

notice, provided that no other Event of Default, Potential Event of Default, or Termination Event shall have occurred and then be continuing under this Agreement on such Early Termination Date (any such termination, an "*Elective Termination*").

For purposes of calculating amounts due under this Part 5(a), the Electing Party shall be treated as if it were the Affected Party and the Non-electing Party shall be treated as if it were the Non-affected Party.

For the purposes of calculating amounts due under an Elective Termination, all references to Additional Termination Event under Sections 6(b), (c), (d), and (e) should be read as references to an Elective Termination and should apply *mutatis mutandi*.

- (b) **Consent to Recording.** Each party (i) consents to the recording of the telephone conversations of trading and marketing and/or other personnel of the parties and their Affiliates in connection with this Agreement or any potential Transaction (ii) agrees to obtain any necessary consent of and give notice of such recording to such personnel of it and its Affiliates; and (iii) agrees that recordings may be submitted in evidence in any Proceedings relating to this Agreement.
- (c) **Tax Provisions.**
 - (1) **ISDA 2010 Short Form HIRE Act Protocol.** The parties agree that solely as between Party A and Party B, the definitions and provisions contained in the ISDA 2010 Short Form HIRE Act Protocol published by the International Swaps and Derivatives Association, Inc. on 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: