

**C L I F F O R D
C H A N C E**

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YOUR REFERENCE

IN REPLY PLEASE QUOTE
PDB/C1458/04790/HNM

DATE
17 December 2003

DIRECT DIAL

The Bond Market Association
360 Madison Avenue
New York
NY 10017
USA

Dear Sirs

Cross-Product Master Agreement (Cross-Affiliate Version 2)

We have been asked, as legal advisors to The Bond Market Association ("TBMA"), to deliver this opinion in respect of the laws of England and Wales (this "**Jurisdiction**") as to the enforceability of agreements on the terms of the Cross-Product Master Agreement (Cross-Affiliate Version 2) published by TBMA in June 2003 in circumstances where such agreement is governed by the laws of this Jurisdiction.

For the purposes of giving this opinion, we have examined the form published by TBMA in June 2003 of an agreement entitled the Cross-Product Master Agreement (Cross-Affiliate Version 2) (the "**Master Agreement**"), a copy of which is attached to this opinion.

1. TERMS OF REFERENCE

- 1.1 When used in this opinion, unless otherwise defined herein, terms defined in the Master Agreement shall have the same meaning as defined therein.
- 1.2 References to the Principal Agreements shall include references to any transactions thereunder, unless the contrary is stated.
- 1.3 Headings in this opinion are for ease of reference only and do not affect its interpretation.
- 1.4 In this opinion:
 - (a) a reference to a "**bank**" is to any person which has permission to accept deposits by virtue of Part IV of the Financial Services and Markets Act 2000 ("**FSMA**");

- (b) a reference to a "company" is to a company within the meaning of section 735 of the Companies Act 1985;
 - (c) a reference to an "insurance company" is to any person which has permission to carry out contracts of insurance by virtue of Part IV of FSMA;
 - (d) a reference to a "paragraph" is to a paragraph of this opinion;
 - (e) a reference to a "Schedule" or "Annex" is to the schedule or an annex to the Master Agreement (as the case may be); and
 - (f) a reference to a "Section" is to a section of the Master Agreement or of an annex thereto (as the case may be).
- 1.5 This opinion relates solely to matters of the laws of this Jurisdiction as in force and as interpreted as at the date hereof. This opinion does not consider the impact of any laws (including insolvency laws) other than of the laws of this Jurisdiction, even in the case where, under the laws of this Jurisdiction, the law of any other jurisdiction falls to be applied.
- 1.6 We do not express any opinion as to any matters of fact or as to any competition law aspects raised by virtue of the publication of the Master Agreement by TBMA.
- 1.7 We have not considered and do not express any opinion on:
- (a) any provision of the Master Agreement which is not in: (i) Sections 1 to 9 inclusive, (ii) Parts I to VII inclusive of the Schedule or (iii) Annexes I or II;
 - (b) the provisions of Section 2 of Annex I as they relate to matters of the laws of the United States, including, in particular: (i) the final sentence of Section 2.2(b)(i); (ii) Section 2.3(a)(ii); (iii) the last two sentences of Section 2.4(a); and (iv) Section 2.4(h);
 - (c) the Principal Agreements, including any transactions thereunder;
 - (d) the validity and effectiveness of any security created by Party B under Annex I over any Collateral which comprises Principal Agreement Collateral or Other Collateral; and
 - (e) the provisions for submission to jurisdiction of courts, waiver of immunities, waiver of jury trial and the appointment of process agents adopted in relation to the Master Agreement under Section 6 and Part IV of the Schedule and any provisions adopted in relation to the Master Agreement under Part VII of the Schedule, as the relevant provisions are not set out in the Master Agreement and are, thus, not available to us. Nevertheless, we do opine on certain matters regarding jurisdiction as indicated in paragraph 3.2.2.
- 1.8 We do not opine on the enforceability of any net obligation resulting from any netting or set-off.

2. ASSUMPTIONS

In rendering this opinion, we have assumed that:

- 2.1 the Master Agreement and all Principal Agreements entered into between the Parties are entered into by each Party as principal and are within each Party's capacity, power and authority and all steps necessary for each Party to authorise, execute, deliver and perform the Master Agreement and the Principal Agreements have been duly taken;
- 2.2 each Party has duly executed and delivered and properly completed the Master Agreement (as a deed in the case of Party B where the Parties have agreed that Annex I should apply to the Master Agreement) and all documentation relating to any Principal Agreement and has obtained, complied with the terms of and maintained, all authorisations, approvals, licences and consents required to enable it lawfully: (i) to enter into and perform its obligations under the Master Agreement and all Principal Agreements, (ii) to ensure the legality, validity and enforceability of the Master Agreement and all Principal Agreements and (iii) to ensure the admissibility in evidence in this Jurisdiction of the Master Agreement and the Principal Agreements;
- 2.3 each Party duly performs its obligations undertaken under the Master Agreement and each Principal Agreement in accordance with their terms;
- 2.4 the Principal Agreements and any contractual or proprietary arrangements or rights thereunder are valid, legally binding and enforceable and any transaction thereunder which cannot legally be Closed Out under any applicable law is not the subject of an election to Close Out by any Party A Entity under Section 2.1;
- 2.5 all Settlement Amounts falling to be determined under the Principal Agreements are duly determined in accordance with the provisions of the relevant Principal Agreement;
- 2.6 the Parties to the Master Agreement are companies (including banks but excluding insurance companies) which are: (i) formed and registered under the laws of this Jurisdiction (each an "English company") or (ii) incorporated or formed under the laws of another jurisdiction (each a "foreign company");
- 2.7 there are no other agreements or arrangements affecting the Parties (including, without limitation, any provisions included by the Parties in Part IX of the Schedule) which conflict with or override the terms of the Master Agreement or any Principal Agreement, save for any such agreement or arrangement in relation to any Principal Agreement which is effected under the terms of the Master Agreement;
- 2.8 where the Parties have agreed that Annex II should apply to the Master Agreement, the execution and delivery of the Master Agreement by each Limited Guarantor which is an English company and the exercise of its rights and performance of its obligations under the Master Agreement will benefit and is in the interests of such Limited Guarantor;

- 2.9 in the case of any Party which is a foreign company, all acts, conditions or things required to be fulfilled, performed or effected in connection with the Master Agreement and the Principal Agreements have been duly fulfilled, performed and effected;
- 2.10 where the Parties have agreed that Annex I should apply to the Master Agreement, they have not also agreed that Annex II should so apply (and *vice versa*);
- 2.11 the governing law selected in Part IV to the Schedule to the Master Agreement is the law of this Jurisdiction; and
- 2.12 notwithstanding the assumption in paragraph 2.1 above, the obligations under the Master Agreement, each Principal Agreement and any transactions thereunder are mutual between the Parties thereto. "Mutuality" generally exists where each Party is personally and solely liable as regards obligations owing by it and is solely entitled to the benefit of obligations owed to it. Circumstances in which the requisite mutuality will not be established include, without limitation, where a Party is acting as agent for another person, or is a trustee, or in respect of which a Party has a joint interest (including partnership) or in respect of which a Party's rights or obligations or any interest herein have been assigned, charged or transferred (whether in whole or in part) whether unilaterally, by agreement or by operation of law.

3. **OPINION**

On the basis of the foregoing terms of reference and assumptions, and subject to the qualifications set out in paragraph 4 below, we are of the following opinion:

3.1 **Validity of the Provisions of the Master Agreement**

The provisions of the Master Agreement would be valid and enforceable under the laws of this Jurisdiction.

3.2 **Choice of Governing Law and Jurisdiction**

3.2.1 In our opinion, if the matter were to come before the courts of this Jurisdiction, those courts would recognise the choice of the laws of this Jurisdiction to govern the Master Agreement, even if none of the Parties is incorporated, domiciled or established in this Jurisdiction, subject to the provisions of the Contracts (Applicable Law) Act 1990. In summary, the Contracts (Applicable Law) Act 1990 allows parties to choose the law to govern a contract subject to the following provisions:

- (a) the fact that the Parties have chosen a foreign law shall not, where all other elements relevant to the situation at the time of the choice are connected with one country only, prejudice the application of rules of law of that country which cannot be derogated from by contract; and

- (b) the Parties cannot restrict the application of the rules of law which are mandatory in the forum irrespective of the law otherwise applicable to the contract.

3.2.2 In our opinion, if the Parties specify the courts of this Jurisdiction as the courts which are to have jurisdiction in respect of any proceedings relating to the Master Agreement, the courts of this Jurisdiction would accept jurisdiction over proceedings relating to the Master Agreement subject to the following:

- (a) In the event that the courts of this Jurisdiction have exclusive jurisdiction in respect of such proceedings:
 - (i) the courts of this Jurisdiction retain an inherent jurisdiction to control any proceedings before them, including by staying those proceedings; and
 - (ii) the courts of this Jurisdiction will not stay proceedings before them in favour of proceedings in another jurisdiction unless there is a strong case for doing so; but
 - (A) if the courts of another member state of the EU or EFTA (except Liechtenstein), or of Poland are seised of proceedings involving the same or a related cause of action, the courts of this Jurisdiction may be obliged to stay proceedings before them but it is not their current practice to do so; and
 - (B) if a Party submits to the jurisdiction of a foreign court, other than solely to contest its jurisdiction, the courts of this Jurisdiction will stay proceedings before them against that Party if that court is in another member state of the EU or EFTA (except Liechtenstein) or Poland and may do so if the court is elsewhere.
- (b) In the event that the courts of this Jurisdiction have non-exclusive jurisdiction in respect of such proceedings:
 - (i) there is uncertainty over the effectiveness of non-exclusive jurisdiction clauses as against Parties domiciled in Denmark, Iceland, Norway, Poland and Switzerland but the current practice of the courts of this Jurisdiction is, subject to the following, to enforce these clauses in accordance with their terms;
 - (ii) the courts of this Jurisdiction retain an inherent jurisdiction to control any proceedings before them, including by staying those proceedings; and
 - (iii) in making a decision on whether to stay proceedings, the courts of this Jurisdiction will take into account all material circumstances

including, in particular, the existence of proceedings in another jurisdiction; but

- (iv) if the courts of a member state of the EU or EFTA (except Liechtenstein) or of Poland were seised before the courts of this Jurisdiction of proceedings involving the same cause of action and between the same parties, the courts of this Jurisdiction will stay proceedings before them, and the courts of this Jurisdiction may do so if those courts were seised before the courts of this Jurisdiction of related proceedings.

3.3 Valid Security Interest

Where the Parties have agreed that Annex I should apply to the Master Agreement, Section 2.2 of Annex I will create in favour of each Party A Entity valid and effective security over the Receivables Collateral in the manner described therein. Subject to paragraph 4.3.1, no further action is required under the laws of this Jurisdiction to perfect such security.

4. QUALIFICATIONS

Our opinion is subject to the following qualifications:

4.1 Limitations Arising From Insolvency Law

The opinions set out in paragraph 3.1 (*Validity of the Provisions of the Master Agreement*) and paragraph 3.3 (*Valid Security Interest*) are subject to any limitations arising from administration, bankruptcy, insolvency, liquidation, moratorium, reorganisation and similar laws generally affecting the rights of creditors and the application of general principles of equity (regardless of whether such enforceability is considered a proceeding in equity or law).

4.2 Enforceability

The terms "enforceable" and "enforceability" as used in this opinion mean that the relevant obligations are of a type which the courts of this Jurisdiction may enforce; but it does not mean that those obligations will necessarily be enforced in all circumstances in accordance with their terms. In particular, we draw your attention to the following:

4.2.1 Where any obligations under the Master Agreement are to be performed in a jurisdiction other than this Jurisdiction or a Party's obligations are subject to the laws of a jurisdiction other than this Jurisdiction, those obligations may not be enforceable under the laws of this Jurisdiction to the extent that performance would be illegal or contrary to public policy under the laws of the other jurisdiction.

4.2.2 Any provision in the Master Agreement to the effect that any calculation, determination or certification will be conclusive and binding will not be effective if such calculation, determination or certification is fraudulent,

incorrect, arbitrary or shown not to have been given or made in good faith and will not necessarily prevent judicial enquiry into the merits of any claim by any Party. The laws of this Jurisdiction may have effect so that any discretion or determination to be exercised or made by a Party under the terms of the Master Agreement must be exercised or made reasonably. The courts of this Jurisdiction may regard any calculation, determination or certification as no more than *prima facie* evidence of the matter calculated, determined or certified.

- 4.2.3 The courts of this Jurisdiction may decline jurisdiction if the courts of another jurisdiction: (i) have already been seised in respect of proceedings involving the same parties and relating to the same cause of action (*lis alibi pendens*) or (ii) are more appropriate for the determination of the dispute (*forum non conveniens*). In relation to (i), the courts of this Jurisdiction may be obliged to stay proceedings or decline jurisdiction if the courts of another member state of the EU or EFTA or of Poland have already been seised in respect of such proceedings. In relation to (ii), in deciding whether the courts of another jurisdiction would be more appropriate, the courts of this Jurisdiction look to connecting factors such as the nature of the dispute, the legal and practical issues involved, such questions as local knowledge, availability of witnesses and their evidence, and expense.
- 4.2.4 If the effect of proceedings in a forum outside this Jurisdiction is to extinguish claims or liabilities under the governing law of those claims or liabilities, the courts of this Jurisdiction may recognise the extinction of those claims or liabilities.
- 4.2.5 Enforcement of rights may be or become limited by the lapse of time or may be or become subject to defences of set off or counterclaim arising in respect of other dealings between the Parties.
- 4.2.6 The obligation to pay interest on a defaulted amount may, to the extent that it does not constitute a genuine pre-estimate of loss, be held to be unenforceable on the grounds that it constitutes a penalty. Similarly, to the extent there are provisions in the Master Agreement entitling a Party to claim an amount in respect of loss or damage suffered by it in respect of a non-performance by the other Party, to the extent that amount exceeds a genuine pre-estimate of loss it may be held to be unenforceable. If the Master Agreement does not provide a contractual remedy for the late payment of any amount payable thereunder that is a "substantial remedy" within the meaning of the Late Payment of Commercial Debts (Interest) Act 1998 (the "Interest Act"), the person entitled to that amount may have a right to statutory interest (and to payment of certain fixed sums) in respect of that late payment at the rate (and in the amount) from time to time prescribed by the Interest Act. Any term of the Master Agreement may be void to the extent that it excludes or varies that right to statutory interest, or purports to confer a contractual right to interest

that is not a substantial remedy for late payment of that amount within the meaning of the Interest Act and we express no opinion as to whether any provision in the Master Agreement does in fact constitute a "substantial remedy" for late payment of any amount within the meaning of the Interest Act.

- 4.2.7 Whilst, in the event of any proceedings being brought in a court of this Jurisdiction in respect of a monetary obligation expressed to be payable in a currency other than pounds sterling of the United Kingdom, that court would have power to give judgement expressed as an order to pay such currency, it may decline to do so in its discretion.
- 4.2.8 The Master Agreement may be held to be invalid or not binding in the event of any misrepresentation, illegality, fraud, duress, undue influence or mistake of fact. Accordingly, we express no opinion if any of these elements is present.
- 4.2.9 We do not opine on the legality, validity or enforceability of any Principal Agreement or any transaction thereunder. Unless and until transactions are entered into under Principal Agreements, the provisions of the Master Agreement regarding the close-out of transactions under any Principal Agreements and the determination and settlement of Settlement Amounts will have no practical application. If a Principal Agreement or any transaction is not itself valid, legally binding and enforceable, the Master Agreement will not be either in relation to it. Moreover, it is possible that the terms of a Principal Agreement or a transaction could amend or affect the Master Agreement in relation to any other Principal Agreement or transaction in a manner which could affect the enforceability of the provisions of the Master Agreement under the laws of this Jurisdiction (for example, where the Parties agree in Part VII of the Schedule that specific provisions of a Principal Agreement are to apply to the Master Agreement). Our opinion is subject to this.
- 4.2.10 The ability of the Master Agreement to terminate all Principal Agreements may be limited by contrary intention contained in any Principal Agreements or in any transaction thereunder (for example, where a provision reflecting such a contrary intention is included in a Principal Agreement and the Parties have agreed in Part VII of the Schedule that such provision is to apply to the Master Agreement).
- 4.2.11 A judgment on the Master Agreement, whether in the courts of this Jurisdiction or elsewhere, may be held to supersede the Master Agreement so that the obligations to pay interest and regarding contractual currency may not survive such judgment.
- 4.2.12 If a Party is controlled by or otherwise connected with a person (or is itself) resident in, incorporated in or constituted under the laws of a country which is

the subject of United Nations, European Community or UK sanctions implemented or effective in this Jurisdiction under the United Nations Act 1946, the Emergency Laws (Re-enactments and Repeals) Act 1964 or the Anti-terrorism, Crime and Security Act 2001, or under the Treaty establishing the European Community, or is otherwise the target of any such sanctions, then the obligations of any other Party to that Party under the Master Agreement may be unenforceable or void.

- 4.2.13 The power of the courts of this Jurisdiction to order specific performance of an obligation or to order any other equitable remedy is discretionary and, accordingly, such courts might make an award of damages where specific performance of an obligation or any other equitable remedy was sought.
- 4.2.14 In order to be effective, a submission to the jurisdiction of particular courts may require compliance with specific requirements because of the nature or location of the submitting Party and, accordingly, the submission made by such Party may not be effective if such requirements have not been complied with.
- 4.2.15 Enforcement of the Master Agreement may be limited by the provisions of the laws of this Jurisdiction applicable to agreements held to have been frustrated by events happening after their execution.
- 4.2.16 Any provision of the Master Agreement stating that a failure or delay on the part of any Party in exercising any right or remedy under the Master Agreement shall not operate as a waiver of such right or remedy may not be effective.
- 4.2.17 The effectiveness of Section 9.6 (which provides for each provision of the Master Agreement to be enforceable notwithstanding the unenforceability of any other provision of the Master Agreement) will be determined by the courts of this Jurisdiction in their discretion.

4.3 Effectiveness of Security

- 4.3.1 Pursuant to the Companies Act 1985, an English company (with respect to assets wherever located) or a foreign company which has established a place of business in England (with respect to assets in England) must, in order to validate certain classes of security over those assets against a liquidator, administrator or creditor, deliver the instrument evidencing the security together with the prescribed particulars thereof for registration to the Registrar of Companies (the "Registrar") within 21 days of the creation of such security. The fact that, at the date of the creation of the security, a foreign company is not registered under the Companies Act 1985 as having established a place of business in England does not relieve it of the requirement to deliver the instrument evidencing the security together with the prescribed particulars of the security within the period of 21 days from

creation, if in fact it had established a place of business in England as at the date of creation of the security; however, the decision of the court in *N.V. Slavenburg's Bank v. Inter Continental National Resources Limited and Others*, as amplified by the decision of the court in *Re Oriel Ltd*, indicates that if the instrument evidencing the security and the prescribed particulars are delivered to the Registrar in the manner required by the Companies Act 1985 then such security will not be prejudiced by reason of the Registrar failing to register the security or to issue a certificate of registration thereof. It is possible that the security created by Party B under Section 2.2 of Annex I may fall within the foregoing requirements. Where Party B is a foreign company which has not registered with the Registrar a place of business in England, it is not possible to deliver all of the prescribed particulars to the Registrar; however, we are able to confirm that the normal practice in this Jurisdiction is to deliver to the Registrar such particulars as are available.

4.3.2 Section 2.2 of Annex I involves the grant by Party B of security which is expressed to be a fixed security interest. A security interest, although expressed in words which would suffice to create a fixed security interest, will nevertheless be treated as a floating charge if it appears that it was intended that the chargor should continue to use the assets charged and turn them over in its business. The principal tests as to whether a charge is a floating charge have been stated by the Court of Appeal as follows: first, it is a charge on a class of assets, present and future; secondly, that class is one which in the ordinary course of business would be changing from time to time; and, thirdly, by the charge it is contemplated that until some step is taken by or on behalf of those interested in the charge, the chargor may carry on its business in the ordinary way as far as concerns the particular class of assets.

4.3.3 We express no opinion as to:

- (a) whether Party B would have good legal or other title to the assets or rights which are expressed to be subject to security under Section 2.2 of Annex I, or as to the existence or value of any such assets or rights;
- (b) the priority of any security created by Party B under Section 2.2 of Annex I or whether such security would constitute a legal or equitable security interest or a fixed or specific (rather than a floating) charge; or
- (c) whether Section 2.2 of Annex I would breach any other agreement or instrument to which Party B is party.

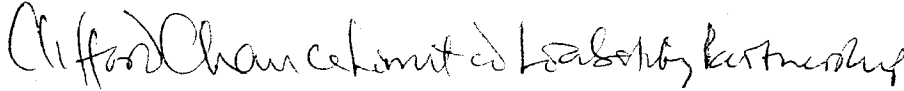
4.3.4 We express no opinion as to whether Party B would create valid security over any asset or right which is situated outside this Jurisdiction or governed by a foreign law (notwithstanding the assumption made at paragraph 2.9).

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LIMITED LIABILITY PARTNERSHIP

This opinion is stated as of its date and is rendered solely to TBMA for its and its members' use in connection with the Master Agreement. No other person may rely on it, nor may the contents of this opinion be disclosed to any other person without our prior consent.

Yours faithfully



Clifford Chance
Limited Liability Partnership



**CROSS-PRODUCT MASTER AGREEMENT (CROSS-AFFILIATE VERSION 2)
June 2003**

Dated as of _____

BETWEEN

_____ (**“Party A”**) and the **Party A Affiliates (as defined herein)**

and

_____ (**“Party B”**)

1. Interpretation

1.1 *Definitions*

“Agreement” means this Cross-Product Master Agreement (Cross-Affiliate Version 2), as modified and supplemented by the Schedule and any applicable Annex attached hereto. Section references in this Agreement, the Schedule, and any applicable Annex are to Sections of this Agreement unless otherwise specified.

“Base Currency” means the currency chosen as such in Part VI of the Schedule.

“Base Currency Equivalent” has the meaning given to it in Section 3.2.

“Base Rate” means, with respect to any period, a rate of interest per annum (computed on the basis of daily compounding and the actual number of days elapsed over a year of such number of days as is customary for transactions involving the Base Currency in the London interbank market) equal to the average of the rates at which overnight deposits in the Base Currency are offered by two major banks (selected by the Designated Party A Entity) in the London interbank market at or about 11:00 a.m. (London time) on each day of such period, or, if no such rates are available, a rate of interest as the Designated Party A Entity may reasonably select.

“Business Day” means a day on which commercial banks effect deliveries of the Base Currency in accordance with the market practice of the principal foreign exchange market for the Base Currency or, if the Base Currency is the euro, any day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET) System is open.

“Close Out” means, when used as a verb with respect to transactions or Principal Agreements, to accelerate, terminate, liquidate or cancel (including by way of automatic

early termination) such transactions or transactions under such Principal Agreements; and **“Close-Out”** means the act of Closing Out.

“Close-Out Event” means any event on the basis of which a Party A Entity has the contractual right to Close Out all of the transactions under a Principal Agreement or which causes automatically the Close-Out of all of the transactions under a Principal Agreement and which is not specified in Part VIII.3 of the Schedule.

“Close-Out Notice” has the meaning given to it in Section 2.2(a).

“Closed-Out Agreement” means (i) a Principal Agreement under which all transactions which in the good faith judgment of the applicable Party A Entity legally may be Closed Out have been Closed Out or (ii) an Unsettled Fully Matured Principal Agreement.

“Designated Party A Entity” has the meaning given to it in Part III of the Schedule.

“Final Net Settlement Amount” has the meaning given to it in Section 4.4(a).

“Final Settlement Date” has the meaning given to it in Section 4.4(b).

“Local Business Day” means in relation to any notice or other communication, a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in the place specified in the address for notice provided by the recipient.

“Net Set-Off Amount” has the meaning given to it in Section 4.1.

“Party A Affiliates” has the meaning given to it in Part I of the Schedule.

“Party A Entities” means Party A and the Party A Affiliates.

“Principal Agreements” means the agreements (each as from time to time amended or supplemented) between Party B and one or more Party A Entities designated in Part II of the Schedule.

“Section 2 Notice” means a notice provided under either Section 2.2(a) or Section 2.2(b).

“Set-Off Date” has the meaning given to it in Section 4.1.

“Settlement Amount” means, in respect of any Closed-Out Agreement, the net amount which is due and payable by one Party to such Closed-Out Agreement to the other upon (i) such agreement having become a Closed-Out Agreement, (ii) the resulting obligations of the Parties to such Closed-Out Agreement having been determined, and (iii) in accordance with the applicable Closed-Out Agreement, those obligations having been set off, and/or having been otherwise reduced, by the exercise of rights to apply any margin, collateral or other credit support delivered under or held in connection with such Closed-Out Agreement.

“Settlement Date” means each Set-Off Date and each Final Settlement Date.

“Unsettled Fully Matured Principal Agreement” means a Principal Agreement with respect to which there are one or more unpaid amounts due and payable that cannot be Closed Out under the terms of such Principal Agreement because the scheduled

obligations (contingent or otherwise) of the parties thereunder have matured and can no longer be accelerated, terminated, liquidated or cancelled. An Unsettled Fully Matured Principal Agreement shall be deemed to have been Closed-Out as of the date upon which such an unpaid amount became due, or, if there is more than one unpaid amount, the last date upon which such an unpaid amount became due.

1.2 *Other Definitional Provisions*

The term “**Party**” means each Party A Entity and Party B and a reference herein to any “**Party**” includes a reference to its successors and permitted assigns.

The phrase “**applicable Party A Entity**” means, with respect to each Principal Agreement or Settlement Amount due under a Closed-Out Agreement, the Party A Entity that is a party to such Principal Agreement or Closed-Out Agreement.

2. **Close-Out of All Transactions under Principal Agreements**

2.1 *Right to Close Out*

If any of the following events has occurred and is continuing:

- (a) a Close-Out Event in respect of Party B under the terms of a Principal Agreement,
- (b) a representation or warranty made or repeated by Party B hereunder proves to have been incorrect or misleading in any material respect when made or repeated, or
- (c) Party B is in violation of a covenant made hereunder,

then, each Party A Entity may elect, if and only if each other Party A Entity also so elects, to Close Out all (but not fewer than all) of the transactions under each Principal Agreement to which such Party A Entity is a party which in the good faith judgment of such Party A Entity legally may be Closed Out under applicable law by causing the Designated Party A Entity to specify such Party A Entity’s election to Close Out its Principal Agreements in a Close-Out Notice under Section 2.2(a) hereof, except that no Close-Out Notice shall be required for the Close-Out of any Principal Agreement which has been Closed Out by its terms prior to the delivery of a Close-Out Notice or any Unsettled Fully Matured Principal Agreement. For the purposes of paragraph (a) above, a Close-Out Event under the terms of a Principal Agreement will be deemed to be continuing until the earlier of such time as the conditions that constituted the Close-Out Event under such Principal Agreement cease to exist or the Settlement Amount that is due and payable under such Principal Agreement has been paid in full. Each Principal Agreement is hereby amended accordingly.

2.2 *Exercise of Rights*

(a) *Close-Out Notice*

The Designated Party A Entity shall specify in a notice to Party B (the “**Close-Out Notice**”) the date on which the Principal Agreements are Closed Out pursuant to Section 2.1. The Close-Out Notice given in the manner specified in this Agreement shall satisfy the notification requirements (if any) under each Principal Agreement for

accelerating and/or terminating transactions under such Principal Agreement. Each Principal Agreement is hereby amended accordingly.

(b) *Notice for Settlement of Automatically Closed-Out Agreements*

If all of the Principal Agreements have Closed Out automatically by their terms, the Settlement Amount under each such Principal Agreement shall be settled at the times and in the manner set forth in Sections 3.3 and 4 hereof if the Designated Party A Entity so specifies in a notice to Party B promptly after all Principal Agreements are Closed Out. Each Principal Agreement is hereby amended accordingly.

(c) *Election by Party A Entities*

For the avoidance of doubt, the Party A Entities may elect to exercise their rights under this Agreement by the Designated Party A Entity's provision of a Section 2 Notice. Upon giving a Section 2 Notice, the Party A Entities shall also have the right to exercise all rights and remedies under each Closed-Out Agreement arising from such Close-Out, including the right to apply any margin, collateral or other credit support delivered under or held in connection with such Closed-Out Agreement and each Principal Agreement is hereby amended accordingly. If one of the events listed in Section 2.1 hereof has occurred, unless and until the Designated Party A Entity gives a Section 2 Notice, each Party shall retain its rights and obligations under each Principal Agreement without regard to Sections 3 and 4 hereof.

3. Determination and Settlement of Settlement Amounts

3.1 *Determination of Settlement Amount*

The Settlement Amount under each Closed-Out Agreement shall be determined in accordance with the terms of such Closed-Out Agreement.

3.2 *Determination of the Base Currency Equivalent of the Settlement Amount*

When a Settlement Amount is denominated in a currency other than the Base Currency (the "**Other Currency**"), the Designated Party A Entity shall determine the amount in the Base Currency (the "**Base Currency Equivalent**") that would result from the conversion of such Settlement Amount into the Base Currency at the spot exchange rate at which such Party A Entity can buy the Base Currency with the Other Currency, as determined in any commercially reasonable manner, for value on the relevant Settlement Date for the Settlement Amount under Section 4 hereof. If all Settlement Amounts are denominated in a single currency other than the Base Currency, the Designated Party A Entity may designate such other currency to be the Base Currency.

3.3 *Settlement of Settlement Amounts in Accordance with this Agreement*

When a Section 2 Notice has been given, all Settlement Amounts shall be settled at the times and in the manner set forth in this Section 3.3 and Section 4 hereof (except to the extent that, in the good faith judgment of any Party A Entity, it is unlawful to do so), notwithstanding any provision to the contrary in any Closed-Out Agreement, including any otherwise applicable requirement to give any calculation statement or any further notice under such Closed-Out Agreement, and notwithstanding that Settlement Amounts may be payable by different branches of a Party at different locations, or in different currencies pursuant to the terms of the relevant Principal Agreements. The date for settlement of such Settlement Amounts shall be deferred (with interest accruing

at the rate and for the period specified in Section 4.5(a) hereof), until the occurrence of a Settlement Date with respect to such Settlement Amount. Each Principal Agreement is hereby amended accordingly.

4. Set-Off; Discharge of Settlement Amounts; Determination and Payment of the Final Net Settlement Amount(s); Interest

4.1 Set-Off

With respect to each Party A Entity, on the first date and any subsequent date on which such Party A Entity and Party B each owes one or more Settlement Amounts to the other under two or more Closed-Out Agreements (a "**Set-Off Date**"), such Party A Entity shall aggregate and set off all Settlement Amounts and accrued interest thereon owed by such Party A Entity to Party B against the aggregate of the Settlement Amounts and accrued interest thereon owed by Party B to such Party A Entity, and only the difference between the aggregate amounts (a "**Net Set-Off Amount**") shall be owed on such Set-Off Date by the Party with the larger aggregate obligation. The obligation of a Party to settle a Net Set-Off Amount on the Set-Off Date shall be deferred (with interest accruing at the rate and for the period specified in Section 4.5(b) hereof) until the occurrence of the first subsequent Settlement Date if any Settlement Amount is still to be determined.

4.2 Discharge of Settlement Amount

If a Settlement Amount has been set off under Section 4.1 in whole or in part on a Set-Off Date, such Settlement Amount shall, to the extent of such set-off, be deemed to have been discharged and no longer due under the relevant Closed-Out Agreement, provided that Party B's obligations to the Party A Entities shall not be discharged by payment or by the exercise of any remedy set forth in any Principal Agreement or otherwise except to the extent such payment or the exercise of such remedies is final and complete and has not been objected to by any person prior to the expiration of all applicable statutes of limitations.

4.3 Further Set-Offs

Subject to Section 4.4 hereof, each Net Set-Off Amount shall be treated as if it were a Settlement Amount for purposes of Section 4.1 hereof and shall, with the interest accrued thereon, be included in the set-off on the first applicable subsequent Set-Off Date.

4.4 Final Net Settlement Amounts

(a) Determination of the Final Net Settlement Amounts

On the first date on which the Settlement Amounts in respect of all Closed-Out Agreements to which a Party A Entity is a Party have been determined, the Designated Party A Entity shall determine the single amount (if any) due and payable by such Party A Entity or Party B in respect of all Closed-Out Agreements between such Party A Entity and Party B (such amount with respect to such Party A Entity, the "**Final Net Settlement Amount**") and the Designated Party A Entity shall be entitled to provide a statement to Party B showing the calculation of such Final Net Settlement Amount (which may be provided as part of the Section 2 Notice and which may be provided together with any other statements delivered pursuant to this Section 4.4(a)) at such time thereafter as the Designated Party A Entity determines in its sole discretion, provided that it shall provide such statement no later than promptly after a Final Net

Settlement Amount has been determined with respect to each Party A Entity that has one or more Closed-Out Agreements.

(b) *Final Settlement Dates; Place of Payment*

Each Party from which a Final Net Settlement Amount is payable shall pay such amount on the same Business Day on which the statement with respect to such Final Net Settlement Amount is provided under Section 4.4(a) hereof, if such statement is delivered by 10:00 a.m. on a Business Day (or, if the euro is the Base Currency, 10:00 a.m. Central European time); otherwise payment shall be made on the following Business Day (with respect to each Final Net Settlement Amount, a "**Final Settlement Date**"). Subject to the last sentence of Section 3.2 hereof, each Final Net Settlement Amount shall be paid in the Base Currency, together with interest thereon as determined pursuant to Section 4.5(c) hereof. If the Party owing a Final Net Settlement Amount has more than one branch, there shall be no limitation as to the place of payment of the obligation, unless otherwise specified by the Parties hereto.

4.5 *Interest*

(a) *Interest on Settlement Amounts*

Each Settlement Amount shall bear interest at the relevant rate specified in the relevant Principal Agreement, or, if no such rate is specified, at the Base Rate, from (and including) the date on which it falls due hereunder to (but excluding) the next Settlement Date with respect to the relevant Party A Entity.

(b) *Interest on Net Set-Off Amounts*

Each Net Set-Off Amount shall bear interest at the Base Rate from (and including) the Set-Off Date therefor to (but excluding) the next Settlement Date with respect to the relevant Party A Entity.

(c) *Interest on Final Net Settlement Amounts*

Each Final Net Settlement Amount shall bear interest at the Base Rate plus 1% per annum from (and including) the relevant Final Settlement Date to (but excluding) the date of actual payment. If the date of determination of a Final Net Settlement Amount is not the Final Settlement Date, such Final Net Settlement Amount shall bear interest at the Base Rate from (but excluding) the date of its determination to (but excluding) the Final Settlement Date.

5. Representations, Warranties and Covenants

Party B represents and warrants to each Party A Entity that (a) it is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder and has taken all necessary actions to authorize such execution, delivery and performance, (b) the person signing this Agreement on its behalf is duly authorized to do so on its behalf, (c) this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, conservatorship, receivership, moratorium or other 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), and (d) it has not assigned, transferred, created or permitted to exist any lien or other encumbrance on, or otherwise disposed of, or purported to assign,

transfer, create or permit to exist any lien or other encumbrance on, or otherwise dispose of, any of its rights to any amounts that may be owed to it under any Principal Agreement to any party not Party to this Agreement, and Party B covenants that, so long as this Agreement is in effect, it will not assign, transfer, create or permit to exist any lien or other encumbrance on, or otherwise dispose of or purport to assign, transfer, create or permit to exist any lien or other encumbrance on, or otherwise dispose of, any of its rights to any amounts that may be owed to it under any Principal Agreement, to any party not Party to this Agreement.

6. No Limitation of Rights; Governing Law and Jurisdiction; Waivers

The rights of each Party A Entity under this Agreement shall be in addition to, and not in limitation or exclusion of, any other rights which such Party A Entity may have (whether by agreement, operation of law or otherwise). This Agreement shall be governed by, and construed in accordance with, the laws of the jurisdiction specified in Part IV of the Schedule. The provisions regarding jurisdiction, waiver of immunities, waiver of trial by jury and process agent contained in the Principal Agreement specified in Part IV of the Schedule shall apply to this Agreement in the same manner and to the same extent as if such references were contained in this Agreement.

7. Transfer/Assignment

Neither this Agreement nor any interest in or under this Agreement may be transferred (whether by way of security or otherwise) or assigned by Party B without the prior written consent of the Party A Entities, except that Party B may make such a transfer or assignment of this Agreement to another entity pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, such other entity (but without prejudice to any right or remedy under this Agreement or any Principal Agreement). Any purported transfer or assignment that is not in compliance with this Section 7 shall be void. To the extent the prior sentence is unenforceable under applicable law, and consistent with Section 9.1 hereof, Party B may not assign its rights or delegate its obligations under any Principal Agreement without the prior written consent of each Party A Entity unless it assigns its rights and delegates its obligations under all Principal Agreements, and any purported assignment or delegation absent such consent shall be void. Without limiting the foregoing, Party B shall provide prior written notice to each Party A Entity of any transfer or assignment of this Agreement or any Principal Agreement or any interest in or under this Agreement or any Principal Agreement.

8. Notices and Other Communications

8.1 *Effectiveness.*

Any notice or other communication in respect of this Agreement may be given in any manner described below (except that a Section 2 Notice may not be given orally) to the address or number or in accordance with the electronic messaging system or e-mail details specified in Part V 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 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;
- (vi) if sent by e-mail, on the date it is delivered; or
- (vii) if by telephone or other oral communication, on the date that oral communication occurred, *provided* that such oral communication either is confirmed promptly in writing by at least one of the methods specified in (a)(i) to (vi) above or is recorded,

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.

Notwithstanding the foregoing, if there occurs an event which, upon or following the giving of a notice, would be a Close-Out Event, any related notice may be given to the Chief Legal Officer or General Counsel of the recipient (or any officer or similar rank or authority) under any of the methods described above, *provided* that a good faith attempt has been made previously to provide effective notice to the addresses or numbers or in accordance with the e-mail or electronic messaging system details provided in or pursuant to this Agreement with respect to the recipient.

8.2 *Change of Details.*

Any Party may by notice to the others change the address, telex, telephone or facsimile number or electronic messaging system or e-mail details at which notices or other communications are to be given to it.

9. Other Provisions

9.1 *Single Business Relationship*

Each Party acknowledges and agrees that each Principal Agreement and this Agreement constitute a single business relationship and that the performance by Party B of each and every payment or delivery obligation under each Principal Agreement is a condition precedent to the performance by any Party A Entity of any obligation to Party B, whether or not arising under such Principal Agreement. The Parties agree that the obligation of each Party to pay each Settlement Amount and Final Net Settlement Amount is mutual with the obligation of each other Party to pay each other Settlement Amount and Final Net Settlement Amount.

9.2 *No Discharge of Guarantors or other Third Party Credit Support Providers*

The exercise by any Party A Entities of any right hereunder or otherwise shall not discharge or otherwise affect the obligation of any guarantor or other credit support provider not Party to this Agreement for any obligation of Party B.

9.3 *Designated Party A Entity; Calculations Conclusive Absent Manifest Error; No Liability for Obligations of Other Party A Entities*

Each Party A Entity hereby appoints the Designated Party A Entity as its agent to undertake all actions on its behalf necessary for the purposes of this Agreement, including, without limitation, to give notices and to make any determinations or calculations of any amounts due under this Agreement or under any Principal Agreement. Each Party agrees that all determinations and calculations by the Designated Party A Entity of any amounts due under this Agreement or under any Principal Agreement shall be conclusive absent manifest error. Each Principal Agreement is hereby amended accordingly. Except to the extent expressly agreed in writing to the contrary, no Party A Entity shall be liable for the obligations of any other Party A Entity.

9.4 *Expenses*

Party B shall be liable for and shall, on demand, indemnify and hold harmless each Party A Entity for and against all reasonable out-of-pocket expenses, including, without limitation, legal fees and any stamp, registration, documentation or similar taxes or costs of collection, incurred by such Party A Entity by reason of the enforcement or protection of its or any other Party A Entity's rights under this Agreement.

9.5 *No Waivers; Amendment*

No express or implied waiver of any Close-Out Event by any Party A Entity shall constitute a waiver of any other Close-Out Event and no exercise of any remedy hereunder by any Party A Entity shall constitute a waiver of its right to exercise any other remedy hereunder. No amendment, modification or waiver of any provision of this Agreement and no consent by any Party to a departure herefrom shall be effective unless and until such shall be in writing and duly executed by each of the Parties (or, if the Parties have so elected in Part III of the Schedule, by Party B and the Designated Party A Entity on behalf of each Party A Entity).

9.6 *Severability*

Each provision and agreement herein shall be treated as separate and independent from any other provision or agreement herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

9.7 *Counterparts*

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.

**SCHEDULE TO THE CROSS-PRODUCT MASTER AGREEMENT (CROSS-AFFILIATE
VERSION 2)**

This Schedule forms a part of the Cross-Product Master Agreement (Cross-Affiliate Version 2) dated as of [] (the “**Agreement**”) between [] (“**Party A**”), [] (“**Party B**”) and the “**Party A Affiliates**” defined therein and herein. Capitalized terms used but not defined in this Schedule shall have the meanings ascribed to them in the Agreement.

Part I. Party A Affiliates:

<input type="checkbox"/>	1. The following entities are Party A Affiliates: []. Notwithstanding the previous sentence, the following entities are not Party A Affiliates [for purposes of Parts [] of this Schedule]: []
<input type="checkbox"/>	2. The following entities are Party A Affiliates: any entity now or hereafter controlled, directly or indirectly, by Party A, any entity that controls, directly or indirectly, Party A or any entity directly or indirectly under common control with Party A. [Notwithstanding the foregoing, any entity that at the time a Close-Out Event occurs is no longer controlled, directly or indirectly, by Party A, no longer controls, directly or indirectly, Party A or is no longer directly or indirectly under common control with Party A shall not be a Party A Affiliate.] [Notwithstanding the foregoing, the following entities shall not be Party A Affiliates [for purposes of [Parts [] of this Schedule][Annex I][Annex II]: []]. For purposes of this paragraph, “control” of any entity means ownership of a majority of the voting power of the entity.

Part II. The Principal Agreements

<input type="checkbox"/>	1. All master agreements between any Party A Entity and Party B covering securities contracts, forward contracts, commodity contracts, spot or forward currency contracts, repurchase agreements, swap agreements or any other transactions whether currently in existence or arising hereafter.
<input type="checkbox"/>	2. All securities contracts, forward contracts, commodity contracts, spot or forward currency contracts, repurchase agreements, swap agreements and any other transactions between any Party A Entity and Party B that are documented under a confirmation or similar document which incorporates by reference the terms of a master agreement.

<input type="checkbox"/>	3. Each of the following is a Principal Agreement:
	List Master Securities Loan Agreements: []
	List Master Repurchase Agreements: []
	List Master Dealer Agreements – OTC Options/U.S. Treasury Securities: []
	List Master Securities Forward Transaction Agreements: []
	List International Foreign Exchange Master Agreements: []
	List International Currency Options Market Master Agreements: []
	List Foreign Exchange and Options Master Agreements: []
	List ISDA Master Agreements (Multicurrency—Cross Border): []
	List ISDA Master Agreements (Local Currency—Single Jurisdiction): []
	List BFE/ESBG Master Agreements for Financial Transactions (European Master Agreement): []
	List Global Master Repurchase Agreements: []
	List FOA Master Netting Agreements: []
	List Overseas Securities Lender's Agreements (OSLA): []
	List EMTA Master Agreements for Options on Emerging Markets Instruments: []
<input type="checkbox"/>	4. Each of the following is a Principal Agreement: []
<input type="checkbox"/>	5. Notwithstanding the foregoing, the following agreements are not Principal Agreements [for purposes of [Parts [] of this Schedule] [Annex I] [Annex II]: []

Part III. Designated Party A Entity:

The Designated Party A Entity is [Party A] [any Party A Entity], or such Party A Entity as the [Designated Party A Entity] [Party A] [any Party A Entity] may from time to time designate [in a notice] to Party B. The Designated Party A Entity [shall] [shall not] be authorized to execute any amendment, modification or waiver on behalf of each Party A Entity as provided in Section 9.5.

Part IV. Governing Law and Jurisdiction; Waiver of Jury Trial

Governing Law: [the State of New York] [England and Wales]

Jurisdiction, Waiver of Immunities and Jury Trials and Process Agent: The provisions contained in Section(s) [] of the following Principal Agreement shall apply as provided in Section 6, irrespective of whether such Principal Agreement remains in effect: []

Part V. Addresses for Communications Between Parties

For the purposes of Section 8:

Address for notices or communications to [each Party A Entity][Party A][the Designated Party A Entity]:

Address:

Attention:

Facsimile No.:

Telephone No.:

Telex No.: Answerback:

Electronic Messaging System Details:

Address for notices or communications to Party B:

Address:

Attention:

Facsimile No.:

Telephone No.:

Telex No.: Answerback:

Electronic Messaging System Details:

Part VI. Base Currency; Payment Instructions

The Base Currency is: []

Payments due under the Agreement to any Party A Entity shall be made to the account or accounts designated in the statement or statements delivered pursuant to Section 4.4(a).

Payments due under the Agreement in the Base Currency to Party B shall be made to the following account:

Name of Bank and Office, Account Number and Reference for Party B: []

Part VII. Incorporation of Certain Provisions from Principal Agreements

The following provisions: [*insert relevant section references to, for example, gross-up and liability for withholding tax, stamp tax, contractual currency, or indemnity and expenses provisions as applicable*][not applicable] from the following Principal Agreement: [] [not applicable] shall apply to the Agreement and the payments due thereunder in the same manner and to the same extent as they would if they were set forth in full in the Agreement and applied to Party B and each Party A Entity, irrespective of whether such Principal Agreement remains in effect and without regard to any modifications to those provisions in their application to any particular transaction thereunder.

Part VIII. Optional Provisions

1. Additional Close-out Events:

1.1 **Adequate Assurances.** The following [shall][shall not] be included as a new Section 2.3:

“2.3 The failure by Party B to provide adequate assurances of its ability to perform its outstanding obligations to any Party A Entity under this Agreement or any Principal Agreement on or before the second Business Day after a written request for such assurances is made by the applicable Party A Entity when such Party A Entity has reasonable grounds for insecurity shall be a Close-Out Event for the purposes of each Principal Agreement. If after such request is made, but before assurances have been provided, any Party A Entity would have otherwise been required to make a payment or delivery pursuant to this Agreement or any Principal Agreement, such payment or delivery may be suspended by any such Party A Entity until such time as the requested assurances have been provided. Each Principal Agreement is hereby amended in accordance with this Section 2.3.”

1.2 **Acts of Insolvency.** The following [shall][shall not] be included as a new Section [2.3] [2.4]:

“[2.3]
[2.4] The admission either orally or in writing by Party B of its inability generally to pay its debts as they become due, or Party B is generally unable to pay its debts as they become due, shall be a Close-Out Event for the purposes of each Principal Agreement. Each Principal Agreement is hereby amended in accordance with this Section [2.3] [2.4].”

2. **Terminating Transactions Not Documented by a Master Agreement.** The Parties [agree][do not agree] to amend the Agreement as follows:

2.1 The following definition shall be added to Section 1.1:

“**Uncovered Transaction**” means any transaction entered into by any Party A Entity and Party B that is not subject to a master agreement.

2.2 The definition of “Principal Agreement” set forth in Section 1.1 shall be restated as follows:

“**Principal Agreements**” means (i) the agreements (each as from time to time amended or supplemented) designated in Part II of the Schedule between Party B and one or more Party A Entities and (ii) each Uncovered Transaction.

2.3 The definition of “Close-Out Event” set forth in Section 1.1 shall be restated as follows:

“**Close-Out Event**” means any breach of any obligation of Party B under an Uncovered Transaction or any event on the basis of which a Party A Entity has the contractual right to Close Out all of the transactions under a Principal Agreement or which causes automatically the Close-Out of all of the transactions under a Principal Agreement and which is not specified in Part VIII.3 of the Schedule.

3. Events Excluded from the Definition of “Close-Out Event.” The following event(s) [shall] [shall not] be excluded from the definition of “Close-Out Event” for purposes of the Agreement:

3.1 The following Termination Events under the terms of any Principal Agreement that is an ISDA Master Agreement or any similar event under any Principal Agreement: Illegality, Tax Event, Tax Event Upon Merger and Credit Event Upon Merger.

3.2 Any Close-Out Event under a Principal Agreement which is (i) a “Disruption Event” as that term is described in Section 5.1 of the 1998 FX and Currency Option Definitions published by ISDA, EMTA and the Foreign Exchange Committee or (ii) any other event which (a) is in the nature of *force majeure* or act of state, (b) is beyond the control of Party B, (c) Party B, with reasonable diligence[,] cannot overcome, and (d) prevents, hinders or delays Party B from performing or makes it illegal or impossible for Party B to perform its obligations when due under a Principal Agreement.

3.3 Other events: []

4. Elimination of Closing Out Party A Entities' Election. The Parties [agree][do not agree] to amend the Agreement as follows:

4.1 Section 2.1 is amended (a) to delete, in the first sentence thereof, the words “may elect, if and only if each other Party A Entity also so elects, to,” and to insert in lieu thereof “shall”; and (b) to delete the second sentence thereof.

4.2 Section 2.2(b) is restated as follows:

“(b) *Settlement of Automatically Closed-Out Agreements*

If all of the Principal Agreements have Closed Out automatically by their terms, the Settlement Amount under each such Principal Agreement shall be settled at the times and in the manner set forth in Sections 3.3 and 4 hereof. Each Principal Agreement is hereby amended accordingly.”

4.3 Section 2.2(c) is deleted in its entirety.

5. Close-Out Event Includes Events Leading to Close-Out Irrespective of Cure. The Parties [agree][do not agree] to amend the Agreement by inserting at the end of the definition of “Close-Out Event” in Section 1.1 the following:

“A ‘Close-Out Event’ shall also include the acceleration, termination, liquidation or cancellation of all transactions under a Principal Agreement on the basis of another Close-Out Event (or the giving of a notice that will cause the Close-Out to proceed) regardless of whether the Close-Out Event that gives rise to the Close-Out has ceased to be continuing.”

6. Party A Entity-by-Party A Entity Close-Out. The Parties [agree][do not agree] to amend the Agreement by restating Sections 2.1 and 2.2 as follows:

2.1 *Right to Close Out*

If any of the following events has occurred and is continuing:

(a) (i) a Close-Out Event in respect of Party B under the terms of a Principal Agreement,

- (b) a representation or warranty made or repeated by Party B hereunder proves to have been incorrect or misleading in any material respect when made or repeated, or
- (c) Party B is in violation of a covenant made hereunder,

then, each Party A Entity may elect to Close Out all (but not fewer than all) of the transactions under each Principal Agreement to which such Party A Entity is a party which in the good faith judgment of such Party A Entity legally may be Closed Out under applicable law by causing the Designated Party A Entity to specify such Party A Entity's election to Close Out its Principal Agreements in a Close-Out Notice under Section 2.2(a) hereof, except that no Close-Out Notice shall be required for the Close-Out of any Principal Agreement which has been Closed Out by its terms prior to the delivery of a Close-Out Notice or any Unsettled Fully Matured Principal Agreement. For the purposes of paragraph (a) above, a Close-Out Event under the terms of a Principal Agreement will be deemed to be continuing until the earlier of such time as the conditions that constituted the Close-Out Event under such Principal Agreement cease to exist or the Settlement Amount that is due and payable under such Principal Agreement has been paid in full. Each Principal Agreement is hereby amended accordingly.

2.2 *Exercise of Rights*

(a) *Close-Out Notice(s)*

The Designated Party A Entity shall specify in a notice or, at the option of the Party A Entities, notices to Party B (the "**Close-Out Notice(s)**") (i) each Party A Entity that has elected to Close Out its transactions under Principal Agreements and (ii) the date on which such Principal Agreements are Closed Out pursuant to Section 2.1. The Close-Out Notice given in the manner specified in this Agreement shall satisfy the notification requirements (if any) under each Principal Agreement for accelerating and/or terminating transactions under such Principal Agreement. Each Principal Agreement is hereby amended accordingly.

(b) *Notice for Settlement of Automatically Closed-Out Agreements*

If all of the Principal Agreements between a Party A Entity and Party B have Closed Out automatically by their terms, the Settlement Amount under each such Principal Agreement shall be settled at the times and in the manner set forth in Sections 3.3 and 4 hereof if the Designated Party A Entity so specifies in a notice to Party B promptly after all Principal Agreements are Closed Out. Each Principal Agreement is hereby amended accordingly.

(c) *Election by Party A Entities*

For the avoidance of doubt, each Party A Entity may elect to exercise its rights under this Agreement by the Designated Party A Entity's provision of a Section 2 Notice. Upon giving of a Section 2 Notice, each Party A Entity shall also have the right to exercise all rights and remedies under each Closed-Out Agreement arising from such Close-Out, including the right to apply any margin, collateral or other credit support delivered under or held in connection with such Closed-Out Agreement and each Principal Agreement is hereby amended accordingly. If one of the events listed in Section 2.1 hereof has occurred, unless and until the Designated Party A Entity gives a Section 2 Notice with respect to a Party A Entity, such Party A Entity and Party B shall retain

their respective rights and obligations under each Principal Agreement between such Party A Entity and Party B without regard to Sections 3 and 4 hereof.

7. Additional Acknowledgments and Representations

- 7.1 The Parties [do] [do not] agree to the following: Each Party intends that the Agreement constitutes a “netting contract” as defined in and subject to Title VI of the Federal Deposit Insurance Corporation Improvement Act of 1991 (“**FDICIA**”), each payment entitlement and payment obligation under the Agreement constitutes a “covered contractual payment entitlement” or “covered contractual payment obligation”, respectively, as defined in and subject to FDICIA, and Party B represents that it is a “financial institution” as defined in and pursuant to FDICIA.
- 7.2 The Parties [do] [do not] agree to the following: Each Party intends that each payment to be made under the Agreement is a “margin payment” or a “settlement payment” or a “transfer” within the meaning of Sections 362 and 546 of Title 11 of the United States Code (the “**Bankruptcy Code**”) and a “payment amount” within the meaning of Section 560 of the Bankruptcy Code and that the Agreement is a “master netting agreement” and the parties are “master netting agreement participants” within the meaning of and as such terms are used in any law, rule, regulation, statute, or order applicable to the parties’ rights herein, whether now or hereafter enacted or made applicable.
- 7.3 The Parties [do] [do not] agree to the following: Each Party intends that each Principal Agreement is a “swap agreement,” “forward contract,” “securities contract,” “repurchase agreement” or “commodity contract” within the meaning of Title 11 of the United States Code (the “**Bankruptcy Code**”), and the exercise of remedies under the Agreement are protected by Sections 362, 555, 556, 559 and 560 of the Bankruptcy Code.
- 7.4 The Parties [do] [do not] agree to the following: This Agreement is hereby incorporated into each Principal Agreement that is a “swap agreement” under the Bankruptcy Code and any transfer hereunder shall be a transfer “under” and “in connection with” each such Principal Agreement.
- 7.5 The Parties [do] [do not] agree and acknowledge that if a Party hereto is an “insured depository institution,” as such term is defined in the Federal Deposit Insurance Act, as amended (“FDIA”), then each Principal Agreement is a “qualified financial contract,” as that term is defined in FDIA and any rules, orders or policy statements thereunder.
- 7.6 Party B [does] [does not] represent and warrant the following to each Party A Entity as of the date hereof and as of each date that a transfer is made or an obligation incurred pursuant to a Principal Agreement:
- (a) Each transfer made or obligation incurred pursuant to each Principal Agreement (i) is being made without intent to hinder, delay, or defraud any entity to which it is or will become, on or after the date that such transfer is made or such obligation is incurred, indebted, (ii) is being made in exchange for reasonably equivalent value and (iii) will not cause it to become insolvent;
 - (b) It is not engaged in business or a transaction, or is about to engage in business or a transaction, for which its remaining property is an unreasonably small capital; and
 - (c) It is solvent and able to pay, and is paying, its debts as they mature, and anticipates that it will continue to be able to pay its debts as they mature for the foreseeable future.

7.7 Party B [will] [will not] be deemed to represent to the Party A Entities on the date on which it enters into this Agreement, a Principal Agreement or any transaction under a Principal Agreement that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for this Agreement, such Principal Agreement or such transaction, as applicable):

- (a) It is acting for its own account, and it has made its own independent decisions to enter into this Agreement, such Principal Agreement or such transaction, as applicable, and as to whether this Agreement, such Principal Agreement or such transaction, as applicable, 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 parties as investment advice or as a recommendation to enter into this Agreement, such Principal Agreement or such transaction, as applicable: it being understood that information and explanations related to the terms and conditions of this Agreement, such Principal Agreement or such transaction, as applicable, will not be considered investment advice or a recommendation to enter into this Agreement, such Principal Agreement or such transaction, as applicable. No communication (written or oral) received from the other Party will be deemed to be an assurance or guarantee as to the expected results of this Agreement, such Principal Agreement or such transaction, as applicable.
- (b) 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 this Agreement, such Principal Agreement or such transaction, as applicable. It is also capable of assuming, and assumes, the risks of this Agreement, such Principal Agreement or such transaction, as applicable.
- (c) No Party A Entity or any affiliate of any Party A Entity is acting as a fiduciary for or an adviser to it in respect of this Agreement, such Principal Agreement or such transaction, as applicable.

8. Adjustment Relating to Interest. The Parties [do] [do not] agree to the following: The obligations of the Party A Entities in respect of interest provided in Section 4.5 shall be reduced to the same extent that interest provided therein may not lawfully be included in calculating the obligations of Party B in respect of any Settlement Amount, Net Set-Off Amount or Final Net Settlement Amount.

9. Bilateral Credit Support; Certain Set-Off Rights.¹ The Parties agree to adopt [Sections 9.1-9.3] [Sections 9.1 and 9.2, but not Section 9.3] [Sections 9.1 and 9.3, but not Section 9.2] [none of Sections 9.1-9.3] of this Part VIII of the Schedule as part of the Agreement:

9.1 *Definitions.* The following definition shall be added to Section 1.1:

"Credit Support Document" means any agreement, registration, filing or comparable document creating an interest in financial assets, general intangibles, contract rights, securities accounts, security entitlements or other property to secure performance of the obligations of Party B under a Principal Agreement, excluding any guarantee by a party not Party to this Agreement of Party B's obligations.

¹ Parties should not adopt any of the provisions in Section 9 of Part VIII of the Schedule if they have elected to have Annex I apply.

- 9.2 *Grant of Security Interest.* With respect to the following Principal Agreements [] [all Principal Agreements], the Parties hereto agree that:
- (a) any property in which a Party A Entity has been or will be granted a security interest to secure obligations owed to it by Party B under such Principal Agreement(s) (the "**Collateral**") shall also secure each obligation of Party B to pay a Settlement Amount to such Party A Entity in connection with any Principal Agreement;
 - (b) each Party A Entity to which any Settlement Amount is owed (the "**Secured Party**") shall be entitled to realize against any Collateral in which it holds a security interest and apply the proceeds thereof to satisfy the obligation of Party B to pay such Settlement Amount or, if the Secured Party so determines in its sole discretion, to set off any such Settlement Amount payable by Party B to the Secured Party against the amount of any such Collateral or the market value thereof (such market value to be determined in a commercially reasonable manner); and
 - (c) each such Principal Agreement and Credit Support Document related thereto is hereby amended as set forth herein.
- 9.3 *Certain Set-Off Rights.* With respect to the following Principal Agreements [] [all Principal Agreements], the Parties hereto agree that in respect of any Closed-Out Agreement that is such a Principal Agreement, each Party A Entity shall have the right to: (i) determine in good faith an amount equal to the fair market value of any securities or other property that Party B or the applicable Party A Entity has obtained under such Closed-Out Agreement or Credit Support Document related thereto and is or may be obligated to return or otherwise transfer to the other, and (ii) include such amount as an amount payable by such Party in determining the Settlement Amount under such Closed-Out Agreement. Each such Principal Agreement and Credit Support Document related thereto is hereby amended accordingly.

Part IX. Additional Terms

The following additional terms and conditions shall apply:

Annex I—Pledge of Receivables/Cross-Collateralization

This Annex I forms a part of the Cross-Product Master Agreement (Cross-Affiliate Version 2) dated as of [] (the “**Agreement**”) between [] (“**Party A**”), [] (“**Party B**”) and the “**Party A Affiliates**” defined therein.

1 Interpretation

1.1 *Additional Definitions.* The following definitions shall be added to Section 1.1:

“**Collateral**” means Other Collateral, Principal Agreement Collateral and Receivables Collateral.

“**First Priority Party A Entity**” has the meaning given to it in Section 2.2(b)(i) of Annex I.

“**Insolvency Act 1986**” means the Insolvency Act 1986 as from time to time amended in effect in England, Scotland and Wales.

“**Law of Property Act 1925**” means the Law of Property Act 1925 as from time to time amended in effect in England and Wales.

“**Obligations**” means all obligations of Party B under or in connection with any Principal Agreement or this Agreement to any Party A Entity, whether arising heretofore or hereafter, and whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, financial, physical, secured, or unsecured, including each obligation to pay a Settlement Amount, a Net Set-Off Amount or a Final Net Settlement Amount or to deliver any Principal Agreement Collateral to any Party A Entity.

“**Other Collateral**” means all securities, money and other property delivered by or on behalf of Party B to any Party A Entity, held or carried by any Party A Entity for the account of Party B, or due from any Party A Entity to Party B, except any of the foregoing that is Principal Agreement Collateral or Receivables Collateral or has been delivered under a Principal Agreement.

“**Principal Agreement Collateral**” means any property in which any Party A Entity has been or will be granted a security interest to secure obligations owed to it by Party B under a Principal Agreement.

“**Receivables Collateral**” means (i) all of Party B’s right, title and interest in and to each Final Net Settlement Amount determined pursuant to Section 4.4(a), regardless of whether a calculation statement with respect to such Final Net Settlement Amount has been delivered and (ii) all of Party B’s right, title and interest in and to each Principal Agreement (subject to the netting, offset and recoupment rights thereunder or under the Agreement) whether arising heretofore or hereafter, and whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, financial, physical, secured, or unsecured, in each case including all cash and non-cash proceeds thereof, supporting obligations relating thereto, distributions thereon and substitutions therefor.

“**Second Priority Party A Entity**” has the meaning given to it in Section 2.2(b)(i) of Annex I.

“**Secured Party**” has the meaning given to it in Section 2.3(a) of Annex I.

“**UCC**” means the Uniform Commercial Code as in effect in the State of New York.

2 Pledge of Receivables/Cross Collateralization

2.1 *Additional Representations.* Section 5 is restated as follows:

Party B represents and warrants to each Party A Entity that, as of the date of this Agreement and as of the date any additional Collateral becomes subject to the security interest, fixed charge and assignment hereunder: (a) it is duly authorized to execute and deliver this Agreement and to perform its obligations hereunder and has taken all necessary actions to authorize such execution, delivery and performance, (b) the person signing this Agreement on its behalf is duly authorized to do so on its behalf, (c) this Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, conservatorship, receivership, moratorium or other 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), (d) it has not assigned, transferred, created or permitted to exist any lien or other encumbrance on, or otherwise disposed of, or purported to assign, transfer, create or permit to exist any lien or other encumbrance on, or otherwise dispose of, any of its rights to any amounts that may be owed to it under any Principal Agreement to any party not Party to this Agreement, (e) the Party A Entities' security interest and fixed charge in and assignment of the Collateral is a perfected security interest, fixed charge and assignment subject to no other security interest, charge, lien, claim or encumbrance, and (f) Party B's exact legal name, type of organization and jurisdiction of organization (together with the organizational identification number, if any, issued by such jurisdiction to Party B), its place of business, or if it has more than one place of business, its chief executive office, at the date of this Agreement and for the four months immediately preceding the date of this Agreement are as set forth in the signature page hereto and Party B covenants that, so long as this Agreement is in effect, it will not assign, transfer, create or permit to exist any lien or other encumbrance on, or otherwise dispose of or purport to assign, transfer, create or permit to exist any lien or other encumbrance on, or otherwise dispose of, any of its rights in the Collateral, to any party not Party to this Agreement.

2.2 *Grant of Security Interest; Priority; Continuing Security; Waiver*

- (a) *Grant of Security Interest.* Party B hereby grants to each Party A Entity a security interest and fixed charge in and assigns all Collateral to secure all the Obligations.
- (b) *Priority*
 - (i) All Principal Agreement Collateral pledged or otherwise transferred by Party B in connection with a particular Principal Agreement shall secure first the Obligations under that Principal Agreement, and second, the Obligations under all other Principal Agreements. Each Party A Entity that does not have a first lien and fixed charge on any Principal Agreement Collateral (with respect to such Principal Agreement Collateral, a “**Second Priority Party A Entity**”) shall take no action in respect of such Principal Agreement Collateral without the consent of the Party A Entity having a first lien and fixed charge on such Principal Agreement Collateral (with respect to such Principal Agreement Collateral, the “**First Priority Party A Entity**”), and the First Priority Party A Entity shall be

entitled to exercise all remedies in respect thereof (without being required to consult with any Second Priority Party A Entity except to the extent required by applicable law, rule or regulation and each Second Priority Party A Entity hereby waives any right to be so consulted to the extent permitted by applicable law, rule or regulation). Each Second Priority Party A Entity acknowledges that Party B's rights in such Principal Agreement Collateral, and such Party A Entity's lien thereon, are subject to the insolvency of the First Priority Party A Entity, including the customer property allocation rules under applicable securities and commodities laws.

- (ii) All Receivables Collateral consisting of Party B's right, title and interest in or to a Final Net Settlement Amount owed by, or a Principal Agreement with, a Party A Entity to Party B shall first secure all Obligations to such Party A Entity and second, all other Obligations without preference or priority, and, upon satisfaction of such Obligations to such Party A Entity, all other Party A Entities shall be entitled to take such actions as they determine in their discretion in respect of any realization upon or other application of, or collection on, any such Receivables Collateral, including, without limitation, the priority of each other Party A Entity's rights in the proceeds of any such foreclosure, application or collection. Any conflicting claims to Receivables Collateral between such other Party A Entities shall be resolved as such other Party A Entities shall agree. All Other Collateral shall secure all Obligations without preference or priority, and all Party A Entities shall be entitled to take such actions as they determine in their discretion in respect of any realization upon or other application of, or collection on, any such Other Collateral, including, without limitation, the priority of each Party A Entity's rights in the proceeds of any such foreclosure, application or collection. Any conflicting claims to Other Collateral between the Party A Entities shall be resolved as the Party A Entities shall agree. Each Principal Agreement and each relevant security agreement is hereby amended accordingly.

(c) *Waiver*

Party B waives any right it may have of first requiring any Party A Entity to proceed against or claim payment from any other person or enforce any guarantee or security before enforcing its rights against the Collateral.

2.3 *Remedies*

(a) *Rights of each Party A Entity*

Party B hereby agrees that at any time after a Section 2 Notice has been given each Party A Entity to which any Obligation is owed (a "**Secured Party**") shall without further notice:

(i) be entitled to realize against and collect on any Collateral and apply the proceeds thereof or collections thereon to satisfy such Obligations or, if a Secured Party so determines in its sole discretion, to set off any Obligations payable by Party B against the amount of any Collateral or the market value thereof (such market value to be determined in a commercially reasonable manner selected by the Secured Party);

(ii) if the Parties have elected the law of the State of New York as the governing law in Part IV of the Schedule or if any Collateral is subject to the law of the United States or

any political subdivision thereof, have all the rights and remedies of a secured creditor under the UCC with respect to all of the Collateral; and

(iii) if the Parties have elected the laws of England and Wales as the governing law in Part IV of the Schedule or if any Collateral is subject to the laws of England and Wales, be entitled to put into force and exercise immediately or as and when they or it may see fit every power possessed by them or it by virtue of the Agreement or available to them or it as a secured creditor (so that sections 93 and 103 of the Law of Property Act 1925 shall not apply) and in particular (but without limitation) they or it shall have power (A) to sell all or any of the Collateral in any manner permitted by law upon such terms as they or it shall in their or its absolute discretion determine; (B) to collect, recover or compromise and to give a good discharge for any moneys payable to Party B in respect of the Obligations; (C) to appoint one or more persons (to act jointly and also severally if more than one) to be a receiver of all or any of the Collateral; and/or (D) without prior notice to Party B (1) to apply or appropriate the Collateral in or towards the payment or discharge of the Obligations in such order as they or it think fit; (2) to set off all or any of the Obligations against any Receivables Collateral; (3) to debit any account of Party B (whether sole or joint) with the applicable Party A Entity at any of its offices anywhere (including, but not limited to, an account opened specially for that purpose) with all or any part of the Obligations; and/or (4) to combine or consolidate any such account with any account with any Party A Entity relating to the Collateral. For the purposes of sub-clause (D) above, the Party A Entities or the applicable Party A Entity shall be entitled to make any currency conversions or effect any transactions in currencies which they or it think fit, and to do so at such time and rates as they or it think proper and/or to effect any transfers between, or entries on, any of Party B's accounts as they or it think proper.

(b) *Priority*

Unless otherwise agreed by the relevant Party A Entities, the exercise of remedies under this Section 2.3 shall be subject in all events to the priority of security interests and charges as set forth in Section 2.2 of this Annex I, the relative rights of a First Priority Party A Entity and of the Second Priority Party A Entities.

(c) *Collection, Reimbursement and Similar Rights*

In the event any Obligation of Party B to a Party A Entity is satisfied by application of Other Collateral or Principal Agreement Collateral held by another Party A Entity, such other Party A Entity shall promptly pay or deliver to such Party A Entity an amount equal to Other Collateral or Principal Agreement Collateral so applied. If a Party A Entity exercises its rights against Receivables Collateral by collecting on such Receivables Collateral from another Party A Entity that is the account debtor thereon, such other Party A Entity shall promptly pay or deliver to such Party A Entity an amount equal to the amount to be collected.

2.4 *Control; Notification of Security Interest; Further Assurances; Characterization*

(a) *Control*

Party B and each Party A Entity acknowledge and agree that any Collateral held by a Party A Entity shall be held by each Party A Entity for itself as Secured Party and also as agent and bailee for each other Party A Entity and, as such, each Party A Entity shall, subject to Section 2.2 of this Annex I, comply with any entitlement orders, instructions or directions originated by such other Party A Entity with respect to such

Collateral without any further consent of Party B. For purposes of Articles 8 and 9 of the UCC, to the extent that Party B has any control with respect to any Collateral, upon the occurrence of a Close-out Event, Party B shall no longer have any control over such Collateral. Each Party A Entity and Party B agree that all Collateral credited to any securities account maintained on the books of any Party A Entity shall be treated as a financial asset for purposes of the UCC. For purposes of Articles 8 and 9 of the UCC, to the extent that Party B has any right to originate entitlement orders or other instructions or directions with respect to any Collateral, Party B shall no longer have any such right upon the occurrence of a Close-out Event.

(b) *Notification of Security Interest*

Each Party A Entity hereby notifies each other Party A Entity of its security interest and fixed charge in and assignment of the Collateral, each Party A Entity acknowledges such notice from each other Party A Entity and each Party A Entity consents to the security interest, fixed charge and assignment granted under Section 2.2 of this Annex I. Party B and each Party A Entity agree that Party B's grant of the security interest and fixed charge in and assignment of the Collateral shall not be a breach of any restriction on assignment in the Agreement or any Principal Agreement.

(c) *Further Assurances*

Party B agrees that at any time and from time to time, at the expense of Party B, it will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that any Party A Entity may request, in order to perfect and protect the security interest, fixed charge and assignment granted hereby or to enable any Party A Entity to exercise or enforce its rights and remedies hereunder with respect to the Collateral or any part thereof (including, without limitation, the filing of any UCC financing statements, whether initial filings, amendments or continuations, deemed necessary or appropriate by any Party A Entity).

(d) *Power of Attorney and Authorization to File UCC Financing Statements*

Party B hereby, by way of security, irrevocably grants each Party A Entity a power of attorney, with full authority to act in the place and stead of Party B, under a power coupled with an interest, and in the name of Party B or otherwise, from time to time in such Party A Entity's discretion to take any action and to execute any instrument which such Party A Entity may deem necessary or advisable to accomplish the purposes of this Agreement. Each Party A Entity is authorized, without limitation, to prepare and file UCC financing statements, whether initial filings, amendments or continuations, or the registration of any charges, with respect to the Collateral, at Party B's expense and to ask, require, demand, receive, compound and give a good discharge for any and all moneys and claims for moneys comprised in or arising out of the Collateral. The provisions of this Section 2.4(d) and Section 2.4(c) supersede any provision to the contrary in any confidentiality or other agreement binding on any Party A Entity.

(e) *Party B's Name, Type of Organization and Jurisdiction of Organization. Chief Executive Office*

Without at least [] days' prior written notice to the Designated Party A Entity, Party B shall not change its name, type of organization or jurisdiction of organization (or the organizational identification number, if any, issued by such jurisdiction to Party B), its

place of business, or if it has more than one place of business, its chief place of business and chief executive office, each as set forth on the signature page hereto.

(f) *Delivery Requirements under Principal Agreements*

Nothing in this Agreement shall affect in any way any requirements to deliver Principal Agreement Collateral pursuant to a Principal Agreement prior to the delivery of a Section 2 Notice.

(g) *Characterization of Principal Agreement Collateral*

References herein to Principal Agreement Collateral “held by” a Party include Principal Agreement Collateral held directly or indirectly by such Party or over which such Party has direct or indirect control.

(h) *Characterization of Transfers.* The Parties [do] [do not] agree to the following:

All transfers of Collateral under the Principal Agreements and hereunder are “transfers” “under” and “in connection with” “swap agreements”, or “margin payments” or “settlement payments” within the meaning of Title 11 of the United States Code (the “Bankruptcy Code”). All Collateral is held to margin, guarantee, secure and settle “swap agreements”, “forward contracts”, “securities contracts”, “repurchase agreements” and “commodity contracts” (as such terms are defined in the Bankruptcy Code) as part of a single integrated business relationship and arrangement.

2.5 *Deferral of Section 4 Rights; Reduction of Obligations*

The Party A Entities shall be entitled to elect to enforce their rights in respect of the Collateral prior to the exercise of any rights under Section 4, and the Party A Entities may defer the exercise of rights under Section 4 while rights in respect of the Collateral are exercised. If any Collateral is applied to any Settlement Amount, Net Set-Off Amount or Final Net Settlement Amount pursuant to Section 2.3(a) of this Annex I, such Settlement Amount, Net Set-Off Amount or Final Net Settlement Amount shall be reduced to the extent of such application for purposes of Section 4.

2.6 *Continuing Security*

The security interest created hereby (a) shall be a continuing security that shall continue until all Obligations are fully satisfied (including any Obligations that shall become due at any time after the giving of a Section 2 Notice) and shall not be satisfied by any intermediate performance of the Obligations, (b) shall be in addition to and shall not be affected by any other security now or subsequently held by any Party A Entity for all or any of the Obligations and (c) shall not be prejudiced or affected by any act, omission or circumstance which, but for this provision, might operate to release or otherwise prejudice or affect such security including (but without limitation) and whether or not known to Party B or any Party A Entity (i) any time or indulgence granted to or composition with Party B or any other person, (ii) the variation, extension, compromise, renewal or release of, or refusal or neglect to perfect or enforce, any terms of the Agreement or any rights or remedies against, or any security granted by, Party B or any other person, (iii) any irregularity, invalidity or unenforceability of any Obligations or any present or future law or order of any government or authority (whether of right or in fact) purporting to reduce or otherwise affect any Obligations with the intent that the security interest shall remain in full force and the Agreement shall be construed accordingly as if there were no such irregularity, unenforceability,

invalidity, law or order and (iv) any legal limitation, disability, incapacity or other circumstance relating to Party B, any guarantor or any other person or any amendment to or variation of the terms of the Agreement or any other document or security.

3 Additional English and Welsh Law Provisions

If the Parties have elected the laws of England and Wales as the governing law in Part IV of the Schedule or if any Collateral is subject to the laws of England and Wales, the following Sections 3.1-3.3 of this Annex I shall apply.

3.1 Receiver

Any receiver appointed by the Party A Entities or the applicable Party A Entity pursuant to Section 2.3(a)(iii)(C) of this Annex I (i) shall be deemed to be the agent of Party B which shall be solely responsible for such receiver's acts, defaults and liabilities and for the payment of such receiver's remuneration, (ii) shall be entitled to remuneration for such receiver's services at a rate to be fixed by the Party A Entities or the applicable Party A Entity from time to time (without being limited to the maximum rate specified by the Law of Property Act 1925) and (iii) shall (subject to any restrictions in the terms of his or her appointment) have and be entitled to exercise, in relation to the Collateral in respect of which he or she is appointed, all the powers conferred on receivers appointed under the Law of Property Act 1925 (as varied or extended herein), all the powers of an administrative receiver set out in Schedule 1 to the Insolvency Act 1986 (whether or not he or she is an administrative receiver) and all the powers and rights of any absolute owner and power to do or omit to do anything which Party B itself could do or omit to do.

3.2 Application of Monies

All monies received or recovered by the Party A Entities or the applicable Party A Entity or any receiver appointed by them or it pursuant to Section 2.3(a)(iii)(C) of this Annex I shall (subject to the claims of any person having prior rights thereto and by way of variation of the provisions of the Law of Property Act 1925) be applied, first, in payment of the costs, charges and expenses incurred and payments made by the Party A Entities or the applicable Party A Entity and any receiver, the receiver's remuneration and any liabilities incurred by the Party A Entities or the applicable Party A Entity or any receiver (and Party B covenants to pay all such costs, charges, expenses, payments and liabilities) and, thereafter, in or towards the satisfaction and discharge of the Obligations.

3.3 No inquiry

No purchaser or other person dealing with the Party A Entities or the applicable Party A Entity or any receiver appointed by them or it or any of their respective attorneys or agents shall be concerned to inquire (i) whether any power exercised or purported to be exercised by the Party A Entities or the applicable Party A Entity has become exercisable, (ii) whether any secured obligation remains due, (iii) as to the propriety or regularity of any action of the Party A Entities or the applicable Party A Entity or any such receiver or (iv) as to the application of any money paid to the applicable Party A Entity or any such receiver. In the absence of bad faith on the part of such purchaser or other person, such dealings shall be deemed to be within the powers conferred by the Agreement and to be valid accordingly. The remedy of Party B in respect of any impropriety or irregularity whatsoever in the exercise of such powers shall be in damages only.

Annex II—Cross Guarantee

This Annex II forms a part of the Cross-Product Master Agreement (Cross-Affiliate Version 2) dated as of [] (the “**Agreement**”) between [] (“**Party A**”), [] (“**Party B**”) and the “**Party A Affiliates**” defined therein.

1 Interpretation

1.1 *Additional Definitions.* The following definitions shall be added to Section 1.1:

“**Guaranteed Obligations**” means, with respect to a Guaranteed Party, all amounts owed from time to time by Party B to such Guaranteed Party under the Agreement and the Principal Agreements.

“**Guaranteed Party**” has the meaning given to it in Section 2.1 of Annex II.

“**Guarantee Limit**” means, at any time, with respect to a Limited Guarantor and a Guaranteed Party, the lower of (i) the amount payable by such Limited Guarantor to Party B at that time under the Agreement and the Principal Agreements and (ii) the amount payable by Party B to the Guaranteed Party under the Agreement and the Principal Agreements.

“**Limited Guarantee**” has the meaning given to it in Section 2.1 of Annex II.

“**Limited Guarantor**” has the meaning given to it in Section 2.1 of Annex II.

2 Cross Guarantee

2.1 *Limited Guarantee*

Each Party A Entity (each a “**Limited Guarantor**”), at the request of Party B, hereby guarantees to each other Party A Entity (each such Party A Entity, with respect to such Limited Guarantor, a “**Guaranteed Party**” and each such guarantee a “**Limited Guarantee**”), to pay when due the Guaranteed Obligations. The liability of such Limited Guarantor to a Guaranteed Party under this Section 2.1 shall be limited to the Guarantee Limit with respect to such Limited Guarantor and Guaranteed Party. Section 9.3 is hereby amended by inserting at the end of last sentence thereof: “, except as provided under Annex II”.

2.2 *Obligations upon Demand; Renouncement of Right of Proof*

Each Limited Guarantor shall be obligated to pay promptly amounts owed to a Guaranteed Party under the relevant Limited Guarantee upon demand of such Guaranteed Party. On the day such demand is made, payment shall be required to be made immediately. Upon such payment, the Guaranteed Party to which such payment has been made shall be deemed to have renounced in favor of the Limited Guarantor that has made such payment its right of proof in any bankruptcy, liquidation or winding-up proceeding to which Party B is subject as at such time to the extent of such payment.

2.3 *Party B Obligation to Indemnify Each Limited Guarantor*

After the giving of a Section 2 Notice and upon demand by one or more Guaranteed Parties of a Limited Guarantor pursuant to Section 2.2 of this Annex II and the

payment of such demand, Party B shall irrevocably and unconditionally indemnify such Limited Guarantor against the amount such Limited Guarantor is obligated to pay such Guaranteed Party or Guaranteed Parties. Each Limited Guarantor shall be entitled to set off any obligation to make a payment under any Principal Agreement or the Agreement (including, without limitation, any Final Net Settlement Amount determined pursuant to Section 4.4(a), regardless of whether a calculation statement with respect to such Final Net Settlement Amount has been delivered) to Party B against such indemnity obligation of Party B. If any Settlement Amount, Net Set-Off Amount or Final Net Settlement Amount is set off against such indemnity obligation of Party B, such Settlement Amount, Net Set-Off Amount or Final Net Settlement Amount shall be reduced to extent of such application for purposes of Section 4.

2.4 *Allocation of the Limited Guarantees*

The Party A Entities shall determine in their sole and absolute discretion the amount of the Limited Guarantees that may be drawn on by each Guaranteed Party.

2.5 *Waiver of Suretyship Defenses*

Each Party hereby agrees that the guarantees hereunder are continuing guarantees of payment (not merely of collection) and that they shall remain in full force and effect until all amounts payable thereunder have been validly, finally, and irrevocably paid in full and shall not be affected in any way by the absence of any action to obtain such amounts from the Party making such guarantee. Each Limited Guarantor and Party B hereby agrees that its obligations hereunder shall be unconditional and will not be discharged except by the valid, final and irrevocable payment of the amounts payable under the Agreement and the Principal Agreements, irrespective of (a) Party B's lack of capacity to execute or deliver the Agreement or the Principal Agreements; (b) the lack of validity or enforceability of any provision of the Agreement or the Principal Agreements; (c) any change in or amendment to any Principal Agreements; (d) any waiver or consent by any Party A Entity with respect to any provisions of the Agreement or the Principal Agreements or any compromise or release of any of the obligations thereunder; (e) the absence of any action to enforce the Agreement or the Principal Agreements or to recover or enforce any judgment thereunder; (f) the existence of any bankruptcy, insolvency, reorganization or similar proceedings or any default involving it; (g) any impairment, taking, exchange or release of collateral under any Principal Agreement; (h) any change in the laws, rules or regulations of any jurisdiction; (i) any present or future action of any governmental authority or court amending, varying, reducing or otherwise affecting, or purporting to amend, vary, reduce or otherwise affect, any of Party B's obligations under the Agreement or under any Principal Agreement; or (j) any other circumstance (other than payment or performance) that might otherwise constitute a legal or equitable discharge or defense of a guarantor generally.

The Parties hereby agree to all terms set forth in the Agreement as supplemented by the Schedule and that [Annex I—Pledge of Receivables/Cross-Collateralization but not Annex II or Section 9 of Part VIII of the Schedule] [Annex II—Cross Guarantee but not Annex I] [neither Annex I nor Annex II] shall apply to this Agreement.

[Name of Party A]

By:

Name:
Title:

[Name of each Party A Affiliate]

By:

Name:
Title:

[Name of Party B]

By:

Name:
Title:

[Party B's type of organization: []]

Party B's jurisdiction of organization: []

[Party B's organizational identification number:
[]]

Party B's chief executive office:
[]²

² Party B should provide its type of organization, jurisdiction of organization, organizational identification number and chief executive office if (i) the Parties have selected the law of New York in Part IV of the Schedule or if any Collateral may be subject to the law of the United States or any political subdivision thereof and (ii) the parties have elected Annex I to apply.

[IN WITNESS whereof this Agreement has been executed as a deed and has been delivered on the date first before written:

EXECUTED as a Deed by)(Signature)
)(Signature)
acting by.....)
and)
in the presence of:

Witness' Signature:
Witness' Name:
Witness' Address:

EXECUTED as a Deed by)(Signature)
Party B)(Signature)
acting by.....)
and)
in the presence of:

Witness' Signature:

Witness' Name:

Witness' Address:]³

³ Party B should execute the Agreement as a deed if (i) the Parties have selected the laws of England and Wales in Part IV of the Schedule or if any Collateral may be subject to the laws of England and Wales and (ii) the parties have elected Annex I to apply.