

Disclosure of beginning to have substantial holding

Section 276, Financial Markets Conduct Act 2013

To [NZX Limited](#)

and

To [SKY NETWORK TELEVISION LIMITED \(SKT\)](#)

Date this disclosure made: [27 May, 2020](#)

Date on which substantial holding began: [25 May, 2020](#)

Substantial product holder(s) giving disclosure

Full name(s): [Morgan Stanley and its Subsidiaries listed in Annexure A](#)

Summary of substantial holding

Class of quoted voting products: [Ordinary Shares](#)

Summary for [Morgan Stanley and its Subsidiaries listed in Annexure A](#)

For this disclosure,—

- (a) total number held in class: [26,096,006](#)
- (b) total in class: [436,226,518](#)
- (c) total percentage held in class: [5.982%](#)

Details of relevant interests –

Details For	Nature of Relevant Interest	For that Relevant Interest				Relevant Agreement Document / Comments
		(a) Number held in class	(b) Percentage held in class	(c) Current registered holder(s)	(d) Registered holder(s) once transfers are registered	
Morgan Stanley & Co. International plc	Holder of securities subject to an obligation to return under a Securities Lending Agreement.	1,542	0.000%	HSBC Custody Nominees (Australia) Limited	Unknown	The relevant agreement document(s) (2000 Global Master Securities Lending Agreement) are attached in Annexure D (29 pages).
	Shares held or in respect of which the holder may exercise control over disposal in the ordinary course of sales and trading businesses.	25,286,405	5.797%	HSBC Nominees (New Zealand) Limited	Unknown	The relevant agreements need not be attached under regulation 139.
Morgan Stanley & Co. LLC	Shares held or in respect of which the holder may exercise right to rehypothecate pursuant to the agreement(s).	66,756	0.015%	HSBC Nominees (New Zealand) Limited	Unknown	The relevant agreement document(s) (Prime Brokerage Margin Agreement) are attached in Annexure B (19 pages).
Morgan Stanley Australia Securities Limited	Shares held or in respect of which the holder may exercise control over disposal in the ordinary course of sales and trading businesses.	410,000	0.094%	Morgan Stanley Australia Securities (Nominee) Pty Limited	Unknown	The relevant agreements need not be attached under regulation 139.
Morgan Stanley Investment Management Inc.	Shares held or in respect of which the holder may exercise control over disposal in the ordinary course of investment management business.	5,824	0.001%	HSBC Nominees (New Zealand) Limited	Unknown	The relevant agreements need not be attached under regulation 139.
Morgan Stanley Capital Services LLC	Derivative relevant interest over quoted underlying.	325,479	0.075%	Unknown	Unknown	Swap Agreement: The relevant agreement document(s) (1992 ISDA Master Agreement & 2002 ISDA Master Agreement) are attached in Annexure C (65 pages). Please refer to Table 2 for details on derivative relevant interest.

For a derivative relevant interest, also –

Details for	(a) Type of Derivative	(b) Details of Derivative		
		Notional Value of the Derivative	Settlement Type	Expiry Date of the Derivative
Morgan Stanley Capital Services LLC	Swap Agreement	89,438.97 (AUD)	Cash	12/03/2020
		78.88 (AUD)		10/15/2021

Details of transactions and events giving rise to substantial holding

Details of the transactions or other events requiring disclosure: [set out in the table below](#)

Date of Transaction	Holder of Relevant Interest	Transaction Nature	Consideration	Class and number of securities
1/28/2020	Morgan Stanley & Co. International plc	Buy	N/A	700 Swaps
1/29/2020	Morgan Stanley & Co. International plc	Buy	700.00	1,000 Ordinary Shares
1/29/2020	Morgan Stanley & Co. International plc	Buy	N/A	600 Swaps
1/29/2020	Morgan Stanley Australia Securities Limited	Buy	1,032.93 (AUD)	1,497 Ordinary Shares
1/29/2020	Morgan Stanley Australia Securities Limited	Buy	535.44 (AUD)	776 Ordinary Shares
1/29/2020	Morgan Stanley Australia Securities Limited	Buy	563.07 (AUD)	822 Ordinary Shares
1/30/2020	Morgan Stanley & Co. International plc	Buy	N/A	600 Swaps
1/30/2020	Morgan Stanley Australia Securities Limited	Buy	1,145.48 (AUD)	1,697 Ordinary Shares
1/31/2020	Morgan Stanley & Co. International plc	Buy	432.63	627 Ordinary Shares
1/31/2020	Morgan Stanley & Co. International plc	Buy	7,934.31	11,499 Ordinary Shares
1/31/2020	Morgan Stanley & Co. International plc	Buy	N/A	600 Swaps
1/31/2020	Morgan Stanley Australia Securities Limited	Buy	1,074.40 (AUD)	1,580 Ordinary Shares
1/31/2020	Morgan Stanley Investment Management Inc.	Buy	533.37	773 Ordinary Shares
2/04/2020	Morgan Stanley & Co. International plc	Buy	359.79	537 Ordinary Shares
2/04/2020	Morgan Stanley & Co. International plc	Buy	N/A	1,300 Swaps
2/04/2020	Morgan Stanley Australia Securities Limited	Buy	1,314.30 (AUD)	2,022 Ordinary Shares
2/05/2020	Morgan Stanley & Co. International plc	Buy	N/A	1,000 Swaps

2/05/2020	Morgan Stanley Australia Securities Limited	Buy	1,840.83 (AUD)	2,854 Ordinary Shares
2/06/2020	Morgan Stanley & Co. LLC	Increase in shares held or in respect of which the holder may exercise right to rehypothecate pursuant to the agreement(s)	N/A	1 Ordinary Share
2/06/2020	Morgan Stanley Australia Securities Limited	Buy	1,849.76 (AUD)	2,879 Ordinary Shares
2/06/2020	Morgan Stanley Australia Securities Limited	Buy	343.54 (AUD)	541 Ordinary Shares
2/10/2020	Morgan Stanley & Co. International plc	Buy	51.48	78 Ordinary Shares
2/10/2020	Morgan Stanley Australia Securities Limited	Buy	1,682.64 (AUD)	2,736 Ordinary Shares
2/11/2020	Morgan Stanley Australia Securities Limited	Buy	11.59 (AUD)	19 Ordinary Shares
2/11/2020	Morgan Stanley Australia Securities Limited	Buy	162.36 (AUD)	264 Ordinary Shares
2/11/2020	Morgan Stanley Australia Securities Limited	Buy	531.00 (AUD)	900 Ordinary Shares
2/11/2020	Morgan Stanley Australia Securities Limited	Buy	679.20 (AUD)	1,132 Ordinary Shares
2/12/2020	Morgan Stanley Australia Securities Limited	Buy	1,734.60 (AUD)	2,940 Ordinary Shares
2/13/2020	Morgan Stanley Australia Securities Limited	Buy	1,146.02 (AUD)	1,959 Ordinary Shares
2/13/2020	Morgan Stanley Australia Securities Limited	Buy	423.54 (AUD)	724 Ordinary Shares
2/14/2020	Morgan Stanley Australia Securities Limited	Buy	94.20 (AUD)	157 Ordinary Shares
2/17/2020	Morgan Stanley Australia Securities Limited	Buy	1,609.46 (AUD)	2,617 Ordinary Shares
2/17/2020	Morgan Stanley Capital Services LLC	Buy	N/A	2,067 Swaps
2/18/2020	Morgan Stanley Australia Securities Limited	Buy	1,007.11 (AUD)	1,651 Ordinary Shares
2/18/2020	Morgan Stanley Australia Securities Limited	Buy	514.25 (AUD)	850 Ordinary Shares
2/18/2020	Morgan Stanley Capital Services LLC	Buy	N/A	292 Swaps
2/19/2020	Morgan Stanley Australia Securities Limited	Buy	1,389.69 (AUD)	2,297 Ordinary Shares
2/19/2020	Morgan Stanley Australia Securities Limited	Buy	56.03 (AUD)	93 Ordinary Shares
2/20/2020	Morgan Stanley Australia Securities Limited	Buy	1,406.02 (AUD)	2,324 Ordinary Shares
2/21/2020	Morgan Stanley & Co. International plc	Buy	18,551.55	29,571 Ordinary Shares
2/25/2020	Morgan Stanley Australia Securities Limited	Buy	219.82 (AUD)	379 Ordinary Shares
2/26/2020	Morgan Stanley & Co. International plc	Buy	570.00	1,000 Ordinary Shares
2/26/2020	Morgan Stanley Australia Securities Limited	Buy	211.68 (AUD)	378 Ordinary Shares
2/27/2020	Morgan Stanley & Co. International plc	Buy	560.00	1,000 Ordinary Shares
2/27/2020	Morgan Stanley Australia Securities Limited	Buy	248.78 (AUD)	465 Ordinary Shares
2/28/2020	Morgan Stanley Australia Securities Limited	Buy	197.50 (AUD)	395 Ordinary Shares
2/28/2020	Morgan Stanley Capital Services LLC	Buy	N/A	1,532 Swaps

3/02/2020	Morgan Stanley & Co. International plc	Buy	530.00	1,000 Ordinary Shares
3/02/2020	Morgan Stanley & Co. LLC	Increase in shares held or in respect of which the holder may exercise right to rehypothecate pursuant to the agreement(s)	N/A	1 Ordinary Share
3/02/2020	Morgan Stanley Australia Securities Limited	Buy	755.56 (AUD)	1,453 Ordinary Shares
3/03/2020	Morgan Stanley & Co. International plc	Buy	126.00	225 Ordinary Shares
3/03/2020	Morgan Stanley Australia Securities Limited	Buy	1,012.61 (AUD)	1,858 Ordinary Shares
3/03/2020	Morgan Stanley Australia Securities Limited	Buy	363.42 (AUD)	673 Ordinary Shares
3/04/2020	Morgan Stanley Australia Securities Limited	Buy	117.08 (AUD)	233 Ordinary Shares
3/04/2020	Morgan Stanley Australia Securities Limited	Buy	295.80 (AUD)	580 Ordinary Shares
3/04/2020	Morgan Stanley Australia Securities Limited	Buy	400.97 (AUD)	794 Ordinary Shares
3/05/2020	Morgan Stanley Australia Securities Limited	Buy	0.51 (AUD)	1 Ordinary Share
3/05/2020	Morgan Stanley Australia Securities Limited	Buy	1,464.92 (AUD)	2,764 Ordinary Shares
3/05/2020	Morgan Stanley Australia Securities Limited	Buy	19.80 (AUD)	37 Ordinary Shares
3/06/2020	Morgan Stanley & Co. International plc	Buy	7,738.12	14,228 Ordinary Shares
3/06/2020	Morgan Stanley Australia Securities Limited	Buy	1,548.04 (AUD)	2,977 Ordinary Shares
3/09/2020	Morgan Stanley Australia Securities Limited	Buy	536.50 (AUD)	1,073 Ordinary Shares
3/10/2020	Morgan Stanley & Co. International plc	Buy	6.36	12 Ordinary Shares
3/10/2020	Morgan Stanley Australia Securities Limited	Buy	517.75 (AUD)	1,090 Ordinary Shares
3/11/2020	Morgan Stanley Australia Securities Limited	Buy	635.84 (AUD)	1,311 Ordinary Shares
3/12/2020	Morgan Stanley Australia Securities Limited	Buy	13.20 (AUD)	30 Ordinary Shares
3/12/2020	Morgan Stanley Australia Securities Limited	Buy	422.31 (AUD)	949 Ordinary Shares
3/12/2020	Morgan Stanley Australia Securities Limited	Buy	675.00 (AUD)	1,500 Ordinary Shares
3/13/2020	Morgan Stanley Australia Securities Limited	Buy	353.57 (AUD)	989 Ordinary Shares
3/16/2020	Morgan Stanley Australia Securities Limited	Buy	1,290.87 (AUD)	4,098 Ordinary Shares
3/16/2020	Morgan Stanley Australia Securities Limited	Buy	434.61 (AUD)	1,317 Ordinary Shares
3/17/2020	Morgan Stanley Australia Securities Limited	Buy	110.08 (AUD)	370 Ordinary Shares
3/17/2020	Morgan Stanley Australia Securities Limited	Buy	283.20 (AUD)	944 Ordinary Shares
3/17/2020	Morgan Stanley Australia Securities Limited	Buy	58.31 (AUD)	196 Ordinary Shares
3/19/2020	Morgan Stanley Australia Securities Limited	Buy	387.20 (AUD)	1,408 Ordinary Shares
3/20/2020	Morgan Stanley & Co. International plc	Buy	20.41	77 Ordinary Shares
3/20/2020	Morgan Stanley Australia Securities Limited	Buy	1,944.00 (AUD)	8,100 Ordinary Shares

3/20/2020	Morgan Stanley Australia Securities Limited	Buy	133.53 (AUD)	545 Ordinary Shares
3/20/2020	Morgan Stanley Australia Securities Limited	Buy	226.75 (AUD)	907 Ordinary Shares
3/20/2020	Morgan Stanley Australia Securities Limited	Buy	231.03 (AUD)	906 Ordinary Shares
3/20/2020	Morgan Stanley Australia Securities Limited	Buy	271.18 (AUD)	1,043 Ordinary Shares
3/20/2020	Morgan Stanley Capital Services LLC	Buy	N/A	1,340 Swaps
3/23/2020	Morgan Stanley & Co. International plc	Buy	30.58	139 Ordinary Shares
3/23/2020	Morgan Stanley Australia Securities Limited	Buy	295.43 (AUD)	1,313 Ordinary Shares
3/24/2020	Morgan Stanley Australia Securities Limited	Buy	329.91 (AUD)	1,571 Ordinary Shares
3/25/2020	Morgan Stanley & Co. International plc	Buy	39.53	155 Ordinary Shares
3/25/2020	Morgan Stanley & Co. International plc	Buy	6.48	24 Ordinary Shares
3/25/2020	Morgan Stanley Australia Securities Limited	Buy	381.96 (AUD)	1,559 Ordinary Shares
3/30/2020	Morgan Stanley & Co. International plc	Borrow	N/A	100,000 Ordinary Shares
3/31/2020	Morgan Stanley & Co. International plc	Buy	80.33	277 Ordinary Shares
3/31/2020	Morgan Stanley Australia Securities Limited	Buy	249.40 (AUD)	860 Ordinary Shares
4/01/2020	Morgan Stanley & Co. International plc	Buy	77.28	276 Ordinary Shares
4/03/2020	Morgan Stanley & Co. International plc	Buy	92.75	350 Ordinary Shares
4/08/2020	Morgan Stanley Capital Services LLC	Buy	N/A	2,407 Swaps
4/09/2020	Morgan Stanley Capital Services LLC	Buy	N/A	1,531 Swaps
4/14/2020	Morgan Stanley Capital Services LLC	Buy	N/A	1,370 Swaps
4/16/2020	Morgan Stanley Capital Services LLC	Buy	N/A	1,611 Swaps
4/22/2020	Morgan Stanley & Co. International plc	Buy	5,172.20	17,129 Ordinary Shares
4/22/2020	Morgan Stanley Capital Services LLC	Buy	N/A	1,170 Swaps
4/24/2020	Morgan Stanley & Co. International plc	Buy	295.00	1,000 Ordinary Shares
4/24/2020	Morgan Stanley & Co. International plc	Buy	449.79	1,551 Ordinary Shares
4/28/2020	Morgan Stanley & Co. International plc	Buy	115.42	398 Ordinary Shares
4/28/2020	Morgan Stanley & Co. International plc	Buy	35.96	124 Ordinary Shares
4/28/2020	Morgan Stanley & Co. International plc	Buy	8,056.01	27,730 Ordinary Shares
5/04/2020	Morgan Stanley & Co. International plc	Buy	14,624.63	49,914 Ordinary Shares
5/04/2020	Morgan Stanley Capital Services LLC	Buy	N/A	786 Swaps
5/07/2020	Morgan Stanley & Co. International plc	Buy	18,044.10	59,897 Ordinary Shares

5/12/2020	Morgan Stanley & Co. International plc	Buy	18,389.25	40,000 Ordinary Shares
5/12/2020	Morgan Stanley Australia Securities Limited	Buy	2,175.00 (AUD)	5,000 Ordinary Shares
5/13/2020	Morgan Stanley & Co. International plc	Buy	16,572.13	46,121 Ordinary Shares
5/14/2020	Morgan Stanley & Co. International plc	Buy	3,305.48	9,364 Ordinary Shares
5/15/2020	Morgan Stanley & Co. International plc	Buy	3,566.20	10,113 Ordinary Shares
5/18/2020	Morgan Stanley & Co. International plc	Buy	8,281.54	24,721 Ordinary Shares
5/20/2020	Morgan Stanley & Co. International plc	Buy	2,499.19	7,416 Ordinary Shares
5/20/2020	Morgan Stanley & Co. International plc	Buy	3,812.16	11,552 Ordinary Shares
5/20/2020	Morgan Stanley Australia Securities Limited	Buy	250.24 (AUD)	782 Ordinary Shares
5/25/2020	Morgan Stanley & Co. International plc	Buy	19,630.00	100,000 Ordinary Shares
5/25/2020	Morgan Stanley & Co. International plc	Buy	3,000,000.00	25,000,000 Ordinary Shares
5/25/2020	Morgan Stanley & Co. International plc	Buy	3,997.44	21,013 Ordinary Shares
5/25/2020	Morgan Stanley Australia Securities Limited	Buy	4,570.64 (AUD)	24,056 Ordinary Shares
5/25/2020	Morgan Stanley Australia Securities Limited	Buy	73,329.36 (AUD)	385,944 Ordinary Shares

Additional information

Address(es) of substantial product holder(s):

Morgan Stanley - 1585 Broadway, New York, NY 10036, United States

Morgan Stanley & Co. International Plc – 25 Cabot Square, Canary Wharf, London E14 4QA, United Kingdom

Morgan Stanley & Co. LLC - 1585 Broadway, New York, NY 10036, United States

Morgan Stanley Investment Management Inc., 522 5th Avenue 6th Floor, New York, NY 10036, United States

Morgan Stanley Capital Services LLC - 1585 Broadway, New York, NY 10036, United States

Morgan Stanley Australia Securities Limited - Level 39, Chifley Tower 2 Chifley Square, Sydney, NSW 2000, Australia

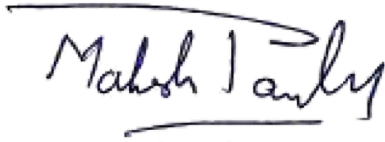
Contact details: Mahesh Pandey, Phone: +22 6212 7479, E-mail: apdoi@morganstanley.com

Nature of connection between substantial product holders:

Each of the entities (as listed in Annexure A) in the Morgan Stanley group is a body corporate that each upstream entity controls and therefore has the relevant interests that the above entities collectively have.

Name of any other person believed to have given, or believed to be required to give, a disclosure under the Financial Markets Conduct Act 2013 in relation to the financial products to which this disclosure relates: Not Applicable

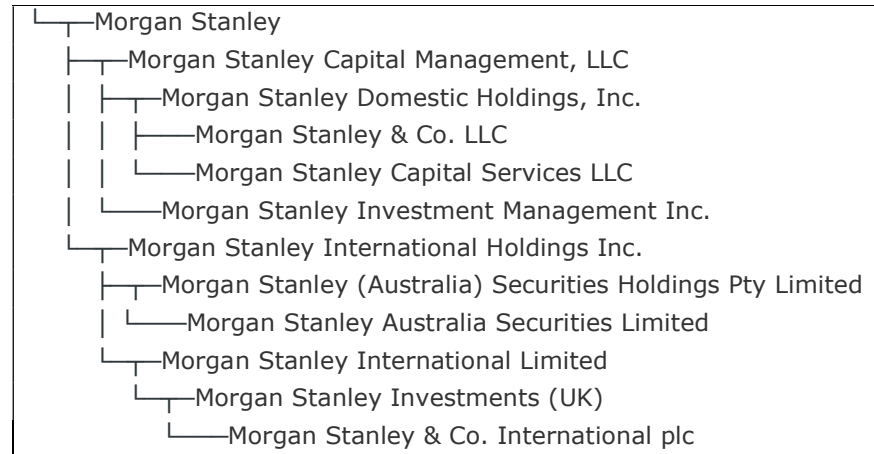
Certification

A handwritten signature in black ink that reads "Mahesh Pandey". The signature is written in a cursive style and is underlined with a single horizontal line.

I, Mahesh Pandey, certify that, to the best of my knowledge and belief, the information contained in this disclosure is correct and that I am duly authorized to make this disclosure by all persons for whom it is made.

Annexure A

List of Morgan Stanley and its subsidiaries that have a relevant interest or deemed to have a relevant interest in the shares.



Annexure B

Morgan Stanley

CUSTOMER PRIME BROKER ACCOUNT AGREEMENT

This Customer Prime Broker Account Agreement is entered into by and between (i) the customer identified on the signature page hereto (the “undersigned”) and (ii) Morgan Stanley & Co. LLC (“MSCO”) and each of its affiliates that maintains an account for the undersigned, with which the undersigned has entered into a Contract, or to which the undersigned owes an Obligation (individually or collectively, as appropriate, a “Morgan Stanley Entity” or “Morgan Stanley”). In consideration of Morgan Stanley from time to time accepting an account or receiving, holding or delivering any property of the undersigned, or entering into any Contract with the undersigned, the undersigned and Morgan Stanley agree as follows:

1. DEFINITIONS

- “Agreement” means this Customer Prime Broker Account Agreement, together with any supplements or annexes hereto.
- “Bankruptcy Event”: means the undersigned (1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (I) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (II) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.
- “Business Day” means any day other than Saturday or Sunday on which banking institutions are open for business in New York, New York.
- “Contract” means all transactions, contracts or agreements between Morgan Stanley and the undersigned, including securities purchase or sale contracts, agreements to lend cash or securities, commodity and currency contracts, forward contracts, repurchase agreements, swap agreements or any other derivative or financial transactions, without regard to the form of such agreement, which may include oral agreements or agreements confirmed or signed by only one party to the agreement and agreements entered into or signed by Morgan Stanley on behalf of the undersigned.
- “Collateral” means cash, securities, commodities, other financial assets, investment property and other property and assets (including all security entitlements in respect thereof, all income and profits thereon, all dividends, interest and other payments and distributions with respect thereto and all proceeds from any of the foregoing) which

from time to time may be deposited or credited to any account of the undersigned with Morgan Stanley, be held or carried by Morgan Stanley for the undersigned, be due from Morgan Stanley to the undersigned, or be delivered to or in Morgan Stanley's possession or control for any purpose, including safekeeping.

- "Obligation" means any obligation or liability of a party arising at any time, whether or not fixed, matured or contingent, including any obligation related to the purchase, sale, loan, clearing, custody or financing of any securities, currencies, instruments, property or other assets under or in connection with any Contract, any requirement to make a margin payment or satisfy margin requirements, or any obligation to pay damages, costs or expenses.
- "Prime Brokerage Regulations" means the requirements applicable to prime brokerage activities set out in the no-action letter of the Division of Market Regulation of the SEC dated January 25, 1994, as such letter may be amended, modified or supplemented from time to time, regarding the performance of prime brokerage services, and any other relevant regulations of the Securities and Exchange Commission or other governmental authorities or self-regulatory organizations.
- "SEC" means the United States Securities and Exchange Commission.

2. **APPLICABLE RULES AND REGULATIONS.** All transactions and activities under this Agreement shall be subject to the rules and regulations of all U.S. federal, state and local, and if applicable, non-U.S., laws, rules and regulations, including any regulations or interpretations issued by governmental authorities, self-regulatory organizations, exchanges, markets, clearing organizations or settlement systems, in each case as in effect from time to time (collectively, "Applicable Law").

3. **SHORT AND LONG SALES.** The undersigned agrees that when placing any sell order, the undersigned will appropriately designate it as "long" or as "short" as required by Applicable Law. The undersigned will designate a sale as "long" only if the securities being sold are securities then owned by the undersigned and may be sold without restriction and such securities are either in the undersigned's account at Morgan Stanley or will be delivered to Morgan Stanley in deliverable form, without undue inconvenience or expense to Morgan Stanley by settlement date.

4. **COMPLIANCE WITH PRIME BROKERAGE REGULATORY REQUIREMENTS.** The undersigned hereby acknowledges that it understands the Prime Brokerage Regulations and with the related provisions of this Agreement, and hereby undertakes to comply with the Prime Brokerage Regulations as in effect at any time and with the related provisions of this Agreement. The undersigned will inform Morgan Stanley promptly if this undertaking is not satisfied. Without limiting the foregoing, the undersigned agrees that it shall maintain in its account with Morgan Stanley at all times a minimum net equity in cash and securities as agreed upon, but in no event less than that required by the Prime Brokerage Regulations. The undersigned further agrees that, in the event its account falls below this minimum net equity, it shall bring its account into compliance in accordance with the Prime Brokerage Regulations.

5. **MORGAN STANLEY AS PRIME BROKER.** In connection with any transaction where Morgan Stanley acts as the undersigned's prime broker:

- (a) The undersigned maintains brokerage accounts with a number of other brokers ("Executing Brokers") and, from time to time, will place orders to be executed by one or more Executing Brokers. The undersigned agrees to give Morgan Stanley notice of the names of all Executing Brokers with whom the undersigned intends to place orders (which Executing Brokers must be acceptable to Morgan Stanley). Morgan Stanley is authorized to enter into a prime brokerage agreement of the type described in the Prime Brokerage Regulations (a "Form 150") with all current or future Executing Brokers, to set up an account for the undersigned's benefit at any Executing Broker and to provide or obtain any information necessary to establish or maintain a prime brokerage relationship. The undersigned acknowledges that Morgan Stanley shall have no obligation to accept for clearance and settlement any order or transaction as prime broker from any Executing Broker with which Morgan Stanley has not entered into a Form 150 with respect to the undersigned's account at Morgan Stanley. The undersigned will use its best efforts to assure that such Executing Brokers comply with the terms set forth in the relevant Form 150. The undersigned

acknowledges that as between Morgan Stanley and any Executing Broker, the Executing Broker will be acting as an agent of the undersigned, and not as Morgan Stanley's agent, for the purpose of carrying out the undersigned's instructions with respect to the purchase, sale and settlement of securities.

- (b) The undersigned shall advise Morgan Stanley on trade date of the details of all transactions effected by any Executing Broker on the undersigned's behalf (the "Trade Data"). The undersigned authorizes Morgan Stanley to acknowledge, affirm, settle and clear all such transactions on the basis of the Trade Data. All such transactions shall be for the sole account and risk of the undersigned, and Morgan Stanley shall have no responsibility or liability to the undersigned, any Executing Broker or any other third party with respect to such transactions. The undersigned agrees to pay all fees agreed upon with the Executing Brokers and to make any necessary arrangements with the appropriate Executing Broker concerning the payment of any such fees, including the deduction of any such amounts from commissions charged by the Executing Brokers.
- (c) Morgan Stanley shall send to the undersigned a notification of each trade placed with any Executing Broker based on the Trade Data provided to Morgan Stanley by the undersigned. Any trade notifications issued by Morgan Stanley as prime broker shall indicate the name of the Executing Broker involved and such other information required by the Prime Brokerage Regulations. If the undersigned has instructed the Executing Broker to send trade confirmations to the undersigned in care of Morgan Stanley, Morgan Stanley agrees that electronic versions of such confirmations will be available to the undersigned without charge upon request to Morgan Stanley.
- (d) The undersigned understands that Morgan Stanley will not clear or settle any transaction for the undersigned if: (i) sufficient funds or securities, as necessary, are not maintained in an account with Morgan Stanley or if the undersigned has not made other arrangements for settlement that are satisfactory to Morgan Stanley; (ii) the undersigned does not maintain, and does not have at the settlement of the transaction, at least the minimum net equity required by the Prime Brokerage Regulations in its account with Morgan Stanley, or (iii) a condition exists that would require Morgan Stanley to disaffirm on a non-discretionary basis, as defined in the Form 150. Morgan Stanley's customer account records may reflect transactions as settled as of the projected settlement date (sometimes referred to as contractual settlement). Morgan Stanley does not guarantee settlement, however, and therefore reserves the right to reverse transaction settlement entries in the event of a settlement failure.
- (e) The undersigned agrees to comply with Morgan Stanley's requirements relating to short sales, including the requirement that no short sale may be effected through an Executing Broker unless the undersigned has first confirmed with Morgan Stanley that the securities are available for delivery. Such confirmation does not guarantee that the securities will be available for delivery on settlement date or that the securities will be available to support a short sale for any particular period of time. Accordingly, the short sale may fail on settlement date or the undersigned may be asked to cover its short sale at any time, and undersigned will be responsible for any Obligations that arise therefrom.
- (f) Morgan Stanley is authorized to try to resolve any unmatched trade reports received from any Executing Broker. However, the undersigned is responsible for the ultimate resolution of these trades and reports. Morgan Stanley shall have no responsibility or liability with respect to Trade Data not correctly transmitted to it on a timely basis by the undersigned, any Executing Broker, any market, exchange or clearing house, or any other person or entity.
- (g) In the event the undersigned's account falls below the minimum net equity required by the Prime Brokerage Regulations, the undersigned authorizes Morgan Stanley to notify promptly all Executing Brokers of such event. If the undersigned fails to bring such account into compliance with the minimum net equity, the undersigned further agrees that Morgan Stanley may, without notice to the undersigned, disaffirm, DK or decline to affirm, clear and settle any transaction effected by an Executing Broker on the undersigned's behalf. Except as provided in the following paragraph, the undersigned understands that if Morgan Stanley takes such action with respect to any transaction of the undersigned, Morgan Stanley shall do so for all transactions of the undersigned that day. In any such case, Morgan Stanley shall send a cancellation notification to the undersigned and the undersigned understands that the undersigned must

settle outstanding trades directly with the relevant Executing Broker and authorizes Morgan Stanley to provide the Executing Broker with any information necessary to settle such trades. The undersigned further agrees that Morgan Stanley will not be bound to make any investigation into the facts surrounding any transaction to which the undersigned is a party and that, immediately upon notice to the undersigned and, if required, to the Executing Brokers, Morgan Stanley may cease acting as prime broker for the undersigned.

- (h) If the undersigned's account is managed on a discretionary basis by a third party (an "Adviser"), the undersigned authorizes Morgan Stanley to commingle the undersigned's prime brokerage transactions with those of other accounts of its Adviser ("sub-accounts"), in accordance with the instructions of its Adviser, for order placement and clearance in bulk. The undersigned understands that no part of any transaction may be allocated to any sub-account where such sub-account's net equity is below the minimum levels established by the Prime Brokerage Regulations and, should any sub-account's net equity fall below the minimum levels established by the Prime Brokerage Regulations, Morgan Stanley would be required to disaffirm the entire transaction. The undersigned agrees that, should such an event occur, its Adviser may resubmit the bulk trade to the Executing Broker so as to exclude those sub-accounts with a net equity deficiency or, if permissible, re-allocate the entire prime brokerage transaction to other sub-accounts. The undersigned understands that such reallocation must be communicated to Morgan Stanley within any required deadlines.

6. CURRENCY CONTRACTS. If the box entitled "Additional Provisions Related to Currency Contracts" appearing at the end of this Agreement is checked, the undersigned, from time to time, may enter into spot and/or forward currency Contracts with Morgan Stanley in connection with the settlement of other Contracts or otherwise as the undersigned and Morgan Stanley may agree. The undersigned acknowledges that Morgan Stanley is under no obligation to enter into any currency Contracts with, or on behalf of, the undersigned, and further agrees to furnish to Morgan Stanley such documentation to indicate capacity and authority as Morgan Stanley may reasonably request prior to entering into any such Contracts. Each currency Contract entered into under this Agreement shall constitute an "FX Transaction", as such term is defined in the 1998 FX and Currency Option Definitions, including Annex A thereto, as published by the International Swaps and Derivatives Association, Inc., EMTA, and The Foreign Exchange Committee (as may be amended, the "FX Definitions"), and shall be subject to the terms in this Section 6 as well as those set forth in the "Additional Provisions Related to Currency Contracts" box. Any confirmation, whether created by an exchange of facsimiles, SWIFT messages, or electronic messages on an electronic messaging or matching system, between Morgan Stanley and the undersigned relating to an FX Transaction, whether or not it is expressed to be, shall constitute a confirmation and, unless Morgan Stanley and the undersigned expressly agree otherwise, will be deemed to incorporate the FX Definitions. Notwithstanding the foregoing, Morgan Stanley shall have the right to convert currencies in connection with the exercise of Morgan Stanley's rights under Section 8 below in such manner as it may determine.

7. SECURITY INTEREST AND LIEN. The undersigned grants to each Morgan Stanley Entity a continuing first priority security interest in and lien upon and assigns to each Morgan Stanley Entity all of its rights, title and interests to any and all Collateral, as security for the payment, performance and discharge of all Obligations of the undersigned to Morgan Stanley, irrespective of whether or not Morgan Stanley has made advances in connection with such Collateral, the number of accounts the undersigned has with Morgan Stanley or which particular Morgan Stanley Entity holds such Collateral. The undersigned and Morgan Stanley each acknowledge and agree that each Morgan Stanley Entity that holds Collateral does so both for itself and also as an agent and bailee for all other Morgan Stanley Entities which may be secured parties under any Contract. The undersigned hereby irrevocably: (i) consents to each Morgan Stanley Entity, with respect to any account maintained by the undersigned with such Morgan Stanley Entity, entering into any agreement to comply with entitlement orders and instructions originated by any other Morgan Stanley Entity without further consent of the undersigned, (ii) ratifies any such existing agreement, and (iii) agrees that each Morgan Stanley Entity is a third-party beneficiary of such consent and ratification. The undersigned and Morgan Stanley agree that each item of Collateral held in or credited to any account maintained by any Morgan Stanley Entity will be treated as "financial asset" under Article 8 of the Uniform Commercial Code as in effect in the State of New York (the "UCC"), and that any account of the undersigned maintained by any Morgan Stanley Entity shall be treated as a "securities account" under Article 8 of the UCC. In the event of a breach or default by the undersigned, Morgan Stanley shall have in addition to the rights and remedies provided in this Agreement, all rights and remedies available to a secured creditor under the UCC and any other

Applicable Law. All Collateral delivered to Morgan Stanley shall be free and clear of all prior liens, claims and encumbrances and the undersigned will not cause or allow any of the Collateral to be subject to any liens, security interests, mortgages or encumbrances of any nature other than the security interest created in Morgan Stanley's favor. Furthermore, Collateral consisting of securities shall be delivered in good deliverable form (or Morgan Stanley shall have the unrestricted power to place such securities in good deliverable form) in accordance with the requirements of the primary market for these securities. The undersigned shall execute such documents and take such other action as Morgan Stanley shall reasonably request in order to perfect its rights with respect to any such Collateral. In addition, the undersigned appoints Morgan Stanley as the undersigned's attorney-in-fact to act on the undersigned's behalf to sign, seal, execute and deliver all documents, and do all such acts as may be required, to realize upon any of Morgan Stanley's rights in the Collateral.

8. **RIGHTS OF MORGAN STANLEY.** Upon the occurrence of an Event of Default (as defined below), Morgan Stanley may, in its discretion, cancel any outstanding orders for the purchase or sale of any securities, currencies, commodities or other property, foreclose, collect, sell or otherwise liquidate any Collateral and apply the proceeds therefore to satisfy any of the undersigned's Obligations, buy-in any securities, currencies, commodities or other property which any account of the undersigned may be short, and take any other action permitted by law or in equity to protect, preserve or enforce Morgan Stanley's rights or to reduce any risk to any Morgan Stanley Entity of loss or delay. Any such sale, purchase or cancellation may be made on any exchange or other market where such business is then usually transacted, or at public auction or private sale, without advertising or notice of the time or place of sale to the undersigned, and without prior tender, demand or call of any kind upon the undersigned, all of which are expressly waived. Morgan Stanley may purchase the whole or any part thereof free from any right of redemption and the undersigned shall remain liable to Morgan Stanley for any deficiency; it being understood that a prior tender, demand or call of any kind from Morgan Stanley, or prior notice from Morgan Stanley, of the time and place of such sale or purchase shall not be considered a waiver of Morgan Stanley's right to sell or buy any securities, commodities, or other property or asset held by Morgan Stanley, or which the undersigned may owe to Morgan Stanley. In addition, Morgan Stanley may at any time in connection with its rights under this Section 8 without prior notice to the undersigned apply or transfer any and all Collateral interchangeably between Morgan Stanley Entities in connection with accounts in which the undersigned has an interest. Each of the following events shall constitute an "Event of Default" hereunder: (a) the undersigned's death or incompetency (if applicable); (b) a breach, repudiation, occurrence of a termination event or default (or similar event however so described) by the undersigned of this Agreement or any other Contract; (c) any misrepresentation of any statement by the undersigned when made or deemed to be made or repeated; (d) the failure of the undersigned to fulfill or discharge any of its Obligations, including the failure to make any payment or delivery or to satisfy margin requirements; (e) the occurrence of a Bankruptcy Event; (f) the levy of an attachment against any property or asset in any account of the undersigned; (g) the failure by the undersigned to give adequate assurance of due performance pursuant to this Agreement; or (h) the determination that such action is necessary for Morgan Stanley's protection.

9. **REPAYMENT OF OBLIGATIONS; ADEQUATE ASSURANCES.** Unless otherwise expressly agreed in writing, all debit balances, other extensions of credit, loans or other Obligations to Morgan Stanley are repayable or terminable upon demand by Morgan Stanley. Upon receipt of notice from Morgan Stanley, which may be given orally, you shall immediately transfer to Morgan Stanley such Collateral as Morgan Stanley may require in connection with any Obligation. If at any time Morgan Stanley has reasonable grounds to doubt the undersigned's performance of any of the undersigned's Obligations, Morgan Stanley may demand, and the undersigned shall give within twenty-four hours or any reasonable shorter period of time Morgan Stanley specifies, adequate assurance of due performance. The giving of adequate assurance of performance may require the delivery by the undersigned to Morgan Stanley of additional Collateral. Any failure by the undersigned to give such adequate assurance of due performance shall constitute an independent, material default under the terms of all Contracts and Morgan Stanley may terminate, liquidate or accelerate any and all Contracts and exercise any right under or with respect to any security relating to any Contract and any right to net or set off payments which may arise under any Contract or other agreement or under Applicable Law.

10. **EXPENSES AND OTHER CHARGES.** The undersigned agrees to pay Morgan Stanley, or its designee, any fees, commissions and charges with respect to the undersigned's activities with Morgan Stanley, including:

- (a) Morgan Stanley's fees, commissions, markups and other charges with respect to the execution of transactions, fails, buy-ins, conversion costs or the maintenance of positions or other related services;

- (b) any fees, fines, penalties or other charges imposed by any authority or body described in Section 2 of this Agreement or any court or authority of competent jurisdiction on any account opened or transaction executed for or with the undersigned, except any such charges as may be imposed due to Morgan Stanley's gross negligence or willful misconduct;
- (c) any charges with respect to any of the undersigned's transactions, including buy-ins, and applicable taxes or interest on any of the foregoing, together with Morgan Stanley's costs and reasonable attorney's fees incurred in collecting any such debit balance.

11. **NETTING AND SET OFF RIGHTS.** Morgan Stanley shall have the right, at any time and from time to time, to set off any Obligations of Morgan Stanley to the undersigned against any Obligations of the undersigned to Morgan Stanley, and to foreclose on any Collateral for the purpose of satisfying the Obligations of the undersigned to Morgan Stanley. The undersigned acknowledges that the fulfillment by Morgan Stanley of its Obligations to the undersigned is contingent upon there being no breach, repudiation, misrepresentation or default by the undersigned which has occurred and is continuing under this Agreement or any Contract. The rights and remedies granted under this Section 11 are in addition to any other rights and remedies which arise under any Contract or under Applicable Law.

12. **MAINTENANCE OF THE UNDERSIGNED'S COLLATERAL.** Subject to the requirements of Applicable Law, the undersigned authorizes Morgan Stanley, from time to time and without further notice to the undersigned, to carry any such Collateral in Morgan Stanley's general accounts, or to loan, pledge, hypothecate, re-hypothecate, sell or otherwise use any and all Collateral, separately or in combination with the property of others for any amounts due to Morgan Stanley or for a greater sum, and without Morgan Stanley's retaining in its possession or control a like amount of similar property. **THE UNDERSIGNED ACKNOWLEDGES THAT MORGAN STANLEY'S LOAN, REPO, PLEDGE, HYPOTHECATION, RE-HYPOTHECATION, SALE OR OTHER USE OF THE COLLATERAL MAY INCLUDE THE TRANSFER TO MORGAN STANLEY OR A THIRD PARTY OF ALL ATTENDANT RIGHTS OF OWNERSHIP, INCLUDING THE RIGHT TO VOTE ANY SECURITIES OR EXERCISE ANY CORPORATE ACTION RIGHTS.**

13. **FAILURE OF DELIVERY.** If the undersigned directs Morgan Stanley to make any delivery of any security, commodity or other property or asset for its account for any reason and the undersigned fails to deliver that item to Morgan Stanley in the time, place and manner required, or if Morgan Stanley is unable to borrow the security, or in the case of a recall, Morgan Stanley is unable to re-borrow the security, the undersigned authorizes Morgan Stanley to borrow or purchase that item (or to be deemed to have made such purchase at the market value of the time of such deemed purchase) in such manner and time as Morgan Stanley in its sole discretion determines to be commercially reasonable. The undersigned agrees to be responsible for any consequent loss which Morgan Stanley may suffer and any related costs, premiums and losses to which Morgan Stanley may be subject.

14. **CONFIRMATIONS, STATEMENTS AND OTHER COMMUNICATIONS.** Trade notifications, account statements of the undersigned and any other communication issued by Morgan Stanley shall be conclusive and binding if not objected to within five days after transmittal by Morgan Stanley to the undersigned by mail, electronic communication, or any other agreed means. Morgan Stanley may send communications to the undersigned at the address maintained by Morgan Stanley in its records or such other addresses that are provided to Morgan Stanley in writing from time to time. All communications, whether by mail, electronic communication, or any other agreed means, shall be deemed to have been given to the undersigned personally as of the date sent, whether actually received or not.

15. **NO OBLIGATION.** The undersigned agrees that Morgan Stanley shall be under no obligation whatsoever to enter into any Contract with, or on behalf of, the undersigned.

16. **PROVISION OF INFORMATION.** (a) From time to time, Morgan Stanley may provide or make available to the undersigned, or to others acting with or on behalf of the undersigned, research, opinions and other information, including portfolio analyses and reports, regarding securities, commodities, other financial assets, and market participants or events. The undersigned acknowledges that such information is provided, unless Morgan Stanley agrees in writing otherwise, without regard to the undersigned's personal financial situation, investment

objectives or other circumstances and that the provision by Morgan Stanley of such information to the undersigned, whether sent directly or made readily accessible, and whether in writing, in electronic form or the subject of a taping, broadcast or narrowcast, does not imply that any asset or transaction discussed therein is suitable in light of the undersigned's particular circumstances. The undersigned agrees that no such information will be the primary basis of any investment decision by the undersigned. While all information produced by Morgan Stanley is based on sources believed to be reliable, the undersigned acknowledges that Morgan Stanley does not guarantee or warrant the accuracy, reliability or timeliness of such information. Further, all information and opinions are current only as of the time provided, and are subject to rapid change without prior notice. The undersigned also acknowledges that Morgan Stanley may take positions in financial instruments discussed in the information provided the undersigned (which positions may be inconsistent with the information provided), may execute transactions for others in those instruments and may provide investment banking and other services to the issuers of those instruments. From time to time, Morgan Stanley also may provide or make available to the undersigned, or to others acting with or on behalf of the undersigned, information regarding parties that might provide goods or services to the undersigned, including but not limited to fund administrators ("Vendors"). While all information produced by Morgan Stanley is based on sources believed to be reliable, the undersigned acknowledges that Morgan Stanley does not guarantee or warrant the accuracy, reliability or timeliness of such information, or the quality of goods or services provided by any Vendors. The undersigned agrees to indemnify and hold Morgan Stanley harmless from and against any and all losses, claims, damages and liabilities arising out of or relating to, actions or omissions by the Vendors, Morgan Stanley's provision or making available of such information, or the undersigned's selection or use of such Vendors.

(b) The undersigned hereby instructs Morgan Stanley to provide electronic access to data relating to the undersigned to such third parties as are specified by the undersigned from time to time (the "Access"). Such Access shall be provided by Morgan Stanley as advised by the undersigned to Morgan Stanley from time to time. The undersigned hereby acknowledges that Morgan Stanley reserves the right to terminate such Access at any time. In the event that the undersigned wishes to have Morgan Stanley cease providing the Access, Morgan Stanley shall do so provided Morgan Stanley is given 14 days prior written notice by the undersigned, such notice to be sent to such address of Morgan Stanley as specified in the Agreement. The undersigned hereby acknowledges that the Access will allow the third party to view Morgan Stanley reports and systems that may contain the undersigned's data compiled and processed by the Morgan Stanley Portfolio Accounting ("MSPA") or other risk or reporting systems maintained by Morgan Stanley. These reports are prepared for informational purposes only, and do not reflect the official books and records of Morgan Stanley. The undersigned acknowledges that Morgan Stanley makes no representation regarding the accuracy and/or completeness of the information contained in such reports and they should not be relied on for accounting, audit, tax and/or legal purposes. Morgan Stanley assumes no duty to update the information contained in the reports. These reports may contain information that has been provided and/or modified by the undersigned and/or its agents and for which Morgan Stanley is not responsible. The undersigned acknowledges that in the case of any discrepancy between the reports and applicable customer statements, the undersigned and any interested third parties should rely on the applicable customer statements.

17. **USE OF THE INTERNET.** Undersigned agrees that the Internet is not a secure network and that any communications transmitted over the Internet may, among other things, be intercepted or accessed by unauthorized or unintended parties and may not remain confidential, or that such transmissions may not arrive in a complete, unaltered or timely manner, and the undersigned assumes the risk arising therefrom.

18. RESOLUTION OF DISPUTES. ANY DISPUTE BETWEEN THE UNDERSIGNED AND A MORGAN STANLEY ENTITY THAT IS REGISTERED AS A BROKER-DEALER WITH THE U.S. SECURITIES AND EXCHANGE COMMISSION ARISING OUT OF, RELATING TO OR IN CONNECTION WITH MORGAN STANLEY'S BUSINESS, ANY TRANSACTION BETWEEN US OR THIS AGREEMENT SHALL BE DETERMINED, AT THE ELECTION OF THE UNDERSIGNED, BY LITIGATION IN A COURT WITH PROPER JURISDICTION OR BY ARBITRATION. SHOULD THE UNDERSIGNED CHOOSE TO PROCEED BY ARBITRATION, UNDERSIGNED AND MORGAN STANLEY AGREE TO FOLLOW THE PROCEDURES, AND ABIDE BY THE REQUIREMENTS, LISTED IN SECTION 19 BELOW. SHOULD THE UNDERSIGNED CHOOSE TO PROCEED BY LITIGATION, UNDERSIGNED AND MORGAN STANLEY AGREE TO FOLLOW THE PROCEDURES, AND ABIDE BY THE REQUIREMENTS, LISTED IN SECTION 20 BELOW.

19. IF THE UNDERSIGNED CHOOSES ARBITRATION, THE UNDERSIGNED ACKNOWLEDGES THAT:

- **ARBITRATION AWARDS ARE GENERALLY FINAL AND BINDING; A PARTY'S ABILITY TO HAVE A COURT REVERSE OR MODIFY AN ARBITRATION AWARD IS VERY LIMITED.**
- **THE PARTIES ARE GIVING UP THE RIGHT TO SUE EACH OTHER IN COURT, INCLUDING THE RIGHT TO A TRIAL BY JURY, EXCEPT AS PROVIDED BY THE RULES OF THE ARBITRATION FORUM IN WHICH A CLAIM IS FILED.**
- **THE ABILITY OF THE PARTIES TO OBTAIN DOCUMENTS, WITNESS STATEMENTS AND OTHER DISCOVERY IS GENERALLY MORE LIMITED IN ARBITRATION THAN IN COURT PROCEEDINGS.**
- **THE ARBITRATORS DO NOT HAVE TO EXPLAIN THE REASON(S) FOR THEIR AWARD UNLESS, IN AN ELIGIBLE CASE, A JOINT REQUEST FOR AN EXPLAINED DECISION HAS BEEN SUBMITTED BY ALL PARTIES TO THE PANEL AT LEAST 20 DAYS PRIOR TO THE FIRST SCHEDULED HEARING DATE.**
- **THE PANEL OF ARBITRATORS MAY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY.**
- **THE RULES OF SOME ARBITRATION FORUMS MAY IMPOSE TIME LIMITS FOR BRINGING A CLAIM IN ARBITRATION. IN SOME CASES, A CLAIM THAT IS INELIGIBLE FOR ARBITRATION MAY BE BROUGHT IN COURT.**
- **THE RULES OF THE ARBITRATION FORUM IN WHICH THE CLAIM IS FILED, AND ANY AMENDMENTS THERETO, SHALL BE INCORPORATED INTO THIS AGREEMENT.**
- **ANY ARBITRATION SHALL BE CONDUCTED BEFORE FINRA. THE AWARD OF THE ARBITRATORS, OR THE MAJORITY OF THEM, SHALL BE FINAL AND JUDGMENT UPON THE AWARD RENDERED MAY BE ENTERED IN ANY STATE OR FEDERAL COURT HAVING JURISDICTION. NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS CONSENT BY MORGAN STANLEY TO AN AWARD OF PUNITIVE DAMAGES.**

NO PERSON SHALL BRING A PUTATIVE OR CERTIFIED CLASS ACTION TO ARBITRATION, NOR SEEK TO ENFORCE ANY PRE-DISPUTE ARBITRATION AGREEMENT AGAINST ANY PERSON WHO, IF THE UNDERSIGNED HAS INITIATED IN COURT A PUTATIVE CLASS ACTION, IS A MEMBER OF A PUTATIVE CLASS WHO HAS NOT OPTED OUT OF THE CLASS WITH RESPECT TO ANY CLAIMS ENCOMPASSED BY THE PUTATIVE CLASS ACTION UNTIL:

- (i) THE CLASS CERTIFICATION IS DENIED;**
- (ii) THE CLASS IS DECERTIFIED; OR**
- (iii) THE UNDERSIGNED IS EXCLUDED FROM THE CLASS BY THE COURT.**

SUCH FORBEARANCE TO ENFORCE AN AGREEMENT TO ARBITRATE SHALL NOT CONSTITUTE A WAIVER OF ANY SUCH RIGHTS UNDER THIS AGREEMENT EXCEPT TO THE EXTENT STATED HEREIN.

20. IF THE UNDERSIGNED CHOOSES LITIGATION IN COURT. (A) UNLESS THE PARTIES OTHERWISE AGREE IN WRITING WHEN ANY DISPUTE ARISES, LITIGATION MUST BE INSTITUTED IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF

NEW YORK OR THE SUPREME COURT OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY. THE UNDERSIGNED IRREVOCABLY CONSENTS TO THE JURISDICTION OF EITHER OF THOSE COURTS AND (B) ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM OR ACTION IS HEREBY WAIVED BY ALL PARTIES TO THIS AGREEMENT.

21. APPLICABLE LAW AND ENFORCEABILITY. THIS AGREEMENT, ANY CONTRACT, THEIR ENFORCEMENT AND ANY DISPUTE BETWEEN US, WHETHER ARISING OUT OF OR RELATING TO THE UNDERSIGNED'S ACCOUNTS OR OTHERWISE, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, EXCLUDING ITS CONFLICT OF LAW RULES. The provisions of this Agreement shall be continuous, shall cover individually and collectively all accounts which the undersigned may open or reopen with Morgan Stanley and shall inure to the benefit of Morgan Stanley's present and any successor organizations, irrespective of any change at any time in the personnel thereof and of the assigns of Morgan Stanley's present organizations or any successor organizations. This Agreement shall be binding upon the undersigned and the estate, executors, administrators, trustees, agents, officers, directors and assigns of the undersigned.

22. MODIFICATION AND WAIVER. The undersigned agrees that Morgan Stanley may modify the terms of this Agreement at any time upon prior written notice. If the modifications are unacceptable, the undersigned agrees to notify Morgan Stanley in writing within twenty days of the transmittal of such written notice. Morgan Stanley may then terminate any or all of the undersigned's accounts. The undersigned also agrees that any transactions or Contracts entered into after such notification shall be subject to the modifications. The undersigned may not modify this Agreement without Morgan Stanley's written consent. To the extent this Agreement is inconsistent with any other agreement between us, the provisions of this Agreement shall govern. Morgan Stanley's failure to enforce this Agreement or any of its terms, or any continued course of such conduct on Morgan Stanley's part, shall not be considered a waiver of any of Morgan Stanley's rights.

23. AUTHORIZED INSTRUCTIONS. (a) The undersigned authorizes Morgan Stanley to accept instructions by telephone, facsimile transmission, electronic mail, electronically, in writing or any other method that undersigned and Morgan Stanley may agree to use, including but not limited to any instructions set forth in any letter of authorization delivered by the undersigned to Morgan Stanley. The undersigned also agrees (i) to be bound by all instructions that Morgan Stanley believes are authorized, regardless of the means by which those instructions have been transmitted to Morgan Stanley, and (ii) that Morgan Stanley shall not be liable for any loss, cost or expense for acting upon instructions that Morgan Stanley believed to be authorized.

(b) To the extent that the undersigned instructs Morgan Stanley to transfer cash, securities or other assets via any electronic method, including but not limited to Morgan Stanley's Interactive Cash Entry system, and is provided with user identifications, passwords, authentication codes or other security devices or procedures (collectively, "Passwords"), the undersigned is solely responsible for maintaining the confidentiality of its Passwords and for preventing unauthorized use of the Passwords. The undersigned agrees that Morgan Stanley may rely on any transmissions, instructions, information or other communications attributable to the Passwords, whether or not such communications are sent by the undersigned, and that all such communications shall be attributable to and binding upon the undersigned. The undersigned shall notify Morgan Stanley immediately upon learning or suspecting that any Password has or may have become known to a party who may not be authorized. Promptly after Morgan Stanley's acknowledgement of such notice, the relevant Password will be terminated. The undersigned represents that any instructions it provides to Morgan Stanley are correct, and acknowledges that Morgan Stanley will not check or monitor the instruction on behalf of the undersigned before it is sent to the relevant agent bank.

24. SEVERABILITY. If any provision of this Agreement is or becomes inconsistent with any applicable present or future law, rule or regulation, that provision will be deemed modified or, if necessary, rescinded in order to comply with the relevant law, rule or regulation. All other provisions of this Agreement will continue and remain in full force and effect. To the extent that this Agreement is not enforceable as to any Contract, this Agreement shall remain in full force and effect and be enforceable in accordance with its terms as to all other Contracts. To the extent this Agreement contains any provision which is inconsistent with provisions in any other Contract or agreement between us, or of which the undersigned is a beneficiary, the provisions of this Agreement shall control with respect to transactions contemplated hereunder.

25. **EXTRAORDINARY EVENTS.** The undersigned agrees that Morgan Stanley will not be liable for any loss caused, directly or indirectly, by government restrictions, exchange or market rulings, suspension of trading, war (whether declared or undeclared), terrorist acts, insurrection, riots, fires, flooding, strikes, failure of utility services, central clearinghouses, depositories or unaffiliated agent banks, or accidents, adverse weather or other events of nature (including earthquakes, hurricanes and tornadoes) or other events or conditions beyond Morgan Stanley's control. In the event that any communications network, data processing system, operational system or computer system Morgan Stanley uses or relies upon, regardless of ownership, is impaired or rendered inoperable, Morgan Stanley will not be liable to the undersigned for any loss, liability, claim, damage or expense resulting, directly or indirectly, from such impairment or inoperability.

26. **LIMITATION OF LIABILITY.** Morgan Stanley shall not be liable in connection with the execution, clearing, handling, purchasing or selling of securities, commodities or other property or assets, or other action, except in the event of gross negligence or willful misconduct on Morgan Stanley's part. The undersigned acknowledges that certain of its assets may be held inside or outside the United States by unaffiliated agent banks, central clearinghouses and securities depositories. Morgan Stanley shall not be liable to the undersigned for any loss, liability or expense incurred by the undersigned in connection with these arrangements except to the extent that any such loss, liability or expense results from Morgan Stanley's gross negligence or willful misconduct.

27. **TAXES.** Any and all payments or crediting of amounts by or on account of the undersigned shall be made free and clear of and without deduction or withholding for or on account of any taxes, levies, imposts, duties, charges, assessments or fees of any nature, including interest, penalties and additions thereto that are imposed by any taxing authority ("Taxes") unless a deduction or withholding is required by law; provided that if any Taxes are deducted or withheld, then (i) the sum payable shall be increased as necessary so that after making all such deductions or withholdings (including deductions or withholdings applicable to additional sums payable under this Section) Morgan Stanley receives an amount equal to the sum it would have received had no such deductions or withholdings been made, (ii) the undersigned shall make or cause to be made such deductions or withholdings in the minimum amount required by law and (iii) the undersigned shall timely pay or cause to be paid the full amount deducted or withheld to the relevant taxing authority within the time allowed and in accordance with Applicable Law. The undersigned shall pay any present or future stamp, transfer, transaction, financial transaction or documentary taxes, or any other excise or property taxes, charges or similar levies, including interest, penalties and additions thereto ("Other Taxes"), that may be imposed in connection with the undersigned's accounts, any transaction therein, this Agreement or any security interest hereunder. Morgan Stanley is hereby authorized to withhold Taxes from any payment or crediting of amounts or delivery made hereunder and remit such Taxes to the relevant taxing authorities to the extent required in the reasonable judgment of Morgan Stanley. The undersigned shall provide Morgan Stanley with any forms, documentation or information reasonably requested by Morgan Stanley in order to reduce or eliminate withholding Taxes on payments made to the undersigned with respect to this Agreement. In addition to the remedies provided by Section 11 of this Agreement and without prejudice to Morgan Stanley's rights under Section 28 of this Agreement, the undersigned shall promptly indemnify Morgan Stanley for the full amount of any Taxes and Other Taxes paid by Morgan Stanley, on or with respect to any payment or crediting of amounts or delivery by or on account of any obligation of the undersigned (including Taxes and Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant taxing authority. A certificate as to the amount of such payment delivered to the undersigned shall be conclusive absent manifest error. Morgan Stanley's rights and protections under this paragraph shall survive the termination of any transaction or this Agreement.

28. **INDEMNIFICATION.** In consideration of Morgan Stanley's carrying one or more accounts for the undersigned, the undersigned agrees to indemnify and hold each Morgan Stanley Entity and each of its parents, subsidiaries, affiliates, divisions, officers, directors, employees and agents harmless from and against, and shall pay Morgan Stanley on demand, any and all losses, claims, damages, liabilities, Taxes, Other Taxes, and expenses (including costs of collection, attorneys' fees, court costs and other expenses), incurred by Morgan Stanley in connection with or arising out of the undersigned's Obligations, the enforcement of this Agreement by Morgan Stanley, the provision of Access pursuant to Section 16(b) hereof, or the execution, purchase, sale, assignment, exercise, endorsement or handling of any transaction for the account of the undersigned, or in connection with or arising out of Morgan Stanley acting or declining to act as prime broker, except for actions taken or omitted to be taken by Morgan Stanley which are a result of, or constitute, willful misconduct or gross negligence. The

undersigned also agrees that Morgan Stanley shall have no responsibility for the undersigned's compliance with Applicable Law and that Morgan Stanley shall not be liable for delays in the transmission of orders or instructions due to the breakdown or failure of transmission or communication facilities or any other cause beyond Morgan Stanley's control, including any mistake, error, negligence or misconduct of any exchange, association or clearing house or their respective officers, directors, employees or agents, nor any failure by any such exchange, association or clearing house to enforce its rules or regulations. Morgan Stanley's rights and protections under this paragraph shall survive the termination of any transaction or this Agreement. Each of the parents, subsidiaries, affiliates, divisions, officers, directors, employees and agents of each Morgan Stanley Entity shall be entitled to enforce the provisions of this Section as if it were a party hereto.

29. **ASSIGNMENTS.** Neither party may assign any of its rights or obligations under this Agreement without the express written consent of the other party, except that MSCO may, with notice to the undersigned, assign any of its rights or obligations to any other Morgan Stanley Entity that is registered as a broker-dealer with the SEC.

30. **REPRESENTATIONS AND WARRANTIES.** The undersigned hereby represents and warrants as of the date hereof, which representations and warranties will be deemed repeated on each date on which a transaction or Contract is effected for any of the undersigned's accounts, or any securities or other property if delivered to or from any such account, that:

- (a) The undersigned will at all times maintain such securities or other property or assets in the accounts of the undersigned for margin purposes, as is required by Morgan Stanley from time to time in Morgan Stanley's sole discretion.
- (b) The undersigned will not transact on the basis of, or in reliance on, material, non-public information.
- (c) Except as disclosed in writing to Morgan Stanley, the undersigned is not an employee of any exchange, or of any corporation of which any exchange owns a majority of the capital stock, or of a member of any exchange, or of a securities broker or dealer, or of a bank, trust company, insurance company or of any corporation, firm or individual engaged in the business of dealing, either as agent or as principal, in securities, bills of exchange, acceptances or other forms of commercial paper.
- (d) The undersigned represents (which representations will be deemed to be repeated by it at all times until termination of this Agreement) that it is not (i) an employee benefit plan, as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), subject to Title I of ERISA (an "ERISA Plan") or a plan subject to Section 4975 of the Internal Revenue Code of 1986, as amended, or subject to any other statute, regulation, procedure or restriction that is materially similar to Section 406 of ERISA or Section 4975 of the Code (together with ERISA Plans, "Plans"), (ii) a person any of the assets of whom constitute assets of a Plan, or (iii) in connection with any contract or transaction under this Agreement, a person acting on behalf of a Plan, or using the assets of a Plan. It will provide notice to Morgan Stanley in the event that it is aware that it is in breach of any aspect of this representation or is aware that with the passing of time, giving of notice or expiry of any applicable grace period it will breach this representation.
- (e) Except as disclosed in writing to Morgan Stanley, the undersigned is not, and will not be, an affiliate (as defined in Rule 144(a)(1) under the Securities Act of 1933) of the issuer of any security held in the undersigned's accounts or sold to or through Morgan Stanley and undertakes to inform Morgan Stanley of any changes in such representation.
- (f) The undersigned has full power and authority to execute and deliver this Agreement and to perform and observe the provisions thereof.
- (g) The execution, delivery and performance of this Agreement has been or will be, prior to entering into the Agreement, duly authorized by all necessary internal action and do not or will not contravene any requirement of law or any contractual restrictions or agreement binding on or affecting the undersigned or its assets.

- (h) This Agreement has been or will be at the time it is entered into properly executed and delivered by the undersigned and constitutes and will constitute a legal, valid and binding obligation enforceable in accordance with its terms.
- (i) The undersigned will promptly furnish to Morgan Stanley appropriate financial statements or similar documents ("Financial Information") upon Morgan Stanley's request and any other information as Morgan Stanley may reasonably request. Since the date of the most recent financial statements provided to Morgan Stanley, if any, there has been no material adverse change in the information set forth therein, and, if the undersigned is not a natural person, the business, financial condition, results, operations or prospects of the undersigned. In the event Morgan Stanley and the undersigned have entered into an ISDA Master Agreement (the "ISDA"), to the extent Financial Information is delivered to Morgan Stanley in accordance with the ISDA, such Financial Information shall be deemed concurrently delivered hereunder.
- (j) No one that is not a party to this Agreement has any interest in any account of the undersigned with Morgan Stanley. The undersigned owns the Collateral assigned, or to be assigned, to Morgan Stanley under each Contract free and clear of any lien, claims, encumbrances and transfer restrictions. Upon Morgan Stanley obtaining possession or control of the Collateral or upon the filing of appropriate financing statements, Morgan Stanley will have, as security for the undersigned's Obligations, a perfected first-priority security interest in the Collateral. No further filings or recordings with any governmental body, agency or official are necessary to create or perfect the security interest in the Collateral.
- (k) The undersigned acknowledges that it is acting as principal (and not as agent or in any other capacity, fiduciary or otherwise) for its own account, and it has made its own independent decisions to enter into this Agreement and Contracts and as to whether its activities and investments thereunder are appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of Morgan Stanley as investment advice or as a recommendation to enter into any particular transaction; it being understood that information and explanations related to the terms and conditions of a transaction shall not be considered investment advice or a recommendation to enter into a transaction. No communication (written or oral) received from Morgan Stanley shall be deemed to be an assurance or guarantee as to the expected results of a transaction. It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of its transactions, and is capable of assuming, and assumes, such risks. Morgan Stanley is not acting as a fiduciary for an adviser to it in any respect, and does not perform any analysis or make any judgment on any matters pertaining to the suitability of any order or offer any opinion, judgment or other type of information pertaining to the nature, value, potential or suitability of any particular transaction.
- (l) The undersigned acknowledges and agrees that Morgan Stanley is not acting hereunder as a municipal advisor within the meaning of Section 975 of the Dodd-Frank Wall Street Reform & Consumer Protection Act.

31. **ACKNOWLEDGMENTS.** The undersigned hereby consents and acknowledges that:

- (a) The undersigned has received, and agrees to be bound by, Morgan Stanley's Credit Charge and Margin Information Statement, which is incorporated herein by reference;
- (b) The undersigned has received a copy of this Agreement and has read and understood its terms; and
- (c) All conversations between us may be recorded on tape or otherwise.

32. **COUNTRY-SPECIFIC TERMS.** This Section 32 shall apply solely to transactions in the specified securities and markets. In the event of any inconsistency between this Section 32 and the remainder of this Agreement, the below shall govern with respect to the specific securities and markets referred to therein (but the remainder of this Agreement shall govern with respect to all other securities and markets.)

- (a) *Australia:* Where Morgan Stanley has provided the undersigned with a locate in Australian Securities (for the purpose of this Agreement, Australian Securities means securities that Morgan Stanley determines to be Australian Securities), Morgan Stanley unconditionally commits to deliver or procure the delivery of such securities for settlement. Such commitment will be limited to the amount of securities for which the locate has been provided and is valid only for the date identified on such locate.
- (b) *Hong Kong:* The parties confirm that the undersigned may from time to time obtain Hong Kong listed securities ("HK Securities") from Morgan Stanley to settle short sales by the undersigned.

The parties further confirm that under the terms of this Agreement, in the event that Morgan Stanley makes delivery on behalf of the undersigned of HK Securities sold short by the undersigned, the undersigned will be required to return equivalent securities, as well as to compensate Morgan Stanley for any payments that would be received by Morgan Stanley assuming that the HK Securities delivered on the undersigned's behalf were retained by Morgan Stanley, including a specified payment as defined under section 19(16) of the Stamp Duty Ordinance.

The parties further acknowledge and agree that, after the undersigned delivers Collateral (as defined in this Agreement) to Morgan Stanley that consists of HK Securities, Morgan Stanley may decide in its discretion that it requires that existing or substitute security be held by Morgan Stanley in another manner, in which case Morgan Stanley may exercise its rights pursuant to Section 12 of this Agreement ("Maintenance of the Undersigned's Collateral") by transferring such HK Securities into any of Morgan Stanley's general accounts. The undersigned hereby grants Morgan Stanley with a limited power of attorney for the purpose of certifying, as the undersigned's attorney in fact, this Agreement and submitting any required documentation to the appropriate regulatory authority.

- (c) *South Africa:* Where the undersigned, pursuant to this Agreement, establishes short positions on Morgan Stanley's books in South African securities (which shall include any listed security contemplated by the South African Securities Transfer Tax Act No. 25, 2007 as amended or updated from time to time), the undersigned hereby undertakes that:

The undersigned will redeliver listed securities of the same kind and quality to Morgan Stanley within a period of twelve (12) months from the date of transfer of those South African securities by Morgan Stanley on behalf of the undersigned. The undersigned will compensate Morgan Stanley for any distributions in respect of South African securities that Morgan Stanley would have been entitled to receive had it not made the stocks available to the undersigned.

Where Morgan Stanley rehypothecates or otherwise uses the undersigned's South African securities (as permitted pursuant to this Agreement), Morgan Stanley hereby undertakes that:

Morgan Stanley will redeliver listed securities of the same kind and quality to the undersigned within a period of 12 months from the date of transfer of those South African securities by Morgan Stanley. Morgan Stanley will compensate the undersigned for any distributions in respect of South African securities that the undersigned would have been entitled to receive had it not made the stocks available to Morgan Stanley.

33. **COUNTERPARTS; THIRD PARTY BENEFICIARIES.** This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if such signatures were upon the same instrument. A facsimile or photocopied signature (which may be delivered by facsimile, the exchange of PDF files or other electronic means) shall be deemed to be the functional equivalent of an original for all purposes. The execution by Morgan Stanley & Co. LLC of this Agreement shall be deemed to be on its own behalf and as agent on behalf of each other Morgan Stanley Entity, with the same effect as if each other Morgan Stanley Entity had signed the Agreement in its own name directly. Except as otherwise may be explicitly set forth herein, this Agreement is not intended to confer any rights, benefits, remedies, obligations or liabilities to any person other than the parties hereto (including each Morgan Stanley Entity) and their respective successors and assigns.

ADDITIONAL PROVISIONS RELATED TO CURRENCY CONTRACTS

1. COLLATERAL. Pursuant to Section 30(a), the undersigned shall at all times maintain with Morgan Stanley Collateral in the amount and form of cash and securities acceptable to Morgan Stanley in order to secure the obligations of the undersigned under all open FX Transactions entered into under Section 6 (the “Margin Requirement”). Morgan Stanley shall settle all FX Transactions with the undersigned on a secured basis only, such that Morgan Stanley’s payment obligations to the undersigned under the terms of an FX Transaction shall be made (a) prior to the receipt of the undersigned’s counterpayment thereunder only to the extent that the amount by which Collateral posted by the undersigned exceeds the Margin Requirement is greater than such counterpayment or the U.S. Dollar equivalent thereof, or (b) after Morgan Stanley has confirmed receipt of the undersigned’s counterpayment.

In addition, if (i) Applicable Law requires Morgan Stanley to exchange variation margin with its counterparties with respect to certain FX Transactions, or Morgan Stanley determines as a commercial matter that it will, in its reasonable discretion, exchange variation margin with its counterparties with respect to certain FX Transactions, and (ii) the undersigned enters into such FX Transactions with Morgan Stanley hereunder (“Applicable FX Transactions”), then the following terms shall apply:

- (a) Collateral Account. Morgan Stanley shall establish a separate collateral account on its books and records (the “FX Collateral Account”) in order to process the daily bilateral exchange of Collateral (in the form of USD cash) between the FX Collateral Account and your prime brokerage account at Morgan Stanley (the “PB Account”) in connection with the Applicable FX Transactions.
- (b) Transfers. On each Business Day, Morgan Stanley shall calculate the value of the Applicable FX Transactions using such methods, procedures, rules, inputs and data sources that it deems appropriate in its commercially reasonable discretion. To the extent there are unrealized gains on the Applicable FX Transactions, Morgan Stanley shall credit the equivalent amount in USD cash to the PB Account, and make a corresponding debit in the FX Collateral Account. To the extent there are unrealized losses on the Applicable FX Transactions (and to the extent consistent with Applicable Law), Morgan Stanley shall debit the equivalent amount in USD cash from the PB Account, and make a corresponding credit in the FX Collateral Account.
- (c) Interest. The undersigned will pay interest on debits from, and will receive interest on credits to, the FX Collateral Account, at such rates as are established by Morgan Stanley from time to time.

2. LIQUIDATION. If an Event of Default occurs, Morgan Stanley, in addition to the rights enumerated in Section 8, shall have the right, to terminate and liquidate any or all outstanding FX Transactions between the parties. Morgan Stanley shall achieve such liquidation by (A) closing out each relevant FX Transaction and reasonably determining in good faith (i) market damages equal to the difference between the market value and the contract value of such FX Transaction and (ii) a settlement payment in an amount equal to the net amount of such damages; and (B) setting off the settlement payment, if any, that Morgan Stanley owes to the undersigned as a result of such liquidation and all Collateral or Collateral held by or for Morgan Stanley against the settlement payment that the undersigned owes to Morgan Stanley as a result of such liquidation, so that all such amounts are netted to a single liquidated amount payable in U.S. Dollars by one party to the other party, as appropriate. Morgan Stanley may, without limiting its rights hereunder, also set off amounts that the undersigned owes to any Morgan Stanley Entity under any other Obligations or owed by any Morgan Stanley Entity to the undersigned. Any amounts owed by the parties hereunder shall accrue interest or be discounted at such rates as Morgan Stanley shall determine.

3. FORCE MAJEURE EVENTS. (a) If a Force Majeure Event (as defined below) occurs with respect to any Deliverable FX Transaction and is still in effect, then (but subject to clause (b) below) either party may, by notice to the other party on any day or days after the Waiting Period (as defined below) expires, require the close-out and liquidation of the Obligations under any or all of the Affected FX Transactions (as defined below) in accordance with the provisions of Section 2 of these Additional Provisions Related to Currency Contracts and, Morgan Stanley shall perform the calculation required under such Section 2 in respect of all Affected FX Transactions which either party determines to liquidate. If a party elects to so liquidate less than all Affected FX Transactions, it may liquidate additional Affected FX Transactions on a later day or days if the relevant Force Majeure Event is still in effect.

(d) If the Settlement Date of a Deliverable FX Transaction which is an Affected FX Transaction under clause (a) above falls during the Waiting Period of the relevant Force Majeure Event, then such Settlement Date will be deferred to the first Business Day (or the first day which, but for such event, would have been a Business Day) after the end of that Waiting Period (or, in the case of split settlement, the first Local Banking Day (as defined below) or the first day which, but for such event, would have been a Local Banking Day, after the end of the Waiting Period). Compensation for this deferral shall be at then current market rates as determined in a commercially reasonable manner by Morgan Stanley under clause (a).

(e) If a Force Majeure Event has occurred, the Affected Party shall promptly give notice thereof to the other party. If an event occurs that would otherwise constitute both a Force Majeure Event and an event that would give Morgan Stanley rights under Section 8, that event will be treated as a Force Majeure Event.

(f) For purposes herein, "Force Majeure Event", on any day determined as if such day were a Settlement Date of a Deliverable FX Transaction (even if it is not), means (i) either party, by reason of force majeure or act of state, is prevented from or hindered or delayed in delivering or receiving, or it is impossible to deliver or receive, any currency in respect of an Obligation hereunder, and which event is beyond the control of such party and which such party, with reasonable diligence, cannot overcome, or (ii) it is unlawful for either party to deliver or receive a payment of any currency in respect of an Obligation hereunder. A party whose delivery or receipt of currency has been or would be so prevented, hindered or delayed or made unlawful or impossible is an "Affected Party", and a Deliverable FX Transaction under which performance has been or would be so prevented, hindered or delayed or made unlawful or impossible is an "Affected FX Transaction". Notwithstanding anything to the contrary in this Agreement or the FX Definitions, circumstances that may give rise, contractually or under law, to an illegality, impossibility or other force majeure event with respect to the Reference Currency of a Non-Deliverable FX Transaction shall have no effect on such transaction; provided, however, that such Non-Deliverable FX Transaction will be subject to such Disruption Events or Disruption Fallbacks as set forth in the relevant confirmations.

(g) For purposes herein, "Waiting Period", in respect of a Force Majeure Event, means the first three days after such event occurs which are Business Days or which, but for such event, would have been Business Days.

(h) For purposes herein, "Local Banking Day" means (i) for any currency, a day on which commercial banks effect deliveries of that currency in accordance with the market practice of the relevant foreign exchange market, and (ii) for any party, a day in the location of the applicable office of such party on which commercial banks in that location are not authorized or required by law to close.

4. NOTICES. The addresses for notices or communications relating to FX Transactions are:

For Morgan Stanley:

Morgan Stanley & Co. LLC

1585 Broadway, 3rd floor

New York, NY 10036-8293

Attention: Foreign Exchange Trading Department

Facsimile No.: 212-761-0296 Telephone No.: 212-761-2700

Swift Number: MSNYUS33FXO

Answerback: FXMS

5. MISCELLANEOUS. In the event of any inconsistency between the provisions of any confirmation relating to an FX Transaction and these Additional Provisions Related to Currency Contracts, such confirmation shall prevail for purposes of the relevant FX Transaction. In the event of any inconsistency between these Additional Provisions Related to Currency Contracts and the FX Definitions, these Additional Provisions Related to Currency Contracts shall prevail.

PROXY DISCLOSURE STATEMENT

Under the rules of the Securities and Exchange Commission, we are required, upon registrant's request, to provide your name, address and security positions to issuers of securities that you own. The issuer may use this information exclusively for purposes of corporate communications. _____(Check) **IF THIS BOX IS CHECKED, MORGAN STANLEY WILL DISCLOSE THE NAME AND ADDRESS INFORMATION FOR THE ACCOUNT ESTABLISHED BY THIS AGREEMENT TO ISSUERS OF SECURITIES WHICH I OWN.**

_____(Check) **YES, WE WOULD LIKE THE ADDITIONAL PROVISIONS RELATED TO CURRENCY CONTRACTS TO APPLY.**

NOTICE: THIS AGREEMENT CONTAINS A PRE-DISPUTE ARBITRATION CLAUSE IN SECTION [19] ON PAGE [8] HEREIN.

DATE: [Date]

ENTITY NAME, by its authorized signatory

MORGAN STANLEY & CO. LLC, on its own behalf
and on behalf of each Morgan Stanley Entity

By: _____
Name:
Title:

By: _____
Name:
Title:

Morgan Stanley

Margin Disclosure Document

Morgan Stanley is required to furnish this document to non-institutional accounts¹ to provide some basic facts about purchasing securities on margin, and to describe the risks involved with trading securities in a margin account. You should carefully review this document and the margin agreement governing your account.² If you have any questions, please consult with your account representative.

When you purchase securities, you may pay for the securities in full or you may borrow part of the purchase price from us. If you choose to borrow funds from Morgan Stanley, you will open a margin account with us. The securities in your account are the Firm's collateral for the loan to you. If the securities in your account decline in value, so does the value of the collateral supporting your loan. As a result, the Firm can take action such as issuing a margin call and/or selling securities or other assets in any of your accounts held with the Firm in order to maintain the required equity in the account.

It is important that you fully understand the risks in trading securities in margin. These risks include, but are not limited to the following:

- **You can lose more funds than you deposit in the margin account.**
A decline in the value of securities that are purchased on margin may require you to provide additional funds to the Firm to avoid the forced sale of those securities or other securities or assets in your account(s).
- **The Firm can force the sale of securities or other assets in your account(s).**
If the equity in your account falls below the maintenance margin requirements or the Firm's higher "house" requirements, the Firm can sell the securities or other assets in any of your accounts held at the Firm to cover the margin deficiency. You will also be responsible for any short fall in the account after such a sale.
- **The Firm can sell your securities or other assets without contacting you.**
While Morgan Stanley may attempt to notify you of margin calls, we are not required to do so. Furthermore, even if we contacted you and provided a specific date by which you can meet a margin call, we can still take necessary steps to protect our financial interests, including immediately selling the securities without notice to you.
- **You are not entitled to choose which securities or other assets in your account(s) are liquidated or sold to meet a margin call.**
Because the securities are collateral for the margin loan, the Firm has the right to decide which securities to sell in order to protect its interests.
- **The Firm can increase its "house" maintenance margin requirements at any time and is not required to provide you with advanced written notice.**
These changes in Firm policy often take effect immediately and may result in the issuance of a maintenance margin call. Your failure to satisfy the call may require us to liquidate or sell securities in your account(s).
- **You are not entitled to an extension of time on a margin call.**
While an extension of time to meet a margin requirement may be available to you under certain conditions, you do not have the right to the extension.

¹Non-institutional accounts are defined as other than: (1) a bank, savings and loan association, insurance company, or registered investment company; (2) an investment adviser registered either with the SEC under section 203 of the Investment Advisors Act of 1940 or with a state securities commission (or agency or office performing similar functions); or (3) any other entity (whether a natural person, corporation, partnership, trust, or otherwise) with total assets of at least \$50 million. If you do not meet this definition, Morgan Stanley is not required to send this notice to you.

²In the event of any conflict between this document and any agreements that you have with Morgan Stanley, the latter will govern.



MARGIN CUSTOMER ONLY

CREDIT CHARGE AND MARGIN INFORMATION

Dear Customer:

We wish to inform you of certain procedures regarding interest charges on credit extended for the financing of margin and other securities transactions.

Interest charges and determination of debit balance. Interest will be charged on the net debit balance (as described below) in your account which is comprised of all credit extended to or maintained for your account by us for the purpose of purchasing, carrying or trading in any security or otherwise. Extension or maintenance of credit is governed by, and loan value is based on Regulation T of the board of Governors of the Federal Reserve System and any exchange or self-regulatory agency to whose jurisdiction we are subject. Each extension of credit creates or increases the debit balance upon which interest is charged. Interest will be computed on the net debit balance in your account across all types marked daily to market.

Net debit balances used for interest purposes. The net debit balance is calculated daily to include the credit extended to you across your cash or margin account and 5% of the market value in the short account as that value relates to the sale of non-U.S. securities. In effect, the interest is calculated off the total cash balance in your account (including short sale proceeds) minus 100% of the short market value of your U.S. securities and 105% of the short market value of your non-U.S. securities. Both of these short market values are rounded up to the nearest nickel.

Interest rate. The annual rate of interest charged on your daily net debit balance consists of the base rate as agreed upon between us, which may be a published rate (such as Fed Funds) or the Prime Broker Rate. The daily determination of the Prime Broker Rate is at our sole discretion and may be affected by such rates as those published by The Wall Street Journal, The New York Times and other sources recognized in the industry to be reliable indications of comparable rates for such loans.

Any change in the base rates will result in a corresponding change in the interest rate charged in your account which change will be made without notice to you. However, should we find it necessary to increase the interest rate for any other reason, you will be given at least thirty days written notice prior to such change. The percentages that are added to our base rate may be varied in individual situations at our discretion. Each affected customer will receive prior notification thereof.

What your monthly statement will show. Your monthly statement will show all debit and credit entries for the period and the dates of such entries, the actual debit balance upon which interest is computed, the daily interest rates, the beginning and ending dates of the interest period, the opening and closing interest balances for the period, and the total interest charged for the period. Your net debit balance includes interest charged to your account from prior interest periods which you have not paid.

Interest, which is calculated daily and usually posted on the first Business Day of the following month, is reflected in the monthly statement of account. You should retain the previous monthly statement in order to verify the amount of interest payable on your account.

The following example is presented for the purpose of more clearly stating the method by which interest is computed using the daily net debit balance for the interest period.

HOW TO COMPUTE INTEREST

<u>From</u>	<u>To</u>	<u>Net Debit</u> <u>(Credit)</u>	<u>Effective</u> <u>Rate</u>	<u>Number</u> <u>of Days</u>	<u>Total Interest</u>
7/1	7/10	\$ 10,000	7.00%	10	\$19.44
7/11	7/28	\$ 30,000	6.25%	18	\$93.74
7/29	7/30	(\$50,000)	5.75%	2	(\$15.97)
7/31		(\$100,000)	5.50%	<u>1</u>	<u>(\$15.27)</u>
	Total:			<u>31</u>	<u>\$81.94</u>

Mark to the market. Where the aggregate market value of short positions increases, the balance in the short account type will be increased accordingly by crediting that account and debiting the margin account. Such entries which are processed periodically and commonly referred to as “mark to the market” affect the balance in the margin account. For interest purposes, this balance is adjusted daily for the mark to market on the short securities, as described above. Should the aggregate market value of the short positions later decrease, we would mark the account to the market to reflect the decrease.

Other Charges. Separate interest charges may be made and debit balances can arise from payments we make to you before the regular settlement date, or from your failure to pay for securities purchased in either a cash or margin account by settlement date.

Liens, additional collateral and general policies. On all securities which this firm or any affiliate has or at any time may hold or carry for you (either individually or jointly with others) or which may be deposited with us for any purpose, including safekeeping, we, as pledgee, have a general lien for the discharge of all your obligations to Morgan Stanley & Co. LLC (“Morgan Stanley”), however arising, irrespective of the number of accounts you maintain with Morgan Stanley or its affiliates. You will be required to deposit collateral in accordance with the rules and regulations of the Federal Reserve system, the New York Stock Exchange, Inc., or any other self-regulatory agency under whose jurisdiction we fall. Morgan Stanley has established “house” margin policies which generally require the maintenance of equity in your account above that required by applicable rules. Accordingly, Morgan Stanley may but need not, require you to deposit additional collateral as Morgan Stanley, in its sole discretion, determines is needed as security for your obligations to Morgan Stanley. In determining whether to require additional collateral, Morgan Stanley reviews each account individually and considers factors such as, but not limited to, marketability and volatility in relation to securities held, concentrations in particular issues, current market conditions, frequency of activity, size of account and length of time the account has been open. Although in your monthly statement Morgan Stanley may base the value of certain securities on pricing information supplied by outside pricing services¹, Morgan Stanley reserves the right in its sole discretion to value your securities at any time and without prior notice by reference to prices that reflect current market conditions obtained directly from our trading desks that deal in the securities, or from other sources. Please consult your broker or representative for additional information regarding Morgan Stanley’s margin policies.

Very truly yours,

MORGAN STANLEY & CO. LLC

¹ Morgan Stanley considers these services to be reliable, but we do not represent that they are accurate, complete or timely and we are not responsible for any inaccuracies or errors in the pricing service reports.

Annexure C



International Swap Dealers Association, Inc.

MASTER AGREEMENT

dated as of

..... and

have entered and/or anticipate entering into one or more transactions (each a “Transaction”) that are or will be governed by this Master Agreement, which includes the schedule (the “Schedule”), and the documents and other confirming evidence (each a “Confirmation”) exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows: —

1. Interpretation

- (a) **Definitions.** The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this “Agreement”), and the parties would not otherwise enter into any Transactions.

2. Obligations

(a) General Conditions.

- (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
- (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.
- (iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) ***Change of Account.*** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) ***Netting.*** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) ***Deduction or Withholding for Tax.***

(i) ***Gross-Up.*** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If: —

- (1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);
- (2) X does not so deduct or withhold; and
- (3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(e) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:—

(a) **Basic Representations.**

- (i) **Status.** It is 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;
- (ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;
- (iii) **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;
- (iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
- (v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party 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)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:—

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated,

organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located (“Stamp Tax Jurisdiction”) and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party’s execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an “Event of Default”) with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If “Cross Default” is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however

described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party: —

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer: —

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Tax Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event

Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:—

- (i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party): —
 - (1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or
 - (2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;
 - (ii) **Tax Event.** Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));
 - (iii) **Tax Event Upon Merger.** The party (the “Burdened Party”) on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);
 - (iv) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, such party (“X”), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or
 - (v) **Additional Termination Event.** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).
- (c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the “Defaulting Party”) has occurred and is then continuing, the other party (the “Non-defaulting Party”) may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, “Automatic Early Termination” is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Transfer to Avoid Termination Event.** If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party’s policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) **Right to Terminate.** If: —

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then

continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) ***Calculations.***

(i) ***Statement.*** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) ***Payment Date.*** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) ***Payments on Early Termination.*** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) ***Events of Default.*** If the Early Termination Date results from an Event of Default: —

(1) ***First Method and Market Quotation.*** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) ***First Method and Loss.*** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) ***Second Method and Market Quotation.*** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the

Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss*. If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) **Termination Events**. If the Early Termination Date results from a Termination Event: —

(1) *One Affected Party*. If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties*. If there are two Affected Parties: —

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) **Adjustment for Bankruptcy**. In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate**. The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that: —

- (a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and
- (b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

8. Contractual Currency

(a) ***Payment in the Contractual Currency.*** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the “Contractual Currency”). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) ***Judgments.*** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term “rate of exchange” includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

(c) ***Separate Indemnities.*** To the extent permitted by applicable law, these indemnities constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) ***Evidence of Loss.*** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

9. Miscellaneous

- (a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.
- (b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.
- (c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.
- (d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.
- (e) **Counterparts and Confirmations.**
 - (i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
 - (ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.
- (f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this 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.
- (g) **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.

10. Offices; Multibranch Parties

- (a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.
- (b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.
- (c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document

to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

12. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) 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 telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date that transmission 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);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (v) if sent by electronic messaging system, on the date that electronic message is received,

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 shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

13. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:—

- (i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or 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, if this Agreement is expressed to be governed by the laws of the State of New York; and
- (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.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Service of Process.** Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any

reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by law.

(d) ***Waiver of Immunities.*** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

14. Definitions

As used in this Agreement:—

“Additional Termination Event” has the meaning specified in Section 5(b).

“Affected Party” has the meaning specified in Section 5(b).

“Affected Transactions” means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

“Affiliate” means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

“Applicable Rate” means:—

- (a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;
- (b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;
- (c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and
- (d) in all other cases, the Termination Rate.

“Burdened Party” has the meaning specified in Section 5(b).

“Change in Tax Law” means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

“consent” includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

“Credit Event Upon Merger” has the meaning specified in Section 5(b).

“Credit Support Document” means any agreement or instrument that is specified as such in this Agreement.

“Credit Support Provider” has the meaning specified in the Schedule.

“Default Rate” means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

“Defaulting Party” has the meaning specified in Section 6(a).

“Early Termination Date” means the date determined in accordance with Section 6(a) or 6(b)(iv).

“Event of Default” has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

“Illegality” has the meaning specified in Section 5(b).

“Indemnifiable Tax” means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

“law” includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and **“lawful”** and **“unlawful”** will be construed accordingly.

“Local Business Day” means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

“Loss” means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party’s legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

“Market Quotation” means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the “Replacement Transaction”) that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have

been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

“Non-default Rate” means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

“Non-defaulting Party” has the meaning specified in Section 6(a).

“Office” means a branch or office of a party, which may be such party’s head or home office.

“Potential Event of Default” means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“Reference Market-makers” means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

“Relevant Jurisdiction” means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

“Scheduled Payment Date” means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

“Set-off” means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

“Settlement Amount” means, with respect to a party and any Early Termination Date, the sum of: —

(a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party’s Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

“Specified Entity” has the meanings specified in the Schedule.

“Specified Indebtedness” means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

“Specified Transaction” means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

“Stamp Tax” means any stamp, registration, documentation or similar tax.

“Tax” means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

“Tax Event” has the meaning specified in Section 5(b).

“Tax Event Upon Merger” has the meaning specified in Section 5(b).

“Terminated Transactions” means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if “Automatic Early Termination” applies, immediately before that Early Termination Date).

“Termination Currency” has the meaning specified in the Schedule.

“Termination Currency Equivalent” means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the “Other Currency”), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

“Termination Event” means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

“Termination Rate” means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

“Unpaid Amounts” owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market

value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

..... (Name of Party) (Name of Party)
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:



International Swap Dealers Association, Inc.

**SCHEDULE
to the
Master Agreement**

dated as of

between and
("Party A") ("Party B")

Part 1. Termination Provisions.

(a) ***"Specified Entity"*** means in relation to Party A for the purpose of: —

Section 5(a)(v),
Section 5(a)(vi),
Section 5(a)(vii),
Section 5(b)(iv),

and in relation to Party B for the purpose of:—

Section 5(a)(v),
Section 5(a)(vi),
Section 5(a)(vii),
Section 5(b)(iv),

(b) ***"Specified Transaction"*** will have the meaning specified in Section 14 of this Agreement unless
another meaning is specified here
.....
.....

(c) The ***"Cross Default"*** provisions of Section 5(a)(vi) will/will not * apply to Party A
will/will not * apply to Party B

If such provisions apply:—

"Specified Indebtedness" will have the meaning specified in Section 14 of this Agreement unless
another meaning is specified here
.....

* Delete as applicable.

“Threshold Amount” means
.....

- (d) The **“Credit Event Upon Merger”** provisions of Section 5(b)(iv) will/will not * apply to Party A
will/will not * apply to Party B
- (e) The **“Automatic Early Termination”** provision of Section 6(a) will/will not * apply to Party A
will/will not * apply to Party B
- (f) **Payments on Early Termination.** For the purpose of Section 6(e) of this Agreement: —
(i) Market Quotation/Loss * will apply.
(ii) The First Method/The Second Method * will apply.
- (g) **“Termination Currency”** means, if such currency is specified and
freely available, and otherwise United States Dollars.
- (h) **Additional Termination Event** will/will not apply*. The following shall constitute an Additional
Termination Event: —
.....
.....
.....
.....
.....
.....

For the purpose of the foregoing Termination Event, the Affected Party or Affected Parties shall be: — ...
.....

Part 2. Tax Representations.

- (a) **Payer Representations.** For the purpose of Section 3(e) of this Agreement, Party A will/will not* make the
following representation and Party B will/will not* make the following representation: —
It is not required by any applicable law, as modified by the practice of any relevant governmental revenue
authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax
from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e) of this Agreement) to be made
by it to the other party under this Agreement. In making this representation, it may rely on (i) the accuracy
of any representations made by the other party pursuant to Section 3(f) of this Agreement, (ii) the
satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy
and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of
this Agreement and (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of
this Agreement, *provided* that it shall not be a breach of this representation where reliance is placed on
clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of
material prejudice to its legal or commercial position.
- (b) **Payee Representations.** For the purpose of Section 3(f) of this Agreement, Party A and Party B make the
representations specified below, if any:
(i) The following representation will/will not* apply to Party A and will/will not apply to Party B: —
It is fully eligible for the benefits of the “Business Profits” or “Industrial and Commercial Profits”
provision, as the case may be, the “Interest” provision or the “Other Income” provision (if any) of the
Specified Treaty with respect to any payment described in such provisions and received or to be received

* Delete as applicable.

by it in connection with this Agreement and no such payment is attributable to a trade or business carried on by it through a permanent establishment in the Specified Jurisdiction.

If such representation applies, then: —

“Specified Treaty” means with respect to Party A

“Specified Jurisdiction” means with respect to Party A

“Specified Treaty” means with respect to Party B

“Specified Jurisdiction” means with respect to Party B

(ii) The following representation will/will not* apply to Party A and will/will not* apply to Party B: —

Each payment received or to be received by it in connection with this Agreement will be effectively connected with its conduct of a trade or business in the Specified Jurisdiction.

If such representation applies, then: —

“Specified Jurisdiction” means with respect to Party A

“Specified Jurisdiction” means with respect to Party B

(iii) The following representation will/will not* apply to Party A and will/will not* apply to Party B: —

(A) It is entering into each Transaction in the ordinary course of its trade as, and is, either (1) a recognised U.K. bank or (2) a recognised U.K. swaps dealer (in either case (1) or (2), for purposes of the United Kingdom Inland Revenue extra statutory concession C17 on interest and currency swaps dated March 14, 1989), and (B) it will bring into account payments made and received in respect of each Transaction in computing its income for United Kingdom tax purposes.

(iv) Other Payee Representations: —

.....

.....

.....

N.B. The above representations may need modification if either party is a Multibranch Party.

* Delete as applicable.

Part 3. Agreement to Deliver Documents.

For the purpose of Sections 4(a)(i) and (ii) of this Agreement, each party agrees to deliver the following documents, as applicable: —

(a) Tax forms, documents or certificates to be delivered are: —

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered
.....
.....
.....
.....
.....

(b) Other documents to be delivered are: —

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
.....	Yes/No*
.....	Yes/No*
.....	Yes/No*
.....	Yes/No*
.....	Yes/No*

Part 4. Miscellaneous.

(a) *Addresses for Notices.* For the purpose of Section 12(a) of this Agreement: —

Address for notices or communications to Party A: —

Address:

Attention:

Telex No.: Answerback:

Facsimile No.: Telephone No:

Electronic Messaging System Details:

Address for notices or communications to Party B: —

Address:

Attention:

Telex No.: Answerback:

* Delete as applicable.

Facsimile No.: Telephone No.:

Electronic Messaging System Details:

- (b) **Process Agent.** For the purpose of Section 13(c) of this Agreement: —

Party A appoints as its Process Agent

Party B appoints as its Process Agent

- (c) **Offices.** The provisions of Section 10(a) will/will not* apply to this Agreement.

- (d) **Multibranch Party.** For the purpose of Section 10(c) of this Agreement: —

Party A is/is not* a Multibranch Party and, if so, may act through the following Offices: —

.....
.....

Party B is/is not* a Multibranch Party and, if so, may act through the following Offices: —

.....
.....

- (e) **Calculation Agent.** The Calculation Agent is, unless otherwise specified in a Confirmation in relation to the relevant Transaction.

- (f) **Credit Support Document.** Details of any Credit Support Document: —

.....
.....
.....

- (g) **Credit Support Provider.** Credit Support Provider means in relation to Party A,

.....
.....

Credit Support Provider means in relation to Party B,

.....
.....

- (h) **Governing Law.** This Agreement will be governed by and construed in accordance with English law/the laws of the State of New York (without reference to choice of law doctrine) *.

* Delete as applicable.

(i) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will not apply to the following Transactions or groups of Transactions (in each case starting from the date of this Agreement/in each case starting from *)
.....
.....

(j) **“Affiliate”** will have the meaning specified in Section 14 of this Agreement unless another meaning is specified here
.....
.....

Part 5. Other Provisions.

* Delete as applicable.



International Swaps and Derivatives Association, Inc.

2002 MASTER AGREEMENT

dated as of [To be specified at execution]

**MORGAN STANLEY & CO.
INTERNATIONAL PLC**

and

[Counterparty Name]

have entered and/or anticipate entering into one or more transactions (each a “Transaction”) that are or will be governed by this 2002 Master Agreement, which includes the schedule (the “Schedule”), and the documents and other confirming evidence (each a “Confirmation”) exchanged between the parties or otherwise effective for the purpose of confirming or evidencing those Transactions. This 2002 Master Agreement and the Schedule are together referred to as this “Master Agreement”.

Accordingly, the parties agree as follows:—

1. Interpretation

- (a) **Definitions.** The terms defined in Section 14 and elsewhere in this Master Agreement will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement, such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this “Agreement”), and the parties would not otherwise enter into any Transactions.

2. Obligations

- (a) **General Conditions.**
 - (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
 - (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other condition specified in this Agreement to be a condition precedent for the purpose of this Section 2(a)(iii).

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the Scheduled Settlement Date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting of Payments.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by which the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount and payment obligation will be determined in respect of all amounts payable on the same date in the same currency in respect of those Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or any Confirmation by specifying that "Multiple Transaction Payment Netting" applies to the Transactions identified as being subject to the election (in which case clause (ii) above will not apply to such Transactions). If Multiple Transaction Payment Netting is applicable to Transactions, it will apply to those Transactions with effect from the starting date specified in the Schedule or such Confirmation, or, if a starting date is not specified in the Schedule or such Confirmation, the starting date otherwise agreed by the parties in writing. This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) **Deduction or Withholding for Tax.**

(i) **Gross-Up.** All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will—

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and

(4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:—

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) **Liability.** If:—

(1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(4);

(2) X does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

3. Representations

Each party makes the representations contained in Sections 3(a), 3(b), 3(c), 3(d), 3(e) and 3(f) and, if specified in the Schedule as applying, 3(g) to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement). If any “Additional Representation” is specified in the Schedule or any Confirmation as applying, the party or parties specified for such Additional Representation will make and, if applicable, be deemed to repeat such Additional Representation at the time or times specified for such Additional Representation.

(a) **Basic Representations.**

(i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorize such execution, delivery and performance;

- (iii) **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;
 - (iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and
 - (v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party 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)).
- (b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.
- (c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it, any of its Credit Support Providers or any of its applicable Specified Entities any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.
- (d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.
- (e) **Payer Tax Representation.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.
- (f) **Payee Tax Representations.** Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.
- (g) **No Agency.** It is entering into this Agreement, including each Transaction, as principal and not as agent of any person or entity.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

- (a) **Furnish Specified Information.** It will deliver to the other party or, in certain cases under clause (iii) below, to such government or taxing authority as the other party reasonably directs:—
 - (i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;
 - (ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorisations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply With Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

(d) **Tax Agreement.** It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) **Payment of Stamp Tax.** Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated, organised, managed and controlled or considered to have its seat, or where an Office through which it is acting for the purpose of this Agreement is located (“Stamp Tax Jurisdiction”), and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party’s execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes (subject to Sections 5(c) and 6(e)(iv)) an event of default (an “Event of Default”) with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) required to be made by it if such failure is not remedied on or before the first Local Business Day in the case of any such payment or the first Local Delivery Day in the case of any such delivery after, in each case, notice of such failure is given to the party;

(ii) **Breach of Agreement; Repudiation of Agreement.**

(1) Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 9(h)(i)(2) or (4) or to give notice of a Termination Event or any agreement or obligation under Section 4(a)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied within 30 days after notice of such failure is given to the party; or

(2) the party disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, this Master Agreement, any Confirmation executed and delivered by that party or any

Transaction evidenced by such a Confirmation (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iii) ***Credit Support Default.***

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document, or any security interest granted by such party or such Credit Support Provider to the other party pursuant to any such Credit Support Document, to be in full force and effect for the purpose of this Agreement (in each case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(iv) ***Misrepresentation.*** A representation (other than a representation under Section 3(e) or 3(f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) ***Default Under Specified Transaction.*** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) defaults (other than by failing to make a delivery) under a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction;

(2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment due on the last payment or exchange date of, or any payment on early termination of, a Specified Transaction (or, if there is no applicable notice requirement or grace period, such default continues for at least one Local Business Day);

(3) defaults in making any delivery due under (including any delivery due on the last delivery or exchange date of) a Specified Transaction or any credit support arrangement relating to a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, such default results in a liquidation of, an acceleration of obligations under, or an early termination of, all transactions outstanding under the documentation applicable to that Specified Transaction; or

(4) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, a Specified Transaction or any credit support arrangement relating to a Specified Transaction that is, in either case, confirmed or evidenced by a document or other confirming evidence executed and delivered by that party, Credit Support Provider or Specified Entity (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross-Default.** If “Cross-Default” is specified in the Schedule as applying to the party, the occurrence or existence of:—

(1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) where the aggregate principal amount of such agreements or instruments, either alone or together with the amount, if any, referred to in clause (2) below, is not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments before it would otherwise have been due and payable; or

(2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments under such agreements or instruments on the due date for payment (after giving effect to any applicable notice requirement or grace period) in an aggregate amount, either alone or together with the amount, if any, referred to in clause (1) above, of not less than the applicable Threshold Amount;

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4)(A) institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organization or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official, or (B) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and such proceeding or petition is instituted or presented by a person or entity not described in clause (A) above and either (I) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (II) is not dismissed, discharged, stayed or restrained in each case within 15 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) above (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganizes, reincorporates or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganization, reincorporation or reconstitution:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes (subject to Section 5(c)) an Illegality if the event is specified in clause (i) below, a Force Majeure Event if the event is specified in clause (ii) below, a Tax Event if the event is specified in clause (iii) below, a Tax Event Upon Merger if the event is specified in clause (iv) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to clause (v) below or an Additional Termination Event if the event is specified pursuant to clause (vi) below:—

(i) **Illegality.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, due to an event or circumstance (other than any action taken by a party or, if applicable, any Credit Support Provider of such party) occurring after a Transaction is entered into, it becomes unlawful under any applicable law (including without limitation the laws of any country in which payment, delivery or compliance is required by either party or any Credit Support Provider, as the case may be), on any day, or it would be unlawful if the relevant payment, delivery or compliance were required on that day (in each case, other than as a result of a breach by the party of Section 4(b)):—

(1) for the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction to perform any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) for such party or any Credit Support Provider of such party (which will be the Affected Party) to perform any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, to receive a payment or delivery under such Credit Support Document or to comply with any other material provision of such Credit Support Document;

(ii) **Force Majeure Event.** After giving effect to any applicable provision, disruption fallback or remedy specified in, or pursuant to, the relevant Confirmation or elsewhere in this Agreement, by reason of force majeure or act of state occurring after a Transaction is entered into, on any day:—

(1) the Office through which such party (which will be the Affected Party) makes and receives payments or deliveries with respect to such Transaction is prevented from performing any absolute or contingent obligation to make a payment or delivery in respect of such Transaction, from receiving a payment or delivery in respect of such Transaction or from complying with any other material provision of this Agreement relating to such Transaction (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or

impracticable for such Office so to perform, receive or comply (or it would be impossible or impracticable for such Office so to perform, receive or comply if such payment, delivery or compliance were required on that day); or

(2) such party or any Credit Support Provider of such party (which will be the Affected Party) is prevented from performing any absolute or contingent obligation to make a payment or delivery which such party or Credit Support Provider has under any Credit Support Document relating to such Transaction, from receiving a payment or delivery under such Credit Support Document or from complying with any other material provision of such Credit Support Document (or would be so prevented if such payment, delivery or compliance were required on that day), or it becomes impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply (or it would be impossible or impracticable for such party or Credit Support Provider so to perform, receive or comply if such payment, delivery or compliance were required on that day),

so long as the force majeure or act of state is beyond the control of such Office, such party or such Credit Support Provider, as appropriate, and such Office, party or Credit Support Provider could not, after using all reasonable efforts (which will not require such party or Credit Support Provider to incur a loss, other than immaterial, incidental expenses), overcome such prevention, impossibility or impracticability;

(iii) **Tax Event.** Due to (1) any action taken by a taxing authority, or brought in a court of competent jurisdiction, after a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (2) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Settlement Date (A) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (B) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 9(h)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iv) **Tax Event Upon Merger.** The party (the “Burdened Party”) on the next succeeding Scheduled Settlement Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 9(h)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets (or any substantial part of the assets comprising the business conducted by it as of the date of this Master Agreement) to, or reorganizing, reincorporating or reconstituting into or as, another entity (which will be the Affected Party) where such action does not constitute a Merger Without Assumption;

(v) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, a Designated Event (as defined below) occurs with respect to such party, any Credit Support Provider of such party or any applicable Specified Entity of such party (in each case, “X”) and such Designated Event does not constitute a Merger Without Assumption, and the creditworthiness of X or, if applicable, the successor, surviving or transferee entity of X, after taking into account any applicable Credit Support Document, is materially weaker immediately after the occurrence of such Designated Event than that of X immediately prior to the occurrence of such Designated Event (and, in any such event, such party or its successor, surviving or transferee entity, as appropriate, will be the Affected Party). A “Designated Event” with respect to X means that:—

(1) X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets (or any substantial part of the assets comprising the business conducted by X as of the

date of this Master Agreement) to, or reorganizes, reincorporates or reconstitutes into or as, another entity;

(2) any person, related group of persons or entity acquires directly or indirectly the beneficial ownership of (A) equity securities having the power to elect a majority of the board of directors (or its equivalent) of X or (B) any other ownership interest enabling it to exercise control of X; or

(3) X effects any substantial change in its capital structure by means of the issuance, incurrence or guarantee of debt or the issuance of (A) preferred stock or other securities convertible into or exchangeable for debt or preferred stock or (B) in the case of entities other than corporations, any other form of ownership interest; or

(vi) **Additional Termination Event.** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties will be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) ***Hierarchy of Events.***

(i) An event or circumstance that constitutes or gives rise to an Illegality or a Force Majeure Event will not, for so long as that is the case, also constitute or give rise to an Event of Default under Section 5(a)(i), 5(a)(ii)(1) or 5(a)(iii)(1) insofar as such event or circumstance relates to the failure to make any payment or delivery or a failure to comply with any other material provision of this Agreement or a Credit Support Document, as the case may be.

(ii) Except in circumstances contemplated by clause (i) above, if an event or circumstance which would otherwise constitute or give rise to an Illegality or a Force Majeure Event also constitutes an Event of Default or any other Termination Event, it will be treated as an Event of Default or such other Termination Event, as the case may be, and will not constitute or give rise to an Illegality or a Force Majeure Event.

(iii) If an event or circumstance which would otherwise constitute or give rise to a Force Majeure Event also constitutes an Illegality, it will be treated as an Illegality, except as described in clause (ii) above, and not a Force Majeure Event.

(d) ***Deferral of Payments and Deliveries During Waiting Period.*** If an Illegality or a Force Majeure Event has occurred and is continuing with respect to a Transaction, each payment or delivery which would otherwise be required to be made under that Transaction will be deferred to, and will not be due until:—

(i) the first Local Business Day or, in the case of a delivery, the first Local Delivery Day (or the first day that would have been a Local Business Day or Local Delivery Day, as appropriate, but for the occurrence of the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event) following the end of any applicable Waiting Period in respect of that Illegality or Force Majeure Event, as the case may be; or

(ii) if earlier, the date on which the event or circumstance constituting or giving rise to that Illegality or Force Majeure Event ceases to exist or, if such date is not a Local Business Day or, in the case of a delivery, a Local Delivery Day, the first following day that is a Local Business Day or Local Delivery Day, as appropriate.

(e) ***Inability of Head or Home Office to Perform Obligations of Branch.*** If (i) an Illegality or a Force Majeure Event occurs under Section 5(b)(i)(1) or 5(b)(ii)(1) and the relevant Office is not the Affected Party’s head or home office, (ii) Section 10(a) applies, (iii) the other party seeks performance of the relevant obligation or

compliance with the relevant provision by the Affected Party's head or home office and (iv) the Affected Party's head or home office fails so to perform or comply due to the occurrence of an event or circumstance which would, if that head or home office were the Office through which the Affected Party makes and receives payments and deliveries with respect to the relevant Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and such failure would otherwise constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) with respect to such party, then, for so long as the relevant event or circumstance continues to exist with respect to both the Office referred to in Section 5(b)(i)(1) or 5(b)(ii)(1), as the case may be, and the Affected Party's head or home office, such failure will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1).

6. Early Termination; Close-Out Netting

(a) ***Right to Terminate Following Event of Default.*** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) ***Right to Terminate Following Termination Event.***

(i) ***Notice.*** If a Termination Event other than a Force Majeure Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction, and will also give the other party such other information about that Termination Event as the other party may reasonably require. If a Force Majeure Event occurs, each party will, promptly upon becoming aware of it, use all reasonable efforts to notify the other party, specifying the nature of that Force Majeure Event, and will also give the other party such other information about that Force Majeure Event as the other party may reasonably require.

(ii) ***Transfer to Avoid Termination Event.*** If a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, other than immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) ***Two Affected Parties.*** If a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice of such occurrence is given under Section 6(b)(i) to avoid that Termination Event.

(iv) ***Right to Terminate.***

(1) If:—

(A) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(B) a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there are two Affected Parties, or the Non-affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, if the relevant Termination Event is then continuing, by not more than 20 days notice to the other party, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(2) If at any time an Illegality or a Force Majeure Event has occurred and is then continuing and any applicable Waiting Period has expired:—

(A) Subject to clause (B) below, either party may, by not more than 20 days notice to the other party, designate (I) a day not earlier than the day on which such notice becomes effective as an Early Termination Date in respect of all Affected Transactions or (II) by specifying in that notice the Affected Transactions in respect of which it is designating the relevant day as an Early Termination Date, a day not earlier than two Local Business Days following the day on which such notice becomes effective as an Early Termination Date in respect of less than all Affected Transactions. Upon receipt of a notice designating an Early Termination Date in respect of less than all Affected Transactions, the other party may, by notice to the designating party, if such notice is effective on or before the day so designated, designate that same day as an Early Termination Date in respect of any or all other Affected Transactions.

(B) An Affected Party (if the Illegality or Force Majeure Event relates to performance by such party or any Credit Support Provider of such party of an obligation to make any payment or delivery under, or to compliance with any other material provision of, the relevant Credit Support Document) will only have the right to designate an Early Termination Date under Section 6(b)(iv)(2)(A) as a result of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2) following the prior designation by the other party of an Early Termination Date, pursuant to Section 6(b)(iv)(2)(A), in respect of less than all Affected Transactions.

(c) ***Effect of Designation.***

(i) If notice designating an Early Termination Date is given under Section 6(a) or 6(b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 9(h)(i) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date will be determined pursuant to Sections 6(e) and 9(h)(ii).

(d) ***Calculations; Payment Date.***

(i) ***Statement.*** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including any quotations, market data or information from internal sources used in making such calculations), (2) specifying (except where there are two Affected Parties) any Early Termination Amount payable and (3) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation or market data obtained in determining a Close-out Amount, the records of the party obtaining such quotation or market data will be conclusive evidence of the existence and accuracy of such quotation or market data.

(ii) ***Payment Date.*** An Early Termination Amount due in respect of any Early Termination Date will, together with any amount of interest payable pursuant to Section 9(h)(ii)(2), be payable (1) on the day on which notice of the amount payable is effective in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default and (2) on the day which is two Local Business Days after the day on which notice of the amount payable is effective (or, if there are two Affected Parties, after the day on which the statement provided pursuant to clause (i) above by the second party to provide such a statement is effective) in the case of an Early Termination Date which is designated as a result of a Termination Event.

(e) ***Payments on Early Termination.*** If an Early Termination Date occurs, the amount, if any, payable in respect of that Early Termination Date (the “Early Termination Amount”) will be determined pursuant to this Section 6(e) and will be subject to Section 6(f).

(i) ***Events of Default.*** If the Early Termination Date results from an Event of Default, the Early Termination Amount will be an amount equal to (1) the sum of (A) the Termination Currency Equivalent of the Close-out Amount or Close-out Amounts (whether positive or negative) determined by the Non-defaulting Party for each Terminated Transaction or group of Terminated Transactions, as the case may be, and (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (2) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If the Early Termination Amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of Early Termination Amount to the Defaulting Party.

(ii) ***Termination Events.*** If the Early Termination Date results from a Termination Event:—

(1) ***One Affected Party.*** Subject to clause (3) below, if there is one Affected Party, the Early Termination Amount will be determined in accordance with Section 6(e)(i), except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.

(2) ***Two Affected Parties.*** Subject to clause (3) below, if there are two Affected Parties, each party will determine an amount equal to the Termination Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an amount equal to (A) the sum of (I) one-half of the difference between the higher amount so determined (by party “X”) and lower amount so determined (by party “Y”) and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.

(3) **Mid-Market Events.** If that Termination Event is an Illegality or a Force Majeure Event, then the Early Termination Amount will be determined in accordance with clause (1) or (2) above, as appropriate, except that, for the purpose of determining a Close-out Amount or Close-out Amounts, the Determining Party will:—

(A) if obtaining quotations from one or more third parties (or from any of the Determining Party's Affiliates), ask each third party or Affiliate (I) not to take account of the current creditworthiness of the Determining Party or any existing Credit Support Document and (II) to provide mid-market quotations; and

(B) in any other case, use mid-market values without regard to the creditworthiness of the Determining Party.

(iii) **Adjustment for Bankruptcy.** In circumstances where an Early Termination Date occurs because Automatic Early Termination applies in respect of a party, Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Adjustment for Illegality or Force Majeure Event.** The failure by a party or any Credit Support Provider of such party to pay, when due, any Early Termination Amount will not constitute an Event of Default under Section 5(a)(i) or 5(a)(iii)(1) if such failure is due to the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event. Such amount will (1) accrue interest and otherwise be treated as an Unpaid Amount owing to the other party if subsequently an Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions and (2) otherwise accrue interest in accordance with Section 9(h)(ii)(2).

(v) **Pre-Estimate.** The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks, and, except as otherwise provided in this Agreement, neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions.

(f) **Set-Off.** Any Early Termination Amount payable to one party (the "Payee") by the other party (the "Payer"), in circumstances where there is a Defaulting Party or where there is one Affected Party in the case where either a Credit Event Upon Merger has occurred or any other Termination Event in respect of which all outstanding Transactions are Affected Transactions has occurred, will, at the option of the Non-defaulting Party or the Non-affected Party, as the case may be ("X") (and without prior notice to the Defaulting Party or the Affected Party, as the case may be), be reduced by its set-off against any other amounts ("Other Amounts") payable by the Payee to the Payer (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation). To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. X will give notice to the other party of any set-off effected under this Section 6(f).

For this purpose, either the Early Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency.

If an obligation is unascertained, X may in good faith estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) will be effective to create a charge or other security interest. This Section 6(f) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which any party is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise).

7. Transfer

Subject to Section 6(b)(ii) and to the extent permitted by applicable law, neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any Early Termination Amount payable to it by a Defaulting Party, together with any amounts payable on or with respect to that interest and any other rights associated with that interest pursuant to Sections 8, 9(h) and 11.

Any purported transfer that is not in compliance with this Section 7 will be void.

8. Contractual Currency

(a) ***Payment in the Contractual Currency.*** Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the “Contractual Currency”). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in good faith and using commercially reasonable procedures in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) ***Judgments.*** To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in clause (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purpose of such judgment or order and the rate of exchange at which such party is able, acting in good faith and using

commercially reasonable procedures in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party.

(c) **Separate Indemnities.** To the extent permitted by applicable law, the indemnities in this Section 8 constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) **Evidence of Loss.** For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

9. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. Each of the parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to 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.

(b) **Amendments.** An amendment, modification or waiver in respect of this Agreement will only be effective if in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) **Counterparts and Confirmations.**

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission and by electronic messaging system), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation will be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes, by an exchange of electronic messages on an electronic messaging system or by an exchange of e-mails, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex, electronic message or e-mail constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this 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

(g) **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.

(h) ***Interest and Compensation.***

(i) ***Prior to Early Termination.*** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction:—

(1) ***Interest on Defaulted Payments.*** If a party defaults in the performance of any payment obligation, it will, to the extent permitted by applicable law and subject to Section 6(c), pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (3)(B) or (C) below), at the Default Rate.

(2) ***Compensation for Defaulted Deliveries.*** If a party defaults in the performance of any obligation required to be settled by delivery, it will on demand (A) compensate the other party to the extent provided for in the relevant Confirmation or elsewhere in this Agreement and (B) unless otherwise provided in the relevant Confirmation or elsewhere in this Agreement, to the extent permitted by applicable law and subject to Section 6(c), pay to the other party interest (before as well as after judgment) on an amount equal to the fair market value of that which was required to be delivered in the same currency as that amount, for the period from (and including) the originally scheduled date for delivery to (but excluding) the date of actual delivery (and excluding any period in respect of which interest or compensation in respect of that amount is due pursuant to clause (4) below), at the Default Rate. The fair market value of any obligation referred to above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party that was entitled to take delivery.

(3) ***Interest on Deferred Payments.*** If:—

(A) a party does not pay any amount that, but for Section 2(a)(iii), would have been payable, it will, to the extent permitted by applicable law and subject to Section 6(c) and clauses (B) and (C) below, pay interest (before as well as after judgment) on that amount to the other party on demand (after such amount becomes payable) in the same currency as that amount, for the period from (and including) the date the amount would, but for Section 2(a)(iii), have been payable to (but excluding) the date the amount actually becomes payable, at the Applicable Deferral Rate;

(B) a payment is deferred pursuant to Section 5(d), the party which would otherwise have been required to make that payment will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the amount of the deferred payment to the other party on demand (after such amount becomes payable) in the same currency as the deferred payment, for the period from (and including) the date the amount would, but for Section 5(d), have been payable to (but excluding) the earlier of the date the payment is no longer deferred pursuant to Section 5(d) and the date during the deferral period upon which an Event of Default or Potential Event of Default with respect to that party occurs, at the Applicable Deferral Rate; or

(C) a party fails to make any payment due to the occurrence of an Illegality or a Force Majeure Event (after giving effect to any deferral period contemplated by clause (B) above), it will, to the extent permitted by applicable law, subject to Section 6(c) and for so long as the event or circumstance giving rise to that Illegality or Force Majeure Event

continues and no Event of Default or Potential Event of Default with respect to that party has occurred and is continuing, pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as the overdue amount, for the period from (and including) the date the party fails to make the payment due to the occurrence of the relevant Illegality or Force Majeure Event (or, if later, the date the payment is no longer deferred pursuant to Section 5(d)) to (but excluding) the earlier of the date the event or circumstance giving rise to that Illegality or Force Majeure Event ceases to exist and the date during the period upon which an Event of Default or Potential Event of Default with respect to that party occurs (and excluding any period in respect of which interest or compensation in respect of the overdue amount is due pursuant to clause (B) above), at the Applicable Deferral Rate.

(4) *Compensation for Deferred Deliveries.* If:—

(A) a party does not perform any obligation that, but for Section 2(a)(iii), would have been required to be settled by delivery;

(B) a delivery is deferred pursuant to Section 5(d); or

(C) a party fails to make a delivery due to the occurrence of an Illegality or a Force Majeure Event at a time when any applicable Waiting Period has expired,

the party required (or that would otherwise have been required) to make the delivery will, to the extent permitted by applicable law and subject to Section 6(c), compensate and pay interest to the other party on demand (after, in the case of clauses (A) and (B) above, such delivery is required) if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

(ii) ***Early Termination.*** Upon the occurrence or effective designation of an Early Termination Date in respect of a Transaction:—

(1) *Unpaid Amounts.* For the purpose of determining an Unpaid Amount in respect of the relevant Transaction, and to the extent permitted by applicable law, interest will accrue on the amount of any payment obligation or the amount equal to the fair market value of any obligation required to be settled by delivery included in such determination in the same currency as that amount, for the period from (and including) the date the relevant obligation was (or would have been but for Section 2(a)(iii) or 5(d)) required to have been performed to (but excluding) the relevant Early Termination Date, at the Applicable Close-out Rate.

(2) *Interest on Early Termination Amounts.* If an Early Termination Amount is due in respect of such Early Termination Date, that amount will, to the extent permitted by applicable law, be paid together with interest (before as well as after judgment) on that amount in the Termination Currency, for the period from (and including) such Early Termination Date to (but excluding) the date the amount is paid, at the Applicable Close-out Rate.

(iii) ***Interest Calculation.*** Any interest pursuant to this Section 9(h) will be calculated on the basis of daily compounding and the actual number of days elapsed.

10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to and agrees with the other party that, notwithstanding the place of booking or its jurisdiction of incorporation or organization, its obligations are the same in terms of recourse against it as if it had entered into the Transaction through its head or home office, except that a party will not have recourse to the head or home office of the other party in respect of any payment or delivery deferred pursuant to Section 5(d) for so long as the payment or delivery is so deferred. This representation and agreement will be deemed to be repeated by each party on each date on which the parties enter into a Transaction.

(b) If a party is specified as a Multibranch Party in the Schedule, such party may, subject to clause (c) below, enter into a Transaction through, book a Transaction in and make and receive payments and deliveries with respect to a Transaction through any Office listed in respect of that party in the Schedule (but not any other Office unless otherwise agreed by the parties in writing).

(c) The Office through which a party enters into a Transaction will be the Office specified for that party in the relevant Confirmation or as otherwise agreed by the parties in writing, and, if an Office for that party is not specified in the Confirmation or otherwise agreed by the parties in writing, its head or home office. Unless the parties otherwise agree in writing, the Office through which a party enters into a Transaction will also be the Office in which it books the Transaction and the Office through which it makes and receives payments and deliveries with respect to the Transaction. Subject to Section 6(b)(ii), neither party may change the Office in which it books the Transaction or the Office through which it makes and receives payments or deliveries with respect to a Transaction without the prior written consent of the other party.

11. Expenses

A Defaulting Party will on demand indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, execution fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

12. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner described below (except that a notice or other communication under Section 5 or 6 may not be given by electronic messaging system or e-mail) to the address or number or in accordance with the electronic messaging system or e-mail details provided (see the Schedule) 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 telex, on the date the recipient's answerback is received;

(iii) 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);

(iv) 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;

(v) if sent by electronic messaging system, on the date it is received; or

- (vi) if sent by e-mail, on the date it is delivered,

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 or e-mail details at which notices or other communications are to be given to it.

13. Governing Law and Jurisdiction

- (a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

- (b) **Jurisdiction.** With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Agreement ("Proceedings"), each party irrevocably:—

- (i) submits:—

(1) if this Agreement is expressed to be governed by English law, to (A) the non-exclusive jurisdiction of the English courts if the Proceedings do not involve a Convention Court and (B) the exclusive jurisdiction of the English courts if the Proceedings do involve a Convention Court; or

(2) if this Agreement is expressed to be governed by the laws of the State of New York, 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.

- (c) **Service of Process.** Each party irrevocably appoints the Process Agent, if any, specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12(a)(i), 12(a)(iii) or 12(a)(iv). Nothing in this Agreement will affect the right of either party to serve process in any other manner permitted by applicable law.

- (d) **Waiver of Immunities.** Each party irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

14. Definitions

As used in this Agreement:—

“Additional Representation” has the meaning specified in Section 3.

“Additional Termination Event” has the meaning specified in Section 5(b).

“Affected Party” has the meaning specified in Section 5(b).

“Affected Transactions” means (a) with respect to any Termination Event consisting of an Illegality, Force Majeure Event, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event (which, in the case of an Illegality under Section 5(b)(i)(2) or a Force Majeure Event under Section 5(b)(ii)(2), means all Transactions unless the relevant Credit Support Document references only certain Transactions, in which case those Transactions and, if the relevant Credit Support Document constitutes a Confirmation for a Transaction, that Transaction) and (b) with respect to any other Termination Event, all Transactions.

“Affiliate” means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

“Agreement” has the meaning specified in Section 1(c).

“Applicable Close-out Rate” means:—

(a) in respect of the determination of an Unpaid Amount:—

(i) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(ii) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate;

(iii) in respect of obligations deferred pursuant to Section 5(d), if there is no Defaulting Party and for so long as the deferral period continues, the Applicable Deferral Rate; and

(iv) in all other cases following the occurrence of a Termination Event (except where interest accrues pursuant to clause (iii) above), the Applicable Deferral Rate; and

(b) in respect of an Early Termination Amount:—

(i) for the period from (and including) the relevant Early Termination Date to (but excluding) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable:—

(1) if the Early Termination Amount is payable by a Defaulting Party, the Default Rate;

(2) if the Early Termination Amount is payable by a Non-defaulting Party, the Non-default Rate;
and

(3) in all other cases, the Applicable Deferral Rate; and

(ii) for the period from (and including) the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable to (but excluding) the date of actual payment:—

(1) if a party fails to pay the Early Termination Amount due to the occurrence of an event or circumstance which would, if it occurred with respect to a payment or delivery under a Transaction, constitute or give rise to an Illegality or a Force Majeure Event, and for so long as the Early Termination Amount remains unpaid due to the continuing existence of such event or circumstance, the Applicable Deferral Rate;

(2) if the Early Termination Amount is payable by a Defaulting Party (but excluding any period in respect of which clause (1) above applies), the Default Rate;

(3) if the Early Termination Amount is payable by a Non-defaulting Party (but excluding any period in respect of which clause (1) above applies), the Non-default Rate; and

(4) in all other cases, the Termination Rate.

“Applicable Deferral Rate” means:—

(a) for the purpose of Section 9(h)(i)(3)(A), the rate certified by the relevant payer to be a rate offered to the payer by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market;

(b) for purposes of Section 9(h)(i)(3)(B) and clause (a)(iii) of the definition of Applicable Close-out Rate, the rate certified by the relevant payer to be a rate offered to prime banks by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the payer after consultation with the other party, if practicable, for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market; and

(c) for purposes of Section 9(h)(i)(3)(C) and clauses (a)(iv), (b)(i)(3) and (b)(ii)(1) of the definition of Applicable Close-out Rate, a rate equal to the arithmetic mean of the rate determined pursuant to clause (a) above and a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount.

“Automatic Early Termination” has the meaning specified in Section 6(a).

“Burdened Party” has the meaning specified in Section 5(b)(iv).

“Change in Tax Law” means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs after the parties enter into the relevant Transaction.

“Close-out Amount” means, with respect to each Terminated Transaction or each group of Terminated Transactions and a Determining Party, the amount of the losses or costs of the Determining Party that are or would be incurred under then prevailing circumstances (expressed as a positive number) or gains of the Determining Party that are or would be realized under then prevailing circumstances (expressed as a negative number) in replacing, or in providing for the Determining Party the economic equivalent of, (a) the material terms of that Terminated Transaction or group of Terminated Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of that Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in

Section 2(a)(iii)) and (b) the option rights of the parties in respect of that Terminated Transaction or group of Terminated Transactions.

Any Close-out Amount will be determined by the Determining Party (or its agent), which will act in good faith and use commercially reasonable procedures in order to produce a commercially reasonable result. The Determining Party may determine a Close-out Amount for any group of Terminated Transactions or any individual Terminated Transaction but, in the aggregate, for not less than all Terminated Transactions. Each Close-out Amount will be determined as of the Early Termination Date or, if that would not be commercially reasonable, as of the date or dates following the Early Termination Date as would be commercially reasonable.

Unpaid Amounts in respect of a Terminated Transaction or group of Terminated Transactions and legal fees and out-of-pocket expenses referred to in Section 11 are to be excluded in all determinations of Close-out Amounts.

In determining a Close-out Amount, the Determining Party may consider any relevant information, including, without limitation, one or more of the following types of information:—

- (i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;
- (ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or
- (iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party's Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

The Determining Party will consider, taking into account the standards and procedures described in this definition, quotations pursuant to clause (i) above or relevant market data pursuant to clause (ii) above unless the Determining Party reasonably believes in good faith that such quotations or relevant market data are not readily available or would produce a result that would not satisfy those standards. When considering information described in clause (i), (ii) or (iii) above, the Determining Party may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilized. Third parties supplying quotations pursuant to clause (i) above or market data pursuant to clause (ii) above may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers and other sources of market information.

Without duplication of amounts calculated based on information described in clause (i), (ii) or (iii) above, or other relevant information, and when it is commercially reasonable to do so, the Determining Party may in addition consider in calculating a Close-out Amount any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to a Terminated Transaction or group of Terminated Transactions (or any gain resulting from any of them).

Commercially reasonable procedures used in determining a Close-out Amount may include the following:—

- (1) application to relevant market data from third parties pursuant to clause (ii) above or information from internal sources pursuant to clause (iii) above of pricing or other valuation models that are, at the time of the determination of the Close-out Amount, used by the Determining Party in the regular course of its business in pricing or valuing transactions between the Determining Party and unrelated third parties that are similar to the Terminated Transaction or group of Terminated Transactions; and

(2) application of different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.

“Confirmation” has the meaning specified in the preamble.

“consent” includes a consent, approval, action, authorization, exemption, notice, filing, registration or exchange control consent.

“Contractual Currency” has the meaning specified in Section 8(a).

“Convention Court” means any court which is bound to apply to the Proceedings either Article 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters or Article 17 of the 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

“Credit Event Upon Merger” has the meaning specified in Section 5(b).

“Credit Support Document” means any agreement or instrument that is specified as such in this Agreement.

“Credit Support Provider” has the meaning specified in the Schedule.

“Cross-Default” means the event specified in Section 5(a)(vi).

“Default Rate” means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

“Defaulting Party” has the meaning specified in Section 6(a).

“Designated Event” has the meaning specified in Section 5(b)(v).

“Determining Party” means the party determining a Close-out Amount.

“Early Termination Amount” has the meaning specified in Section 6(e).

“Early Termination Date” means the date determined in accordance with Section 6(a) or 6(b)(iv).

“electronic messages” does not include e-mails but does include documents expressed in markup languages, and **“electronic messaging system”** will be construed accordingly.

“English law” means the law of England and Wales, and “English” will be construed accordingly.

“Event of Default” has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

“Force Majeure Event” has the meaning specified in Section 5(b).

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

“Illegality” has the meaning specified in Section 5(b).

“Indemnifiable Tax” means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

“law” includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority), and ***“unlawful”*** will be construed accordingly.

“Local Business Day” means (a) in relation to any obligation under Section 2(a)(i), a General Business Day in the place or places specified in the relevant Confirmation and a day on which a relevant settlement system is open or operating as specified in the relevant Confirmation or, if a place or a settlement system is not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) for the purpose of determining when a Waiting Period expires, a General Business Day in the place where the event or circumstance that constitutes or gives rise to the Illegality or Force Majeure Event, as the case may be, occurs, (c) in relation to any other payment, a General Business Day in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment and, if that currency does not have a single recognized principal financial centre, a day on which the settlement system necessary to accomplish such payment is open, (d) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), a General Business Day (or a day that would have been a General Business Day but for the occurrence of an event or circumstance which would, if it occurred with respect to payment, delivery or compliance related to a Transaction, constitute or give rise to an Illegality or a Force Majeure Event) in the place specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (e) in relation to Section 5(a)(v)(2), a General Business Day in the relevant locations for performance with respect to such Specified Transaction.

“Local Delivery Day” means, for purposes of Sections 5(a)(i) and 5(d), a day on which settlement systems necessary to accomplish the relevant delivery are generally open for business so that the delivery is capable of being accomplished in accordance with customary market practice, in the place specified in the relevant Confirmation or, if not so specified, in a location as determined in accordance with customary market practice for the relevant delivery.

“Master Agreement” has the meaning specified in the preamble.

“Merger Without Assumption” means the event specified in Section 5(a)(viii).

“Multiple Transaction Payment Netting” has the meaning specified in Section 2(c).

“Non-affected Party” means, so long as there is only one Affected Party, the other party.

“Non-default Rate” means the rate certified by the Non-defaulting Party to be a rate offered to the Non-defaulting Party by a major bank in a relevant interbank market for overnight deposits in the applicable currency, such bank to be selected in good faith by the Non-defaulting Party for the purpose of obtaining a representative rate that will reasonably reflect conditions prevailing at the time in that relevant market.

“Non-defaulting Party” has the meaning specified in Section 6(a).

“Office” means a branch or office of a party, which may be such party’s head or home office.

“Other Amounts” has the meaning specified in Section 6(f).

“Payee” has the meaning specified in Section 6(f).

“Payer” has the meaning specified in Section 6(f).

“Potential Event of Default” means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“Proceedings” has the meaning specified in Section 13(b).

“Process Agent” has the meaning specified in the Schedule.

“rate of exchange” includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

“Relevant Jurisdiction” means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

“Schedule” has the meaning specified in the preamble.

“Scheduled Settlement Date” means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

“Specified Entity” has the meaning specified in the Schedule.

“Specified Indebtedness” means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

“Specified Transaction” means, subject to the Schedule, (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is not a Transaction under this Agreement but (i) which is a rate swap transaction, swap option, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction or forward purchase or sale of a security, commodity or other financial instrument or interest (including any option with respect to any of these transactions) or (ii) which is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made, (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

“Stamp Tax” means any stamp, registration, documentation or similar tax.

“Stamp Tax Jurisdiction” has the meaning specified in Section 4(e).

“Tax” means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

“Tax Event” has the meaning specified in Section 5(b).

“Tax Event Upon Merger” has the meaning specified in Section 5(b).

“Terminated Transactions” means, with respect to any Early Termination Date, (a) if resulting from an Illegality or a Force Majeure Event, all Affected Transactions specified in the notice given pursuant to Section 6(b)(iv), (b) if resulting from any other Termination Event, all Affected Transactions and (c) if resulting from an Event of Default, all Transactions in effect either immediately before the effectiveness of the notice designating that Early Termination Date or, if Automatic Early Termination applies, immediately before that Early Termination Date.

“Termination Currency” means (a) if a Termination Currency is specified in the Schedule and that currency is freely available, that currency, and (b) otherwise, Euro if this Agreement is expressed to be governed by English law or United States Dollars if this Agreement is expressed to be governed by the laws of the State of New York.

“Termination Currency Equivalent” means, in respect of any amount denominated in the Termination Currency, such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the “Other Currency”), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Close-out Amount is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

“Termination Event” means an Illegality, a Force Majeure Event, a Tax Event, a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

“Termination Rate” means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

“Threshold Amount” means the amount, if any, specified as such in the Schedule.

“Transaction” has the meaning specified in the preamble.

“Unpaid Amounts” owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii) or due but for Section 5(d)) to such party under Section 2(a)(i) or 2(d)(i)(4) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date, (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii) or 5(d)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered and (c) if the Early Termination Date results from an Event of Default, a Credit Event Upon Merger or an Additional Termination Event in respect of which all outstanding Transactions are Affected Transactions, any Early Termination Amount due prior to such Early Termination Date and which remains unpaid as of such Early Termination Date, in each case together with any amount of interest accrued or other

compensation in respect of that obligation or deferred obligation, as the case may be, pursuant to Section 9(h)(ii)(1) or (2), as appropriate. The fair market value of any obligation referred to in clause (b) above will be determined as of the originally scheduled date for delivery, in good faith and using commercially reasonable procedures, by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it will be the average of the Termination Currency Equivalents of the fair market values so determined by both parties.

“Waiting Period” means:—

(a) in respect of an event or circumstance under Section 5(b)(i), other than in the case of Section 5(b)(i)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of three Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance; and

(b) in respect of an event or circumstance under Section 5(b)(ii), other than in the case of Section 5(b)(ii)(2) where the relevant payment, delivery or compliance is actually required on the relevant day (in which case no Waiting Period will apply), a period of eight Local Business Days (or days that would have been Local Business Days but for the occurrence of that event or circumstance) following the occurrence of that event or circumstance.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

**MORGAN STANLEY & CO. INTERNATIONAL
PLC**

[Counterparty Name]

By:.....

By:.....

Name:

Name:

Title:

Title:

Date:

Date:

SCHEDULE

to the

2002 MASTER AGREEMENT

dated as of [To be specified at execution]

between

MORGAN STANLEY & CO. INTERNATIONAL PLC

a public limited company duly organized under the laws of England and Wales

("Party A")

and

[Counterparty Name]

a [TBC] duly organized under the laws of [Jurisdiction]

("Party B")

acting through [Manager Name] (the "Investment Manager")

Part 1. Termination Provisions.

- (a) **"Specified Entity"** means in relation to Party A for the purpose of:

Section 5(a)(v) (Default Under Specified Transaction).....Affiliates

Section 5(a)(vi) (Cross Default) None Specified

Section 5(a)(vii) (Bankruptcy) None Specified

Section 5(b)(v) (Credit Event Upon Merger) None Specified

and in relation to Party B for the purpose of:

Section 5(a)(v) (Default Under Specified Transaction).....Affiliates

Section 5(a)(vi) (Cross Default) None Specified

Section 5(a)(vii) (Bankruptcy) None Specified

Section 5(b)(v) (Credit Event Upon Merger) None Specified

- (b) **"Specified Transaction"** means, in lieu of the meaning specified in Section 14, any contract or transaction, including an agreement with respect thereto (whether or not documented under or effected pursuant to a master agreement) now existing or hereafter entered into between one party to this Agreement (or any applicable Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any applicable Credit Support Provider of such party or any applicable Specified Entity of such party).

- (c) **Cross Default** applies to Party A and Party B.

"Specified Indebtedness" has the meaning specified in Section 14 of this Agreement.

"Threshold Amount" means, with respect to Party A an amount equal to USD 10,000,000 (or the equivalent in another currency, currency unit or combination thereof) and with respect to Party B an amount equal to USD 1,000,000 (or the equivalent in another currency, currency unit or combination thereof).

- (d) **Credit Event Upon Merger** will apply to Party A and will apply to Party B.

- (e) The **Automatic Early Termination** provision of Section 6(a) of this Agreement will not apply to Party A and will not apply to Party B.
- (f) **“Termination Currency”** means United States Dollars (“USD”).
- (g) **Additional Termination Event** will apply. Each of the following shall constitute an Additional Termination Event with respect to the party specified below:
 - (i) **Decline in Net Assets.** On any day, the Net Asset Value of Party B (as defined below) has declined by:
 - (A) 15% or more from the Net Asset Value of Party B calculated as of the end of the immediately preceding month; or
 - (B) 25% or more from the Net Asset Value of Party B calculated as of the end of the third preceding month; or
 - (C) 35% or more from the Net Asset Value of Party B calculated as of the end of the twelfth preceding month.

For the purposes of the foregoing Additional Termination Event, Party B shall be the sole Affected Party and all Transactions shall be Affected Transactions.

“Net Asset Value” of Party B shall mean an amount in USD equal to the total assets of Party B minus the total liabilities of Party B, calculated by Party B or by Party A in its reasonable judgment, in either case, in accordance with U.S. generally accepted accounting principles or international accounting standards (in the event Party B does not apply U.S. generally accepted accounting principles).

- (ii) **Failure to Provide Net Asset Value Calculation.**

Party B fails to provide its Net Asset Value information in accordance with the terms of Part 3 of this Schedule.

For the purposes of the foregoing Additional Termination Event, Party B shall be the sole Affected Party and all Transactions shall be Affected Transactions.

- (iii) **Breach of Investment Guideline Restrictions.**

There occurs a material and continuing breach of the restrictions applicable to Party B contained in the most recent prospectus issued by Party B.

For the purposes of the foregoing Additional Termination Event, Party B shall be the sole Affected Party and all Transactions shall be Affected Transactions.

Part 2. Representations.

- (a) **Party A and Party B Payer Tax Representations.** For the purpose of Section 3(e) of this Agreement, each of Party A and Party B makes the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 9(h) of this Agreement) to be made by it to the other party under this Agreement. In making this representation, it may rely on: (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of this Agreement; (ii) the satisfaction of the agreement contained in Sections 4(a)(i) or 4(a)(iii) of this Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Sections 4(a)(i) or 4(a)(iii) of this Agreement; and (iii) the satisfaction of the agreement of the other

party contained in Section 4(d) of this Agreement, except that it will not be a breach of this representation where reliance is placed on clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) of this Agreement by reason of material prejudice to its legal or commercial position.

(b) **Party A and Party B Payee Tax Representations.**

- (i) For the purpose of Section 3(f) of this Agreement, Party A makes the following representation:

It is a public limited company duly organized under the laws of England and Wales.

- (ii) For the purpose of Section 3(f) of this Agreement, Party B makes the following representation:

It is a [TBC] duly organized under the laws of [Jurisdiction].

Part 3. Agreement to Deliver Documents.

For the purpose of Sections 4(a)(i) and (ii) of this Agreement, each party agrees to deliver the following documents, as applicable:

- (a) Tax forms, documents or certificates to be delivered are:

Party required to deliver <u>document</u>	<u>Form/Document/Certificate</u>	<u>Date by which to be delivered</u>
Party B	An executed United States Internal Revenue Service Form W-8IMY (or any successor thereto) and any required supporting documentation.	(i) Upon the execution of this Agreement; (ii) promptly upon reasonable demand by Party A; and (iii) promptly upon any Form W-8IMY (or any successor thereto) and any required supporting documentation previously provided by Party B becoming obsolete, incorrect or expired.

- (b) Other documents to be delivered are:

Party required to deliver <u>document</u>	<u>Form/Document/Certificate</u>	<u>Date by which to be delivered</u>	<u>Covered by Section 3(d) Representation</u>
Party A and Party B	Either (i) a signature booklet containing a secretary's certificate and resolutions ("authorizing resolutions") or (ii) other authority documentation, in either case, which (x) authorizes the party to enter into derivatives transactions of the type contemplated by the parties and (y) is reasonably satisfactory in form and substance to the other party.	The earlier of (i) the fifth Local Business Day after the trade date of the first Transaction and (ii) upon execution of this Agreement and as deemed necessary for any further documentation.	Yes

Party A and Party B	Certified copies of documents evidencing each party's capacity to execute this Agreement, each Confirmation and any Credit Support Document (if applicable) and to perform its obligations hereunder and thereunder.	Upon the execution of this Agreement, and, with respect to a Confirmation, upon the other party's request.	Yes
Party A	A copy of the annual report of Party A (or of its Credit Support Provider, if any) containing audited consolidated financial statements for each such fiscal year, certified by independent certified public accountants and prepared in accordance with generally accepted accounting principles in the country in which such party is organized; provided however that Party A shall not be required to deliver such annual report if it is publicly available at www.morganstanley.com , or at www.sec.gov .	As soon as practicable after the execution of this Agreement and also within 120 calendar days after the end of each fiscal year while there are any obligations outstanding under this Agreement.	Yes
Party B	A copy of the annual report of such party containing audited consolidated financial statements for each such fiscal year, certified by independent certified public accountants and prepared in accordance with generally accepted accounting principles in the country in which such party is organized.	As soon as practicable after the execution of this Agreement and also within 120 calendar days after the end of each fiscal year while there are any obligations outstanding under this Agreement.	Yes
Party B	Evidence satisfactory to Party A that the Process Agent designated by Party B pursuant to Part 4(b) of this Schedule has agreed to act as such in respect of this Agreement.	Upon request from Party A.	No
Party B	A certificate or report of a responsible officer of Party B, or the Investment Manager, stating: (A) the Net Asset Value of Party B as of the last day of the most recently ended calendar month, and (B) the estimate of the Net Asset Value of Party B as of the close of business on the most recent Local Business Day presented or determined in the form or manner customarily employed to inform Party B's investors of its Net Asset Value, each of which may be delivered by email to:	For the purposes of (A): within 10 calendar days after the end of each such calendar month, and for the purposes of (B): within 2 Local Business Days following the request of Party A.	Yes

hkhedgefunds@morganstanley.com.

Party B	Copies of all relevant offering documents of Party B as may be amended from time to time.	The earlier of the fifth Local Business Day after the trade date of the first Transaction or upon execution of this Agreement and as deemed necessary for any further documentation.	Yes
Party B	The investment management agreement or power-of-attorney from Party B, an incumbency certificate from Party B or Party B's attorney-in-fact (as appropriate) and the Investment Manager side letter in a form acceptable to Party A and substantially similar to the sample attached hereto and marked Exhibit A.	Upon the execution of this Agreement.	Yes
Party B	A copy of all relevant formation documents (such as certificate of formation, articles of incorporation, partnership agreement, trust agreement and/or central register of charities), disclosure documents (such as offering memorandum, prospectus, memorandum and articles of association and/or audited financial statement), a list of all principals (such as directors / trustees / general partners) (in each case as may be amended from time to time), the government-issued or taxpayer identification number (as applicable), and any other documentation required to meet customer identification program requirements.	The earlier of (i) execution of this Agreement and (ii) the trade date of the first Transaction and as deemed necessary for any further documentation.	Yes
Party A and Party B	Such other documents as the other party may reasonably request.	Upon request	No

Part 4. Miscellaneous.

(a) **Addresses for Notices.** For the purpose of Section 12(a) of this Agreement:

(i) Address for notices or communications to Party A:

For notices or communications with respect to Sections 5 or 6 only:

MORGAN STANLEY & CO. INTERNATIONAL PLC
25 Cabot Square / Canary Wharf
London E14 4QA
England
Attention: Close-out Notices
With a mandatory copy to:
Facsimile No.: +1 212 507 4622

For notices or communications with respect to all purposes other than Sections 5 or 6:

MORGAN STANLEY & CO. INTERNATIONAL PLC
25 Cabot Square / Canary Wharf
London E14 4QA
England
Attention: Miscellaneous Notices
Facsimile No.: +1 212 404 9899

- (ii) Address for notices or communications to Party B:

[Counterparty Name]
[PLEASE INSERT DETAILS]
Attention: [PLEASE INSERT DETAILS]
Telephone No.: [PLEASE INSERT DETAILS]
Facsimile No.: [PLEASE INSERT DETAILS]
- (b) **Process Agent.** For the purpose of Section 13(c) of this Agreement:
 - (i) Party A does not appoint a Process Agent.
 - (ii) Party B irrevocably appoints as its Process Agent:

[PLEASE INSERT LONDON PROCESS AGENT ADDRESS]
- (c) **Offices.** The provisions of Section 10(a) of this Agreement will apply to Party A and Party B.
- (d) **Multibranch Party.** For the purpose of Section 10(b) of this Agreement:

Party A is not a Multibranch Party.

Party B is not a Multibranch Party.
- (e) **“Calculation Agent”** means Party A.
- (f) **“Credit Support Document”** means with respect to Party A, any credit support annex, any Confirmation and any other document which by its terms secures, guarantees or otherwise supports Party A’s obligations under this Agreement.

“Credit Support Document” means with respect to Party B, any credit support annex, any Confirmation and any other document which by its terms secures, guarantees or otherwise supports Party B’s obligations under this Agreement.
- (g) **“Credit Support Provider”** means in relation to Party A: None.

“Credit Support Provider” means in relation to Party B: None.
- (h) **Governing Law; Jurisdiction.** Sections 13(a) and (b) of the Agreement shall be deleted and replaced with the following:

- “(a) **Governing Law.** This Agreement and any non-contractual obligations arising out of or in relation to it will be governed by and construed in accordance with the laws of England and Wales.
- (b) **Jurisdiction and Third Party Rights.**
- (i) **Jurisdiction.** With respect to any suit, action or proceedings relating to any dispute, whether contractual or non-contractual, arising out of or in connection with this Agreement, (“Proceedings”), each party:
- (1) irrevocably submits to the exclusive jurisdiction of the English courts; and
 - (2) 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.
- (ii) **Third Party Rights**
- (1) Subject to this clause, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
 - (2) Notwithstanding the foregoing, an Affiliate may enforce the rights expressly granted to an Affiliate under this Agreement, if any, subject to and in accordance with this clause, Section 13(a) and (b) of this Agreement and the provisions of the Contracts (Rights of Third Parties) Act 1999. However, such an Affiliate may not bring proceedings to enforce any of those terms unless it has first given written notice to the parties (in accordance with Section 12 of this Agreement) agreeing to the provisions of Section 13 of this Agreement. The parties to this Agreement do not require the consent of any Affiliate or other third party to rescind or vary this Agreement.”
- (i) **Waiver of Jury Trial.** EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDINGS RELATING TO THIS AGREEMENT OR ANY CREDIT SUPPORT DOCUMENT.
- (j) **Netting of Payments.** “Multiple Transaction Payment Netting” will apply for the purpose of Section 2(c) of this Agreement to all Transactions under this Agreement, provided, however, that (i) obligations to make payments pursuant to FX Transactions shall only be netted, satisfied and discharged against obligations to make payments arising out of the same or other FX Transactions and obligations to make payments pursuant to Currency Option Transactions shall only be netted, satisfied and discharged against obligations to make payments arising out of the same or other Currency Option Transactions and (ii) Premiums in respect of Currency Option Transactions shall be netted, satisfied and discharged only against other Premiums in respect of Currency Option Transactions. The Calculation Agent shall notify the parties of the amounts of any such netted payments (which notice may be by telephone).
- (k) **“Affiliate”** has the meaning specified in Section 14 of this Agreement, provided that in relation to Party A excludes Morgan Stanley Derivative Products Inc.
- (l) **Absence of Litigation.** For the purpose of Section 3(c) of this Agreement “Specified Entity” shall mean Affiliates in relation to Party A and Affiliates in relation to Party B.
- (m) **No Agency.** The provisions of Section 3(g) will apply to both parties of this Agreement.

- (n) **Additional Representation** will apply. For the purpose of Section 3 of this Agreement the following Sections will constitute Additional Representations:
- (h) **Relationship Between Parties.** Each party will be deemed to represent to the other party on each date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):
- (i) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction;
- (ii) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction; and
- (iii) **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction.
- (i) **Non-ERISA Representation.** Party B represents (which representations will be deemed to be repeated by it at all times until termination of this Agreement) that it is not (i) an employee benefit plan, as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), subject to Title I of ERISA (an "ERISA Plan") or a plan subject to Section 4975 of the Internal Revenue Code of 1986, as amended, or subject to any other statute, regulation, procedure or restriction that is materially similar to Section 406 of ERISA or Section 4975 of the Code (together with ERISA Plans, "Plans"), (ii) a person any of the assets of whom constitute assets of a Plan, or (iii) in connection with any Transaction under this Agreement, a person acting on behalf of a Plan, or using the assets of a Plan. It will provide notice to the other party in the event that it is aware that it is in breach of any aspect of this representation or is aware that with the passing of time, giving of notice or expiry of any applicable grace period it will breach this representation.
- (j) **Investment Manager Trading Authorization.** Party B and the Investment Manager, in its individual capacity, each represents and warrants to Party A (which representations and warranty will be deemed to be repeated by Party B and the Investment Manager, in its individual capacity at all times until the Termination of this Agreement) that:
- (i) the Investment Manager is duly authorized and empowered by Party B to enter into and perform on behalf of Party B all the obligations of Party B under the Agreement and all Transactions thereunder;
- (ii) each Transaction is and will be entered into by the Investment Manager on behalf of Party B and not for the Investment Manager's own account and constitutes and will constitute legal, valid and binding obligations of Party B enforceable in accordance with its terms;
- (iii) in respect of this Agreement, Party B has full legal capacity and power to enter into this Agreement and all Transactions thereunder and to do so through Investment Manager's agency (and all actions required to be taken by Party B and/or each of its agents to authorize the same and all other acts, conditions, and things required to be

done, fulfilled or performed by it or them in relation thereto, have been done, fulfilled or performed); and

- (iv) it is entitled to rely conclusively upon any request, order, instruction, certificate, opinion or other document or information furnished to Party A by any employee or agent of Investment Manager or a sub-adviser and reasonably believed by Party A to be genuine, as though such request, order, instruction, certificate, opinion or other document or information were given by Party B.
- (o) **Recording of Conversations.** Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings.

Part 5. Other Provisions.

- (a) **Set-Off.** Section 6(f) of the Agreement shall be deleted and replaced with the following:
 - “(f) **Set-Off.**
 - (i) In addition to any rights of set-off a party may have as a matter of law or otherwise, upon the occurrence of an Event of Default with respect to a party (“X”) hereof (or a provision analogous thereto) or a Termination Event where X is the sole Affected Party, the other party (“Y”) shall have the right (but shall not be obliged) without prior notice to X or any other person to set off any obligation of X owing to Y or any Affiliate of Y (whether or not arising under this Agreement, whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation) against any obligations of Y or any Affiliate of Y owing to X (whether or not arising under this Agreement, whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation).
 - (ii) For the purpose of cross-currency set off, Y may convert any obligation to another currency at a market rate determined by Y.
 - (iii) If any obligation is unascertained, Y may in good faith estimate that obligation and set off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.
 - (iv) Nothing in this paragraph will have the effect of creating a charge or other security interest. This paragraph shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise).”
- (b) **Export of Defaults.** The occurrence or effective designation of an Early Termination Date with respect to an Event of Default, a Credit Event Upon Merger, or an Additional Termination Event where a party to this Agreement (“X”) is the Defaulting Party or sole Affected Party shall constitute a material breach and event of default (howsoever described) under all agreements, contracts and transactions other than this Agreement (1) between X and the other party to this Agreement (“Y”) and (2) between X and any Affiliate of Y (together, the “Other Contracts”), whereupon Y and the relevant Affiliate(s) of Y shall each have the right to terminate, liquidate and otherwise close out any such Other Contracts to which it is a party (and X shall be liable for any damages, losses, costs or other expenses suffered by Y and the relevant Affiliate(s) of Y as a result thereof).
- (c) **Single Relationship.** The parties and their Affiliates intend that all Transactions and all other obligations (whether or not arising under this Agreement, whether or not matured, whether or not

contingent and regardless of the currency, place of payment or booking office of the obligation) shall be treated as mutual and part of a single, indivisible contractual and business relationship.

- (d) **Procedures for Entering Into Transactions.** Party A will deliver to Party B a Confirmation relating to each Transaction.
- (e) **Form of Agreement.** The parties hereby agree that the text of the body of the Agreement is intended to be the printed form of 2002 ISDA Master Agreement as published and copyrighted by the International Swaps and Derivatives Association, Inc.
- (f) **Transfers.** The following provision (c) is hereby added to Section 7 of this Agreement:
 - “(c) Party A may, for any legal, tax, accounting, or regulatory reason, transfer its rights and obligations under this Agreement or any agreement for a Specified Transaction to any Affiliate of Party A, and Party B agrees to such transfer; provided, however, that the transferee (or its Credit Support Provider) has substantially the same credit-worthiness as Party A.”
- (g) **2002 Master Agreement Protocol.** Party A and Party B each agree that either 1) it is an adherent to the ISDA 2002 Master Agreement Protocol published by the International Swaps and Derivatives Association, Inc. on July 15, 2003 (the “2002 Protocol”) or 2) in accordance with the terms of the 2002 Protocol, certain amendments shall be deemed to be made to:
 - (i) sets of definitions and provisions published before 2002 by ISDA (each an “ISDA Definitions Booklet”); and
 - (ii) documents containing credit support provisions published before 2002 by ISDA (each called “Credit Support Provisions”);in each case in accordance with the terms of the 2002 Protocol as specified in Annexes 1-18 thereof. As used in this Agreement (including in all Confirmations related to it), any reference to any ISDA Definitions Booklet and/or Credit Support Provisions shall mean that ISDA Definitions Booklet and/or those Credit Support Provisions as deemed amended in accordance with the terms of the 2002 Protocol.
- (h) **ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol.** Party A and Party B hereby confirm that to the extent they are (or are in the process of becoming) adhering parties to the ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol published by the International Swaps and Derivatives Association Inc. on 19 July 2013 (the “PDD Protocol”), the PDD Protocol and Party A and Party B’s respective elections under the PDD Protocol are incorporated into and apply to this Agreement as if this Agreement was a Protocol Covered Agreement.
- (i) **Equity Swap Transactions on Financial Underliers.** The occurrence of any final valuation date of a Transaction (a) where a Party A is the equity amount payer and (b) the underlier of which is the common stock (or the equivalent thereof) of a “financial institution” (as defined in “Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule” promulgated by the Office of the Comptroller of the Currency, Treasury; and the Board of Governors of the Federal Reserve System on July 2, 2013) or an index/basket, or security that contains the common stock (or the equivalent thereof) of a “financial institution” shall be delayed, in whole or in part, to the extent necessary to allow such Party A to unwind any hedge it may have to a Transaction; provided, however, that on any scheduled final valuation date the relevant Party A will use all commercially reasonable efforts to unwind any relevant hedge in light of then-prevailing market condition.

- (j) **ISDA 2015 Section 871(m) Protocol.** Party A is an adherent to the ISDA 2015 Section 871 (m) Protocol published by the International Swaps and Derivatives Association, Inc. on November 2, 2015, as may be amended or modified from time to time (the “Section 871(m) Protocol”). In the event that Party B is not an adherent to the Section 871(m) Protocol, Party A and Party B hereby agree that this Agreement shall be treated as a Covered Master Agreement (as that term is defined in the Section 871(m) Protocol) and certain amendments shall be deemed to be made to this Agreement in accordance with the Attachment to the Section 871(m) Protocol.
- (k) **2015 Universal Resolution Stay Protocol.** The terms of the ISDA 2015 Universal Resolution Stay Protocol are incorporated into and form part of this Agreement, and this Agreement shall be deemed a Covered Agreement for purposes thereof. In the event of any inconsistencies between this Agreement and the Protocol, the Protocol will prevail.
- (l) **Conditions Precedent.** Section 2(a)(iii)(1) of the Agreement shall be modified to insert the words “Additional Termination Event” after the words “Event of Default” in line 2 thereof.
- (m) **Withholding Tax imposed on payments to non-US counterparties under the United States Foreign Account Tax Compliance Act.** “Tax” as used in Part 2(a) of this Schedule (Payer Tax Representation) and “Indemnifiable Tax” as defined in Section 14 of this Agreement shall not include any U.S. federal withholding tax imposed or collected pursuant to Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986, as amended (the “Code”), any current or future regulations or official interpretations thereof, any agreement entered into pursuant to Section 1471(b) of the Code, or any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code (a “**FATCA Withholding Tax**”). For the avoidance of doubt, a FATCA Withholding Tax is a Tax the deduction or withholding of which is required by applicable law for the purposes of Section 2(d) of this Agreement.

Part 6. FX Transactions and Currency Option Transactions.

- (a) **Scope.** If the parties enter into or have any outstanding FX Transactions or Currency Option Transactions, as each defined in the FX Definitions (hereinafter defined), (whether before or after this Agreement is entered into), this Part (FX Transactions and Currency Option Transactions) of the Schedule shall apply.
- (b) **Definitions.** Any Confirmation between the parties relating to an FX Transaction or Currency Option Transaction, whether or not it is expressed to be, shall constitute a “Confirmation” as referred to in this Agreement and shall incorporate the 1998 FX and Currency Option Definitions (as published by the International Swaps and Derivatives Association, Inc., the Emerging Markets Traders Association and The Foreign Exchange Committee), including Annex A thereto as in effect on the Trade Date of the relevant Transaction (collectively, the “FX Definitions”). In the event of any inconsistency between the provisions of this Agreement and the FX Definitions, this Agreement will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Agreement or the FX Definitions, such Confirmation will prevail for the purposes of the relevant Transaction.
- (c) **Discharge and Termination of Options.** The FX Definitions are hereby amended by adding the following new Section 3.9:

“Section 3.9. Discharge and Termination of Currency Option Transactions. Unless otherwise agreed, any Call or Put written by a party will automatically be terminated and discharged, in whole or in part, as applicable, against a Call or a Put, respectively, written by the other party, such termination and discharge to occur automatically upon the payment in full of the last Premium payable in respect of such Currency Option Transactions; *provided that*, such termination and discharge may only occur in respect of Currency Option Transactions:

- (a) each being with respect to the same Put Currency and the same Call Currency;

- (b) each having the same Expiration Date and Expiration Time;
- (c) each being of the same style (i.e., both being American Style Options, both being European Style Options or both being Bermuda or Mid-Atlantic Style Options);
- (d) each having the same Strike Price;
- (e) neither of which shall have been exercised by delivery of a Notice of Exercise;
- (f) which are otherwise identical in terms that are material for the purposes of offset and discharge;

and, upon the occurrence of such termination and discharge, neither party shall have any further obligation to the other party in respect of the relevant Currency Option Transactions or, as the case may be, parts thereof so terminated and discharged. Such termination and discharge shall be effective notwithstanding that either party (i) may fail to send out a Confirmation, (ii) may fail to record such termination and discharge in its books, or (iii) may send out a Confirmation that is inconsistent with such termination and discharge. In the case of a partial termination and discharge (i.e., where the relevant Currency Option Transactions are for different amounts of the Currency Pair), the remaining portion of the Currency Option Transaction which is partially terminated and discharged shall continue to be a Currency Option Transaction for all purposes hereunder.”

- (d) **Payments Relating to FX Transactions and Currency Option Transactions.** In the case of FX Transactions and Currency Option Transactions only, payments shall be made to the parties as specified in the relevant Confirmation or as otherwise advised.

IN WITNESS WHEREOF, the parties have executed this Schedule by their duly authorized officers as of the date hereof.

MORGAN STANLEY & CO. INTERNATIONAL **[Counterparty Name]**
PLC

By: _____
 Name:
 Title:
 Date:

By: _____
 Name:
 Title:
 Date:

[Manager Name]
 in its individual capacity with respect to Sections 3(i)
 and 3(j)

By: _____
 Name:
 Title:
 Date:

EXHIBIT A

[To be specified at execution]

Morgan Stanley & Co. International plc ("Morgan Stanley")
25 Cabot Square / Canary Wharf
London E14 4QA
England

To Whom It May Concern:

Re: The ISDA Master Agreement between [Counterparty Name] (the
"Client") and MORGAN STANLEY & CO. INTERNATIONAL PLC
(the "Agreement")

We continuously represent and warrant to Morgan Stanley that:

- (i) we act as investment adviser for the Client and we are duly authorized and empowered by them, on their behalf and on a discretionary basis, to direct orders, enter into Transactions, sign Confirmations, and perform all of their obligations under the Agreement and all Transactions thereunder;
- (ii) each Transaction is and will be entered into by us on behalf of the Client and constitutes a valid and binding obligation of the Client, enforceable in accordance with its terms;
- (iii) Morgan Stanley may rely on our assurance that the Client has full legal capacity and power to enter into the ISDA Master Agreement and all Transactions thereunder and to do so through our agency (and all actions required to be taken by the Client and/or each of its agents to authorize the same and all other acts, conditions, and things required to be done, fulfilled or performed by it or them in relation thereto, have been done, fulfilled or performed); and
- (iv) you are entitled to rely conclusively upon any request, order, instruction, certificate, opinion or other document or information furnished to you by any employee or agent of ours or a sub-adviser and reasonably believed by you to be genuine, as though such request, order, instruction, certificate, opinion or other document or information were given by the Client.
- (v) any order given to Morgan Stanley by us (a) shall not exceed the scope of the authority granted to us by the Client and (b) will be suitable for the Client.

We agree that the representations contained in this letter will be deemed to be repeated by us on each date on which a Transaction is entered into by the Client with Morgan Stanley.

This letter shall be governed by and construed in accordance with the applicable law governing the Agreement, as amended from time to time. The terms of Section 13(b) of the Agreement, as amended from time to time, shall apply to this letter with references in such Section to "this Agreement" being deemed references to this letter.

Sincerely,

[Manager Name]

ACKNOWLEDGED AND CONFIRMED

this ____ day of _____, 201_

[Counterparty Name]

By: _____

Name:

Title:

Date:

By: _____

Name:

Title:

Date:

Annexure D

VERSION: MAY 2000



GLOBAL MASTER SECURITIES LENDING AGREEMENT

CLIFFORD CHANCE

CONTENTS

1.	Applicability	1
2.	Interpretation.....	1
3.	Loans Of Securities	5
4.	Delivery.....	5
5.	Collateral.....	7
6.	Distributions And Corporate Actions.....	10
7.	Rates Applicable To Loaned Securities And Cash Collateral.....	11
8.	Redelivery Of Equivalent Securities.....	11
9.	Failure To Redeliver	13
10.	Set-Off Etc	14
11.	Transfer Taxes	17
12.	Lender's Warranties	17
13.	Borrower's Warranties	18
14.	Events Of Default.....	18
15.	Interest On Outstanding Payments.....	19
16.	Transactions Entered Into As Agent	19
17.	Termination Of This Agreement.....	21
18.	Single Agreement.....	21
19.	Severance	21
20.	Specific Performance	22
21.	Notices	22
22.	Assignment	22
23.	Non-Waiver.....	22
24.	Governing Law And Jurisdiction.....	23
25.	Time	23
26.	Recording.....	23
27.	Waiver Of Immunity	23
28.	Miscellaneous	23
	SCHEDULE	26

AGREEMENT

BETWEEN:

of ("Party A") a company incorporated under the laws of acting through a Designated Office; and

of ("Party B") a company incorporated under the laws of acting through a Designated Office.

1. APPLICABILITY

- 1.1 From time to time the parties may enter into transactions in which one party ("**Lender**") will transfer to the other ("**Borrower**") securities and financial instruments ("**Securities**") against the transfer of Collateral (as defined in paragraph 2) with a simultaneous agreement by Borrower to transfer to Lender Securities equivalent to such Securities on a fixed date or on demand against the transfer to Borrower by Lender of assets equivalent to such Collateral.
- 1.2 Each such transaction shall be referred to in this Agreement as a "**Loan**" and shall be governed by the terms of this Agreement, including the supplemental terms and conditions contained in the Schedule and any Addenda or Annexures attached hereto, unless otherwise agreed in writing.
- 1.3 Either party may perform its obligations under this Agreement either directly or through a Nominee.

2. INTERPRETATION

- 2.1 In this Agreement:-

"**Act of Insolvency**" means in relation to either Party

- (i) its making a general assignment for the benefit of, or entering into a reorganisation, arrangement, or composition with creditors; or
- (ii) its stating in writing that it is unable to pay its debts as they become due; or
- (iii) its seeking, consenting to or acquiescing in the appointment of any trustee, administrator, receiver or liquidator or analogous officer of it or any material part of its property; or
- (iv) the presentation or filing of a petition in respect of it (other than by the other Party to this Agreement in respect of any obligation under this Agreement) in any court or before any agency alleging or for the bankruptcy, winding-up or insolvency of such Party (or any analogous proceeding) or seeking any reorganisation, arrangement, composition, re-adjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition

not having been stayed or dismissed within 30 days of its filing (except in the case of a petition for winding-up or any analogous proceeding in respect of which no such 30 day period shall apply); or

- (v) the appointment of a receiver, administrator, liquidator or trustee or analogous officer of such Party over all or any material part of such Party's property; or
- (vi) the convening of any meeting of its creditors for the purpose of considering a voluntary arrangement as referred to in Section 3 of the Insolvency Act 1986 (or any analogous proceeding);

"Alternative Collateral" means Collateral having a Market Value equal to the Collateral delivered pursuant to paragraph 5 and provided by way of substitution in accordance with the provisions of paragraph 5.3;

"Base Currency" means the currency indicated in paragraph 2 of the Schedule;

"Business Day" means a day other than a Saturday or a Sunday on which banks and securities markets are open for business generally in each place stated in paragraph 3 of the Schedule and, in relation to the delivery or redelivery of any of the following in relation to any Loan, in the place(s) where the relevant Securities, Equivalent Securities, Collateral or Equivalent Collateral are to be delivered;

"Cash Collateral" means Collateral that takes the form of a transfer of currency;

"Close of Business" means the time at which the relevant banks, securities exchanges or depositaries close in the business centre in which payment is to be made or Securities or Collateral is to be delivered;

"Collateral" means such securities or financial instruments or transfers of currency as are referred to in the table set out under paragraph 1 of the Schedule as being acceptable or any combination thereof as agreed between the Parties in relation to any particular Loan and which are delivered by Borrower to Lender in accordance with this Agreement and shall include Alternative Collateral;

"Defaulting Party" shall have the meaning given in paragraph 14;

"Designated Office" means the branch or office of a Party which is specified as such in paragraph 4 of the Schedule or such other branch or office as may be agreed to in writing by the Parties;

"Equivalent " or **"equivalent to"** in relation to any Securities or Collateral provided under this Agreement means securities, together with cash or other property (in the case of Collateral) as the case may be, of an identical type, nominal value, description and amount to particular Securities or Collateral, as the case may be, so provided. If and to the extent that such Securities or Collateral, as the case may be, consists of securities that are partly paid or have been converted, subdivided, consolidated, made the subject of a takeover, rights of pre-emption, rights to receive securities or a certificate which may at a future date be exchanged for securities, the expression shall include such securities or other assets to which Lender or Borrower as the case may be, is entitled following the

occurrence of the relevant event, and, if appropriate, the giving of the relevant notice in accordance with paragraph 6.4 and provided that Lender or Borrower, as the case may be, has paid to the other Party all and any sums due in respect thereof. In the event that such Securities or Collateral, as the case may be, have been redeemed, are partly paid, are the subject of a capitalisation issue or are subject to an event similar to any of the foregoing events described in this paragraph, the expression shall have the following meanings:-

- (a) in the case of redemption, a sum of money equivalent to the proceeds of the redemption;
- (b) in the case of a call on partly paid securities, securities equivalent to the relevant Loaned Securities or Collateral, as the case may be, provided that Lender shall have paid Borrower, in respect of Loaned Securities, and Borrower shall have paid to Lender, in respect of Collateral, an amount of money equal to the sum due in respect of the call;
- (c) in the case of a capitalisation issue, securities equivalent to the relevant Loaned Securities or Collateral, as the case may be, together with the securities allotted by way of bonus thereon;
- (d) in the case of any event similar to any of the foregoing events described in this paragraph, securities equivalent to the Loaned Securities or the relevant Collateral, as the case may be, together with or replaced by a sum of money or securities or other property equivalent to that received in respect of such Loaned Securities or Collateral, as the case may be, resulting from such event;

"Income" means any interest, dividends or other distributions of any kind whatsoever with respect to any Securities or Collateral;

"Income Payment Date", with respect to any Securities or Collateral means the date on which Income is paid in respect of such Securities or Collateral, or, in the case of registered Securities or Collateral, the date by reference to which particular registered holders are identified as being entitled to payment of Income;

"Letter of Credit" means an irrevocable, non-negotiable letter of credit in a form, and from a bank, acceptable to Lender;

"Loaned Securities" means Securities which are the subject of an outstanding Loan;

"Margin" shall have the meaning specified in paragraph 1 of the Schedule with reference to the table set out therein;

"Market Value" means:

- (a) in relation to the valuation of Securities, Equivalent Securities, Collateral or Equivalent Collateral (other than Cash Collateral or a Letter of Credit):
 - ① such price as is equal to the market quotation for the bid price of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral

as derived from a reputable pricing information service reasonably chosen in good faith by Lender; or

- (ii) if unavailable the market value thereof as derived from the prices or rates bid by a reputable dealer for the relevant instrument reasonably chosen in good faith by Lender,

in each case at Close of Business on the previous Business Day or, at the option of either Party where in its reasonable opinion there has been an exceptional movement in the price of the asset in question since such time, the latest available price; plus (in each case)

- (iii) the aggregate amount of Income which has accrued but not yet been paid in respect of the Securities, Equivalent Securities, Collateral or Equivalent Collateral concerned to the extent not included in such price,

(provided that the price of Securities, Equivalent Securities, Collateral or Equivalent Collateral that are suspended shall (for the purposes of paragraph 5) be nil unless the Parties otherwise agree and (for all other purposes) shall be the price of such Securities, Equivalent Securities, Collateral or Equivalent Collateral, as the case may be, as of Close of Business on the dealing day in the relevant market last preceding the date of suspension or a commercially reasonable price agreed between the Parties;

- (b) in relation to a Letter of Credit the face or stated amount of such Letter of Credit; and
- (c) in relation to Cash Collateral the amount of the currency concerned;

"Nominee" means an agent or a nominee appointed by either Party to accept delivery of, hold or deliver Securities, Equivalent Securities, Collateral and/or Equivalent Collateral or to receive or make payments on its behalf;

"Non-Defaulting Party" shall have the meaning given in paragraph 14;

"Parties" means Lender and Borrower and "Party" shall be construed accordingly;

"Posted Collateral" has the meaning given in paragraph 5.4;

"Required Collateral Value" shall have the meaning given in paragraph 5.4;

"Settlement Date" means the date upon which Securities are transferred to Borrower in accordance with this Agreement.

2.2 **Headings**

All headings appear for convenience only and shall not affect the interpretation of this Agreement.

2.3 **Market terminology**

Notwithstanding the use of expressions such as "borrow", "lend", "Collateral", "Margin", "redeliver" etc. which are used to reflect terminology used in the market for transactions of the kind provided for in this Agreement, title to Securities "borrowed" or "lent" and "Collateral" provided in accordance with this Agreement shall pass from one Party to another as provided for in this Agreement, the Party obtaining such title being obliged to redeliver Equivalent Securities or Equivalent Collateral as the case may be.

2.4 Currency conversions

For the purposes of determining any prices, sums or values (including Market Value, Required Collateral Value, Relevant Value, Bid Value and Offer Value for the purposes of paragraphs 5 and 10 of this Agreement) prices, sums or values stated in currencies other than the Base Currency shall be converted into the Base Currency at the latest available spot rate of exchange quoted by a bank selected by Lender (or if an Event of Default has occurred in relation to Lender, by Borrower) in the London interbank market for the purchase of the Base Currency with the currency concerned on the day on which the calculation is to be made or, if that day is not a Business Day the spot rate of exchange quoted at Close of Business on the immediately preceding Business Day.

- 2.5 The parties confirm that introduction of and/or substitution (in place of an existing currency) of a new currency as the lawful currency of a country shall not have the effect of altering, or discharging, or excusing performance under, any term of the Agreement or any Loan thereunder, nor give a party the right unilaterally to alter or terminate the Agreement or any Loan thereunder. Securities will for the purposes of this Agreement be regarded as equivalent to other securities notwithstanding that as a result of such introduction and/or substitution those securities have been redenominated into the new currency or the nominal value of the securities has changed in connection with such redenomination.

2.6 Modifications etc to legislation

Any reference in this Agreement to an act, regulation or other legislation shall include a reference to any statutory modification or re-enactment thereof for the time being in force.

3. LOANS OF SECURITIES

Lender will lend Securities to Borrower, and Borrower will borrow Securities from Lender in accordance with the terms and conditions of this Agreement. The terms of each Loan shall be agreed prior to the commencement of the relevant Loan either orally or in writing (including any agreed form of electronic communication) and confirmed in such form and on such basis as shall be agreed between the Parties. Any confirmation produced by a Party shall not supersede or prevail over the prior oral, written or electronic communication (as the case may be).

4. DELIVERY

4.1 Delivery of Securities on commencement of Loan

Lender shall procure the delivery of Securities to Borrower or deliver such Securities in accordance with this Agreement and the terms of the relevant Loan. Such Securities shall be deemed to have been delivered by Lender to Borrower on delivery to Borrower or as it shall direct of the relevant instruments of transfer, or in the case of Securities held by an agent or within a clearing or settlement system on the effective instructions to such agent or the operator of such system which result in such Securities being held by the operator of the clearing system for the account of the Borrower or as it shall direct, or by such other means as may be agreed.

4.2 Requirements to effect delivery

The Parties shall execute and deliver all necessary documents and give all necessary instructions to procure that all right, title and interest in:

- (a) any Securities borrowed pursuant to paragraph 3;
- (b) any Equivalent Securities redelivered pursuant to paragraph 8;
- (c) any Collateral delivered pursuant to paragraph 5;
- (d) any Equivalent Collateral redelivered pursuant to paragraphs 5 or 8;

shall pass from one Party to the other subject to the terms and conditions set out in this Agreement, on delivery or redelivery of the same in accordance with this Agreement with full title guarantee, free from all liens, charges and encumbrances. In the case of Securities, Collateral, Equivalent Securities or Equivalent Collateral title to which is registered in a computer based system which provides for the recording and transfer of title to the same by way of book entries, delivery and transfer of title shall take place in accordance with the rules and procedures of such system as in force from time to time. The Party acquiring such right, title and interest shall have no obligation to return or redeliver any of the assets so acquired but, in so far as any Securities are borrowed or any Collateral is delivered to such Party, such Party shall be obliged, subject to the terms of this Agreement, to redeliver Equivalent Securities or Equivalent Collateral as appropriate.

4.3 Deliveries to be simultaneous unless otherwise agreed

Where under the terms of this Agreement a Party is not obliged to make a delivery unless simultaneously a delivery is made to it, subject to and without prejudice to its rights under paragraph 8.6 such Party may from time to time in accordance with market practice and in recognition of the practical difficulties in arranging simultaneous delivery of Securities, Collateral and cash transfers waive its right under this Agreement in respect of simultaneous delivery and/or payment provided that no such waiver (whether by course of conduct or otherwise) in respect of one transaction shall bind it in respect of any other transaction.

4.4 Deliveries of Income

In respect of Income being paid in relation to any Loaned Securities or Collateral, Borrower in the case of Income being paid in respect of Loaned Securities and Lender in

the case of Income being paid in respect of Collateral shall provide to the other Party, as the case may be, any endorsements or assignments as shall be customary and appropriate to effect the delivery of money or property equivalent to the type and amount of such Income to Lender, irrespective of whether Borrower received the same in respect of any Loaned Securities or to Borrower, irrespective of whether Lender received the same in respect of any Collateral.

5. COLLATERAL

5.1 Delivery of Collateral on commencement of Loan

Subject to the other provisions of this paragraph 5, Borrower undertakes to deliver to or deposit with Lender (or in accordance with Lender's instructions) Collateral simultaneously with delivery of the Securities to which the Loan relates and in any event no later than Close of Business on the Settlement Date. In respect of Collateral comprising securities, such Collateral shall be deemed to have been delivered by Borrower to Lender on delivery to Lender or as it shall direct of the relevant instruments of transfer, or in the case of such securities being held by an agent or within a clearing or settlement system, on the effective instructions to such agent or the operator of such system, which result in such securities being held by the operator of the clearing system for the account of the Lender or as it shall direct, or by such other means as may be agreed.

5.2 Deliveries through payment systems generating automatic payments

Unless otherwise agreed between the Parties, where any Securities, Equivalent Securities, Collateral or Equivalent Collateral (in the form of securities) are transferred through a book entry transfer or settlement system which automatically generates a payment or delivery, or obligation to pay or deliver, against the transfer of such securities, then:-

- (i) such automatically generated payment, delivery or obligation shall be treated as a payment or delivery by the transferee to the transferor, and except to the extent that it is applied to discharge an obligation of the transferee to effect payment or delivery, such payment or delivery, or obligation to pay or deliver, shall be deemed to be a transfer of Collateral or redelivery of Equivalent Collateral, as the case may be, made by the transferee until such time as the Collateral or Equivalent Collateral is substituted with other Collateral or Equivalent Collateral if an obligation to deliver other Collateral or redeliver Equivalent Collateral existed immediately prior to the transfer of Securities, Equivalent Securities, Collateral or Equivalent Collateral; and
- (ii) the party receiving such substituted Collateral or Equivalent Collateral, or if no obligation to deliver other Collateral or redeliver Equivalent Collateral existed immediately prior to the transfer of Securities, Equivalent Securities, Collateral or Equivalent Collateral, the party receiving the deemed transfer of Collateral or redelivery of Equivalent Collateral, as the case may be, shall cause to be made to the other party for value the same day either, where such transfer is a payment, an irrevocable payment in the amount of such transfer or, where such transfer is a

delivery, an irrevocable delivery of securities (or other property, as the case may be) equivalent to such property.

5.3 **Substitutions of Collateral**

Borrower may from time to time call for the repayment of Cash Collateral or the redelivery of Collateral equivalent to any Collateral delivered to Lender prior to the date on which the same would otherwise have been repayable or redeliverable provided that at the time of such repayment or redelivery Borrower shall have delivered or delivers Alternative Collateral acceptable to Lender and Borrower is in compliance with paragraph 5.4 or paragraph 5.5, as applicable.

5.4 **Marking to Market of Collateral during the currency of a Loan on aggregated basis**

Unless paragraph 1.3 of the Schedule indicates that paragraph 5.5 shall apply in lieu of this paragraph 5.4, or unless otherwise agreed between the Parties:-

- (i) the aggregate Market Value of the Collateral delivered to or deposited with Lender (excluding any Equivalent Collateral repaid or redelivered under Paragraphs 5.4(ii) or 5.5(ii) (as the case may be)) ("**Posted Collateral**") in respect of all Loans outstanding under this Agreement shall equal the aggregate of the Market Value of the Loaned Securities and the applicable Margin (the "**Required Collateral Value**") in respect of such Loans;
- (ii) if at any time on any Business Day the aggregate Market Value of the Posted Collateral in respect of all Loans outstanding under this Agreement exceeds the aggregate of the Required Collateral Values in respect of such Loans, Lender shall (on demand) repay and/or redeliver, as the case may be, to Borrower such Equivalent Collateral as will eliminate the excess;
- (iii) if at any time on any Business Day the aggregate Market Value of the Posted Collateral in respect of all Loans outstanding under this Agreement falls below the aggregate of Required Collateral Values in respect of all such Loans, Borrower shall (on demand) provide such further Collateral to Lender as will eliminate the deficiency.

5.5 **Marking to Market of Collateral during the currency of a Loan on a Loan by Loan basis**

If paragraph 1.3 of the Schedule indicates this paragraph 5.5 shall apply in lieu of paragraph 5.4, the Posted Collateral in respect of any Loan shall bear from day to day and at any time the same proportion to the Market Value of the Loaned Securities as the Posted Collateral bore at the commencement of such Loan. Accordingly:

- (i) the Market Value of the Posted Collateral to be delivered or deposited while the Loan continues shall be equal to the Required Collateral Value;
- (ii) if at any time on any Business Day the Market Value of the Posted Collateral in respect of any Loan exceeds the Required Collateral Value in respect of such Loan,

Lender shall (on demand) repay and/or redeliver, as the case may be, to Borrower such Equivalent Collateral as will eliminate the excess; and

- (iii) if at any time on any Business Day the Market Value of the Posted Collateral falls below the Required Collateral Value, Borrower shall (on demand) provide such further Collateral to Lender as will eliminate the deficiency.

5.6 **Requirements to redeliver excess Collateral**

Where paragraph 5.4 applies, unless paragraph 1.4 of the Schedule indicates that this paragraph 5.6 does not apply, if a Party (the "**first Party**") would, but for this paragraph 5.6, be required under paragraph 5.4 to provide further Collateral or redeliver Equivalent Collateral in circumstances where the other Party (the "**second Party**") would, but for this paragraph 5.6, also be required to or provide Collateral or redeliver Equivalent Collateral under paragraph 5.4, then the Market Value of the Collateral or Equivalent Collateral deliverable by the first Party ("**X**") shall be set-off against the Market Value of the Collateral or Equivalent Collateral deliverable by the second Party ("**Y**") and the only obligation of the Parties under paragraph 5.4 shall be, where X exceeds Y, an obligation of the first Party, or where Y exceeds X, an obligation of the second Party to repay and/or (as the case may be) redeliver Equivalent Collateral or to deliver further Collateral having a Market Value equal to the difference between X and Y.

- 5.7 Where Equivalent Collateral is repaid or redelivered (as the case may be) or further Collateral is provided by a Party under paragraph 5.6, the Parties shall agree to which Loan or Loans such repayment, redelivery or further provision is to be attributed and failing agreement it shall be attributed, as determined by the Party making such repayment, redelivery or further provision to the earliest outstanding Loan and, in the case of a repayment or redelivery up to the point at which the Market Value of Collateral in respect of such Loan equals the Required Collateral Value in respect of such Loan, and then to the next earliest outstanding Loan up to the similar point and so on.

5.8 **Timing of repayments of excess Collateral or deliveries of further Collateral**

Where any Equivalent Collateral falls to be repaid or redelivered (as the case may be) or further Collateral is to be provided under this paragraph 5, unless otherwise agreed between the Parties, it shall be delivered on the same Business Day as the relevant demand. Equivalent Collateral comprising securities shall be deemed to have been delivered by Lender to Borrower on delivery to Borrower or as it shall direct of the relevant instruments of transfer, or in the case of such securities being held by an agent or within a clearing or settlement system on the effective instructions to such agent or the operator of such system which result in such securities being held by the operator of the clearing system for the account of the Borrower or as it shall direct or by such other means as may be agreed.

5.9 **Substitutions and extensions of Letters of Credit**

Where Collateral is a Letter of Credit, Lender may by notice to Borrower require that Borrower, on the Business Day following the date of delivery of such notice, substitute

Collateral consisting of cash or other Collateral acceptable to Lender for the Letter of Credit. Prior to the expiration of any Letter of Credit supporting Borrower's obligations hereunder, Borrower shall, no later than 10.30a.m. UK time on the second Business Day prior to the date such Letter of Credit expires, obtain an extension of the expiration of such Letter of Credit or replace such Letter of Credit by providing Lender with a substitute Letter of Credit in an amount at least equal to the amount of the Letter of Credit for which it is substituted.

6. DISTRIBUTIONS AND CORPORATE ACTIONS

6.1 Manufactured Payments

Where Income is paid in relation to any Loaned Securities or Collateral (other than Cash Collateral) on or by reference to an Income Payment Date Borrower, in the case of Loaned Securities, and Lender, in the case of Collateral, shall, on the date of the payment of such Income, or on such other date as the Parties may from time to time agree, (the "**Relevant Payment Date**") pay and deliver a sum of money or property equivalent to the type and amount of such Income that, in the case of Loaned Securities, Lender would have been entitled to receive had such Securities not been loaned to Borrower and had been retained by Lender on the Income Payment Date, and, in the case of Collateral, Borrower would have been entitled to receive had such Collateral not been provided to Lender and had been retained by Borrower on the Income Payment Date unless a different sum is agreed between the Parties.

6.2 Income in the form of Securities

Where Income, in the form of securities, is paid in relation to any Loaned Securities or Collateral, such securities shall be added to such Loaned Securities or Collateral (and shall constitute Loaned Securities or Collateral, as the case may be, and be part of the relevant Loan) and will not be delivered to Lender, in the case of Loaned Securities, or to Borrower, in the case of Collateral, until the end of the relevant Loan, provided that the Lender or Borrower (as the case may be) fulfils their obligations under paragraph 5.4 or 5.5 (as applicable) with respect to the additional Loaned Securities or Collateral, as the case may be.

6.3 Exercise of voting rights

Where any voting rights fall to be exercised in relation to any Loaned Securities or Collateral, neither Borrower, in the case of Equivalent Securities, nor Lender, in the case of Equivalent Collateral, shall have any obligation to arrange for voting rights of that kind to be exercised in accordance with the instructions of the other Party in relation to the Securities borrowed by it or transferred to it by way of Collateral, as the case may be, unless otherwise agreed between the Parties.

6.4 Corporate actions

Where, in respect of any Loaned Securities or any Collateral, any rights relating to conversion, sub-division, consolidation, pre-emption, rights arising under a takeover offer, rights to receive securities or a certificate which may at a future date be exchanged for securities or other rights, including those requiring election by the holder for the time

being of such Securities or Collateral, become exercisable prior to the redelivery of Equivalent Securities or Equivalent Collateral, then Lender or Borrower, as the case may be, may, within a reasonable time before the latest time for the exercise of the right or option give written notice to the other Party that on redelivery of Equivalent Securities or Equivalent Collateral, as the case may be, it wishes to receive Equivalent Securities or Equivalent Collateral in such form as will arise if the right is exercised or, in the case of a right which may be exercised in more than one manner, is exercised as is specified in such written notice.

7. RATES APPLICABLE TO LOANED SECURITIES AND CASH COLLATERAL

7.1 Rates in respect of Loaned Securities

In respect of each Loan, Borrower shall pay to Lender, in the manner prescribed in subparagraph 7.3, sums calculated by applying such rate as shall be agreed between the Parties from time to time to the daily Market Value of the Loaned Securities.

7.2 Rates in respect of Cash Collateral

Where Cash Collateral is deposited with Lender in respect of any Loan, Lender shall pay to Borrower, in the manner prescribed in paragraph 7.3, sums calculated by applying such rates as shall be agreed between the Parties from time to time to the amount of such Cash Collateral. Any such payment due to Borrower may be set-off against any payment due to Lender pursuant to paragraph 7.1.

7.3 Payment of rates

In respect of each Loan, the payments referred to in paragraph 7.1 and 7.2 shall accrue daily in respect of the period commencing on and inclusive of the Settlement Date and terminating on and exclusive of the Business Day upon which Equivalent Securities are redelivered or Cash Collateral is repaid. Unless otherwise agreed, the sums so accruing in respect of each calendar month shall be paid in arrear by the relevant Party not later than the Business Day which is one week after the last Business Day of the calendar month to which such payments relate or such other date as the Parties shall from time to time agree.

8. REDELIVERY OF EQUIVALENT SECURITIES

8.1 Delivery of Equivalent Securities on termination of a Loan

Borrower shall procure the redelivery of Equivalent Securities to Lender or redeliver Equivalent Securities in accordance with this Agreement and the terms of the relevant Loan on termination of the Loan. Such Equivalent Securities shall be deemed to have been delivered by Borrower to Lender on delivery to Lender or as it shall direct of the relevant instruments of transfer, or in the case of Equivalent Securities held by an agent or within a clearing or settlement system on the effective instructions to such agent or the operator of such system which result in such Equivalent Securities being held by the operator of the clearing system for the account of the Lender or as it shall direct, or by such other means as may be agreed. For the avoidance of doubt any reference in this Agreement or in any other agreement or communication between the Parties (howsoever

expressed) to an obligation to redeliver or account for or act in relation to Loaned Securities shall accordingly be construed as a reference to an obligation to redeliver or account for or act in relation to Equivalent Securities.

8.2 Lender's right to terminate a Loan

Subject to paragraph 10 and the terms of the relevant Loan, Lender shall be entitled to terminate a Loan and to call for the redelivery of all or any Equivalent Securities at any time by giving notice on any Business Day of not less than the standard settlement time for such Equivalent Securities on the exchange or in the clearing organisation through which the Loaned Securities were originally delivered. Borrower shall redeliver such Equivalent Securities not later than the expiry of such notice in accordance with Lender's instructions.

8.3 Borrower's right to terminate a Loan

Subject to the terms of the relevant Loan, Borrower shall be entitled at any time to terminate a Loan and to redeliver all and any Equivalent Securities due and outstanding to Lender in accordance with Lender's instructions and Lender shall accept such redelivery.

8.4 Redelivery of Equivalent Collateral on termination of a Loan

On the date and time that Equivalent Securities are required to be redelivered by Borrower on the termination of a Loan, Lender shall simultaneously (subject to paragraph 5.4 if applicable) repay to Borrower any Cash Collateral or, as the case may be, redeliver Collateral equivalent to the Collateral provided by Borrower pursuant to paragraph 5 in respect of such Loan. For the avoidance of doubt any reference in this Agreement or in any other agreement or communication between the Parties (however expressed) to an obligation to redeliver or account for or act in relation to Collateral shall accordingly be construed as a reference to an obligation to redeliver or account for or act in relation to Equivalent Collateral.

8.5 Redelivery of Letters of Credit

Where a Letter of Credit is provided by way of Collateral, the obligation to redeliver Equivalent Collateral is satisfied by Lender redelivering for cancellation the Letter of Credit so provided, or where the Letter of Credit is provided in respect of more than one Loan, by Lender consenting to a reduction in the value of the Letter of Credit.

8.6 Redelivery obligations to be reciprocal

Neither Party shall be obliged to make delivery (or make a payment as the case may be) to the other unless it is satisfied that the other Party will make such delivery (or make an appropriate payment as the case may be) to it. If it is not so satisfied (whether because an Event of Default has occurred in respect of the other Party or otherwise) it shall notify the other party and unless that other Party has made arrangements which are sufficient to assure full delivery (or the appropriate payment as the case may be) to the notifying Party, the notifying Party shall (provided it is itself in a position, and willing, to perform

its own obligations) be entitled to withhold delivery (or payment, as the case may be) to the other Party.

9. FAILURE TO REDELIVER

9.1 Borrower's failure to redeliver Equivalent Securities

- (i) If Borrower does not redeliver Equivalent Securities in accordance with paragraph 8.1 or 8.2, Lender may elect to continue the Loan (which Loan, for the avoidance of doubt, shall continue to be taken into account for the purposes of paragraph 5.4 or 5.5 as applicable) provided that if Lender does not elect to continue the Loan, Lender may either by written notice to Borrower terminate the Loan forthwith and the Parties' delivery and payment obligations in respect thereof (in which case sub-paragraph (ii) below shall apply) or serve a notice of an Event of Default in accordance with paragraph 14.
- (ii) Upon service of a notice to terminate the relevant Loan pursuant to paragraph 9.1(i):-
 - (a) there shall be set-off against the Market Value of the Equivalent Securities concerned such amount of Posted Collateral chosen by Lender (calculated at its Market Value) as is equal thereto;
 - (b) the Parties delivery and payment obligations in relation to such assets which are set-off shall terminate;
 - (c) in the event that the Market Value of the Posted Collateral set-off is less than the Market Value of the Equivalent Securities concerned Borrower shall account to Lender for the shortfall; and
 - (d) Borrower shall account to Lender for the total costs and expenses incurred by Lender as a result thereof as set out in paragraphs 9.3 and 9.4 from the time the notice is effective.

9.2 Lender's failure to Redeliver Equivalent Collateral

- (i) If Lender does not redeliver Equivalent Collateral in accordance with paragraph 8.4 or 8.5, Borrower may either by written notice to Lender terminate the Loan forthwith and the Parties' delivery and payment obligations in respect thereof (in which case sub-paragraph (ii) below shall apply) or serve a notice of an Event of Default in accordance with paragraph 14.
- (ii) Upon service of a notice to terminate the relevant Loan pursuant to paragraph 9.2(i):-
 - (a) there shall be set-off against the Market Value of the Equivalent Collateral concerned the Market Value of the Loaned Securities;
 - (b) the Parties delivery and payment obligations in relation to such assets which are set-off shall terminate;

- (c) in the event that the Market Value of the Loaned Securities held by Borrower is less than the Market Value of the Equivalent Collateral concerned Lender shall account to Borrower for the shortfall; and
- (d) Lender shall account to Borrower for the total costs and expenses incurred by Borrower as a result thereof as set out in paragraphs 9.3 and 9.4 from the time the notice is effective.

9.3 **Failure by either Party to redeliver**

This provision applies in the event that a Party (the "**Transferor**") fails to meet a redelivery obligation within the standard settlement time for the asset concerned on the exchange or in the clearing organisation through which the asset equivalent to the asset concerned was originally delivered or within such other period as may be agreed between the Parties. In such situation, in addition to the Parties' rights under the general law and this Agreement where the other Party (the "**Transferee**") incurs interest, overdraft or similar costs and expenses the Transferor agrees to pay on demand and hold harmless the Transferee with respect to all such costs and expenses which arise directly from such failure excluding (i) such costs and expenses which arise from the negligence or wilful default of the Transferee and (ii) any indirect or consequential losses. It is agreed by the Parties that any costs reasonably and properly incurred by a Party arising in respect of the failure of a Party to meet its obligations under a transaction to sell or deliver securities resulting from the failure of the Transferor to fulfil its redelivery obligations is to be treated as a direct cost or expense for the purposes of this paragraph.

9.4 **Exercise of buy-in on failure to redeliver**

In the event that as a result of the failure of the Transferor to fulfil its redelivery obligations a "buy-in" is exercised against the Transferee, then the Transferor shall account to the Transferee for the total costs and expenses reasonably incurred by the Transferee as a result of such "buy-in".

10. **SET-OFF ETC**

10.1 **Definitions for paragraph 10**

In this paragraph 10:

"Bid Price" in relation to Equivalent Securities or Equivalent Collateral means the best available bid price on the most appropriate market in a standard size;

"Bid Value" subject to paragraph 10.5 means:-

- (a) in relation to Collateral equivalent to Collateral in the form of a Letter of Credit zero and in relation to Cash Collateral the amount of the currency concerned; and
- (b) in relation to Equivalent Securities or Collateral equivalent to all other types of Collateral the amount which would be received on a sale of such Equivalent Securities or Equivalent Collateral at the Bid Price at Close of Business on the relevant Business Day less all costs, fees and expenses that would be incurred in

connection therewith, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out such sale or realisation and adding thereto the amount of any interest, dividends, distributions or other amounts, in the case of Equivalent Securities, paid to Borrower and in respect of which equivalent amounts have not been paid to Lender and in the case of Equivalent Collateral, paid to Lender and in respect of which equivalent amounts have not been paid to Borrower, in accordance with paragraph 6.1 prior to such time in respect of such Equivalent Securities, Equivalent Collateral or the original Securities or Collateral held, gross of all and any tax deducted or paid in respect thereof;

"Offer Price" in relation to Equivalent Securities or Equivalent Collateral means the best available offer price on the most appropriate market in a standard size;

"Offer Value" subject to paragraph 10.5 means:-

- (a) in relation to Collateral equivalent to Collateral in the form of a Letter of Credit zero and in relation to Cash Collateral the amount of the currency concerned; and
- (b) in relation to Equivalent Securities or Collateral equivalent to all other types of Collateral the amount it would cost to buy such Equivalent Securities or Equivalent Collateral at the Offer Price at Close of Business on the relevant Business Day together with all costs, fees and expenses that would be incurred in connection therewith, calculated on the assumption that the aggregate thereof is the least that could reasonably be expected to be paid in order to carry out the transaction and adding thereto the amount of any interest, dividends, distributions or other amounts, in the case of Equivalent Securities, paid to Borrower and in respect of which equivalent amounts have not been paid to Lender and in the case of Equivalent Collateral, paid to Lender and in respect of which equivalent amounts have not been paid to Borrower, in accordance with paragraph 6.1 prior to such time in respect of such Equivalent Securities, Equivalent Collateral or the original Securities or Collateral held, gross of all and any tax deducted or paid in respect thereof;

10.2 **Termination of delivery obligations upon Event of Default**

Subject to paragraph 9, if an Event of Default occurs in relation to either Party, the Parties' delivery and payment obligations (and any other obligations they have under this Agreement) shall be accelerated so as to require performance thereof at the time such Event of Default occurs (the date of which shall be the **"Termination Date"** for the purposes of this clause) so that performance of such delivery and payment obligations shall be effected only in accordance with the following provisions:

- (i) the Relevant Value of the securities which would have been required to be delivered but for such termination (or payment to be made, as the case may be) by each Party shall be established in accordance with paragraph 10.3; and

- (ii) on the basis of the Relevant Values so established, an account shall be taken (as at the Termination Date) of what is due from each Party to the other and (on the basis that each Party's claim against the other in respect of delivery of Equivalent Securities or Equivalent Collateral or any cash payment equals the Relevant Value thereof) the sums due from one Party shall be set-off against the sums due from the other and only the balance of the account shall be payable (by the Party having the claim valued at the lower amount pursuant to the foregoing) and such balance shall be payable on the Termination Date.

If the Bid Value is greater than the Offer Value, and the Non-Defaulting Party had delivered to the Defaulting Party a Letter of Credit, the Defaulting Party shall draw on the Letter of Credit to the extent of the balance due and shall subsequently redeliver for cancellation the Letter of Credit so provided.

If the Offer Value is greater than the Bid Value, and the Defaulting Party had delivered to the Non-Defaulting Party a Letter of Credit, the Non-Defaulting Party shall draw on the Letter of Credit to the extent of the balance due and shall subsequently redeliver for cancellation the Letter of Credit so provided.

In all other circumstances, where a Letter of Credit has been provided to a Party, such Party shall redeliver for cancellation the Letter of Credit so provided.

10.3 **Determination of delivery values upon Event of Default**

For the purposes of paragraph 10.2 the "**Relevant Value**":-

- (i) of any securities to be delivered by the Defaulting Party shall, subject to paragraph 10.5 below, equal the Offer Value of such securities; and
- (ii) of any securities to be delivered to the Defaulting Party shall, subject to paragraph 10.5 below, equal the Bid Value of such securities.

10.4 For the purposes of paragraph 10.3, but subject to paragraph 10.5, the Bid Value and Offer Value of any securities shall be calculated for securities of the relevant description (as determined by the Non-Defaulting Party) as of the first Business Day following the Termination Date, or if the relevant Event of Default occurs outside the normal business hours of such market, on the second Business Day following the Termination Date (the "**Default Valuation Time**");

10.5 Where the Non-Defaulting Party has following the occurrence of an Event of Default but prior to the close of business on the fifth Business Day following the Termination Date purchased securities forming part of the same issue and being of an identical type and description to those to be delivered by the Defaulting Party or sold securities forming part of the same issue and being of an identical type and description to those to be delivered by him to the Defaulting Party, the cost of such purchase or the proceeds of such sale, as the case may be, (taking into account all reasonable costs, fees and expenses that would be incurred in connection therewith) shall (together with any amounts owing pursuant to paragraph 6.1) be treated as the Offer Value or Bid Value, as the case may be, of the amount of securities to be delivered which is equivalent to the amount of the securities so bought or sold, as the case may be, for the purposes of this paragraph 10, so

that where the amount of securities to be delivered is more than the amount so bought or sold as the case may be, the Offer Value or Bid Value as the case may be, of the balance shall be valued in accordance with paragraph 10.4.

- 10.6 Any reference in this paragraph 10 to securities shall include any asset other than cash provided by way of Collateral.

10.7 **Other costs, expenses and interest payable in consequence of an Event of Default**

The Defaulting Party shall be liable to the Non-Defaulting Party for the amount of all reasonable legal and other professional expenses incurred by the Non-Defaulting Party in connection with or as a consequence of an Event of Default, together with interest thereon at the one-month London Inter Bank Offered Rate as quoted on a reputable financial information service ("**LIBOR**") as of 11.00 am, London Time, on the date on which it is to be determined or, in the case of an expense attributable to a particular transaction and where the parties have previously agreed a rate of interest for the transaction, that rate of interest if it is greater than LIBOR. The rate of LIBOR applicable to each month or part thereof that any sum payable pursuant to this paragraph 10.7 remains outstanding is the rate of LIBOR determined on the first Business Day of any such period of one month or any part thereof. Interest will accrue daily on a compound basis and will be calculated according to the actual number of days elapsed.

11. **TRANSFER TAXES**

Borrower hereby undertakes promptly to pay and account for any transfer or similar duties or taxes chargeable in connection with any transaction effected pursuant to or contemplated by this Agreement, and shall indemnify and keep indemnified Lender against any liability arising as a result of Borrower's failure to do so.

12. **LENDER'S WARRANTIES**

Each Party hereby warrants and undertakes to the other on a continuing basis to the intent that such warranties shall survive the completion of any transaction contemplated herein that, where acting as a Lender:

- (a) it is duly authorised and empowered to perform its duties and obligations under this Agreement;
- (b) it is not restricted under the terms of its constitution or in any other manner from lending Securities in accordance with this Agreement or from otherwise performing its obligations hereunder;
- (c) it is absolutely entitled to pass full legal and beneficial ownership of all Securities provided by it hereunder to Borrower free from all liens, charges and encumbrances; and
- (d) it is acting as principal in respect of this Agreement or, subject to paragraph 16, as agent and the conditions referred to in paragraph 16.2 will be fulfilled in respect of any Loan which it makes as agent.

13. **BORROWER'S WARRANTIES**

Each Party hereby warrants and undertakes to the other on a continuing basis to the intent that such warranties shall survive the completion of any transaction contemplated herein that, where acting as a Borrower:

- (a) it has all necessary licenses and approvals, and is duly authorised and empowered, to perform its duties and obligations under this Agreement and will do nothing prejudicial to the continuation of such authorisation, licences or approvals;
- (b) it is not restricted under the terms of its constitution or in any other manner from borrowing Securities in accordance with this Agreement or from otherwise performing its obligations hereunder;
- (c) it is absolutely entitled to pass full legal and beneficial ownership of all Collateral provided by it hereunder to Lender free from all liens, charges and encumbrances; and
- (d) it is acting as principal in respect of this Agreement.

14. **EVENTS OF DEFAULT**

14.1 Each of the following events occurring in relation to either Party (the "**Defaulting Party**", the other Party being the "**Non-Defaulting Party**") shall be an Event of Default for the purpose of paragraph 10 but only (subject to sub-paragraph (v) below) where the Non-Defaulting Party serves written notice on the Defaulting Party:-

- (i) Borrower or Lender failing to pay or repay Cash Collateral or deliver Collateral or redeliver Equivalent Collateral or Lender failing to deliver Securities upon the due date;
- (ii) Lender or Borrower failing to comply with its obligations under paragraph 5;
- (iii) Lender or Borrower failing to comply with its obligations under paragraph 6.1;
- (iv) Borrower failing to comply with its obligations to deliver Equivalent Securities in accordance with paragraph 8;
- (v) an Act of Insolvency occurring with respect to Lender or Borrower, an Act of Insolvency which is the presentation of a petition for winding up or any analogous proceeding or the appointment of a liquidator or analogous officer of the Defaulting Party not requiring the Non-Defaulting Party to serve written notice on the Defaulting Party;
- (vi) any representation or warranty made by Lender or Borrower being incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated;
- (vii) Lender or Borrower admitting to the other that it is unable to, or it intends not to, perform any of its obligations under this Agreement and/or in respect of any Loan;

- (viii) Lender (if applicable) or Borrower being declared in default or being suspended or expelled from membership of or participation in, any securities exchange or association or suspended or prohibited from dealing in securities by any regulatory authority;
 - (ix) any of the assets of Lender or Borrower or the assets of investors held by or to the order of Lender or Borrower being transferred or ordered to be transferred to a trustee (or a person exercising similar functions) by a regulatory authority pursuant to any securities regulating legislation, or
 - (x) Lender or Borrower failing to perform any other of its obligations under this Agreement and not remedying such failure within 30 days after the Non-Defaulting Party serves written notice requiring it to remedy such failure.
- 14.2 Each Party shall notify the other (in writing) if an Event of Default or an event which, with the passage of time and/or upon the serving of a written notice as referred to above, would be an Event of Default, occurs in relation to it.
- 14.3 The provisions of this Agreement constitute a complete statement of the remedies available to each Party in respect of any Event of Default.
- 14.4 Subject to paragraph 9.3 and 10.7, neither Party may claim any sum by way of consequential loss or damage in the event of failure by the other party to perform any of its obligations under this Agreement.

15. **INTEREST ON OUTSTANDING PAYMENTS**

In the event of either Party failing to remit sums in accordance with this Agreement such Party hereby undertakes to pay to the other Party upon demand interest (before as well as after judgment) on the net balance due and outstanding, for the period commencing on and inclusive of the original due date for payment to (but excluding) the date of actual payment, in the same currency as the principal sum and at the rate referred to in paragraph 10.7. Interest will accrue daily on a compound basis and will be calculated according to the actual number of days elapsed.

16. **TRANSACTIONS ENTERED INTO AS AGENT**

16.1 **Power for Lender to enter into Loans as agent**

Subject to the following provisions of this paragraph, Lender may (if so indicated in paragraph 6 of the Schedule) enter into Loans as agent (in such capacity, the "**Agent**") for a third person (a "**Principal**"), whether as custodian or investment manager or otherwise (a Loan so entered into being referred to in this paragraph as an "**Agency Transaction**").

16.2 **Conditions for agency loan**

A Lender may enter into an Agency Transaction if, but only if:-

- (i) it specifies that Loan as an Agency Transaction at the time when it enters into it;

- (ii) it enters into that Loan on behalf of a single Principal whose identity is disclosed to Borrower (whether by name or by reference to a code or identifier which the Parties have agreed will be used to refer to a specified Principal) at the time when it enters into the Loan or as otherwise agreed between the Parties; and
- (iii) it has at the time when the Loan is entered into actual authority to enter into the Loan and to perform on behalf of that Principal all of that Principal's obligations under the agreement referred to in paragraph 16.4(ii).

16.3 Notification by Lender of certain events affecting the principal

Lender undertakes that, if it enters as agent into an Agency Transaction, forthwith upon becoming aware:-

- (i) of any event which constitutes an Act of Insolvency with respect to the relevant Principal; or
- (ii) of any breach of any of the warranties given in paragraph 16.5 or of any event or circumstance which has the result that any such warranty would be untrue if repeated by reference to the then current facts;

it will inform Borrower of that fact and will, if so required by Borrower, furnish it with such additional information as it may reasonably request.

16.4 Status of agency transaction

- (i) Each Agency Transaction shall be a transaction between the relevant Principal and Borrower and no person other than the relevant Principal and Borrower shall be a party to or have any rights or obligations under an Agency Transaction. Without limiting the foregoing, Lender shall not be liable as principal for the performance of an Agency Transaction, but this is without prejudice to any liability of Lender under any other provision of this clause; and
- (ii) all the provisions of the Agreement shall apply separately as between Borrower and each Principal for whom the Agent has entered into an Agency transaction or Agency Transactions as if each such Principal were a party to a separate agreement with Borrower in all respects identical with this Agreement other than this paragraph and as if the Principal were Lender in respect of that agreement;

PROVIDED THAT

if there occurs in relation to the Agent an Event of Default or an event which would constitute an Event of Default if Borrower served written notice under any sub-clause of paragraph 14, Borrower shall be entitled by giving written notice to the Principal (which notice shall be validly given if given to Lender in accordance with paragraph 21) to declare that by reason of that event an Event of Default is to be treated as occurring in relation to the Principal. If Borrower gives such a notice then an Event of Default shall be treated as occurring in relation to the Principal at the time when the notice is deemed to be given; and

if the Principal is neither incorporated in nor has established a place of business in Great Britain, the Principal shall for the purposes of the agreement referred to in paragraph 16.4(ii) be deemed to have appointed as its agent to receive on its behalf service of process in the courts of England the Agent, or if the Agent is neither incorporated nor has established a place of business in Great Britain, the person appointed by the Agent for the purposes of this Agreement, or such other person as the Principal may from time to time specify in a written notice given to the other Party.

The foregoing provisions of this paragraph do not affect the operation of the Agreement as between Borrower and Lender in respect of any transactions into which Lender may enter on its own account as principal.

16.5 Warranty of authority by Lender acting as agent

Lender warrants to Borrower that it will, on every occasion on which it enters or purports to enter into a transaction as an Agency Transaction, have been duly authorised to enter into that Loan and perform the obligations arising under such transaction on behalf of the person whom it specifies as the Principal in respect of that transaction and to perform on behalf of that person all the obligations of that person under the agreement referred to in paragraph 16.4(ii).

17. TERMINATION OF THIS AGREEMENT

Each Party shall have the right to terminate this Agreement by giving not less than 15 Business Days' notice in writing to the other Party (which notice shall specify the date of termination) subject to an obligation to ensure that all Loans which have been entered into but not discharged at the time such notice is given are duly discharged in accordance with this Agreement.

18. SINGLE AGREEMENT

Each Party acknowledges that, and has entered into this Agreement and will enter into each Loan in consideration of and in reliance upon the fact that, all Loans constitute a single business and contractual relationship and are made in consideration of each other. Accordingly, each Party agrees:

- (i) to perform all of its obligations in respect of each Loan, and that a default in the performance of any such obligations shall constitute a default by it in respect of all Loans; and
- (ii) that payments, deliveries and other transfers made by either of them in respect of any Loan shall be deemed to have been made in consideration of payments, deliveries and other transfers in respect of any other Loan.

19. SEVERANCE

If any provision of this Agreement is declared by any judicial or other competent authority to be void or otherwise unenforceable, that provision shall be severed from the Agreement and the remaining provisions of this Agreement shall remain in full force and effect. The Agreement shall, however, thereafter be amended by the Parties in such

reasonable manner so as to achieve as far as possible, without illegality, the intention of the Parties with respect to that severed provision.

20. SPECIFIC PERFORMANCE

Each Party agrees that in relation to legal proceedings it will not seek specific performance of the other Party's obligation to deliver or redeliver Securities, Equivalent Securities, Collateral or Equivalent Collateral but without prejudice to any other rights it may have.

21. NOTICES

21.1 Any notice or other communication in respect of this Agreement may be given in any manner set forth below to the address or number or in accordance with the electronic messaging system details set out in paragraph 4 of the Schedule 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 telex, on the date the recipient's answerback is received;
- (iii) if sent by facsimile transmission, on the date that transmission 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);
- (iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
- (v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or the receipt, as applicable, is not a Business Day or that communication is delivered (or attempted) or received, as applicable, after the Close of Business on a Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Business Day.

21.2 Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

22. ASSIGNMENT

Neither Party may charge assign or transfer all or any of its rights or obligations hereunder without the prior consent of the other Party.

23. NON-WAIVER

No failure or delay by either Party (whether by course of conduct or otherwise) to exercise any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude any other or

further exercise thereof or the exercise of any other right, power or privilege as herein provided.

24. **GOVERNING LAW AND JURISDICTION**

- 24.1 This Agreement is governed by, and shall be construed in accordance with, English law.
- 24.2 The courts of England have exclusive jurisdiction to hear and decide any suit, action or proceedings, and to settle any disputes, which may arise out of or in connection with this Agreement (respectively, "**Proceedings**" and "**Disputes**") and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England.
- 24.3 Each party irrevocably waives any objection which it might at any time have to the courts of England being nominated as the forum to hear and decide any Proceedings and to settle any Disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.
- 24.4 Each of Party A and Party B hereby respectively appoints the person identified in paragraph 5 of the Schedule pertaining to the relevant Party as its agent to receive on its behalf service of process in the courts of England. If such an agent ceases to be an agent of Party A or party B, as the case may be, the relevant Party shall promptly appoint, and notify the other Party of the identity of its new agent in England.

25. **TIME**

Time shall be of the essence of the Agreement.

26. **RECORDING**

The Parties agree that each may record all telephone conversations between them.

27. **WAIVER OF IMMUNITY**

Each Party hereby waives all immunity (whether on the basis of sovereignty or otherwise) from jurisdiction, attachment (both before and after judgement) and execution to which it might otherwise be entitled in any action or proceeding in the courts of England or of any other country or jurisdiction relating in any way to this Agreement and agrees that it will not raise, claim or cause to be pleaded any such immunity at or in respect of any such action or proceeding.

28. **MISCELLANEOUS**

- 28.1 This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.
- 28.2 The Party (the "**Relevant Party**") who has prepared the text of this Agreement for execution (as indicated in paragraph 7 of the Schedule) warrants and undertakes to the other Party that such text conforms exactly to the text of the standard form Global Master Securities Lending Agreement posted by the International Securities Lenders Association on its website on 7 May 2000 except as notified by the Relevant Party to the other Party in writing prior to the execution of this Agreement.

- 28.3 No amendment in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the Parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.
- 28.4 The obligations of the Parties under this Agreement will survive the termination of any Loan.
- 28.5 The warranties contained in paragraphs 12, 13, 16 and 28.2 will survive termination of this Agreement for so long as any obligations of either of the Parties pursuant to this Agreement remain outstanding.
- 28.6 Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.
- 28.7 This Agreement (and each amendment in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
- 28.8 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

EXECUTED by the **PARTIES**

SIGNED BY)
)
DULY AUTHORISED FOR AND)
ON BEHALF OF)

SIGNED BY)
)
DULY AUTHORISED FOR AND)
ON BEHALF OF)

SCHEDULE

1. Collateral

- 1.1 The securities, financial instruments and deposits of currency set out in the table below with a cross marked next to them are acceptable forms of Collateral under this Agreement.
- 1.2 Unless otherwise agreed between the Parties, the Market Value of the Collateral delivered pursuant to paragraph 5 by Borrower to Lender under the terms and conditions of this Agreement shall on each Business Day represent not less than the Market Value of the Loaned Securities together with the percentage contained in the row of the table below corresponding to the particular form of Collateral, referred to in this Agreement as the "**Margin**".

Security/Financial Instrument/Deposit of Currency	Mark "X" if acceptable form of Collateral	Margin (%)

- 1.3 Basis of Margin Maintenance:

Paragraph 5.4 (aggregation) shall not apply* ☐

The assumption is that paragraph 5.4 (aggregation) applies unless the box is ticked.

- 1.4 Paragraph 5.6 (netting of obligations to deliver Collateral and redeliver Equivalent Collateral) shall not apply* ☐

If paragraph 5.4 applies, the assumption is that paragraph 5.6 (netting) applies unless the box is ticked.

2. Base Currency

The Base Currency applicable to this Agreement is

3. Places of Business

(See definition of Business Day.)

4. Designated Office and Address for Notices

(A) Designated office of Party A:

Address for notices or communications to Party A:

Address:

Attention:

Facsimile No:

Telephone No:

Electronic Messaging System Details:

(B) **Designated office of Party B:**

Address for notices or communications to Party B:

Address:

Attention:

Facsimile No:

Telephone No:

Electronic Messaging System Details:

5. (A) **Agent of Party A for Service of Process**

Name:

Address:

(B) **Agent of Party B for Service of Process**

Name:

Address:

6. **Agency**

- Paragraph 16 may apply to Party A* ☐

- Paragraph 16 may apply to Party B* ☐

7. **Party Preparing this Agreement**

Party A* ☐

Party B* ☐