

Form Make-Whole and Swap Indemnity Language

Section 8.[X] Make-Whole Amount and Modified Make-Whole Amount.

- (a) Make-Whole Amount and Modified Make-Whole Amount with respect to Non-Swapped Notes

The terms “**Make-Whole Amount**” and “**Modified Make-Whole Amount**” mean, with respect to any Non-Swapped Note, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Non-Swapped Note over the amount of such Called Principal, *provided* that neither the Make-Whole Amount nor the Modified Make-Whole Amount may in any event be less than zero. All payments of Make-Whole Amount and Modified Make-Whole Amount in respect of any Non-Swapped Note shall be made in [_____]¹. For the purposes of determining the Make-Whole Amount and/or Modified Make-Whole Amount with respect to any Non-Swapped Note, the following terms have the following meanings:

“**Applicable Percentage**” in the case of a computation of the Modified Make-Whole Amount for purposes of Section 8.3 means [____]% ([____] basis points), and in the case of a computation of the Make-Whole Amount for any other purpose means [____]% ([____] basis points).

“**Called Principal**” means the principal of such Non-Swapped Note that is to be prepaid pursuant to Section 8.2 or Section 8.3 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

“**Discounted Value**” means, with respect to the Called Principal of such Non-Swapped Note, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on the Non-Swapped Note is payable) equal to the Reinvestment Yield with respect to such Called Principal.

“**Non-Swapped Note**” means any Note other than a Swapped Note.

“**Recognized [_____ Government Bond] Market Makers**” means internationally recognized dealers of [_____] Government bonds selected by the Company and reasonably acceptable to the holders of more than 50% in principal amount of the Non-Swapped Notes at the time outstanding (exclusive of Notes then owned by the Company or any of its Affiliates).

“**Reinvestment Yield**”² means, with respect to the Called Principal of such Non-Swapped Note, the sum of (x) the Applicable Percentage plus (y) the

yield to maturity implied by the “Ask Yield(s)” reported as of 10:00 a.m. (New York City time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as [“Page [_____]”³] (or such other display as may replace Page [____]) on Bloomberg Financial Markets for the most recently issued actively traded [on the run] [_____] ⁴ Government bonds] (“**Reported**”) having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date. If there are no such [_____] Government bonds Reported having a maturity equal to such Remaining Average Life, then such implied yield to maturity will be determined by (a) converting [_____] Government bond quotations to bond equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between the “Ask Yields” Reported for the applicable most recently issued actively traded [on-the-run] [_____] Government bonds with the maturities (1) closest to and greater than such Remaining Average Life and (2) closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of such Non-Swapped Note.

If such yields are not Reported or the yields Reported as of such time are not ascertainable (including by way of interpolation), then “**Reinvestment Yield**” means, with respect to the Called Principal of such Non-Swapped Note, the average of the yields for such [_____] Government bonds having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date as reported by two Recognized [_____] Government Bond] Market Makers. If there are no such [_____] Government bonds having a term equal to such Remaining Average Life, such implied yield will be determined by interpolating linearly between (1) the applicable [_____] Government bond] with the maturity closest to and greater than such Remaining Average Life and (2) the applicable [_____] Government bond] with the maturity closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of such Non-Swapped Note.

“**Remaining Average Life**” means, with respect to any Called Principal, the number of years obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (b) the number of years, computed on the basis of a 360-day year comprised of twelve 30-day months and calculated to two decimal places, that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

“**Remaining Scheduled Payments**” means, with respect to the Called Principal of any Non-Swapped Note, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its

scheduled due date, *provided* that if such Settlement Date is not a date on which interest payments are due to be made under the terms of such Non-Swapped Note, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to Section 8.2, Section 8.3 or Section 12.1.

“Settlement Date” means, with respect to the Called Principal of any Non-Swapped Note, the date on which such Called Principal is to be prepaid pursuant to Section 8.2 or Section 8.3 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

(b) Make-Whole Amount and Modified Make-Whole Amount with respect to Swapped Notes

The terms **“Make-Whole Amount”** and **“Modified Make-Whole Amount”** mean, with respect to any Swapped Note, an amount equal to the excess, if any, of the Swapped Note Discounted Value of the Swapped Note Remaining Scheduled Swap Payments with respect to the Swapped Note Called Notional Amount related to such Swapped Note over such Swapped Note Called Notional Amount, *provided* that neither the Make-Whole Amount nor the Modified Make-Whole Amount may in any event be less than zero. All payments of Make-Whole Amount and Modified Make-Whole Amount in respect of any Swapped Note shall be made in U.S. Dollars. For the purposes of determining the Make-Whole Amount and/or Modified Make-Whole Amount with respect to any Swapped Note, the following terms have the following meanings:

“New Swap Agreement” means any cross-currency swap agreement (which does not qualify as a Replacement Swap Agreement) pursuant to which the holder of a Swapped Note is to receive payment in U.S. Dollars and which is entered into in full or partial replacement of an Original Swap Agreement as a result of such Original Swap Agreement having terminated for any reason. The terms of a New Swap Agreement with respect to any Swapped Note do not have to be identical to those of the Original Swap Agreement with respect to such Swapped Note. Any holder of a Swapped Note that enters into or terminates a New Swap Agreement shall within a reasonable period of time thereafter deliver to the Company (i) an updated Schedule 8.[X] describing the confirmation or termination related thereto or (ii) a copy of the confirmation or termination related thereto.

“Original Swap Agreement” means, with respect to any Swapped Note, (x) a cross-currency swap agreement and annexes and schedules thereto (an **“Initial Swap Agreement”**) that is entered into on an arm's length basis by the original Purchaser of such Swapped Note (or any affiliate thereof) in connection with the execution of this Agreement and the purchase of such Swapped Note and relates to the scheduled payments by the Company of interest and principal on such Swapped Note, under which the Purchaser of such Swapped Note is to receive payments from the counterparty thereunder in U.S. Dollars and which is

more particularly described on Schedule 8.[X]⁵ hereto, (y) any Initial Swap Agreement that has been assumed (without any waiver, amendment, deletion or replacement of any material economic term or provision thereof) by a holder of a Swapped Note in connection with a transfer of such Swapped Note and (z) any Replacement Swap Agreement; and a **“Replacement Swap Agreement”** means, with respect to any Swapped Note, a cross-currency swap agreement and annexes and schedules thereto with payment terms and provisions (other than a reduction in notional amount, if applicable) identical to those of the Initial Swap Agreement with respect to such Swapped Note that is entered into on an arm's length basis by the holder of such Swapped Note in full or partial replacement (by amendment, modification or otherwise) of such Initial Swap Agreement (or any subsequent Replacement Swap Agreement) in a notional amount not exceeding the outstanding principal amount of such Swapped Note following a non-scheduled partial prepayment or a partial repayment or purchase of such Swapped Note prior to its scheduled maturity or an acceleration and rescission thereof of such Swapped Note as provided in Section 12.3. Any holder of a Swapped Note that enters into, assumes or terminates an Initial Swap Agreement or Replacement Swap Agreement shall within a reasonable period of time thereafter deliver to the Company (i) an updated Schedule 8.[X] describing the confirmation, assumption or termination related thereto or (ii) a copy of the confirmation, assumption or termination related thereto.

“Swap Agreement” means, with respect to any Swapped Note, an Original Swap Agreement or a New Swap Agreement, as the case may be.

“Swapped Note” means any Note that as of the date of the Closing is subject to a Swap Agreement. A **“Swapped Note”** shall no longer be deemed a **“Swapped Note”** for so long as the related Swap Agreement ceases to be in force in respect thereof; *provided* that if there is any Note that is a Swapped Note outstanding as of the date on which either the Company has provided notice of prepayment or offer of prepayment [or purchase]⁶ of such Note pursuant to Section 8 or such Note has become or is declared to be immediately due and payable pursuant to Section 12.1, then such Note shall be deemed to be a Swapped Note until payment in full of the principal, interest and Make-Whole Amount or Modified Make-Whole Amount (if any) and Swap Breakage Amount due with respect to such Note.

“Swapped Note Applicable Percentage” means [___]% ([___] basis points) in the case of a computation of the Modified Make-Whole Amount and means [___]% ([___] basis points) in the case of a computation of the Make-Whole Amount.

“Swapped Note Called Notional Amount” means, with respect to any Swapped Note Called Principal of any Swapped Note, the payment in U.S. Dollars due to the holder of such Swapped Note under the terms of the Swap Agreement to which such holder is a party, attributable to and in exchange for such Swapped Note Called Principal and assuming that such Swapped Note

Called Principal is paid on its scheduled payment date, *provided* that if such Swap Agreement is not an Original Swap Agreement, then the “Swapped Note Called Notional Amount” in respect of such Swapped Note shall not exceed the amount in U.S. Dollars which would have been due to the holder of such Swapped Note under the terms of the Original Swap Agreement to which such holder was a party (or if such holder was never party to an Original Swap Agreement, then the last Original Swap Agreement to which the most recent predecessor in interest to such holder as a holder of such Swapped Note was a party), attributable to and in exchange for such Swapped Note Called Principal and assuming that such Swapped Note Called Principal is paid on its scheduled payment date.

“Swapped Note Called Principal” means, with respect to any Swapped Note, the principal of such Swapped Note that is to be prepaid pursuant to Section 8.2 or Section 8.3 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

“Swapped Note Discounted Value” means, with respect to the Swapped Note Called Notional Amount of any Swapped Note that is to be prepaid pursuant to Section 8.2 or Section 8.3 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires, the amount obtained by discounting all Swapped Note Remaining Scheduled Swap Payments corresponding to the Swapped Note Called Notional Amount of such Swapped Note from their respective scheduled due dates to the Swapped Note Settlement Date with respect to such Swapped Note Called Notional Amount, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on such Swapped Note is payable) equal to the Swapped Note Reinvestment Yield with respect to such Swapped Note Called Notional Amount.

“Swapped Note Reinvestment Yield” means, with respect to the Swapped Note Called Notional Amount of any Swapped Note, the sum of (x) the Swapped Note Applicable Percentage plus (y) the yield to maturity implied by the “Ask Yield(s)” reported as of 10.00 a.m. (New York City time) on the second Business Day preceding the Swapped Note Settlement Date with respect to such Swapped Note Called Notional Amount, on the display designated as “Page PX1” (or such other display as may replace Page PX1) on Bloomberg Financial Markets for the most recently issued actively traded on-the-run U.S. Treasury securities (“**Reported**”) having a maturity equal to the Swapped Note Remaining Average Life of such Swapped Note Called Notional Amount as of such Swapped Note Settlement Date. If there are no such U.S. Treasury securities Reported having a maturity equal to such Swapped Note Remaining Average Life, then such implied yield to maturity will be determined by (a) converting U.S. Treasury bill quotations to bond equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between the “Ask Yields” Reported for the applicable most recently issued actively traded on-the-run U.S. Treasury securities with the maturities (1) closest to and greater than such Swapped Note Remaining Average Life and (2) closest to and less than such Swapped Note

Remaining Average Life. The Swapped Note Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Swapped Note.

If such yields are not Reported or the yields Reported as of such time are not ascertainable (including by way of interpolation), then **“Swapped Note Reinvestment Yield”** means, with respect to the Swapped Note Called Notional Amount of any Swapped Note, the sum of the (x) Swapped Note Applicable Percentage plus (y) the yield to maturity implied by the U.S. Treasury constant maturity yields reported for the latest day for which such yields have been so reported as of the second Business Day preceding the Swapped Note Settlement Date with respect to such Swapped Note Called Notional Amount, in Federal Reserve Statistical Release H.15 (or any comparable successor publication) for the U.S. Treasury constant maturity having a term equal to the Swapped Note Remaining Average Life of such Swapped Note Called Notional Amount as of such Swapped Note Settlement Date. If there is no such U.S. Treasury constant maturity having a term equal to such Swapped Note Remaining Average Life, such implied yield to maturity will be determined by interpolating linearly between (1) the U.S. Treasury constant maturity so reported with the term closest to and greater than such Swapped Note Remaining Average Life and (2) the U.S. Treasury constant maturity so reported with the term closest to and less than such Swapped Note Remaining Average Life. The Swapped Note Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Swapped Note.

“Swapped Note Remaining Average Life” means, with respect to any Swapped Note Called Notional Amount, the number of years obtained by dividing (i) such Swapped Note Called Notional Amount into (ii) the sum of the products obtained by multiplying (a) the principal component of each Swapped Note Remaining Scheduled Swap Payment with respect to such Swapped Note Called Notional Amount by (b) the number of years, computed on the basis of a 360-day year comprised of twelve 30-day months and calculated to two decimal places, that will elapse between the Swapped Note Settlement Date with respect to such Swapped Note Called Notional Amount and the scheduled due date of such Swapped Note Remaining Scheduled Swap Payment.

“Swapped Note Remaining Scheduled Swap Payments” means, with respect to the Swapped Note Called Notional Amount relating to any Swapped Note, the payments due to the holder of such Swapped Note in U.S. Dollars under the terms of the Swap Agreement to which such holder is a party which correspond to all payments of the Swapped Note Called Principal of such Swapped Note corresponding to such Swapped Note Called Notional Amount and interest on such Swapped Note Called Principal (other than that portion of the payment due under such Swap Agreement corresponding to the interest accrued on the Swapped Note Called Principal to the Swapped Note Settlement Date) that would be due after the Swapped Note Settlement Date with respect to such Swapped Note Called Notional Amount assuming that no payment of such

Swapped Note Called Principal is made prior to its originally scheduled payment date, *provided* that (i) if such Swapped Note Settlement Date is not a date on which an interest payment is due to be made under the terms of such Swapped Note, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Swapped Note Settlement Date and required to be paid on such Swapped Note Settlement Date pursuant to Section 8.2, Section 8.3 or Section 12.1 and (ii) if the Swap Agreement with respect to such Swapped Note is not an Original Swap Agreement, then the interest on such Swapped Note Called Notional Amount shall not exceed the amount in U.S. Dollars that would have been due with respect to such Swapped Note under the terms of the Original Swap Agreement.

“Swapped Note Settlement Date” means, with respect to the Swapped Note Called Notional Amount of any Swapped Note Called Principal of any Swapped Note, the date on which such Swapped Note Called Principal is to be prepaid pursuant to Section 8.2 or Section 8.3 or has become or is declared to be immediately due and payable pursuant to Section 12.1, as the context requires.

Section 8.[Y] Swap Breakage.

(a) If any Swapped Note is prepaid [or purchased]⁷ pursuant to Section 8.2, 8.3, 8.4 or 8.7⁸ or has become or is declared to be immediately due and payable pursuant to Section 12.1 (each a **“Swap Unwind Event”**), then upon any such Swap Unwind Event (i) any resulting Swap Breakage Loss in connection therewith shall be reimbursed to the holder of such Swapped Note by the Company in U.S. Dollars no later than five Business Days after the date such holder has delivered the Swap Breakage Amount Notice with respect to such Swap Unwind Event and (ii) any resulting Swap Breakage Gain in connection therewith shall be forwarded to the Company by the holder of such Swapped Note in U.S. Dollars no later than five Business Days after the date such holder shall have received payment in full of the principal, interest and Make-Whole Amount or Modified Make-Whole Amount (if any) due hereunder with respect to such Swap Unwind Event, in each case unless alternative arrangements are otherwise agreed between the Company and the holder of a Swapped Note. Each holder of a Swapped Note shall be responsible for calculating its own Swap Breakage Amount in U.S. Dollars in connection with any Swap Unwind Event, and such calculations shall (unless alternative arrangements are otherwise agreed between the Company and the holder of a Swapped Note) promptly, but no longer than two Business Days following such Swap Unwind Event, be reported to the Company in writing and in reasonable detail (the **“Swap Breakage Amount Notice”**) and shall be binding on the Company absent demonstrable error.

(b) As used in this Section 8.[Y], **“Swap Breakage Amount”** means, with respect to the Swap Agreement associated with any Swapped Note, the amount that is received (in which case the Swap Breakage Amount shall be referred to as the **“Swap Breakage Gain”**) or paid (in which case the Swap Breakage Amount shall be referred to as the **“Swap Breakage Loss”**) by the holder of such Swapped Note in connection with a

termination or amendment of its Swap Agreement resulting from a Swap Unwind Event, where:

(i) such Swap Breakage Amount shall be calculated upon the inclusion of an accelerated exchange and payment of principal amounts and associated accrued and unpaid interest, whereby in connection with and incorporated into the termination or amendment of the Swap Agreement and determination of the Swap Breakage Amount, all remaining associated principal payments otherwise scheduled through the natural duration of the Swap Agreement and associated accrued and unpaid interest shall be accelerated and made (in their respective applicable currencies) at the time of the settlement of such termination or amendment (or, in the case of a Swap Unwind Event resulting from a Swapped Note becoming or being declared to be immediately due and payable pursuant to Section 12.1, as if such remaining associated principal payments and associated accrued and unpaid interest had been accelerated and made at the time of the settlement of such termination); and

(ii) the holder of such Swapped Note shall determine such Swap Breakage Amount in good faith and in a commercially reasonable manner in accordance with customary practices for calculating such amounts under the ISDA 1992 Multi-Currency Cross Border Master Agreement or ISDA 2002 Master Agreement, as applicable (the “**ISDA Master Agreement**”) pursuant to which such holder entered into such Swap Agreement and assuming for the purpose of such calculation that there are no transactions outstanding under such ISDA Master Agreement other than such Swap Agreement,

provided, however, that if such holder (or its predecessor-in-interest with respect to such Swapped Note) was, but is not at the time, a party to an Original Swap Agreement but is a party to a New Swap Agreement, then the Swap Breakage Amount shall mean the *lesser of* (x) the Swap Breakage Amount that would have been received or paid by the holder of such Swapped Note under the terms of the Original Swap Agreement (if any) in respect of such Swapped Note to which such holder (or any affiliate thereof) was a party (or if such holder was never a party to an Original Swap Agreement, then the last Original Swap Agreement to which the most recent predecessor in interest to such holder as a holder of a Swapped Note was a party) and (y) the Swap Breakage Amount actually received or paid by the holder of such Swapped Note under the terms of the New Swap Agreement to which such holder (or any affiliate thereof) is a party.

Swap Description

Trade Date:	
FX (USD:GBP)	
Swap Effective Date	
Swap Termination Date	
GBP Notional	
USD Notional	
Amortization Schedule	
GBP Leg	
GBP Fixed Leg Payers	_____ (the “Purchaser”)
Coupon	
Payment Dates	
Day Count Basis	
Business Days	
USD Leg	
USD Fixed Leg Payer	Bank Counterparty
Coupon	
Payment Dates	
Day Count Basis	
Business Days	
Initial and Final Exchanges	
Swap Effective Date	Bank Counterparty pays the Purchaser _____ Purchaser pays Bank Counterparty _____
Swap Termination Date	Bank Counterparty pays Purchaser _____ Purchaser pays Bank Counterparty _____

¹ *Form Note:* Insert applicable non-U.S. Dollar currency.

² *Form Note:* This definition assumes the Non-Swapped Note is denominated in a currency other than U.S. Dollars.

³ *Form Note:* Insert applicable screen (e.g., for Australian Dollars, "Page PXAU").

⁴ *Form Note:* Insert applicable securities (e.g., for Australian Dollars, "Australian Government bonds", for British Pounds, "gilt-edged securities").

⁵ *Form Note:* Generally, the cross-currency swap agreements entered into at "rate lock" will be listed on Schedule 8.[X].

OPTIONAL: If any Purchaser of a Swapped Note does not want to have its Swap Description included in Schedule 8.[X], then the phrase which appears at the end of clause (x) of the definition of "Original Swap Agreement" which states "and which is more particularly described on Schedule 8.[X] hereto," may be replaced with the following:

"and which is more particularly described (i) on Schedule 8.[X] hereto or (ii) in a notice provided by such Purchaser to the Company prior to Closing (each a "**Swap Description**"), and, in the case of the immediately preceding clause (ii), the Company hereby agrees to promptly provide written acknowledgment to such Purchaser of such Swap Description prior to Closing,"

A form of such acknowledgment of receipt appears below:

[Date]

[Purchaser's name]

[Purchaser's address]

Re: **Note Purchase Agreement** dated _____ entered into by [Company's name] and, among others, [Purchaser's name] (the "**Note Purchase Agreement**")

Dear [_____]:

[Company's name] hereby confirm receipt prior to Closing from [Purchaser's name] of the attached Swap Description regarding the Original Swap Agreement entered into by [Purchaser's name] in relation to the Swapped Note(s) purchased by [Purchaser's name], pursuant to the first sentence of the definition of "**Original Swap Agreement**" in Section 8.[X](b) (*Make-Whole Amount and Modified Make-Whole Amount with respect to Swapped Notes*) of the Note Purchase Agreement.

Capitalised terms that are used but not defined in this letter shall have the meanings given to them in the Note Purchase Agreement.

Sincerely,

[COMPANY'S NAME]

By: _____

[Name]

[Title]

⁶ *Form Note:* References to “purchases” should be removed where the Note Purchase Agreement does not allow tender offers by the Company.

⁷ *Form Note:* References to “purchases” should be removed where the Note Purchase Agreement does not allow tender offers by the Company.

⁸ *Form Note:* The Sections that are referenced here should include Sections with respect to Noteholder Sanctions Event Prepayment and Offer to Purchase Notes, and any other applicable prepayment sections (e.g., prepayment upon change of control or sale of assets), even if no make-whole will be due.