations between the parties.
- (iii) Party A shall not be liable to Party B for any losses, costs, expenses, fees, charges, amounts, liabilities, claims, damages, penalties, interest, taxes, or fines associated with that Transaction, including the failure of that Transaction to achieve Party B's legal, regulatory, tax, business, investment, financial, or accounting objectives, other than Party A's own gross negligence and/or willful misconduct. L for
- (iv) Party B entered into this Agreement and is entering into that Transaction for Party B's own account as principal (and not as agent or in any other capacity, fiduciary or otherwise). JCC
- (v) Party B has, as of such date, (x) total assets at least equal to USD 67,500,000; (y) net worth (as defined in Part 1 of this Schedule) at least equal to USD 67,500,000; and (z) liquid