

EXECUTION COPY

**MEDIANNUAIRE UNIFORM ELCDS SETTLEMENT  
AGREEMENT**

**ALLEN & OVERY**

Allen & Overy LLP

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## MEDIANNUAIRE UNIFORM ELCDS SETTLEMENT AGREEMENT

This Mediannuaire Uniform ELCDS Settlement Agreement (this **Agreement**) is entered into on 29 January 2013 between the entities specified in Schedule 1 hereto (each, a **Party** and together, the **Parties**).

**WHEREAS** the Parties hereto wish to facilitate the orderly settlement of any Covered Transactions (as defined below) relating to the Reference Obligations (as defined below) of the relevant Reference Entity (as defined below) to which they are respectively a party by agreeing that Credit Event Notices and Notices of Publicly Available Information in respect of the relevant Covered Transactions will be deemed to have been effectively delivered on the Notice Date (as defined below) without requiring the actual delivery of such notices.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Interpretation

As used in this Agreement, **Confirmation** and **Credit Support Document** each has the respective meaning given to that term in the related Governing Master Agreement and **Credit Derivative Transaction** has the meaning given to that term in the 2003 ISDA Credit Derivatives Definitions, as supplemented by the May 2003 Supplement to the 2003 ISDA Credit Derivatives Definitions, each as published by the International Swaps and Derivatives Association, Inc. (**ISDA**) (the **2003 Definitions**). Each other capitalised term used in this Agreement but not defined herein has the meaning given to that term in the 2003 Definitions, the ELCDS Standard Terms, or the LevX Standard Terms, as applicable.

#### 1.2 Definitions

**Bespoke Portfolio Transaction** means any Bespoke Untranching Portfolio Transaction and any Bespoke Tranching Portfolio Transaction.

**Bespoke Tranching Portfolio Transaction** means a tranching Credit Derivative Transaction that references more than one Reference Credit Agreement and is not any other type of Covered Transaction.

**Bespoke Untranching Portfolio Transaction** means an untranching Credit Derivative Transaction that references more than one Reference Credit Agreement and is not any other type of Covered Transaction.

**Covered Transaction** means any Credit Derivative Transaction that (a) is not an Excluded Transaction, (b) is an ELCDS Transaction, a LevX Transaction, a Bespoke Portfolio Transaction, a Single Name Swaption or a Portfolio Swaption and (c) for which:

- (i) Mediannuaire is a Reference Entity;
- (ii) the relevant Reference Obligations and Senior Loans are the only Deliverable Obligations;
- (iii) the Effective Date is on or prior to the Default Date;
- (iv) the Trade Date is on or prior to the date that is 30 calendar days after the Notice Date;
- (v) the Scheduled Termination Date is on or after the 15th January 2013; and

(vi) in respect of a Covered Transaction which references more than one Reference Credit Agreement, any portion thereof attributable to the relevant Reference Obligations is still outstanding as of the Notice Date.

**Default Date** means 14 September, 2012.

**Documentation** means the Governing Master Agreement and Confirmation (including a master confirmation) relating to a Covered Transaction.

**ELCDS Confirmation** means the form of confirmation for use with the ELCDS Standard Terms or any predecessor thereof.

**ELCDS Standard Terms** means the ISDA Standard Terms Supplement for use with Credit Derivative Transactions on Leveraged Loans published by ISDA on 3 October 2008, the Standard Terms Supplement for use with Credit Derivative Transactions on Leveraged Loans dated 9 October 2006 (the **2006 Standard Terms Cancellable Form**) or the Credit Derivative Transactions on Leveraged Loans Standard Terms Supplement published on 18 May 2009 (the **ISDA Standard Terms Cancellable Form**).

**ELCDS Transaction** means a Credit Derivative Transaction the documentation for which is based on the ELCDS Standard Terms or any predecessor to such ELCDS Standard Terms.

**Excluded Transaction** means (a) any Bespoke Portfolio Transaction that relates to a portfolio of Reference Credit Agreements that is also the relevant portfolio for any series of credit-linked notes, trust certificates or other similar securities and for which the parties thereto intend settlement to be consistent with the settlement terms applicable to such securities and (b) any Fixed Recovery Transaction.

**Fixed Recovery Transaction** means a Credit Derivative Transaction in respect of which the Final Price is pre-determined and specified in the Documentation.

**Governing Master Agreement** means, in respect of a Covered Transaction, the master agreement governing such Covered Transaction, whether executed by the parties thereto or incorporated by reference in the Confirmation relating to such Covered Transaction.

**LevX Standard Terms** means the iTraxx® LevX® Standard Terms Supplement for use with Credit Derivative Transactions on Leveraged Loans published by ISDA on 3 October 2008.

**LevX Transaction** means a Credit Derivative Transaction referencing a LevX index published by International Index Company Ltd. for which the documentation is based on the LevX Standard Terms or any predecessor to such LevX Standard Terms.

**Notice Date** means 29 January 2013.

**Portfolio Swaption** means any unexercised option to enter into a Covered Transaction (other than another Portfolio Swaption) referencing more than one Reference Credit Agreement.

**Reference Credit Agreement** means each credit agreement that would constitute a Reference Credit Agreement under a Credit Derivative Transaction documented under the ELCDS Standard Terms or the LevX Standard Terms (or any predecessor thereof).

**Reference Entity** means Mediannuaire.

**Reference Obligations** means each obligation that would constitute a Reference Obligation pursuant to the ELCDS Standard Terms or the LevX Standard Terms assuming that the Relevant Loans are specified as the Reference Obligations in the ELCDS Confirmation in the case of an ELCDS Transaction or in respect of any Component Transaction in the case of a LevX Transaction.

**Relevant Loan** means the Facility B2, Facility C or Revolving Credit Facility entered into pursuant to the Senior Credit Agreement dated 10 October 2006 (as amended from time to time thereafter).

**Senior Loans** means each obligation that would constitute a Senior Loan (or, in the case of the 2006 Standard Terms Cancellable Form or the ISDA Standard Terms Cancellable Form, a Senior Obligation) pursuant to the ELCDS Standard Terms or LevX Standard Terms assuming that the Relevant Loans are specified as Reference Obligations in the ELCDS Confirmation in the case of an ELCDS Transaction or in respect of any Component Transaction in the case of a LevX Transaction.

**Single Name Swaption** means any unexercised option to enter into a Covered Transaction (other than another Single Name Swaption) referencing no more than one Reference Credit Agreement.

## 2. SETTLEMENT AGREEMENT EFFECTIVE DATE

The Parties hereby agree that the agreements set forth in Clause 3 of this Agreement will be deemed to take effect from the Notice Date.

## 3. AGREEMENT

With respect to each Covered Transaction:

- (a) a Credit Event Notice specifying Failure to Pay as the Credit Event and a Notice of Publicly Available Information shall be deemed to be effective on the Notice Date and the Notice Date shall be deemed to be the Event Determination Date for purposes of each such Covered Transaction or for any portion of such Covered Transaction applicable to the Reference Obligations, as applicable (and for the avoidance of doubt, such date shall be the Event Determination Date for all Covered Transactions even if any city other than London is specified as the Calculation Agent City for any such Covered Transaction);
- (b) any Credit Event Notice or Notice of Publicly Available Information (other than a notice deemed to be given pursuant to this Agreement) delivered in respect of any portion of any Covered Transaction applicable to the Reference Obligations shall be deemed revoked, and neither Party shall have any obligations with respect to such revoked notice; and
- (c) each Party agrees not to deliver any other Credit Event Notice or Notice of Publicly Available Information (other than a notice deemed to be given pursuant to this Agreement) in respect of any portion of a Covered Transaction applicable to the Reference Obligations, and any such notice delivered shall be void and have no effect.

## 4. REPRESENTATIONS

Each Party represents (and each such representation shall be deemed to be a representation for the purposes of Section 5(a)(iv) of the Governing Master Agreement) to each other Party with which it had any Covered Transaction outstanding on the Notice Date, in respect of each Covered Transaction between them, that:

- (a) **Status**

- (i) it is, if relevant, 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; or
- (ii) if it otherwise represents its status in or pursuant to the Governing Master Agreement, has such status.

(b) **Powers**

It has the power to execute and deliver this Agreement and to perform its obligations under this Agreement and each Covered Transaction, in each case as amended by 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 and each Covered Transaction, in each case as amended by 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 and each Covered Transaction, in each case as amended by 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) **Credit Support**

This Agreement will not, in and of itself, adversely affect any obligations owed, whether by a Party or by any third party, under any Credit Support Document relating to a Covered Transaction.

**5. MISCELLANEOUS**

**5.1 Entire Agreement**

Notwithstanding Section 9(a) of the Governing Master Agreement, this Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter.

**5.2 Non-reliance**

Each Party acknowledges that in agreeing to this Agreement it has not relied on any oral or written representation, warranty or other assurance, except as otherwise set forth 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.

### **5.3 No Waiver**

Except as explicitly stated in this Agreement, nothing herein shall constitute a waiver or release of any rights of any Party under the Documentation for the relevant Covered Transaction.

### **5.4 Amendments**

An amendment, modification or waiver in respect of the matters contemplated by this Agreement will only be effective if made in accordance with the terms of the Governing Master Agreement and then only with effect between the parties to that Governing Master Agreement (and will only be effective to amend or override the provisions contained in Clause 3 hereof if it expressly refers in writing to this Clause 5.4 of this Agreement and would otherwise be effective in accordance with Section 9(b) of the Governing Master Agreement).

### **5.5 Headings**

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.

### **5.6 Governing Law**

This Agreement will be governed by and construed in accordance with English law and as between two Parties and in respect of each Covered Transaction between them, the giving of notices deemed to occur under that Covered Transaction pursuant to this Agreement shall be governed by and construed in accordance with the law specified to govern that Covered Transaction and otherwise in accordance with applicable choice of law doctrine.

### **5.7 Counterparts**

This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in any number of counterparts (including by facsimile transmission) and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

**IN WITNESS** whereof the Parties have executed this Agreement on 29 January 2013.

**SCHEDULE 1**

**PARTIES**

Each of the following entities is a Party to this Agreement:

<b>Legal name of Party<sup>1</sup></b>	<b>DTCC Account # (if any)</b>
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<sup>1</sup> Specify legal name of Party. If you are an investment or asset manager and act on behalf of multiple funds, you may indicate in the signature block, "Investment/Asset Manager, acting on behalf of each of the funds and accounts listed in the relevant Master Agreement between it and another Party" (or such other language that indicates the funds to which this letter is applicable). A separate signature page for each fund does not need to be submitted to ISDA.



For and on behalf of:

DTCC Account #:

By:.....