

For use with Non-ERISA Special Entities:

## JPM AUGUST 2012 BILATERAL DF AGREEMENT

dated as of \_\_\_\_\_

between

JPMORGAN CHASE BANK, N.A.

and

CITY OF SMYRNA, GA

(“Party A”)

(“Party B”)

The parties hereto wish to enter into this agreement (this “**Bilateral DF Agreement**”) in relation to their trading relationship in respect of Swaps (as defined in Annex I hereto) in order to ensure compliance with the regulatory requirements of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “**Act**”) and the DF Rules (as defined in Annex I hereto).

Effective on the date hereof, the terms of this Bilateral DF Agreement shall supplement and form part of the terms of each Swap entered into between Party A and Party B.

Accordingly, the parties agree as follows:

1. **Defined Terms.** Capitalized terms used but not otherwise defined in this Bilateral DF Agreement shall have the meanings assigned to such terms in Annex I hereto.
2. **Representations and Agreements of Party A and Party B.**
  - (a) Each party represents to the other party (which representation is deemed repeated as of the time of each Swap Transaction Event) that, as of the date of each Swap Transaction Event, (i) all Relevant Information (excluding financial information and representations) furnished by or on behalf of it to the other party is true, accurate and complete in every material respect, (ii) no representation provided in the Relevant Information or in this Bilateral DF Agreement is incorrect or misleading in any material respect, and (iii) all Relevant Information that is financial information furnished by or on behalf of it to the other party has been prepared in accordance with applicable accounting standards, consistently applied.<sup>1</sup>
  - (b) Each party acknowledges that if the parties enter into any Swap on or after the date of this Bilateral DF Agreement, the other party will do so in reliance upon the Relevant Information and the representations provided by such party or its agent in the Relevant Information and this Bilateral DF Agreement. Notwithstanding the foregoing, each party agrees that an event of default, termination event, or other similar event shall not occur under any contract between the parties solely on the basis of (i) a representation provided solely in this Bilateral DF Agreement or in the Relevant Information provided hereunder being incorrect or misleading in any material respect, or (ii) a breach of any covenant or agreement set forth solely in this Bilateral DF Agreement; *provided, however*, that nothing in this Paragraph 2(b) shall prejudice any other right or remedy of a party at law or under any contract in respect of any misrepresentation or breach hereunder or thereunder. For the avoidance of doubt, this Paragraph 2(b) shall not alter a party’s termination rights or remedies, if any, applicable to a breach of any representation, warranty,

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<sup>1</sup> CFTC Regulation 23.402(d).

covenant, or agreement that is not provided or set forth solely in the Relevant Information or in this Bilateral DF Agreement, including any such breach relating to any event or condition that could also cause or constitute an event specified in (i) or (ii) above.

- (c) Each party agrees to promptly notify the other party in writing in accordance with the Notice Procedures (i) of any material change to information (other than representations) previously provided by such party or on behalf of such party pursuant to this Bilateral DF Agreement and (ii) if any representations made in the Relevant Information or in this Bilateral DF Agreement by or on behalf of such party become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the notifying party shall timely amend such representation by giving notice of such amendment to the other party in accordance with the Notice Procedures. A notification pursuant to this Paragraph 2(c) shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.<sup>2</sup>
- (d) Each party agrees to promptly provide the other party, in accordance with the Notice Procedures, with any information reasonably requested by such other party to enable such other party to comply with the Act and the DF Rules in connection with any Swap outstanding between the parties to which this Bilateral DF Agreement applies.<sup>3</sup>
- (e) Notwithstanding anything to the contrary herein or in any non-disclosure, confidentiality or other agreement between the parties, each party hereby consents to the disclosure of information to the extent required by the DF Rules which mandate reporting of transaction and similar information.<sup>4</sup> Each party acknowledges that disclosures made pursuant to this Paragraph 2(e) may include, without limitation, the disclosure of trade information including a party's identity (by name, identifier or otherwise) to an SDR and relevant regulators and that such disclosures could result in certain anonymous Swap transaction and pricing data becoming available to the public. Each party further acknowledges that, for purposes of complying with regulatory reporting obligations, an SDR may engage the services of a global trade repository regulated by one or more governmental regulators, provided that such regulated global trade repository is subject to comparable confidentiality provisions as is an SDR registered with the CFTC. For the avoidance of doubt, to the extent that applicable non-disclosure, confidentiality, bank secrecy or other law imposes non-disclosure requirements on transaction and similar information required to be disclosed pursuant to the DF Rules 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 other applicable law.
- (f) To the fullest extent permitted by applicable law, each party consents to the recording of conversations of its trading, marketing, operations and other relevant personnel by the other party and its affiliates, with or without the use of a warning tone or similar warning, in connection with any Swap or proposed Swap. Each party further agrees to obtain the individual consents of its personnel should such consent be required by applicable law.<sup>5</sup>
- (g) As of each Swap Transaction Event with respect to a Commodity Trade Option to which Party B is the offeree, Party B represents to Party A that it is: (i) a producer, processor, commercial user of, or a merchant handling, the commodity that is the subject of the Commodity Trade Option, or the products or byproducts thereof, and (ii) entering into the Commodity Trade Option solely for purposes related to its business as such.<sup>6</sup>

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<sup>2</sup> CFTC Regulation 23.402(d).

<sup>3</sup> *See, e.g.*, CFTC Regulations 20.5(a); 43.3-43.4; 45.2-45.4; 46.3.

<sup>4</sup> CFTC Regulations 20.4, 20.5, 23.204, 23.205, 43.3, 43.4, 45.3, 45.4, and 46.3.

<sup>5</sup> CFTC Regulation 23.202.

<sup>6</sup> CFTC Regulation 32.3(a)(2).

- (h) As of each Swap Transaction Event with respect to a Commodity Trade Option, each party represents to the other party that the Commodity Trade Option, if exercised, contains a binding obligation that results in the sale of an Exempt Commodity or an Agricultural Commodity for immediate or deferred shipment or delivery.<sup>7</sup>

### 3. Agreements of Party B as the Non-Reporting Counterparty.

- (a) Party B agrees as the Non-Reporting Counterparty with respect to any Swap to which this Bilateral DF Agreement applies that is an “international swap” (as that term is defined in CFTC Regulation 45.1), it shall notify Party A as the Reporting Counterparty to such international swap, as soon as practicable and in accordance with the Notice Procedures, of the (i) identity of each non-U.S. trade repository not registered with the CFTC to which the Non-Reporting Counterparty or its agent has reported the Swap, and (ii) swap identifier used by such non-U.S. trade repository to identify the swap.<sup>8</sup>
- (b) Party B agrees as the Non-Reporting Counterparty with respect to any Swap to which this Bilateral DF Agreement applies, upon the occurrence of any “life cycle event” (as that term is defined in CFTC Regulation 45.1) relating to a corporate event in respect of Party B as Non-Reporting Counterparty and such Swap, it will, as soon as practicable, but in no event later than 10 a.m. on the second “business day” (as that term is defined in CFTC Regulation 45.1) following the day on which such life cycle event occurs, notify Party A as the Reporting Counterparty to the Swap of the occurrence of such life cycle event, with sufficient detail regarding such life cycle event to allow Party A to comply with any reporting requirements imposed by the DF Rules.<sup>9</sup>

### 4. Representations of Party B

- (a) Party B has received, reviewed, and understood the Additional Representations applicable to it in Annex II to this Bilateral DF Agreement. Such Additional Representations are incorporated herein by reference and constitute a part hereof. For the avoidance of doubt, all Additional Representations shall constitute Relevant Information.
- (b) Party B has received, reviewed, and understood the Notifications in Annex III to this Bilateral DF Agreement.<sup>10</sup>
- (c) Party B agrees that Party A may effect delivery to Party B of any notifications and informational disclosures required by the DF Rules, including standardized notifications and disclosures applicable to multiple Swaps, through any of the following means, each of which Party B agrees is reliable: (i) means specified for the delivery of notices in the Notice Procedures; (ii) by posting on a web page at, or accessible through, a URL designated in a written notice given to Party B pursuant to the Notice Procedures and notifying Party B of such posting in a written notice given pursuant to the Notice Procedures, *provided that* Party A need not provide written notice of posting on such web page with respect to the provision of daily marks pursuant to CFTC Regulation 23.431(d) or (iii) by email at the email address specified in Section 7 of Annex II to this Bilateral DF Agreement. Party B further agrees that, if it has so specified in writing to Party A (whether in Section 8 of Annex II to this Bilateral DF Agreement or otherwise), Party A may provide oral disclosures of any (A) pre-trade mid-market marks required pursuant to CFTC Regulation 23.431(a)(3)(i) and (B) basic material economic terms, including price, notional amount and termination date, pursuant to CFTC Regulation 23.431(a)(2), *provided* such disclosures are confirmed by Party A in a written notice (which confirmation may be provided post-trade) by a means specified in the preceding sentence.

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<sup>7</sup> CFTC Regulation 32.3(a)(3).

<sup>8</sup> CFTC Regulation 45.3(h).

<sup>9</sup> CFTC Regulation 45.4(c).

<sup>10</sup> CFTC Regulations 23.402(f) and 23.431(d)(3)(ii).

- (d) Subject to any conditions on the disclosure of Material Confidential Information to governmental authorities, regulatory authorities or self-regulatory organizations previously agreed by the parties, Party B agrees that Party A is authorized to disclose Material Confidential Information provided to Party A by (or on behalf of) Party B to comply with a request of any regulatory authority or self-regulatory organization with jurisdiction over Party A or of which Party A is a member or as otherwise required by applicable law (whether by statute, law, rule, regulation, court order, subpoena, deposition, civil investigative demand or otherwise).<sup>11</sup>
- (e) If, on or prior to the date on which this Bilateral DF Agreement is executed, Party A and Party B have entered into a written agreement relating to the non-disclosure of information regarding Party B or its activities, Party A and Party B agree that all information that is subject to that agreement that constitutes Material Confidential Information and is provided by (or on behalf of) Party B to Party A may be used or disclosed by Party A in any manner that is not prohibited by the terms of such agreement, irrespective of any limitations set forth in CFTC Regulation 23.410(c)(1).
- (f) If any Material Confidential Information provided by (or on behalf of) Party B to Party A is not subject to an agreement of the type described in Paragraph 4(e) above, Party B agrees that Party A is authorized to use or disclose such Material Confidential Information to (i) any of its affiliates and third-party service providers (*provided* such affiliates and third-party service providers are subject to limitations on use or disclosure that are no less restrictive than the limitations applicable to Party A under the DF Rules, as agreed by the parties in this Bilateral DF Agreement) and (ii) Associated Persons, solely for purposes of complying with the internal legal risk, compliance, accounting, operational risk, market risk, liquidity risk or credit risk policies of Party A or its affiliates (in each case, consistently applied) or as otherwise permitted by the DF Rules. Notwithstanding the foregoing, no such Material Confidential Information will be disclosed to any person acting in a structuring, sales or trading capacity for Party A or any affiliate of Party A except as permitted by CFTC Regulation 23.410(c)(2); *provided that* for purposes of the foregoing, Party A and Party B agree that:
- (A) “the effective execution of any swap for or with counterparty,” as such language is used in CFTC Regulation 23.410(c)(2)(i), may require, without limitation, the delivery of Material Confidential Information to persons acting in a structuring, sales or trading capacity for Party A or any affiliate of Party A for the purpose of structuring a Swap or for the purpose of, but solely to the extent necessary for, establishing the price of a Swap or proposed Swap or adjusting the terms of an existing Swap; and
- (B) the disclosure or use of Material Confidential Information to “hedge or mitigate any exposure,” as such language is used in CFTC Regulation 23.410(c)(2)(ii), includes, without limitation, its disclosure or use, for the purpose of, but solely to the extent necessary for, establishing or adjusting one or more anticipatory hedges or other positions intended to hedge against the market risk, liquidity risk or counterparty credit exposure to Party B that is generated by a Swap or proposed Swap.
- (g) Party B agrees that the following information is not Material Confidential Information: information that, at or prior to the time of its use or disclosure by Party A, is generally available publicly other than as a result of (i) a breach by Party A of its obligations to Party B under Applicable U.S. Law or a written agreement relating to the non-disclosure of information regarding Party B or its activities or (ii) a breach by (A) any of Party A’s affiliates or third-party service providers that receive such information from Party A or (B) any of Party A’s affiliates that receive such information in connection with the trading relationship between Party A and Party B, in either case, of corresponding restrictions on the use or disclosure of such information that are applicable to it.<sup>12</sup>

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<sup>11</sup> CFTC Regulation 23.410(c)(2).

<sup>12</sup> CFTC Regulation 23.410(c).

## 5. Agreements and Acknowledgements of Party B

- (a) Party B agrees that, with respect to each cleared Swap to which this Bilateral DF Agreement applies and that is originally executed between Party A and Party B, Party B will obtain any daily marks it wishes to receive for such cleared Swap from the FCM through which Party B clears such cleared Swap or the relevant DCO or another third party.<sup>13</sup>
- (b) Party B agrees that, unless otherwise agreed with Party A in writing, with respect to each uncleared Swap between Party A and Party B to which this Bilateral DF Agreement applies, any daily marks required to be provided by Party A to Party B pursuant to CFTC Regulation 23.431(d) will be calculated by Party A as of the close of business on the prior Business Day in the locality specified by Party A in its notice of such daily mark to Party B, such locality to be consistently specified with regard to a class or type of Swaps.<sup>14</sup>
- (c) Party B acknowledges that, with respect to each Swap between Party A and Party B to which this Bilateral DF Agreement applies that is not “available for trading” (as that phrase is used in the CFTC Regulations), unless Party B makes a request of Party A prior to a Swap Transaction Event for a specific scenario analysis to which it is entitled pursuant to DF Rules or other Applicable U.S. Law (which request, if made orally, will be confirmed in writing), Party B shall not be entitled to any scenario analysis unless Party A otherwise agrees.<sup>15</sup>

The following sub-paragraph (d) applies where Party B has represented in Section 10 of Annex II to this Bilateral DF Agreement that it is a Hedging Entity ECP:

- (d) Party B represents to Party A (which representation is deemed repeated as of the time of each Swap Transaction Event) that for so long as Party B remains a Hedging Entity ECP, each Swap entered into by it to which this Bilateral DF Agreement applies will be entered into in connection with the conduct of Party B’s business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by Party B in the conduct of Party B’s business.<sup>16</sup>

The following sub-paragraph (e) applies where Party B has represented in Section 10 of Annex II to this Bilateral DF Agreement that it is a Hedging Individual ECP:

- (e) Party B represents to Party A (which representation is deemed repeated as of the time of each Swap Transaction Event) that for so long as Party B remains a Hedging Individual ECP, each Swap entered into by it to which this Bilateral DF Agreement applies, will be entered into in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by Party B.<sup>17</sup>

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<sup>13</sup> CFTC Regulation 23.431(d).

<sup>14</sup> CFTC Regulation 23.431(d).

<sup>15</sup> CFTC Regulation 23.431(b).

<sup>16</sup> See Commodity Exchange Act Section 1a(18)(A)(v)(III) and related CFTC Regulations.

<sup>17</sup> See Commodity Exchange Act Section 1a(18)(A)(vi)(II) and related CFTC Regulations.

## 6. Safe Harbor Representations and Agreements

- (a) Party B and its Designated QIR have each received, reviewed, and understood the Non-ERISA Special Entity Safe Harbor Representations applicable to them in Annex V to this Bilateral DF Agreement. Such Non-ERISA Special Entity Safe Harbor Representations are incorporated herein by reference and constitute a part hereof. For the avoidance of doubt, all Non-ERISA Special Entity Safe Harbor Representations shall constitute Relevant Information.
- (b) Party B has received, reviewed, and understood the Party A Disclosures in Section (3) of Annex V to this Bilateral DF Agreement

## 7. Basic Representations

Each party represents to the other party (which representations are deemed repeated by each party as of the time of each Swap Transaction Event) that:

- (a) **Status.** It is, if relevant, duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing;
- (b) **Powers.** It has the power to execute and deliver this Bilateral DF Agreement and to perform its obligations under this Bilateral DF Agreement, and has taken all necessary action to authorize 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 Bilateral DF Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
- (e) **Obligations Binding.** Its obligations under this Bilateral DF Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, 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)).

## 8. Miscellaneous.

- a) **Entire Agreement; Survival.** This Bilateral DF Agreement (together with Annexes I through V hereto, which, the parties agree, supplement and form part of this Bilateral DF Agreement) constitutes the entire agreement and understanding of each party with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto. Each party acknowledges that, in entering into this Bilateral DF Agreement, it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to elsewhere in this Bilateral DF Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Bilateral DF Agreement will limit or exclude any liability of either party for fraud.
- b) **Headings and Footnotes.** The headings and footnotes used in this Bilateral DF Agreement are for informational purposes and convenience of reference only, and are not to affect the construction of or to be taken into consideration in interpreting this Bilateral DF Agreement.

- c) **Counterparts.** This Bilateral DF Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission, by electronic messaging system or by any other means acceptable to the parties), each of which will be deemed an original.
- d) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Bilateral DF 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.
- e) **Governing Law.** This Bilateral DF Agreement will be governed by and construed in accordance with the laws of the State of New York, without reference to choice of law doctrine, provided that, if the Swaps to which this Bilateral DF Agreement applies are subject to a master agreement between the parties, then, any supplements to such master agreement arising out of the application of this Bilateral DF Agreement to such Swaps shall be governed by and construed in accordance with the law governing such master agreement.
- f) **Jurisdiction.** With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Bilateral DF Agreement (“**Proceedings**”), each party:
  - (i) irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City;
  - (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party; and
  - (iii) agrees, to the extent permitted by applicable law, that the bringing of Proceedings in any one or more jurisdictions will not preclude the bringing of Proceedings in any other jurisdiction.

*[Signature Page Follows]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Bilateral DF Agreement to be executed by their respective officers duly authorized, as of the date first above written.

Accepted and agreed:

**JPMORGAN CHASE BANK, N.A.**

**CITY OF SMYRNA, GA**

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

Name:

Title:

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

Name: The Honorable A. Max Bacon

Title: Mayor

**Andrew McKendrick**, solely as Party B's Designated QIR and solely to make the representations and agreements applicable to it as Designated QIR in Paragraph 6 hereof and Annex V to this Bilateral DF Agreement

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

Name: Andrew McKendrick

Title: Managing Director, PFM Swap Advisors LLC

## ANNEX I

### Defined Terms

“**Additional Representations**” means the representations made by Party B set forth in Annex II to this Bilateral DF Agreement.

“**Agricultural Commodity**” means any “agricultural commodity,” as defined in CFTC Regulation 1.3(zz).

“**Associated Person**” means, with respect to Party A, any person acting for or on behalf of Party A, including an associated person as defined in Section 1a(4) of the Commodity Exchange Act.

“**Applicable U.S. Law**” means all applicable laws of the United States and rules, regulations, orders and written interpretations of U.S. federal authorities, self-regulatory organizations, markets, exchanges, and clearing facilities.

“**Business Day**” means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits).

“**CFTC**” means the U.S. Commodity Futures Trading Commission.

“**CFTC Regulations**” means the rules, regulations, orders and interpretations published or issued by the CFTC.

“**Commodity Exchange Act**” means the Commodity Exchange Act, as amended.

“**Commodity Trade Option**” means a commodity option entered into pursuant to CFTC Regulation 32.3(a).

“**DCM**” means a “designated contract market,” as such term is used in the CFTC Regulations.

“**DCO**” means a “derivatives clearing organization,” as such term is defined in Section 1a(15) of the Commodity Exchange Act and the CFTC Regulations.

“**Designated QIR**” means, with respect to Party B, a person (if any) that such party has represented to Party A is its “Designated QIR” pursuant to Section 6 of Annex II to this Bilateral DF Agreement

“**DF Rules**” means the CFTC Regulations adopted in the following Federal Register citations, as amended and supplemented from time to time: (a) *Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties*, 77 Fed. Reg. 9734 (Feb. 17, 2012); (b) *Large Trader Reporting for Physical Commodity Swaps*, 76 Fed. Reg. 43851 (July 22, 2011); (c) *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71626 (Nov. 18, 2011); (d) *Real-Time Public Reporting of Swap Transaction Data*, 77 Fed. Reg. 1182 (Jan. 9, 2012); (e) *Swap Data Recordkeeping and Reporting Requirements*, 77 Fed. Reg. 2136 (Jan. 13, 2012); (f) *Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants*, 77 Fed. Reg. 20128 (Apr. 3, 2012); (g) *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*, 77 Fed. Reg. 35200 (June 12, 2012); and (h) solely for purposes of Paragraphs 2(d), 2(e), 4(c) and 5(c) of this Bilateral DF Agreement, any comparable non-U.S. regulation with which Party A is permitted by the CFTC to comply in lieu of any of the foregoing CFTC Regulations.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**ERISA Special Entity**” means a party that has represented in writing that it is an employee benefit plan subject to Title I of ERISA.

“**Exempt Commodity**” means any “exempt commodity” under Section 1a(20) of the Commodity Exchange Act.

“**FCM**” means a futures commission merchant subject to regulation under the Commodity Exchange Act.

“**Hedging Entity ECP**” means a party that (a) has represented in writing to Party A that it is a corporation, partnership, proprietorship, organization, trust, or other entity that has a net worth exceeding \$1,000,000 and enters into Swaps in connection with the conduct of the party’s business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the party in the conduct of the party’s business, but (b) has not represented that it qualifies as an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act other than as provided above.

“**Hedging Individual ECP**” means a party that (a) has represented in writing to Party A that it is an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$5,000,000 and who enters into Swaps in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the party, but (b) has not represented that it qualifies as an “eligible contract participant” as defined in Section 1a(18) of the Commodity Exchange Act other than as provided above.

“**LEI/CICI**” means a “legal entity identifier” satisfying the requirements of CFTC Regulation 45.6 or such other entity identifier as shall be provided by the CFTC pending the availability of such legal entity identifiers.

“**Local Business Day**” means, with respect to Party A, a Business Day in New York City and with respect to Party B, a Business Day in the city that is specified in the address for Party B in Section 2 of Annex II to this Bilateral DF Agreement.

“**Material Confidential Information**” means “material confidential information” as such term is used in CFTC Regulation 23.410(c).

“**Non-ERISA Special Entity**” means Party B where such party has represented to Party A that it is a Special Entity, other than an ERISA Special Entity, by checking box (a), (b), (c) or (d) in Section 12 of Annex II to this Bilateral DF Agreement.

“**Non-ERISA Special Entity Safe Harbor Representations**” means the representations made by Party B and its Designated QIR to Party A as set forth in Annex V to this Bilateral DF Agreement.

“**Non-Reporting Counterparty**” means, in respect of any Swap subject to the CFTC Regulations, Party B.

“**Notice Effective Date**” means with respect to a party to whom a notice has been delivered, the Local Business Day following the date on which such notice would be effective pursuant to the Notice Procedures or such other date as the parties may specify in writing.

“**Notice Procedures**” means (a) the procedures specified in Annex IV to this Bilateral DF Agreement regarding delivery of notices or information to a party and (b) such other means as may be agreed in writing between the parties from time to time.

“**Notifications**” means the notifications by Party A set forth in Annex III to this Bilateral DF Agreement.

“**Party A Disclosures**” means the disclosures made by Party A set forth in Annex V to this Bilateral DF Agreement.

“**Relevant Information**” means (a) any information or representation agreed in writing by the parties to be Relevant Information; and (b) any information provided pursuant to Paragraph 2(d) of this Bilateral DF Agreement, in each case, as amended or supplemented from time to time in accordance with Paragraph 2(c) of this Bilateral DF Agreement or in another manner agreed by the parties.

“**Reporting Counterparty**” means, in respect of any Swap subject to the CFTC Regulations, Party A as the “reporting counterparty” in accordance with CFTC Regulation 45.8.

“**SDR**” means a “swap data repository” as defined in Section 1a(48) of the Commodity Exchange Act and the CFTC Regulations.

“**Securities Exchange Act**” means the Securities Exchange Act of 1934, as amended.

“**SEF**” means a “swap execution facility” as defined in Section 1a(50) of the Commodity Exchange Act and the CFTC Regulations.

“**Special Entity**” means a “special entity” as defined in Section 4s(h)(2)(C) of the Commodity Exchange Act and CFTC Regulation 23.401(c) thereunder.

“**Swap**” means a “swap” as defined in the Section 1a(47) of the Commodity Exchange Act and CFTC Regulation 1.3(xxx) entered into or proposed to be entered into between Party A and Party B. The term “Swap” also includes any foreign exchange swaps and foreign exchange forwards that may be exempted from regulation as “swaps” by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the Commodity Exchange Act.

“**Swap Communication Event**” means each (a) Swap Transaction Event, (b) offer by one party hereto to the other to enter into a Swap or a Swap Transaction Event and (c) Swap Recommendation.

“**Swap Recommendation**” means a “recommendation” (as such term is used in CFTC Regulations 23.434 and 23.440) made by Party A to Party B with respect to a Swap or trading strategy involving a Swap.

“**Swap Transaction Event**” means the execution of a new Swap between Party A and Party B or any material amendment, mutual unwind or novation of an existing Swap between Party A and Party B.<sup>18</sup>

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<sup>18</sup> See 77 Fed. Reg. 9734, 9741 (Feb. 17, 2012).

**ANNEX II**

**Additional Representations of Party B**

(1) **LEI/CICI**<sup>19</sup>

Party B's LEI/CICI is \_\_\_\_\_

(2) **True Name and Address**<sup>20</sup>

The true name and address of Party B is as follows:

Name:	City of Smyrna, Georgia
Address:	1800 King St
	Smyrna, GA 30080
Phone:	(678) 631-5326
Fax:	(770) 319-5316
Email:	<a href="mailto:tjhoward@smyrnaga.gov">tjhoward@smyrnaga.gov</a>

(3) The principal occupation or business of Party B is as follows:<sup>21</sup>

City Government

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<sup>19</sup> CFTC Regulation 45.6.  
<sup>20</sup> CFTC Regulation 23.402(c).  
<sup>21</sup> CFTC Regulation 23.402(c).

**FOR QUESTIONS 4, 5, 8, 9, 10, 11, 12 BELOW PLEASE CHECK THE APPLICABLE BOX:**

**(4) Guarantor Information<sup>22</sup>**

- No person is guaranteeing the performance of Party B.
- The performance of Party B is being guaranteed. The true name and address of each person providing such guarantee is as follows:<sup>23</sup>

Name:	
Address:	
Phone:	
Fax:	
Email:	

**(5) Third Party Control Person Information.**

- No person other than an employee of Party B may exercise any control with respect to Swap positions.<sup>24</sup>
- The true name and address of each person (other than an employee of Party B) exercising control with respect to Swap positions is as follows (such person, a “Third Party Control Person”):<sup>25</sup>

Name:	Matt Williams, Financial Services Programs Manager, GMA
Address:	201 Pryor St., SW, Atlanta, GA 30303
Phone:	(678) 686-6264
Fax:	(678) 686-6364
Email:	<a href="mailto:mwilliams@gmanet.com">mwilliams@gmanet.com</a>

<sup>22</sup> CFTC Regulation 23.402(c).

<sup>23</sup> CFTC Regulation 23.402(c).

<sup>24</sup> Include when there is no third party control person.

<sup>25</sup> Include when there is a third party control person.

(6) **Designated QIR Information**

Party B is a Non-ERISA Special Entity and has selected one or more Designated QIRs. The true name and address of each of Party B's Designated QIRs is as follows:<sup>26</sup>

Name:	Andrew McKendrick, Managing Director, PFM Swap Advisors LLC
Address:	Two Logan Square 18th & Arch Streets Suite 1600 Philadelphia, PA 19103
Phone:	(215) 567-6100
Fax:	
Email:	<a href="mailto:mckendricka@pfm.com">mckendricka@pfm.com</a>

(7) Party B provides the following e-mail address that may be used for the delivery of notifications and any informational disclosures given pursuant to the DF Rules: [mwilliams@gmanet.com](mailto:mwilliams@gmanet.com).

(8)

Party B agrees to receive oral disclosure (with written confirmation to follow post-trade) of any (i) pre-trade mid-market marks pursuant to CFTC Regulation 23.431(a)(3)(i) and (ii) basic material economic terms, including price, notional amount and termination date pursuant to CFTC Regulation 23.431 (a)(2)<sup>27</sup>

Party B does not agree to receive oral disclosure (with written confirmation to follow post-trade) of any (i) pre-trade mid-market marks pursuant to CFTC Regulation 23.431(a)(3)(i) and (ii) basic material economic terms, including price, notional amount and termination date pursuant to CFTC Regulation 23.431 (a)(2)<sup>28</sup>

(9)

Party B is not a Commodity Pool as defined in Section 1(a)(10) of the Commodity Exchange Act.<sup>29</sup>

Party B is a Commodity Pool as defined in Section 1(a)(10) of the Commodity Exchange Act<sup>30</sup>

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<sup>26</sup> CFTC Regulation 23.434(b)(1)

<sup>27</sup> Include where Party B agrees to receive oral disclosures.

<sup>28</sup> Include where Party B does not agree to receive oral disclosures.

<sup>29</sup> Include where Party B is not a Commodity Pool.

<sup>30</sup> Include where Party B is a Commodity Pool.

- (10) Other than for purposes of any agreement, contract or transaction described in Sections 2(c)(2)(B)(vi) or 2(c)(2)(C)(vii) of the Commodity Exchange Act, Party B is an “eligible contract participant,” as that term is defined in Section 1a(18) of the Commodity Exchange Act (an “Eligible Contract Participant”), that satisfies the identified criteria set forth in the table below: *[check all applicable boxes]*<sup>31</sup>

<input type="checkbox"/>	Party B is a “financial institution” as defined in Section 1a(21) of the Commodity Exchange Act (a “Financial Institution”). <sup>32</sup>
<input type="checkbox"/>	Party B is an insurance company that is regulated by a State, or that is regulated by a foreign government and is subject to comparable regulation as determined by the CFTC, including a regulated subsidiary or affiliate of such an insurance company (an “Eligible Insurance Company”). <sup>33</sup>
<input type="checkbox"/>	Party B is an investment company subject to regulation under the Investment Company Act of 1940, as amended, or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an Eligible Contract Participant) (an “Eligible Investment Company”). <sup>34</sup>
<input type="checkbox"/>	Party B is a Commodity Pool that (1) has total assets exceeding \$5,000,000 and (2) was formed and is operated by a person subject to regulation under the Commodity Exchange Act or a foreign person performing a similar role or function subject as such to foreign regulation (an “Eligible Commodity Pool”). <sup>35</sup>
<input type="checkbox"/>	Party B is a corporation, partnership, proprietorship, organization, trust, or other entity (1) that has total assets exceeding \$10,000,000 or (2) the obligations of which under each agreement between Party A and Party B that governs Swaps are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by a corporation, partnership, proprietorship, organization, trust, or other entity that has total assets exceeding \$10,000,000, a Financial Institution, an Eligible Insurance Company, an Eligible Investment Company, an Eligible Commodity Pool, an Eligible Government Entity (as defined in Annex I), or an Other Eligible Person (as defined below) (a “Large Entity”). <sup>36</sup>
<input type="checkbox"/>	Party B is a corporation, partnership, proprietorship, organization, trust, or other entity (other than a Commodity Pool) that has a net worth exceeding \$1,000,000 and enters into Swaps in connection with the conduct of the entity’s business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity’s business (a “Hedging Entity ECP”). <sup>37</sup>
<input type="checkbox"/>	Party B is an employee benefit plan subject to ERISA, a governmental employee benefit plan, or a foreign person performing a similar role or function subject as such to foreign regulation (1) that has total assets exceeding \$5,000,000; or (2) the investment decisions of which are made by (A) an investment adviser or commodity trading advisor subject to regulation under the Investment Advisers Act of 1940, as amended, or the Commodity Exchange Act; (B) a foreign person performing a similar

<sup>31</sup> CFTC Regulation 23.430(a). See 77 Fed. Reg. 9734, 9757 (Feb. 17, 2012).

<sup>32</sup> Commodity Exchange Act § 1a(18)(A)(i)

<sup>33</sup> Commodity Exchange Act § 1a(18)(A)(ii)

<sup>34</sup> Commodity Exchange Act § 1a(18)(A)(iii)

<sup>35</sup> Commodity Exchange Act § 1a(18)(A)(iv)

<sup>36</sup> Commodity Exchange Act § 1a(18)(A)(v)(I)-(II)

<sup>37</sup> Commodity Exchange Act § 1a(18)(A)(v)(III)

	role or function subject as such to foreign regulation; (C) a Financial Institution; or (D) an Eligible Insurance Company, or a regulated subsidiary or affiliate of such Eligible Insurance Company. <sup>38</sup>
<input checked="" type="checkbox"/>	Party B is (1) a governmental entity (including the United States, a State, or a foreign government), or political subdivision of a governmental entity, (2) a multinational or supranational government entity, or (3) an instrumentality, agency, or department of an entity described in clause (1) or (2), <u>and</u> if Party B is an entity described in clause (1) or (3), Party B owns and invests on a discretionary basis \$50,000,000 or more in investments, or otherwise satisfies the requirements of Section 1a(18)(A)(vii)(III)(aa) or (cc) of the Commodity Exchange Act (an “Eligible Government Entity”). <sup>39</sup>
<input type="checkbox"/>	Party B is a broker or dealer (other than a natural person or proprietorship) subject to regulation under the Securities Exchange Act, or a foreign person (other than a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation. <sup>40</sup>
<input type="checkbox"/>	Party B is (1) a broker or dealer (and is a natural person or proprietorship) subject to regulation under the Securities Exchange Act or a foreign person (that is a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation and (2) qualifies as a Large Entity or Eligible Individual (as defined below). <sup>41</sup>
<input type="checkbox"/>	Party B is an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered broker or dealer makes and keeps records under Section 15C(b) or 17(h) of the Securities Exchange Act. <sup>42</sup>
<input type="checkbox"/>	Party B is an investment bank holding company (as defined in Section 17(i) of the Securities Exchange Act). <sup>43</sup>
<input type="checkbox"/>	Party B is a futures commission merchant subject to regulation under the Commodity Exchange Act (other than a natural person or proprietorship) or a foreign person (other than a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation. <sup>44</sup>
<input type="checkbox"/>	Party B (1) is a futures commission merchant subject to regulation under the Commodity Exchange Act (and is a natural person or proprietorship) or a foreign person (that is a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation and (2) qualifies as a Large Entity or Eligible Individual. <sup>45</sup>
<input type="checkbox"/>	Party B is a floor broker or floor trader subject to regulation under the Commodity Exchange Act in connection with any transaction that takes place on or through the facilities of a registered entity (other than an electronic trading facility with respect to a significant price discovery contract) or an exempt board of trade, or any affiliate thereof, on which such person regularly trades. <sup>46</sup>

<sup>38</sup> Commodity Exchange Act § 1a(18)(A)(vi).  
<sup>39</sup> Commodity Exchange Act § 1a(18)(A)(vii).  
<sup>40</sup> Commodity Exchange Act § 1a(18)(A)(viii).  
<sup>41</sup> Commodity Exchange Act § 1a(18)(A)(viii).  
<sup>42</sup> Commodity Exchange Act § 1a(18)(A)(viii)(II).  
<sup>43</sup> Commodity Exchange Act § 1a(18)(A)(viii)(III).  
<sup>44</sup> Commodity Exchange Act § 1a(18)(A)(ix).  
<sup>45</sup> Commodity Exchange Act § 1a(18)(A)(ix).  
<sup>46</sup> Commodity Exchange Act § 1a(18)(A)(x).

<input type="checkbox"/>	Party B is an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$10,000,000 (an “Eligible Individual”). <sup>47</sup>
<input type="checkbox"/>	Party B is an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of \$5,000,000 and who enters into Swaps in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual (a “Hedging Individual ECP”). <sup>48</sup>
<input type="checkbox"/>	Party B is a person that the CFTC has determined to be eligible in light of the financial or other qualifications of the person (an “Other Eligible Person”) <sup>49</sup> [if this subsection is checked, Party B must provide an explanation in the space below and include additional pages as necessary]:  _____  _____  _____  _____

(11)

- Party B represents that it is not a “financial entity,” as such term is defined in Section 2(h)(7)(C)(i) of the Commodity Exchange Act and the CFTC Regulations.<sup>50</sup>
- Party B represents that it is a “financial entity,” as such term is defined in Section 2(h)(7)(C)(i) of the Commodity Exchange Act and the CFTC Regulations.<sup>51</sup>

(12) Party B represents that it is a Non-ERISA Special Entity and the following subsections are applicable to Party B: ***[check all applicable boxes]***

(a)	<input type="checkbox"/>	Party B is a Federal agency <sup>52</sup>
(b)	<input checked="" type="checkbox"/>	Party B is a State, State agency, city, county, municipality, other political subdivision of a State, or any instrumentality, department, or corporation of or established by a State or political subdivision of a State <sup>53</sup>
(c)	<input type="checkbox"/>	Party B is a governmental plan, as defined in Section 3 of ERISA <sup>54</sup>
(d)	<input type="checkbox"/>	Party B is an endowment <sup>5556</sup>

<sup>47</sup> Commodity Exchange Act § 1a(18)(A)(xi)(I)

<sup>48</sup> Commodity Exchange Act § 1a(18)(A)(xi)(II)

<sup>49</sup> Commodity Exchange Act § 1a(18)(C)

<sup>50</sup> Commodity Exchange Act § 2(h)(7)(C).

<sup>51</sup> Commodity Exchange Act § 2(h)(7)(C).

<sup>52</sup> CFTC Regulation 23.401(c)(1)

<sup>53</sup> CFTC Regulation 23.401(c)(2)

<sup>54</sup> CFTC Regulation 23.401(c)(4)

<sup>55</sup> CFTC Regulation 23.401(c)(5)

<sup>56</sup> For the purposes of this section, an “endowment” includes an endowment that is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 501(c)(3).

## ANNEX III

### Notifications

**Notifications by Party A.** Party A hereby notifies Party B that:

- (a) **Scenario Analysis.**<sup>57</sup> Prior to any Swap Transaction Event with respect to any Swap that is not “available for trading” (as such term is defined in the CFTC Regulations) on a DCM or SEF, Party B can request, and consult on the design of, a scenario analysis to allow Party B to assess its potential exposure in connection with such Swap.
- (b) **Daily Mark**
  - (i) Party B has the right to receive the daily mark for cleared Swaps originally executed by Party B with Party A from the relevant DCO.<sup>58</sup>
  - (ii) Party A hereby discloses to Party B, in respect of a daily mark for any uncleared Swap provided to Party B by Party A pursuant to CFTC Regulation 23.431(d)(3)(ii), that:
    - (A) the daily mark may not necessarily be a price at which either Party B or Party A would agree to replace or terminate the Swap;
    - (B) unless otherwise expressly agreed by the parties, calls for margin may be based on considerations other than the daily mark provided to Party B; and<sup>59</sup>
    - (C) the daily mark may not necessarily be the value of the Swap that is marked on the books of Party A.<sup>60</sup>
- (c) **Clearing**
  - (i) With respect to any Swap to which this Bilateral DF Agreement applies and that is subject to the mandatory clearing requirements under Section 2(h) of the Commodity Exchange Act, Party B has the sole right to select the DCO at which the Swap will be cleared,<sup>61</sup> and
  - (ii) With respect to any Swap to which this Bilateral DF Agreement applies and that is not subject to the mandatory clearing requirements under Section 2(h) of the Commodity Exchange Act, Party B may elect to clear such Swap and has the sole right to select the DCO at which the Swap will be cleared.<sup>62</sup>
- (d) **Special Entities**

If Party B is an employee benefit plan defined in Section 3 of ERISA that is not subject to Title I of ERISA, Party A hereby notifies Party B of its right to elect to be treated as a special entity pursuant to CFTC Regulation 23.430(c).<sup>63</sup>

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<sup>57</sup> CFTC Regulation 23.431(b).

<sup>58</sup> CFTC Regulation 23.431(d)(1).

<sup>59</sup> CFTC Regulation 23.431(d)(3).

<sup>60</sup> CFTC Regulation 23.431(d)(3).

<sup>61</sup> CFTC Regulation 23.432(a).

<sup>62</sup> CFTC Regulation 23.432(b).

<sup>63</sup> CFTC Regulation 23.430(c).

- (e) **Address for Notices to Party A.** Set forth below is the physical address and facsimile number to which notices may be directed to Party A:

Name:	JPMorgan Chase Bank, N.A.
Attention:	Legal Department- Derivatives Practice Group
Address:	277 Park Avenue New York, New York 10172-0003
Fax:	(646) 534-6393

- (f) **Address for Complaints to Party A.** Set forth below is the physical address, email or other widely available electronic address, and telephone number of the department to which any complaints may be directed:<sup>64</sup>

Department Name:	J.P. Morgan Derivatives Compliance
Attention:	Fadi Hanna
Department Address:	277 Park Avenue, 10 <sup>th</sup> floor New York, New York 10172-0003
Phone:	(212) 648-2848
Email:	derivatives_&_antitrust_compliance@jpmchase.com

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<sup>64</sup> CFTC Regulation 23.201(b)(3)(ii).

## ANNEX IV

### Notice Procedures

- (a) **Effectiveness.** Any notice or other communication in respect of this Bilateral DF Agreement may be given in any manner described below, or in any other manner agreed by the parties, to the address or number or in accordance with the electronic messaging system or e-mail or other details provided (in Annex III of this Bilateral DF Agreement with respect to Party A and in Annex II to this Bilateral DF Agreement with respect to Party B) and will be deemed effective as indicated:
- (i) if in writing and delivered in person or by courier, on the date it is delivered;
  - (ii) if sent by facsimile transmission, on the date it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
  - (iii) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered or its delivery is attempted;
  - (iv) if sent by electronic messaging system, on the date it is received;
  - (v) if sent by e-mail, on the date it is delivered; or
  - (vi) if sent by any other means agreed by the parties, on the date determined in accordance with the relevant agreement of the parties;
- unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication will be deemed given and effective on the first following day that is a Local Business Day.
- (b) **Change of Details.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system, e-mail or other notice details at which notices or other communications are to be given to it.

## ANNEX V

### Non-ERISA Special Entity Safe Harbors

#### 1. Party B Representations

Party B represents to Party A (which representations are deemed repeated by Party B as of the occurrence of each Swap Communication Event) that:

- (i) Party B will not rely on Swap Recommendations (if any) provided by Party A;<sup>65</sup>
- (ii) Party B will rely on advice from a Designated QIR;<sup>66</sup>
- (iii) Party B has complied in good faith with written policies and procedures reasonably designed to ensure that each Designated QIR selected by Party B satisfies the applicable requirements of CFTC Regulation 23.450(b)(1), and that such policies and procedures provide for ongoing monitoring of the performance of such representative consistent with the requirements of CFTC Regulation 23.450(b)(1);<sup>67</sup> and
- (iv) Party B will exercise independent judgment in consultation with a Designated QIR, in evaluating all Swap Recommendations (if any) of Party A that are presented to Party B with respect to Swaps to be executed by Party B on its own behalf.

#### 2. Representations and Agreements of a Designated QIR.

(a) Each Designated QIR represents to Party A and Party B (which representations are deemed repeated by such Designated QIR as of the occurrence of each Swap Communication Event involving such Designated QIR) that:

- (i) Such Designated QIR has written policies and procedures reasonably designed to ensure that the Designated QIR satisfies the applicable requirements of CFTC Regulation 23.450(b)(1);<sup>68</sup>
- (ii) Such Designated QIR is exercising independent judgment in evaluating all Swap Recommendations (if any) of Party A that are presented to it;<sup>69</sup>
- (iii) Unless such Designated QIR otherwise notifies Party A in writing in accordance with the Notice Procedures, which notification shall become effective on the Notice Effective Date:

(1) Such Designated QIR is not and, within one year of representing Party B in connection with the Swap has not been, an “associated person,” as such term is defined in Section 1a(4) of the Commodity Exchange Act, of Party A;<sup>70</sup>

(2) There is no “principal relationship” (as that term is defined in CFTC Regulation 23.450(a)(1)) between the Designated QIR and Party A;<sup>71</sup>

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<sup>65</sup> CFTC Regulation 23.440(b)(2)(ii)(A).

<sup>66</sup> CFTC Regulation 23.440(b)(2)(ii)(B).

<sup>67</sup> CFTC Regulation 23.450(d)(1)(i); 23.434(c)(ii).

<sup>68</sup> CFTC Regulation 23.450(d)(1)(ii)(A).

<sup>69</sup> CFTC Regulation 23.434(b)(2).

<sup>70</sup> CFTC Regulation 23.450(c)(1).

<sup>71</sup> CFTC Regulation 23.450(c)(2).

- (3) Such Designated QIR (i) provides timely and effective disclosures to Party B of all material conflicts of interest that could reasonably affect the judgment or decision making of such Designated QIR with respect to its obligations to Party B and (ii) complies with policies and procedures reasonably designed to manage and mitigate such material conflicts of interest;<sup>72</sup>
  - (4) Such Designated QIR is not directly or indirectly, through one or more persons, controlled by, in control of, or under common control with Party A;<sup>73</sup> and
  - (5) To the best of such Designated QIR's knowledge, Party A did not refer, recommend, or introduce such Designated QIR to Party B within one year of such Designated QIR's representation of Party B in connection with the Swap; and<sup>74</sup>
- (iv) Such Designated QIR is legally obligated to comply with the applicable requirements of CFTC Regulation 23.450(b)(1) by agreement, condition of employment, law, rule, regulation, or other enforceable duty.<sup>75</sup>
- (b) Each Designated QIR agrees to promptly notify Party A in writing in accordance with the Notice Procedures if any representations made by such Designated QIR in this Bilateral DF Agreement become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the Designated QIR shall amend such representation by giving notice of such amendment to Party A in accordance with the Notice Procedures. A notification pursuant to this Section (b) of Annex V shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.<sup>76</sup>

### 3. Party A Disclosures.

Party A discloses to Party B (which disclosures are deemed repeated by Party A as of the occurrence of each Swap Communication Event) that:

- (i) Party A is not undertaking to act in the best interests of Party B;<sup>77</sup> and
- (ii) Party A is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any Swap or trading strategy involving a Swap for Party B.<sup>78</sup>

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<sup>72</sup> CFTC Regulation 23.450(c)(3).  
<sup>73</sup> CFTC Regulation 23.450(c)(4).  
<sup>74</sup> CFTC Regulation 23.450(c)(5).  
<sup>75</sup> CFTC Regulation 23.450(d)(1)(ii)(C).  
<sup>76</sup> CFTC Regulation 23.402(d).  
<sup>77</sup> CFTC Regulation 23.440(b)(2)(iii).  
<sup>78</sup> CFTC Regulation 23.434(b)(3).