

Samples of joint calculation agent provisions in confirmation

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Sample A

“**Calculation Agent**” means Party A and Party B acting jointly in good faith and in a commercially reasonable manner. If Party A and Party B fail to agree on any determination within [] Business Days, they shall agree to appoint an independent dealer to act as the substitute Calculation Agent in their place (the “**Substitute Calculation Agent**”). If Party A and Party B cannot agree on the Substitute Calculation Agent, they shall each appoint a third party dealer who shall in turn appoint another independent dealer and the three independent dealers (collectively, the “**Substitute Calculation Agents**”) shall make a determination as to the disputed matter within [] Business Days of such appointment. For price or rate determinations, the median price or rate provided by the Substitute Calculation Agents is deemed to be the price or rate. For all other matters, the consensus determination of at least two of the Substitute Calculation Agents is deemed to be the final determination, and if no consensus is reached by at least two Substitute Calculation Agents within a reasonable time, these Substitute Calculation Agent provisions shall cease to apply that determination. In the absence of manifest error, the prices, rates and other determinations of the Substitute Calculation Agent or Substitute Calculation Agents shall be binding and conclusive. The costs of the Substitute Calculation Agent(s) shall be borne by Party A and Party B equally.

Sample B

Calculation Agent: Party A provided, however, where Party A fails to perform its obligations as Calculation Agent or where Party B disputes any determination, calculation or estimate which dispute cannot be resolved within twenty-four hours, then (i) the relevant party shall pay the amount, if any, that is not in dispute and (ii) the parties shall appoint an independent third party that would qualify as a Reference Market-maker (a “**Substitute Calculation Agent**”) to resolve the dispute. The determination of the Substitute Calculation Agent shall be final and binding absent manifest error. If the parties cannot agree on a Substitute Calculation Agent, each party shall elect an independent Reference Market-maker and such two Reference Market-makers shall jointly appoint a third Reference Market-maker which shall be deemed to be the Substitute Calculation Agent.