

CONFIRMATION LETTER

To: _____

From: Dave Brueggeman

Phone: _____

Company: **Illinois Power Company d/b/a AmerenIP**

Phone: (314) 554-4622

Fax: _____

Fax: (314) 206-0210

This Confirmation Letter will confirm the agreement reached on _____ between _____ (____ or **“Party A”**) and **Illinois Power Company d/b/a AmerenIP (“IP” or “Party B”)** [or **Central Illinois Light Co. d/b/a Ameren CILCO (“CILCO” or “Party B”)** or **Central Illinois Public Service Co. d/b/a Ameren CIPS (“CIPS” or “Party B”)**], regarding the transaction below. This Confirmation Letter constitutes a **“Confirmation”** under the ISDA Agreement defined below.

The Parties agree and acknowledge that this Confirmation Letter is a Fixed Price Customer Supply Contract (as such term is defined herein).

The definitions and provisions contained in the 2000 ISDA Definitions (the **“ISDA Definitions”**) and the 2005 ISDA Commodity Definitions (the **“Commodity Definitions”**) (each as published by the International Swaps and Derivatives Association, Inc. and collectively, the **“Definitions”**) are incorporated into this Confirmation Letter with respect to **“Transactions,”** as defined by the Commodity Definitions, except as otherwise specifically provided in this Confirmation Letter. Only those Definitions in place at the time each Transaction is entered into shall govern such Transaction.

The parties agree that the Transaction(s) described in this Confirmation Letter is legally binding on each of them. Except as otherwise expressly set forth in this Confirmation Letter (and as otherwise amended, supplemented and modified by Sections 2 through 7 herein), the Transaction shall be subject to and governed by all the terms and conditions from (i) the form of the agreement entitled **“Master Agreement”** (**“Multicurrency-Cross Border”** version) as published in 1992 by the International Swaps and Derivatives Association, Inc., attached hereto as Attachment 1 (hereinafter the **“ISDA Agreement”**), excluding the **“Schedule”** thereto, and such terms are hereby incorporated herein by reference and (ii) the Credit Support Annex (**“Bilateral Form, New York Law Only”** version) as published in 1994 by the International Swaps and Derivatives Association, Inc., attached hereto as Attachment 2 (hereinafter the **“Credit Support Annex”**), and such terms are hereby incorporated herein by reference (collectively, the **“Master Agreement”**). In the event of any inconsistency between the ISDA Definitions and the Commodity Definitions, the Commodity Definitions shall prevail. In the event of any inconsistency between the provisions of the Master Agreement and the Definitions, the Master Agreement shall prevail. In the event of any inconsistency between the Master Agreement, or the Definitions and this Confirmation Letter, this Confirmation Letter shall prevail.

If the Parties have entered into an ISDA Master Agreement (whether a 1992 version or the 2002 version) that governs Transactions other than the Transaction confirmed under this Confirmation Letter, such ISDA Master Agreement shall not apply for the purposes of the Transaction confirmed under this Confirmation Letter, and this Confirmation Letter shall be treated as a separate, stand-alone Confirmation from all other Transactions between the Parties.

The terms of this Confirmation Letter are as follows:

1. Terms of the Transaction(s)

Underlying Commodity: Electrical Energy

Fixed Price Payer: Party B

Floating Price Payer: Party A

Floating Price Structure: The “Floating Price” means the average MISO DA LMP Price for each applicable hour of each settlement month for the MISO CP Node AMIL.BGS9 [CIPS – AMIL.BGS6 and CILCO – AMIL.BGS3]

Product: Financial Swap

TABLE 1

Transaction	TERM	Transaction Type (On/Off- Peak)	Fixed Price (\$/MWH)	Hourly Quantity (MW/HOUR)	Total Quantity (MWHs)
A	[Start Date] through and including [End Date]		\$		
B	[Start Date] through and including [End Date]				
C	[Start Date] through and including [End Date]				
D	[Start Date] through and including [End Date]				
E	[Start Date] through and including [End Date]				
F	[Start Date] through and including [End Date]				

[Note that the MW/hour and MWH’s will depend on Party B’s proportion of purchase]

[Note that additional rows will be added as needed based on number of products won by the supplier.]

[Note that if a supplier wins multiple blocks of a single product with different prices, a single transaction will be used for the entire quantity with a fixed price which is the load weighted average of the individual prices rounded to the nearest \$0.01]

For transaction types of On-peak and Off-peak, the Hourly Quantity shall be as listed in Table 1 for the entire Settlement periods as defined below:

For transaction type of On-Peak, the Settlement period shall be all hours starting Hour Ending (“HE”) 0800 through HE 2300 Eastern Prevailing Time (“EPT”) for weekdays excluding NERC holidays during the Term.

For transaction type of Off-Peak, the Settlement period shall be all hours of all calendar days in Eastern Standard Time (“EST”) during the Term that are not On Peak hours.

“NERC Holidays” means a holiday as defined by the North American Electric Reliability Corporation or any successor thereto.

Commercial Terms Applicable to All Transactions

Settlement: For all Transactions hereunder, a financial settlement month will occur for each calendar month of the term. Each settlement month the parties agree to financially settle the difference between the agreed Fixed Price (as defined in Table 1 above) and the Floating Price for the relevant Transaction. If the Floating Price exceeds the Fixed Price set forth in the relevant Transaction, the Floating Price payer will owe the Fixed Price payer the difference multiplied by the Total Quantity (as defined in Table

1 above) for such month or if the Floating Price is less than the Fixed Price set forth in the relevant Transaction, the Fixed Price payer will owe the Floating Price payer the difference multiplied by the Total Quantity for such month. As provided herein, the financially settled amounts for each Transaction shall be netted against all other Transactions and the party owing the greater amount will pay the other party such amount.

Payment Due Date: Promptly following final approval of the MISO DA expost LMPs for the given settlement month, Party A will provide an invoice to both parties of the amount owed by one party to the other. If the invoice is received by the party owing an amount under such invoice prior to the tenth (10th) day of the month, such party shall make payment by the 20th day of such month. If the invoice is received by the party owing an amount under such invoice on or after the tenth (10th) day of the month, such party shall make payment within ten (10) Local Business Days of the day of receipt; provided, that if payment is due from Party A to Party B, Party A shall make payment by the 20th day of such month.

Local Business Days: Any day on which Federal Reserve member banks in New York City are open for business and a Local Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Standard (or Daylight) time.

Contractual Currency: All units denominated in a currency shall refer to and all payments shall be made in United States Dollars (USD).

References: All references to “Section” under sections 2 through 7 below shall be references to the ISDA Agreement except as otherwise specifically provided.

2. Part 1, Termination Provision Elections to the ISDA Agreement:

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

Section 5(a)(v):	Not Applicable
Section 5(a)(vi):	Not Applicable
Section 5(a)(vii):	Not Applicable
Section 5(b)(iv):	Not Applicable

and in relation to Party B for the purpose of:

Section 5(a)(v):	Not Applicable
Section 5(a)(vi):	Not Applicable
Section 5(a)(vii):	Not Applicable
Section 5(b)(iv):	Not Applicable

(b) **“Specified Transaction”** will have the meaning specified in Section 14 of the ISDA Agreement.

(c) The **“Cross Default”** provisions of Section 5(a)(vi) will apply to Party A and to Party B. Section 5(a)(vi) of the ISDA Agreement is hereby amended by the addition of the following at the end thereof: “provided, however, that notwithstanding the foregoing, an Event of Default shall not occur under either (1) or (2) above if, as demonstrated to the reasonable satisfaction of the other party, (a) the event or condition referred to in (1) or the failure to pay or deliver referred to in (2) is a failure to pay or deliver caused by an error or omission of an administrative or operational nature; and (b) funds were available to such party to enable it to make the relevant payment when due; and (c) such relevant payment is made within three Local Business Days following receipt of written notice from an interested party of such failure to pay.”

If such provisions apply:

“Specified Indebtedness” will have the meaning specified in Section 14 of the ISDA Agreement.

“Threshold Amount” means \$50,000,000 with respect to Party A and, if applicable, Party A’s Credit Support Provider.
means \$50,000,000 with respect to Party B.

(d) The **“Credit Event Upon Merger”** provisions of Section 5(b)(iv) of the ISDA Agreement will apply to Party A and to Party B.

(e) The **“Automatic Early Termination”** provision of Section 6(a) will not apply to Party A and will not apply to Party B; provided, however, with respect to a party, where an Event of Default specified in Section 5(a)(vii)(1), (3), (4), (5), (6) or to the extent analogous thereto, (8), is governed by a system of law which does not permit termination to take place after the occurrence of the relevant Event of Default, then the Automatic Early Termination provisions of Section 6(a) will apply to such party.

(f) **Payments on Early Termination.** For the purpose of Section 6(e) of the ISDA Agreement:

(i) Loss will apply.

(ii) The Second Method will apply.

(g) **“Termination Currency”** means United States Dollars.

(h) **“Additional Termination Event”** will not apply.

(i) **Master Netting; Termination Payment.**

(i) In addition to the Settlement Amount calculated for purposes of this Confirmation Letter, the Non-Defaulting Party shall calculate a “Termination Payment” by aggregating all Settlement Amounts (however calculated) due under this Confirmation Letter and any other Fixed Price Customer Supply Contracts into a single amount by: netting out (a) all Settlement Amounts that are due or will become due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party and actually received, liquidated and retained by the Non-Defaulting Party, plus any or all other amounts due to the Defaulting Party under this Confirmation Letter or any other Fixed Price Customer Supply Contracts against (b) all Settlement Amounts that are due or will become due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Confirmation Letter or any other Fixed Price Customer Supply Contracts, so that all such amounts shall be netted out to a single liquidated amount owed by one party to the other. Such single Termination Payment will be payable within five (5) Local Business Days by the Party owing such amount to the other. “Fixed Price Customer Supply Contract” means any supply contract entered into by the Parties designated as “Fixed Price Customer Supply Contract” between the Parties.

(ii) The Defaulting Party shall indemnify and hold the other Party harmless from all reasonable costs and expenses, including reasonable attorney fees, incurred in the exercise of its remedies hereunder.

(iii) It is the intention of each of the Parties that the decision by the Non-Defaulting Party to terminate its obligations to the Defaulting Party hereunder shall result in the automatic termination of its obligations under all other Fixed Price Customer Supply Contracts between the Parties. The Non-Defaulting Party will calculate a single Termination Payment applicable to all such Fixed Price Customer Supply Contracts as set forth above, and only one Termination Payment will be paid by the Party owing such amount.

(iv) The Parties are making credit, default, collateral and other decisions and changes based upon and in reliance on the effectiveness of the default, early termination, setoff and netting provisions of this Confirmation Letter and any other Fixed Price Customer Supply Contracts, including without limitation the calculation of the Total Exposure Amount for purposes of determining how much collateral shall be posted and the calculation of a single Termination Payment across the Confirmation Letter and all other Fixed Price Customer Supply Contracts. The Parties would not enter into this Confirmation Letter except for their reliance on and with the understanding that such terms shall be effective.

(v) The Parties agree and acknowledge that this Confirmation Letter is a “swap agreement”, “master netting agreement” and/or “forward contract” and that each of the Parties is a “swap participant”, “forward contract merchant” and/or “master netting agreement participant” for purposes of 11 U.S.C. 101 et seq. or any successor provisions. To the extent that Section 365 of the Bankruptcy Code applies to this Confirmation Letter and all other Fixed Price Customer Supply Contract(s), the Parties agree that all transactions with each of the Parties under this Confirmation Letter and all other Fixed Price Customer Supply Contracts constitute one integrated transaction that can only be assumed or rejected in its entirety.

- (j) **Additional Event of Default.** It shall be an “Event of Default” under this Agreement if an “Event of Default” or default (however defined) occurs and is continuing under any other Fixed Price Customer Supply Contract with respect to a party.

3. **Part 2, Tax Representations:**

- (a) **Payer Tax Representations.** For the purposes of Section 3(e) of the ISDA Agreement, each, Party A and Party B will make the following representation:

It is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e), 6(d)(ii) or 6(e) of the ISDA Agreement) to be made by it to the other party under the ISDA Agreement. In making this representation, it may rely on:

- (i) the accuracy of any representations made by the other party pursuant to Section 3(f) of the ISDA Agreement;
- (ii) the satisfaction of the agreement contained in Section 4(a)(i) or 4(a)(iii) of the ISDA Agreement and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or 4(a)(iii) of the ISDA Agreement; and
- (iii) the satisfaction of the agreement of the other party contained in Section 4(d) of the ISDA Agreement,

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

- (b) **Payee Tax Representations.** For the purposes of Section 3(f) of the ISDA Agreement, Party A and Party B make the following representations:

Party A: If Party A is not a foreign entity, the following representation will apply: Party A is a _____ organized under the laws of the _____ and is not a foreign entity for United States tax purposes and has the following tax identification number _____.

If Party A is a foreign entity, the following representations will apply:

- (1) In respect of each Transaction that Party A enters into under the ISDA Agreement through an Office that is located in the United States of America, Party A makes the following representation to Party B:

Each payment received or to be received by Party A in connection with the ISDA Agreement will be effectively connected with the conduct of a trade or business by Party A in the United States of America.

- (2) In respect of each Transaction that Party A enters into under the ISDA Agreement through an Office that is not located in the United States of America, Party A makes the following representations to Party B:

No payment received or to be received by Party A under the ISDA Agreement will be effectively connected with Party A's conduct of a trade or business within the Specified Jurisdiction. It is fully eligible for the benefits of the "Business Profits" or "Industrial and Commercial Profits" provision, as the case may be, the "Interest" provision or the "Other Income" provision (if any) of the Specified Treaty with respect to any payment described in such provisions and received or to be received by it in connection with the ISDA Agreement and no such payment is attributable to a trade or business carried on by it through a permanent establishment in the Specified Jurisdiction. Each payment received or to be received by it in connection with the ISDA Agreement (other than interest under Section 2(e), 6(d)(ii) and 6(e)) qualifies as "Business Profits," "Industrial and Commercial Profits," "Interest" or "Other Income" under the Specified Treaty.

If such representation applies, then:

"Specified Treaty" means, with respect to a Transaction, the tax treaty applicable between Switzerland and the country in which Party B is resident for purposes of such treaty with respect to such Transaction; and

"Specified Jurisdiction" means, with respect to each Transaction, the country in which Party B is resident for purposes of the tax treaty that is referred to in the definition of Specified Treaty.

Party B: Party B is a corporation organized under the laws of the State of Illinois and is not a foreign corporation for United States tax purposes and has the following tax identification number 37-0211380.

4. Part 3 Documents to Be Delivered:

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

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

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered
Party A and Party B	An executed United States Internal Revenue Service Form W-9 (or any successor thereto) or, if applicable, Internal Revenue Service Form W-8ECI and Form W-8BEN (or any successor thereto) with respect to a foreign entity.	At execution of this Confirmation Letter and thereafter promptly upon learning that any such forms previously provided to the other party have become obsolete, incorrect or ineffective.

(b) Other documents to be delivered are:

Party required to deliver	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d) Representation
Party A and Party B	Copy of its (or if applicable, its Credit Support Provider's) most recent, publicly available quarterly Form 10-Q and annual Form 10-K reports containing audited financial statements, prepared in accordance with the generally accepted accounting principles in the country in which the party is organized. If the audited statement is not from an SEC filing, then the party's (or, if applicable, its Credit Support Provider's) Chief Financial Officer must submit an attestation that the information provided is accurate and complete.	If reports and financial statements are not available publicly (on EDGAR or otherwise) or on a party's website, hard copies will be provided upon reasonable demand of the other party, if available.	Yes
Party A and Party B	A secretary's certificate showing evidence of the authority (whether by resolution, articles of association, or otherwise) and specimen signatures with respect to the party's (or, if applicable, its Credit Support Provider's) signatories executing this Confirmation Letter and any Credit Support Document.	At execution of this Confirmation Letter.	Yes
Party A and Party B	Credit Support Document(s)	At execution of this Confirmation Letter	No

5. Part 4, Miscellaneous Provisions:

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

 ("Party A")
 All Notices:
 Street: _____
 City: _____
 Attn: _____

 Phone: _____
 Facsimile: _____
 Duns: _____
 Federal Tax ID Number: _____

Invoices:
 Attn: _____
 Phone: _____
 Facsimile: _____
 Email: _____

Illinois Power Company d/b/a Ameren IP
 ("Party B")
 All Notices:
 Street: 1901 Chouteau Ave., MC- 1301
 City: St. Louis, MO Zip: 63103
 Attn: Power Supply Acquisition
 Jim Blessing
 Phone: (314) 554-2972
 Facsimile: (314) 206-0210
 Duns: 00-693-60 1 7
 Federal Tax ID Number: 37-0211380

Invoices:
 Attn: Scott Holtgrieve
 Phone: (314) 554-3440
 Facsimile: (314) 206-0210
 Email: sholtgrieve@ameren.com

With a copy to:

Attn: Jim Blessing
Phone: (314) 554-2972
Facsimile: (314) 206-0210
Email: jblessing@ameren.com

Payments:

Attn: _____
Phone: _____
Facsimile: _____

Payments:

Attn: Sam Cassmeyer
Phone: (314) 554-4287
Facsimile: (314) 554-6328

Wire Transfer: Wire Transfer:

BNK: _____
ABA: _____
ACCT: _____

BNK: US Bank
ABA: 042000013
ACCT: 1301 030 18052

Credit and Collections:

Attn: _____
Phone: _____
Facsimile: _____

Credit and Collections:

Attn: Lee Lalinsky
Phone: (314) 206-1166
Facsimile: (314) 206-0210

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: _____
Phone: _____
Facsimile: _____

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: President & CEO
Phone: (309) 677-5220
Facsimile: (309) 677-5016

(b) **Process Agent.** For the purpose of Section 13(c):

Party A appoints as its Process Agent: Not applicable. *[If foreign entity, name Process Agent]*

Party B appoints as its Process Agent: Not applicable.

(c) **Offices.**

With respect to Party A, the provisions of Section 10(a) will apply to this Confirmation Letter.

With respect to Party B, the provisions of Section 10(a) will apply to this Confirmation Letter.

(d) **Multibranch Party.** For the purpose of Section 10(c):

Party A is not a Multibranch Party. *[If foreign entity, name applicable U.S. Branch and home office]*

Party B is not a Multibranch Party.

(e) **Calculation Agent.** The Calculation Agent is Party A; provided, however, if Party A is the Defaulting Party, the Calculation Agent shall be Party B (or any designated third party mutually agreed to by the parties) until such time as Party A is no longer a Defaulting Party. All calculations made by the Calculation Agent may be independently confirmed by the other party at its sole discretion. In the event that the Parties' initial calculations are inconsistent and the amount owed disputed, the undisputed amount will be used to determine payment obligations and if then due, paid by the relevant party. The parties shall endeavor to resolve any such dispute in good faith. If the parties are unable to resolve such dispute within a commercially reasonable time, the parties shall mutually select a dealer in the applicable commodity to act as

Calculation Agent with respect to the issue in dispute. The failure of Party A to perform its obligations as Calculation Agent hereunder shall not be construed as an Event of Default or Termination Event.

(f) **“Credit Support Document”**

For both Party A and Party B, the Credit Support Annex incorporated herein by reference below.

In the case of Party A: *[If applicable, any unconditional corporate guaranty provided by Party A’s Credit Support Provider in the form attached hereto as Exhibit A.]*

In the case of Party B: Not applicable.

(g) **Credit Support Provider.** Credit Support Provider means:

In relation to Party A: *[if applicable, creditworthy parent of Party A.]*

In relation to Party B: Not applicable.

(h) **Governing Law.** This Confirmation Letter and each Credit Support Document will be governed by and construed in accordance with the laws of the State of New York.

(i) **Jurisdiction.** Section 13(b) is hereby replaced with the following:

With respect to any action, suit or proceedings relating to this Confirmation Letter (“Proceedings”), each party irrevocably: (i) submits to the exclusive jurisdiction of the courts of the State of Illinois and the United States District Court located in the Northern District of Illinois, and (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have jurisdiction over such party. Nothing in this Confirmation Letter precludes either party from bringing Proceedings in any other jurisdiction in order to enforce any judgment obtained in any Proceedings referred to in the preceding sentence, nor will the bringing of such enforcement Proceedings in any one or more jurisdictions preclude the bringing of enforcement Proceedings in any other jurisdiction.

(j) **Waiver of Jury Trial.** Section 13 of the ISDA Agreement is hereby amended by adding the following as a new Section 13(e) to this Confirmation Letter:

WAIVER OF JURY TRIAL. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY CREDIT SUPPORT DOCUMENT. EACH PARTY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY OR ANY CREDIT SUPPORT PROVIDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF SUCH A SUIT, ACTION OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND PROVIDE FOR ANY CREDIT SUPPORT DOCUMENT, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(k) **Netting of Payments.** To the extent more than one Transaction is confirmed under this Confirmation Letter, subparagraph (ii) of Section 2(c) will not apply and therefore netting pursuant to Section 2(c) will apply to all Transactions under this Confirmation Letter.

(l) **“Affiliate”** has the meaning specified in Section 14 of the ISDA Agreement.

6. Part 5, Other Provisions:

(a) **Set-Off.** The parties agree to amend Section 6 by adding a new Section 6(f) as follows:

Set-Off. Without affecting the provisions of the ISDA Agreement requiring the calculation of certain net payment amounts, all payments under this Confirmation Letter will be made without set-off or counterclaim; provided, however, that upon the designation of any Early Termination Date, in addition to and not in limitation of any other right or remedy (including right to set off, counterclaim or otherwise withhold payment or any recourse to any Credit Support Document) under applicable law, the Non-defaulting Party or non-Affected Party (in either case, "X") may without prior notice to any person set off any sum or obligation (whether or not arising under this Confirmation Letter and whether matured or unmatured, whether or not contingent and irrespective of the currency, place of payment or booking office of the sum or obligation) owed by or owed to the Defaulting Party or Affected Party (in either case, "Y") to or from X against any sum or obligation (whether or not arising under this Confirmation Letter, whether matured or unmatured, whether or not contingent and irrespective of the currency, place of payment or booking office of the sum or obligation) owed by or owed to X to or from Y, and to the extent any such amounts are so set off, those amounts will be discharged promptly in all respects. If an obligation is unascertained, X may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained. X will give Y notice of any setoff effected under this section as soon as practicable after the setoff is effected, provided that failure to give such notice shall not affect the validity of the setoff.

Nothing in this Set-Off provision shall be effective to create a charge or other security interest. This Set-Off provision shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Notwithstanding any provision to the contrary contained in this Agreement, the Non-defaulting Party shall not be required to pay to the Defaulting Party any Termination Payment until the Non-defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-defaulting Party under this Confirmation Letter or otherwise (including, without limitation, any other Fixed Price Customer Supply Contracts) which are due and payable as of the Early Termination Date have been fully and finally performed."

(b) **Modifications to the ISDA Agreement.**

(i) **Accuracy of Specified Information.** Section 3(d) of the ISDA Agreement is amended by (a) inserting after the word "information" in the first line the words "other than financial information," and (b) adding before the period at the end of the Section the words "and, in the case of each item of financial information, presents fairly the financial condition or performance that the item of financial information purports to present as of the date or for the periods for which that item of financial information is stated to refer and, in the case of interim financial information, is subject to year-end adjustments."

(ii) Section 3 of the ISDA Agreement is hereby amended by adding at the end thereof the following subparagraphs (g), (h), (i), (j) and (k):

"(g) **Eligible Contract Participant; Eligible Commercial Entity.** It qualifies as (i) an "eligible contract participant" as defined at Section 101(12) of the Commodity Futures Modernization Act of 2000 (7 U.S.C.A. Section 1a(12) (West Supp. 2001) and (ii) as to transactions to be entered into on "electronic trading facilities", an "eligible commercial entity" as defined at Section 101(11) of the Commodity Futures Modernization Act of 2000 (7 U.S.C.A. Section 1a(11) (West Supp. 2001)).

(h) **Bankruptcy Code Representation.** The parties hereto intend that this Confirmation Letter shall be a “swap agreement”, a “master agreement” and a “master netting agreement” for purposes of 11 U.S.C 101(53B).

(i) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction, it being understood that information and explanations related to the terms and conditions of a Transaction will not be considered investment advice or a recommendation to enter into that Transaction. 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 that Transaction.

(j) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.

(k) **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction.”

(c) **LIMITATION OF LIABILITY. THE PARTIES CONFIRM THAT THE EXPRESS PAYMENTS PROVIDED FOR IN THIS CONFIRMATION LETTER ARE IN LIEU OF ANY OTHER REMEDIES OR MEASURES OF DAMAGES AND SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS PAYMENT IS SPECIFIED AS THE APPROPRIATE MEASURE OF DAMAGES, SUCH PAYMENT SHALL BE THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO A PARTY AND ALL OTHER REMEDIES AT LAW OR IN EQUITY ARE WAIVED. NO PARTY SHALL BE REQUIRED TO PAY OR BE LIABLE TO THE OTHER FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR SIMILAR TYPES OF DAMAGES EXCEPT TO THE EXTENT THAT PAYMENTS EXPRESSLY REQUIRED TO BE MADE UNDER THE TERMS OF THIS CONFIRMATION LETTER ARE DEEMED TO BE SUCH DAMAGES. IF AND TO THE EXTENT THAT ANY PAYMENTS REQUIRED TO BE MADE PURSUANT TO THIS CONFIRMATION LETTER ARE DEEMED TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE AND AGREE THAT SUCH DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND SUCH PAYMENT IS INTENDED AND BELIEVED BY THE PARTIES TO BE A REASONABLE APPROXIMATION OF THE HARM OR LOSS SUFFERED.**

(d) **Limitation of Rate.** Notwithstanding any provision to the contrary contained in this Confirmation Letter, in no event shall the Default Rate, Non-default Rate, or Termination Rate exceed the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged, or received on the subject indebtedness under the law applicable to such party.

7. Part 6, Additional Provisions for Commodity Transactions

(a) The “Market Disruption Events” specified in Section 7.4(d)(i) of the Commodity Definitions shall apply.

(b) “Additional Market Disruption Events” shall not apply.

(c) Section 9.1 of the Commodity Definitions is deleted in its entirety and the following is substituted therefore:

“Section 9.1. For purposes of preparing any calculations referred to in the Commodity Definitions, unless otherwise agreed and specified in a Confirmation, rounding conventions shall be as follows:

Commodity Pricing in \$/MWh:	rounded to two (2) decimals;
All Dollar Amounts:	rounded to the nearest cent.”

8. Credit Support Annex

All references to “Paragraph” under this section 8 shall be references to the Credit Support Annex. The following provisions modify and supplement the Credit Support Annex:

Paragraph 13. Elections and Variables.

Agreement as to Single Secured Party and Pledgor. Party A and Party B agree that, notwithstanding anything to the contrary in the recital to the Credit Support Annex, Paragraph 1(b) or Paragraph 2 of the definitions in Paragraph 12, (a) the term “Secured Party” as used in the Credit Support Annex (including this Paragraph 13) means only Party B, (b) the term “Pledgor” as used in the Credit Support Annex (including this Paragraph 13) means only Party A, (c) only Party A makes the pledge and grant in Paragraph 2, the acknowledgment in the final sentence of Paragraph 8(a) and the representations in Paragraph 9, (d) only Party A will be required to make Transfers of Eligible Credit Support under the Credit Support Annex and (e) Paragraph 7 shall apply to Party A only and shall not apply to Party B.

(a) **Security Interest for “Obligations”.** The term **“Obligations”** as used in the Credit Support Annex includes the following additional obligations:

With respect to Party A: “Obligations” includes all obligations of Party A under this Confirmation Letter and any other Fixed Price Customer Supply Contracts.

The definition of “Exposure” in the Credit Support Annex is amended to include not only the Exposure under this Confirmation Letter, but the total credit exposure (the “Total Exposure Amount”) of Party B, on an aggregate basis, consisting of the sum of: (i) the Exposure amount (however calculated under this Confirmation Letter and any other Fixed Price Customer Supply Contracts, including an amount calculated each Business Day reflecting the Settlement Amount that would be owed to Party B on such day if Party A had defaulted under such Fixed Price Customer Supply Contract) calculated by Party B in a commercially reasonable manner; provided, that if a Fixed Price Customer Supply Contract does not include provisions for margining mark-to-market exposure, then such Fixed Price Customer Supply Contract will not be included for purposes of this calculation; and (ii) any amount required as security from Party A pursuant to any Fixed Price Customer Supply Contract that is not collateral posted as margin and treated as part of any Exposure amount; provided, however, that in the event the Total Exposure Amount for any day is a negative number, the Total Exposure Amount shall be deemed to be zero for such day. Any collateral or security previously posted by Party A under this Confirmation Letter or any other Fixed Price Customer Supply Contract will be netted against the Total Exposure Amount when determining collateral requirements.

(b) **Credit Support Obligations.**

(i) **Delivery Amount, Return Amount and Credit Support Amount.**

(A) **“Delivery Amount”** has the meaning specified in Paragraph 3(a).

(B) **“Return Amount”** has the meaning specified in Paragraph 3(b).

(C) **“Credit Support Amount”** has the meaning specified in Paragraph 3.

(ii) **Eligible Collateral.** The following items will qualify as **“Eligible Collateral”** for the party specified:

	PARTY A	Valuation Percentage
(A) Cash	[X]	[100]%

(iii) **Other Eligible Support.** The following items will qualify as **“Other Eligible Support”** for the party specified:

	PARTY A	Valuation Percentage
Letters of Credit	[X]	100% of the Letter of Credit unless (i) a Letter of Credit Default shall apply with respect to such Letter of Credit, or (ii) twenty (20) or fewer Local Business Days remain prior to the expiration of such Letter of Credit, in either of which case the Valuation Percentage shall be zero (0).

(iv) **Thresholds**

(A) **“Independent Amount”** means with respect to Party A: Not Applicable

“Threshold” means, with respect to Party A or its Credit Support Provider, if applicable, the amount determined in accordance with Table A below; provided that (i) for the applicable Credit Rating within Table A, Threshold for such party shall be the lesser of that party’s applicable percentage of Tangible Net Worth or the amount shown as the Credit Cap; and provided further, that in the event Party A or its Credit Support Provider is (a) only rated by one Credit Rating Agency, such Credit Rating will apply; (b) rated by two Credit Rating Agencies, the lower of the two Credit Ratings will apply; (c) rated by all three Credit Rating Agencies, then the lower of the two highest Credit Ratings will apply and (d) in the event that the two highest Credit Ratings are common, such common Credit Rating will apply; (ii) if Party A’s Credit Support Provider has provided a corporate guaranty, the Threshold shall be the lesser of the Threshold as

determined by (i) above or the amount of such corporate guaranty; (iii) upon the occurrence and during the continuance of an Event of Default, Potential Event of Default, or Specified Condition with respect to Party A, Party A's Threshold shall be zero; and (iv) if none of Moody's, S&P nor Fitch assign a Credit Rating to Party A or its Credit Support Provider, as applicable, Party A's Threshold shall be zero. Notwithstanding the foregoing, if Party A has entered into one or more BGS-FP Supplier Forward Contracts ("SFCs") with Party B following the 2006 Illinois Auctions and such SFCs call for power delivery beyond May 31, 2009, Party A's Threshold shall equal the lesser of (a) the positive amount, if any, determined by multiplying 50% [CIPS 33%, CILCO 17%] and the amount by which the Credit Limit under the SFCs exceeds the Total Exposure Amount under the SFCs (if the result is a negative amount, Party A's Threshold shall be zero) and (b) Party A's Threshold as determined by (i) above.

Table A

Credit Rating			Threshold (the lesser of the following)	
S&P	Moody's	Fitch	Percent of Tangible Net Worth	Credit Cap
A- and above	A3 and above	A- and above	16%	\$40,000,000 [26,400,000 – CIPS] [13,600,000 – CILCO]
BBB+	Baa1	BBB+	10%	\$30,000,000 [19,800,000 – CIPS] [10,200,000 – CILCO]
BBB	Baa2	BBB	8%	\$20,000,000 [13,200,000 – CIPS] [6,800,000 – CILCO]
BBB-	Baa3	BBB-	6%	\$10,000,000 [6,600,000 – CIPS] [3,400,000 – CILCO]
Below BBB-	Below Baa3	Below BBB-	0%	\$0

(C) **“Minimum Transfer Amount”** means with respect to Party A and Party B: \$100,000.

(D) **Rounding.** The Delivery Amount will be rounded up to the nearest integral multiple of \$100,000. The Return Amount will be rounded down to the nearest integral multiple of \$100,000.

(c) **Valuation and Timing.**

(i) **“Valuation Agent”** means the Secured Party.

(ii) **“Valuation Date”** means: Every Local Business Day.

(iii) **“Valuation Time”** means the close of business on the Local Business Day before the Valuation Date or date of calculation, as applicable; *provided* that the calculations of Value and Exposure will be made as of approximately the same time on the same date.

(iv) **“Notification Time”** means 1:00 p.m., New York time, on a Local Business Day.

(d) **Conditions Precedent and Secured Party’s Rights and Remedies.** The following Termination Event(s) will be a “Specified Condition” for the party specified (that party being the Affected Party if the Termination Event occurs with respect to that party):

	<u>Party A</u>
Illegality	[X]
Tax Event	[]
Tax Event Upon Merger	[]
Credit Event Upon Merger	[X]

(e) **Substitution**

- (i) **“Substitution Date”** has the meaning specified in Paragraph 4(d)(ii).
- (ii) **Consent.** The Pledgor must obtain the Secured Party’s consent for any substitution pursuant to Paragraph 4(d).

(f) **Dispute Resolution**

- (i) **“Resolution Time”** means 1:00 p.m., New York time, on the Local Business Day following the date on which the notice is given that rise to a dispute under Paragraph 5.
- (ii) **Value.** For the purpose of Paragraphs 5(i)(C) and 5(ii), the Value of Posted Credit Support will be calculated as follows: (i) for cash collateral, the face value thereof and (ii) with respect to Other Eligible Support and Other Posted Support, an amount equal to the value as calculated pursuant to Paragraph 13(j)(i).
- (iii) **Alternative.** The provisions of Paragraph 5 will apply.

(g) **Holding and Using Posted Collateral**

(i) **Eligibility to Hold Posted Collateral; Custodians.**

Party B will be entitled to hold Posted Collateral pursuant to Paragraph 6(b); *provided* that the following conditions applicable to it are satisfied:

- (1) Party B is not a Defaulting Party and/or no Material Adverse Change has occurred with respect to Party B.
- (2) Posted Collateral may be held only in the United States.

- (3) The Custodian shall be a Qualified Institution.

Initially, the **Custodian** for Party B is not applicable.

- (ii) **Use of Posted Collateral.** The provisions of Paragraph 6(c) will apply so long as the Secured Party is eligible to hold collateral pursuant to the terms and conditions of Paragraph 13(g)(i). If a party or its Custodian becomes ineligible to hold Posted Collateral pursuant to this Section, then it shall be considered a **“Downgraded Party”** or a **“Downgraded Custodian”**, as the case may be, the event that caused such party or its Custodian to become ineligible to hold Posted Collateral shall be a **“Credit Rating Event”** and the following provisions shall apply. At the request of the other party, the Downgraded Party shall be required to deliver (or, in the case of a Downgraded Custodian, cause the Downgraded Custodian to deliver) not later than the close of business on the fifth (5th) Local Business Day following such Credit Rating Event all Posted Collateral in its possession or held on its behalf to a Qualified Institution to a segregated, safekeeping or custody account (**“Collateral Account”**) within such Qualified Institution with the title of the Collateral Account indicating that the property contained therein is being held as Posted Collateral for such party; provided, that, if the Credit Rating Event occurs with respect to a Party’s Custodian that is holding Posted Collateral on behalf of such Party, then such Downgraded Custodian may also deliver such Posted Collateral to such party if such party is not a Downgraded Party. The Qualified Institution shall serve as Custodian with respect to the Posted Collateral in the Collateral Account, and shall hold such Posted Collateral in accordance with the terms of this Annex and for the security interest of the Downgraded Party and, subject to such security interest, for the ownership of the other Party.
- (h) **Distributions and Interest Amount**
- (i) **Interest Rate.** The **“Interest Rate”** for each day in which cash collateral is held will be Federal Funds overnight rate as specified in the Federal Reserve Statistical Report (H.15) “Selected Interest Rates” report.
- (ii) **Transfer of Interest Amount.** The Transfer of the Interest Amount will be made by the third Local Business Day of each calendar month and on any Local Business Day that Posted Collateral in the form of Cash is Transferred to the Pledgor pursuant to Paragraph 3(b).
- (iii) **Alternative to Interest Amount.** The provisions of Paragraph 6(d)(ii) will apply.
- (i) **Additional Representations.** None.
- (j) **Other Eligible Support and Other Posted Support**
- (i) **“Value”** with respect to Other Eligible Support and Other Posted Support means the Valuation Percentage multiplied by stated amount (undrawn portion) of any Letter of Credit maintained by the Pledgor (or its Credit Support Provider) for the benefit of the Secured Party.
- (ii) **“Transfer”** with respect to Other Eligible Support and Other Posted Support means:
- (1) For purposes of Paragraph 3(a), delivery of the Letter of Credit by the Pledgor or issuer of the Letter of Credit to the Secured Party at the address of the Secured Party specified in the “Notices” Section of this Annex, or delivery of an executed amendment to such Letter of Credit in form and substance satisfactory to the Secured Party (extending the term or increasing the amount available to the Secured

Party thereunder) by the Pledgor or the issuer of the Letter of Credit to the Secured Party at the address of the Secured Party specified in the “Notices” Section of this Annex; and

- (2) For purposes of Paragraph 3(b), by the return of an outstanding Letter of Credit by the Secured Party to the Pledgor, at the address of the Pledgor specified in the “Notices” Section of this Annex, or delivery of an executed amendment to the Letter of Credit in form and substance satisfactory to the Secured Party (reducing the amount available to the Secured Party thereunder) by the Pledgor or the issuer of the Letter of Credit to the Secured Party at the Secured Party’s address specified in the “Notices” Section of this Annex. If a transfer is to be effected by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party, the Secured Party shall not unreasonably withhold its consent to a commensurate reduction in the amount of such Letter of Credit and shall take such action as is reasonably necessary to effectuate such reduction.

(iii) **Letter of Credit Provisions.** Other Eligible Support and Other Posted Support provided in the form of a Letter of Credit shall be subject to the following provisions:

- (1) Unless otherwise agreed in writing by the parties, each Letter of Credit shall be provided in accordance with the provisions of this Annex, and each Letter of Credit shall be maintained for the benefit of the Secured Party. The Pledgor shall (i) renew or replace or cause the renewal or replacement of each outstanding Letter of Credit prior to the expiration date of the relevant Letter of Credit being renewed or replaced in order to maintain the then-applicable Credit Support Amount requirements, (ii) if the Qualified Institution that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide a substitute Letter of Credit at least twenty (20) Local Business Days prior to the expiration of the outstanding Letter of Credit, and (iii) if a Qualified Institution issuing a Letter of Credit shall fail to honor the Secured Party’s properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of the Secured Party, (x) a substitute Letter of Credit, that is issued by a Qualified Institution acceptable to the Secured Party, other than the Qualified Institution failing to honor the outstanding Letter of Credit, or (y) Eligible Collateral, in each case within one (1) Business Day after the Pledgor receives notice of such failure; *provided* that, at the time the Pledgor is required to perform in accordance with (i), (ii), or (iii) above, the Delivery Amount applicable to the Pledgor equals or exceeds the Pledgor’s Minimum Transfer Amount.
- (2) As one method of providing Eligible Credit Support, the Pledgor may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.
- (3) (i) A Letter of Credit shall provide that the Secured Party may draw upon the Letter of Credit in an amount (up to the face amount for which the Letter of Credit has been issued) that is equal to all amounts that are due and owing from the Pledgor but have not been paid to the Secured Party within the time allowed for such payments under this Confirmation Letter (including any related notice or grace period or both). A Letter of Credit shall provide that a drawing be made on the Letter of Credit upon submission to the Qualified Institution issuing the Letter of Credit of one or more certificates specifying the amounts due and owing to the Secured Party in accordance with the specific requirements of the Letter of Credit.

(ii) If the Pledgor shall fail to renew, substitute, or sufficiently increase the amount of an outstanding Letter of Credit (as the case may be), or establish one or more additional Letters of Credit, or otherwise provide sufficient Eligible Credit Support and if the Delivery Amount applicable to the Pledgor equals or exceeds the Pledgor's Minimum Transfer Amount as a result of such failure, then the Secured Party may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the Qualified Institution issuing such Letter of Credit of one or more certificates specifying the amounts due and owing to the Secured Party in accordance with the specific requirements of the Letter of Credit. The Pledgor shall remain liable for any amounts due and owing to the Secured Party and remaining unpaid after the application of the amounts so drawn by the Secured Party.

- (4) If a party's Credit Support Provider shall furnish a Letter of Credit hereunder, the amount otherwise required under such Letter of Credit may at the option of such Credit Support Provider be reduced by the amount of any Letter of Credit established by such party (but only for such time as such party's Letter of Credit shall be in effect). If a party shall be required to furnish a Letter of Credit hereunder, the amount otherwise required under such Letter of Credit may at the option of such party be reduced by the amount of any Letter of Credit established by such party's Credit Support Provider (but only for such time as such Credit Support Provider's Letter of Credit shall be in effect).
- (5) Upon the occurrence of a Letter of Credit Default, the Pledgor agrees to deliver a substitute Letter of Credit or other Eligible Credit Support to the Secured Party in an amount at least equal to that of the Letter of Credit to be replaced on or before the second (2nd) Local Business Day after written demand by the Secured Party (or the third (3rd) Local Business Day if only clause (i) under the definition of Letter of Credit Default applies).
- (6) Notwithstanding Paragraph 10, in all cases, the costs and expenses (including but not limited to the reasonable costs, expenses, and external attorneys' fees of the Secured Party) of establishing, renewing, substituting, canceling, increasing, and reducing the amount of (as the case may be) one or more Letters of Credit shall be borne by the Pledgor.

(iv) ***Certain Rights and Remedies.***

(1) ***Secured Party's Rights and Remedies.*** For purposes of Paragraph 8(a)(ii), the Secured Party may draw on any outstanding Letter of Credit (Other Posted Support) in an amount equal to any amounts payable by the Pledgor with respect to any Obligations.

(2) ***Pledgor's Rights and Remedies.*** For purposes of Paragraph 8(b)(ii), (i) the Secured Party will be obligated immediately to Transfer any Letter of Credit (Other Posted Support) to the Pledgor and (ii) the Pledgor may do any one or more the following: (x) to the extent that the Letter of Credit (Other Posted Support) is not Transferred to the Pledgor as required pursuant to (i) above, Set-off any amounts payable by the Pledgor with respect to any Obligations against any such Letter of Credit (Other Posted Support) held by the Secured Party up to the full amount drawable thereunder and to the extent its rights to Set-off are not exercised, withhold payment of any remaining amounts payable by the Pledgor with respect to any Obligations, up to the sum of the Value of any remaining Posted Collateral and the Value of any Letter of Credit (Other Posted Support) held by the Secured Party, until any such Posted Collateral and such Letter of Credit (Other Posted Support) is transferred to the

Pledgor; and (y) exercise rights and remedies available to the Pledgor under the terms of the Letter of Credit.

(v) **Additional Definitions.** As used in this Confirmation Letter:

“Credit Rating” means the senior unsecured long-term debt rating of a party or of its Credit Support Provider, if applicable, or of an entity assigned by S&P, Moody’s or Fitch (each a “Credit Rating Agency”), or if such senior unsecured long-term debt rating is not available, then the then assigned issuer rating (or corporate credit rating) assigned by S&P or Fitch, discounted one notch, or the then assigned issuer rating assigned by Moody’s.

“Fitch” means Fitch Rating, or its successor.

“Letter of Credit” means an irrevocable, transferable, standby Letter of Credit issued by a Qualified Institution, in the form attached hereto as Exhibit B.

“Letter of Credit Default” means with respect to an outstanding Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least “A-” by S&P and “A3” by Moody’s, (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of any Transaction under this Confirmation Letter; or (v) any event analogous to an event specified in Section 5(a)(vii) of this Confirmation Letter shall occur with respect to the issuer of such Letter of Credit; *provided, however*, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to the Pledgor in accordance with the terms of this Annex.

“Material Adverse Change” means with respect to a party, for the purposes of eligibility to hold Posted Collateral, the applicable Credit Rating of it or its Credit Support Provider, if any, is below “BB+” by S&P, is below “Ba1” by Moody’s or is below “BB+ by Fitch, provided, that such party is rated by only one or two of such Credit Rating Agencies. In the event that a party is rated by all three Credit Rating Agencies, then the lower of the two highest ratings will apply for purposes of determining a “Material Adverse Change” and (b) in the event that the two highest ratings are common, such common rating will apply for purposes of determining a “Material Adverse Change”. Additionally, a “Material Adverse Change” will occur if all of such applicable Credit Ratings are withdrawn subsequent to the date of this Confirmation Letter.

“Moody’s” means Moody’s Investor Service, Inc., or its successor.

“Qualified Institution” means a major U.S. commercial bank or a foreign bank with a U.S. branch office with a Credit Rating of at least “A-” by S&P and “A3” by Moody’s and capital and surplus of at least \$1,000,000,000.

“S&P” means Standard & Poor’s Rating Group (a division of The McGraw-Hill Companies) or its successor.

“Tangible Net Worth” means the total assets of a party (or its Credit Support Provider, if applicable) less intangible assets and total liabilities of such entity. For purpose of this

definition, “intangible assets” includes benefits such as goodwill, patents, copyrights and trademarks.

(k) **Demands and Notices.**

All demands, specifications, and notices under this Annex will be made pursuant to the Notices Section of this Confirmation Letter.

(l) **Addresses for Transfers.**

All transfers under this Annex will be made to an account pursuant to the written instructions of the other Party.

(m) **Additional Provisions.**

In determining Exposure pursuant to the Credit Support Annex, the Valuation Agent will be obligated to do the following: (1) the Valuation Agent will communicate with at least two and no more than five Reference Market-makers from the following list: NYMEX, ICAP, Prebon, Intercontinental Exchange and Amerex; (2) the Valuation Agent will obtain bid and ask quotations from such Reference Market-makers for energy products at the Cinergy Hub for each remaining month of the Delivery Period; and (3) to the extent that the settlement index varies from the Cinergy Hub, the Valuation Agent shall calculate the basis difference between the Cinergy Hub and the MISO CP Node AMIL.BGS9 [CIPS – AMIL.BGS6 and CILCO – AMIL.BGS3] and apply it to the quotations to reflect locational price differences.

You have received two partially executed copies of this Confirmation Letter. Please execute both, keep one copy for your own records, return a copy of this signature page by facsimile to Dave Brueggeman at (314) 206-0210 and send a fully executed copy to us to our address in the Notices section above.

If you have any questions, please contact Dave Brueggeman at (314) 554-4622.

Illinois Power Company d/b/a AmerenIP

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

FORM OF GUARANTY

THIS GUARANTY (this "Guaranty"), dated as of _____, 20__, is made by _____ (the "Guarantor"), a _____ organized and existing under the laws of _____, in favor of [_____] (the "Guaranteed Party"), a [_____] organized and existing under the laws of the State of [_____].

Terms not defined herein shall have the meanings given to them in the [_____] dated _____, 20__ (as amended, modified or extended from time to time, the "Agreement"), between the Guaranteed Party and _____, a _____ organized and existing under the laws of _____ (the "Counterparty"). This Guaranty is made by Guarantor in consideration for, and as an inducement for the Guaranteed Party to enter into, the Agreement with the Counterparty. Guarantor, subject to the terms and conditions hereof, hereby unconditionally, irrevocably and absolutely guarantees to the Guaranteed Party the full and prompt payment and performance when due, subject to any applicable grace period, of all payment obligations of the Counterparty to the Guaranteed Party arising out of the Agreement. [OPTION 1: If Counterparty fails to pay any Guaranteed Obligations when due, Guarantor shall, as an independent obligation, promptly upon receiving written notice of such failure from Guaranteed Party, pay such Guaranteed Obligation to Guaranteed Party in accordance with the terms and provisions of the Agreement.] Without limiting the generality of the foregoing, Guarantor further agrees as follows:

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of any sums due and payable by the Counterparty as a result of an Event of Default under the Agreement (including, without limitation, indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement). Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall in no event exceed _____; provided, that Guarantor will be responsible for all reasonable legal fees, costs, and expenses incurred by Company in enforcing the obligations under this Guaranty apart from such liability cap. All such principal, interest, obligations and liabilities, collectively, are the "Guaranteed Obligations". This Guaranty is a guarantee of payment and not of collection.
2. The Guarantor hereby waives diligence, acceleration, notice of acceptance of this Guaranty and notice of any liability to which it may apply, and waives presentment and all demands whatsoever except as noted herein, notice of protest, notice of dishonor or nonpayment of any such liability, suit or taking of other action by any Guaranteed Party against, and any other notice to, any party liable thereon (including the Guarantor or any other guarantor), filing of claims with a court in the event of the insolvency or bankruptcy of the Counterparty, and any right to require a proceeding first against the Counterparty.
3. The Guaranteed Party may, at any time and from time to time, without notice to or consent of the Guarantor, without incurring responsibility to the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder, upon or without any terms or conditions: (a) take or refrain from taking any and all actions with respect to the Guaranteed Obligations, any document or any person (including the Counterparty) that the Guaranteed Party determine in their sole discretion to be necessary or appropriate; (b) take or refrain from taking any action of any kind in respect of any security for any Guaranteed Obligation(s) or liability of the Counterparty to the Guaranteed Party; or (c) compromise or subordinate any Guaranteed Obligation(s) or liability of the Counterparty to the Guaranteed Party including any security therefor.
4. Subject to the terms and conditions hereof, the obligations of the Guarantor under this Guaranty are absolute, irrevocable and unconditional and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by: (a) any extension, renewal, settlement, compromise, waiver, consent, discharge or release by the Counterparty concerning any provision of the Agreement in respect of

any Guaranteed Obligations of the Counterparty; (b) the rendering of any judgment against the Counterparty or any action to enforce the same; (c) the existence, or extent of, any release, exchange, surrender, nonperfection or invalidity of any direct or indirect security for any of the Guaranteed Obligations; (d) any modification, amendment, waiver, extension of or supplement to any of the Agreement or the Guaranteed Obligations agreed to from time to time by the Counterparty and the Guaranteed Party; (e) any change in the corporate existence (including its constitution, laws, rules, regulations or powers), structure or ownership of the Counterparty or the Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceedings affecting the Counterparty or its assets, the Guarantor or any other guarantor of any of the Guaranteed Obligations; (f) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Counterparty, the Guaranteed Party or any other corporation or person, whether in connection herewith or in connection with any unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim; (g) the invalidity, irregularity or unenforceability in whole or in part of the Agreement or any Guaranteed Obligations or any instrument evidencing any Guaranteed Obligations or the absence of any action to enforce the same, or any provision of applicable law or regulation purporting to prohibit payment by the Counterparty of amounts to be paid by it under the Agreement or any of the Guaranteed Obligations; and (h) except for a failure to comply with any applicable statute of limitations, any other act or omission to act or delay of any kind of the Counterparty, any other guarantor, the Guaranteed Party or any other corporation, entity or person or any other event, occurrence or circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of the Guarantor's obligations hereunder.

5. The Guarantor hereby irrevocably waives (a) any right of reimbursement or contribution, and (b) any right of salvage against the Counterparty or any collateral security or guaranty or right of offset held by the Guaranteed Party therefor.

6. The Guarantor will not exercise any rights [OPTION 2: in respect of any amount paid by Guarantor hereunder] which it may acquire by way of subrogation or any other right to payment until all Guaranteed Obligations to the Guaranteed Party pursuant to the Agreement have been irrevocably paid in full.

7. Subject to the terms and conditions hereof, this Guaranty is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. Except for a failure to comply with any applicable statute of limitations, no failure or delay on the part of the Guaranteed Party in exercising any right, power or privilege hereunder, and no course of dealing between the Guarantor and a Guaranteed Party, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies, which a Guaranteed Party would otherwise have. [OPTION 3: Except as set forth in this Guaranty,] [n][N]o notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of a Guaranteed Party to any other or further action in any circumstances without notice or demand.

8. This Guaranty shall be binding upon the Guarantor and upon its successors and assigns and shall inure to the benefit of and be enforceable by the Guaranteed Party and their successors and assigns; provided, however, that the Guarantor may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Guaranteed Party. The assignment rights of the Guaranteed Party will be in accordance with any applicable terms of the Agreement.

9. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except upon written agreement of the Guaranteed Party and the Guarantor.

10. The Guarantor's liability as guarantor shall continue and remain in full force and effect in the event that all or any part of any payment made hereunder or any obligation or liability guaranteed hereunder is recovered (as a fraudulent conveyance, preference or otherwise) rescinded or must otherwise be reinstated or returned due to bankruptcy or insolvency laws or otherwise. If claim is ever made upon the Guaranteed Party

for repayment or recovery of any amount or amounts received from the Guarantor or the Counterparty in payment or on account of any of the Guaranteed Obligations and the Guaranteed Party repay all or part of such amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property, or (b) any settlement or compromise of any such claim effected by such payee with any such claimant (including the Guarantor), then and in such event the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon it, notwithstanding any revocation hereof or the cancellation of the Agreement or other instrument evidencing any liability of the Guarantor, and the Guarantor shall be and remain liable to the Guaranteed Party hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by the Guaranteed Party.

11. Subject to Paragraph 10, this Guaranty shall remain in full force and effect until all Guaranteed Obligations have been fully and finally performed, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to the Guaranteed Party which termination shall be effective only upon receipt by the Guaranteed Party of alternative means of security or credit support, as specified in the Agreement and in a form reasonably acceptable to the Guaranteed Party. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Guaranteed Obligations arising or created prior to the time the expiration or termination is effective, which Guaranteed Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully performed.

12. All notices and other communications hereunder shall be made at the addresses by hand delivery, by the next day delivery service effective upon receipt, or by certified mail return receipt requested (effective upon scheduled weekday delivery day) or telefacsimile (effective upon receipt of evidence, including telefacsimile evidence, that telefacsimile was received)

If to the Guarantor:

[To be completed]

If to the Guaranteed Party:

[To be completed]

13. The Guarantor represents and warrants [OPTION 4: as of the date of this Guaranty] that: (a) it is duly organized and validly existing under the laws of the jurisdiction in which it was organized and has the power and authority to execute, deliver, and perform this Guaranty; (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution, delivery and performance of this Guaranty except for those already made or obtained; (c) this Guaranty constitutes a valid and legally binding agreement of the Guarantor, and is enforceable against the Guarantor in accordance with its terms; (d) the execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate or comparable action and do not contravene any provision of its constituent documents or any law, regulation or contractual restriction binding on it or its assets; and (e) the Guarantor is not experiencing a Material Adverse Change (as defined in the Agreement).

14. This Guaranty and the rights and obligations of the Counterparty and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the State of New York. The Guarantor and Guaranteed Party jointly and severally agree and irrevocably submit to the exclusive jurisdiction of state and federal courts located in the Northern District of the State of Illinois over any disputes arising or relating to this Guaranty and waive and agree not to assert as a defense any objections to venue or inconvenient forum. The Guarantor and the Guaranteed Party consent to and grant any such court jurisdiction over the person of such party and over the subject matter of such dispute and agree that summons or other legal process in connection with any such action or proceeding shall be deemed properly and effectively served when sent by certified U.S. mail, return receipt requested, to the address of the other party set forth in Paragraph 12 hereof,

or in such other manner as may be permitted by law. The Guarantor and the Guaranteed Party each hereby irrevocably waives any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Guaranty.

15. This writing is the complete and exclusive statement of the terms of this Guaranty and supersedes all prior oral or written representations, understandings, and agreements between the Guaranteed Party and the Guarantor with respect to subject matter hereof. The Guaranteed Party and the Guarantor agree that there are no conditions to the full effectiveness of this Guaranty.

16. Every provision of this Guaranty is intended to be severable. If any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

17. If the Guarantor is a trust: no trustee of the Guarantor shall be held to any liability whatsoever for any obligation under this Guaranty, and this Guaranty shall not be enforceable against any such trustee in their or its, his or her individual capacities or capacity; and this Guaranty shall be enforceable against the trustees of the Guarantor only as such, and every person, firm, association, trust or corporation having any claim or demand arising under this Guaranty and relating to the Guarantor or any trustee of the Guarantor shall look solely to the trust estate of the Guarantor for the payment or satisfaction thereof.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed and delivered as of the date first written above to be effective as of the earliest effective date of any of the Agreement.

[GUARANTOR]

By: _____

Title:

EXHIBIT B

FORM OF LETTER OF CREDIT

_____ (Date)

Letter of Credit No. _____

To:

[_____]

("Beneficiary")

Attention: _____

1. We hereby establish this Irrevocable Transferable Standby Letter of Credit (this "Letter of Credit") in your favor in the amount of USD \$_____ (the "Stated Amount") effective immediately and available to you at sight upon demand at our counters at [location] and expiring at 5:00 PM New York, NY time¹, [OPTION 1 [_____, 20__ - insert the date that is 30 calendar days following the latest term ending date in effect under the [_____] between the Applicant and you, dated __, 20__ (the "Expiration Date"),] [OPTION 2: [_____, 20__ (the "Expiration Date")]. It is a condition to this Letter of Credit that it will be automatically extended without amendment for one year from the Expiration Date, or any future expiration date, unless at least ninety (90) days prior to any expiration date we notify you by registered mail or courier service that we elect not to consider this Letter of Credit renewed for any such time period or] unless terminated earlier in accordance with the provisions of Paragraph 14 hereof .
2. This Letter of Credit is issued at the request and for the account of _____ (including its successors and assigns, the "Applicant"), and we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the Stated Amount, subject to reduction as provided in Paragraph 8 hereof. This Letter of Credit may be drawn upon an Event of Default under the [] between the Applicant and you, dated __, 20__.
3. A partial or full drawing hereunder may be made by you on any Business Day on or prior to the Expiration Date by delivering, by no later than 11:00 AM [New York, NY time] on such Business Day to (Bank), (address), (a) a notice executed by you in the form of Annex 1 hereto, appropriately completed and duly signed by your Authorized Officer and (b) your draft in the form of Annex 2 hereto, appropriately completed and duly signed by your Authorized Officer.
4. Drafts, document(s) and other communications hereunder may be presented or delivered to us by facsimile transmission. Presentation of documents to effect a draw by facsimile must be made to the following facsimile number: _____, and confirmed by telephone to us at the following number: _____. In the event of a presentation via facsimile transmission, no mail

¹ If the issuer of the Letter of Credit is located in an area that is not in the Eastern time zone, this time and all other times in this Letter of Credit, and the definition of a Business Day should be adjusted accordingly here and in Paragraphs 3, 6, 10 and 14.

confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.

5. Option A: We may, but shall not be obligated to, accept any request to issue a substitute Letter of Credit. Such request shall be made pursuant to an Availability Certificate in the form of Annex 3 hereto executed by your Authorized Officer and delivered by you to us for exchange for a new Letter of Credit in the amount set forth in such Availability Certificate, which amount shall not exceed the Stated Amount less any amounts drawn under this Letter of Credit at or before the time of submission of such Availability Certificate, and expiring on the then current Expiration Date. Upon acceptance by us of any such request to issue a substitute Letter of Credit for exchange, the new Letter of Credit shall be issued in the amount as set forth in the Availability Certificate.

Option B: We may, but shall not be obligated to, accept any request to amend this Letter of Credit. Such request may be made by you pursuant to an Availability Certificate in the form of Annex 3 hereto executed by your Authorized Officer and delivered by you to us for amendment to this Letter of Credit in the amount set forth in such Availability Certificate, expiring on the then current Expiration Date. Upon acceptance by us and the Applicant of any such request to amend this Letter of Credit, the Letter of Credit shall be amended in the amount as set forth in the Availability Certificate.

6. We hereby agree to honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in the draft (or so much thereof as is available hereunder) delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your draft delivered to us pursuant to Paragraph 3 hereof, by 3:00 PM [New York, NY time] on the date of such drawing, if delivery of the requisite document is made prior to 11:00 AM [New York, NY time] on a Business Day pursuant to Paragraph 3 hereof, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery of the requisite document is made on or after 11:00 AM [New York, NY time] on any Business Day pursuant to Paragraph 3 hereof.
7. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you notice not later than the time provided in Paragraph 6 above for honor of a drawing presented to us, that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.
8. Partial drawings are permitted hereunder and multiple drawings are permitted hereunder. The amount available for drawing by you under this Letter of Credit shall be automatically reduced to the extent of the amount of any drawings referencing this Letter of Credit paid by us. Presentation of demands for drawings in amounts that exceed the amount available to be drawn hereunder shall not be deemed a failure to comply with the requirements of Paragraph 8 hereof, provided that the amounts payable on any such demand shall thus be limited to the amount then available to be drawn under this Letter of Credit.
9. Unless otherwise hereafter designated in writing to us by your Authorized Officer, all payments made by us under this Letter of Credit shall be transmitted by wire transfer to you pursuant to the following instructions:

Beneficiary:

Account Number:

Bank:

Bank's Address:

ABA Routing Number:

Bank Contact:

Telephone Number:

10. As used herein:

“Authorized Officer” means President, Treasurer, any Vice President or any Assistant Treasurer.

“Availability Certificate” means a certificate substantially in the form of Annex 3 hereto, appropriately completed and duly signed by your Authorized Officer.

“Business Day” means any day on which commercial banks are not authorized or required to close in [New York, New York] and any day on which payments can be effected on the Fedwire system.

11. This Letter of Credit is assignable and transferable pursuant to an instrument of assignment and transfer in the form of Annex 6 hereto. Each beneficiary may assign and transfer its rights individually, to an entity it identifies to us in such instrument as its assignee, and we hereby consent to such assignment or transfer. [OPTION X: Transfers to designated foreign nationals and/or specially designated nationals are not permitted and are contrary to the U.S. Treasury Department and Office of Foreign Assets Control regulations.] Any and all transfer fees, expenses and costs shall be borne by the Beneficiary. Except as otherwise expressly stated herein, this Letter of Credit may not be amended or modified without consent from us, you, and the Applicant.
12. This Letter of Credit is subject to and shall be governed by the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590), or any successor publication thereto (the “ISP”), except to the extent that the terms hereof are inconsistent with the provisions of the ISP, in which case the terms of this Letter of Credit shall govern. This Letter of Credit shall, as to matters not governed by the ISP or matters inconsistent with the ISP, be governed and construed in accordance with [New York] law, without regard to principles of conflicts of law.
13. Rule 3.14(a) of the ISP as it applies to this Letter of Credit is hereby modified to provide as follows: If on the last Business Day for presentation the place for presentation stated in this Letter of Credit is for any reason closed, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business. Rule 3.14(b) of the ISP is hereby modified by providing that any alternate place for presentation we may designate pursuant to this rule must be in the United States.
14. This Letter of Credit shall terminate on the earliest of the date (a) you have made drawings which exhaust the amounts available to be drawn under this Letter of Credit, (b) we receive from you a Certificate of Cancellation in the form of Annex 4 hereto together with the original of this Letter of Credit returned for cancellation, or (c) unless extended, 5:00 PM [New York, NY time] on the Expiration Date.
15. We certify that as of the date of issuance of this Letter of Credit our senior unsecured debt is rated “A-” or better by Standard & Poor’s Rating Service and “A3” or better by Moody’s Investors Service, Inc.
16. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 6 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above. Except as otherwise expressly stated

herein, this Letter of Credit may not be amended or modified by us without the consent of an Authorized Officer of the beneficiary.

17. In the event of an Act of God, riot, civil commotion, insurrection, war, terrorism or by any strikes or lock outs, or any cause beyond our control, that interrupts our business, and causes the place for presentation of this Letter of Credit to be closed for business on the last day of presentation, the Expiration Date shall be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business, and we agree to effect payment, if this Letter of Credit is drawn against, otherwise in accordance with its terms, within such thirty (30) calendar day period.
18. This original Letter of Credit has been delivered to you as beneficiary in accordance with the Applicant's instructions. Any demands or communications in the form of the attached Annexes (except for Annex 5) or other communications directed to us under this Letter of Credit must be signed by your Authorized Officer.

Very truly yours,

(Issuing Bank)

By: _____

ANNEX 1 TO LETTER OF CREDIT

DRAWING UNDER LETTER OF CREDIT NO. _____

_____, 20__

To: (Issuing Bank)

(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned is making a drawing under Your Letter of Credit No. _____ (the Letter of Credit) in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used herein that are not defined herein shall have the meanings ascribed thereto in the Letter of Credit.
2. The undersigned is making a drawing under the Letter of Credit in the amount of USD \$_____ (the "Draw Amount").
3. An Event of Default has occurred under the [_____] between the Applicant and the undersigned, which entitles the undersigned to draw on the Letter of Credit for the Draw Amount.
4. The undersigned acknowledges that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by the amount of this drawing honored by you.

Very truly yours,

[_____]

By:
Name:
Title:
Date:

ANNEX 2 TO LETTER OF CREDIT

SIGHT DRAFT

Amount: \$ _____

Date: _____, 20__

AT SIGHT, PAY TO THE ORDER OF

[_____]

THE SUM OF _____ U.S. DOLLARS. Drawn under Irrevocable
Letter of Credit No. _____ of
_____ [identify Issuing Bank] dated
_____, 200_.

To: _____ [Issuing Bank]
_____ [Address]

[_____]

By:
Name:
Title:

ANNEX 3 TO LETTER OF CREDIT

AVAILABILITY CERTIFICATE

_____, 20__

To: (Issuing Bank)

(Address)

Attn: Standby Letter of Credit Dept.

[Applicant]

[Address]

Attn:

Re: _____ [Issuing Bank] Letter of Credit No.

_____ (the "Letter of Credit")

Ladies and Gentlemen:

Pursuant to Paragraph 5 of the above-referenced Letter of Credit, the undersigned hereby requests that _____ [Issuing Bank] issue and deliver to us as beneficiary of the above-referenced Letter of Credit, an amendment to it to provide that the amount available for drawing thereunder from the date of the amendment will be in the amount of \$_____ (the "New Amount"), but otherwise the terms of the above-referenced Letter of Credit shall remain unchanged. Please acknowledge your agreement to amend the Letter of Credit to the New Amount by issuing and forwarding the requested amendment of the Letter of Credit in the New Amount to the attention of the undersigned at the address listed below within two Business Days after the first Business Day on which you receive this Request.

Very truly yours,

[_____]

By:

Name:

Title:

Date:

_____ [Address]

ANNEX 4 TO LETTER OF CREDIT
CERTIFICATE OF CANCELLATION

_____, 20__

To: (Issuing Bank)

(Address)

Attention: Standby Letter of Credit Unit/Your Letter of Credit No. _____

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above-referenced Letter of Credit may be cancelled without further payment. Attached hereto is the original Letter of Credit, marked cancelled.

[_____]

By:
Name:
Title:
Date:

ANNEX 5 TO LETTER OF CREDIT

NOTICE OF EXTENSION OF LETTER OF CREDIT NO.

[date]

To:

[_____]

[Address]

Attention:

Re: Our Letter of Credit no ____ presently in the amount of USD issued for the account of and expiring on ____.

We hereby irrevocably agree to extend the expiration date of the above-referenced Letter of Credit no. to expire on (date), which date, for all purposes of the above-referenced Letter of Credit, shall be the Expiration Date of the Letter of Credit from and after the issuance of this Notice of Extension, unless and until we issue a subsequent Notice of Extension extending the Expiration Date to a later date.

Very truly yours,

BANK

By:
Name:
Title:
Date:

cc:

(Applicant Name)

ANNEX 6 TO LETTER OF CREDIT

NOTICE OF ASSIGNMENT AND TRANSFER OF LETTER OF CREDIT NO.

[date]

To:

Bank
Bank Address

To Whom It May Concern:

Re: Credit Issued by Advice No

For value received, the undersigned beneficiary hereby irrevocably assigns and transfers to:

(Name of Transferee)

(Address)

all rights of the undersigned beneficiary to draw and receive payments under the above-referenced Letter of Credit in its entirety. By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee, and the transferee shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments, whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original Letter of Credit is returned herewith, and we ask you to endorse the transfer thereon and forward it directly to the transferee at the address indicated above with your customary notice of transfer or issue a new Letter of Credit in the form of the Letter of Credit naming the transferee as the beneficiary thereof. From and after the transfer of the Letter of Credit, payments under the Letter of Credit shall be made to an account of the transferee in accordance with written instructions you receive from an authorized officer of the transferee. Pursuant to the Letter of Credit and your agreement with the Applicant, your transfer commission and any other expenses that may be incurred by you in conjunction with this transfer are payable by the Beneficiary.

Very truly yours,

[_____]

By:
Name:
Title:

The above signatures with titles as stated conform to those on file with us and are authorized for the execution of said instruments.

(Name of authenticating bank)

(Authorized signature of authenticating party)

Name:
Title:

ATTACHMENT 1

(Multicurrency-Cross Border)



International Swap Dealers Association, Inc.

MASTER AGREEMENT

dated as of

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

Accordingly, the parties agree as follows:--

1. Interpretation

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

2. Obligations

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

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

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

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

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

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

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

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

- (1) promptly notify the other party ("Y") of such requirement;
- (2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;
- (3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and
- (4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:
 - (A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or
 - (B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a

Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement or (II) a change in Tax Law.

(ii) **Liability.** If--

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

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

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

3. Representations

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

(a) **Basic Representations.**

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

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

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights

generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

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

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

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

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

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

4. Agreements

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

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

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

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

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

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

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

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

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

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

5. Events of Default and Termination Events

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

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

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

(iii) **Credit Support Default.**

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

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

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

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

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

(vi) **Cross Default.** If "Cross Default" is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

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

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

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

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

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

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

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(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):-

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Tax Event.** Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) **Tax Event Upon Merger.** The party (the "Burdened Party") on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) **Credit Event Upon Merger.** If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

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

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

6. **Early Termination.**

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early

Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

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

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

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

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

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

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

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

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

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

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more **than** one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

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

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

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but

without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) **Calculations.**

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

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

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

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

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

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

(3) **Second Method and Market Quotation.** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

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

- (ii) **Termination Events.** If the Early Termination Date results from a Termination Event:-
- (1) **One Affected Party.** If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.
- (2) **Two Affected Parties.** If there are two Affected Parties:-
- (A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y; and
- (B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the bigger Loss ("X") and the Loss of the party with the lower Loss ("Y").

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

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

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

7. **Transfer**

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

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

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

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

8. **Contractual Currency**

(a) **Payment in the Contractual Currency.** Each payment under this Agreement will be made in the relevant

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

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

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

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

9. **Miscellaneous**

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

(b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

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

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

(e) **Counterparts and Confirmations.**

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

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

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

10. **Offices; Multibranch Parties**

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organization of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.

(b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.

(c) if a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make **and** receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

11. **Expenses**

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

12. **Notices**

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:--

(i) if in writing and delivered in person or by courier, on the date it is delivered;

(ii) if sent by telex, on the date the recipient's answerback is received;

(iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

(v) if sent by electronic messaging system, on the date that electronic message is received, unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

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

13. Governing Law and Jurisdiction

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

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

(i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

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

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

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

14. Definitions

As used in this Agreement:-

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

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

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

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

"Applicable Rate" means:-

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

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

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

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

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

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

"Consent" includes a consent, approval, action, authorization, exemption, notice, filing, registration or exchange control consent.

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

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

"Credit Support Provider" has the meaning specified in the Schedule.

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

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

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

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

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

"Indemnifiable Tax" means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organized, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or

related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

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

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

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

"Market Quotation" means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same biggest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

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

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

"Office" means a branch or office of a party, which may be such party's head or home office.

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

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

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

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

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

"Settlement Amount" means, with respect to a party and any Early Termination Date, the sum of:--

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

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

"Specified Entity" has the meaning specified in the Schedule.

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

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

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

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

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

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

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

"Termination Currency" has the meaning specified in the Schedule.

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

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

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

"Unpaid Amounts" owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

ATTACHMENT 2

(Bilateral Form)

(ISDA Agreements Subject to New York Law Only)

ISDA[®]

International Swaps and Derivatives Association, Inc.

CREDIT SUPPORT ANNEX

to the Schedule to the

_____ dated as of _____

between

_____ and _____
("Party A") ("Party B")

This Annex supplements, forms part of, and is subject to, the above-referenced Agreement, is part of its Schedule and is a Credit Support Document under this Agreement with respect to each party.

Accordingly, the parties agree as follows:

Paragraph 1. Interpretation

(a) **Definitions and Inconsistency.** Capitalized terms not otherwise defined herein or elsewhere in this Agreement have the meanings specified pursuant to Paragraph 12, and all references in this Annex to Paragraphs are to Paragraphs of this Annex. In the event of any inconsistency between this Annex and the other provisions of this Schedule, this Annex will prevail, and in the event of any inconsistency between Paragraph 13 and the other provisions of this Annex, Paragraph 13 will prevail.

(b) **Secured Party and Pledgor.** All references in this Annex to the "Secured Party" will be to either party when acting in that capacity and all corresponding references to the "Pledgor" will be to the other party when acting in that capacity; *provided, however*, that if Other Posted Support is held by a party to this Annex, all references herein to that party as the Secured Party with respect to that Other Posted Support will be to that party as the beneficiary thereof and will not subject that support or that party as the beneficiary thereof to provisions of law generally relating to security interests and secured parties.

Paragraph 2. Security Interest

Each party, as the Pledgor, hereby pledges to the other party, as the Secured Party, as security for its Obligations, and grants to the Secured Party a first priority continuing security interest in, lien on and right of Set-off against all Posted Collateral

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Transferred to or received by the Secured Party hereunder. Upon the Transfer by the Secured Party to the Pledgor of Posted Collateral, the security interest and lien granted hereunder on that Posted Collateral will be released immediately and, to the extent possible, without any further action by either party.

Paragraph 3. Credit Support Obligations

(a) **Delivery Amount.** Subject to Paragraphs 4 and 5, upon a demand made by the Secured Party on or promptly following a Valuation Date, if the Delivery Amount for that Valuation Date equals or exceeds the Pledgor's Minimum Transfer Amount, then the Pledgor will Transfer to the Secured Party Eligible Credit Support having a Value as of the date of Transfer at least equal to the applicable Delivery Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "**Delivery Amount**" applicable to the Pledgor for any Valuation Date will equal the amount by which:

(i) the Credit Support Amount

exceeds

(ii) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party.

(b) **Return Amount.** Subject to Paragraphs 4 and 5, upon a demand made by the Pledgor on or promptly following a Valuation Date, if the Return Amount for that Valuation Date equals or exceeds the Secured Party's Minimum Transfer Amount, then the Secured Party will Transfer to the Pledgor Posted Credit Support specified by the Pledgor in that demand having a Value as of the date of Transfer as close as practicable to the applicable Return Amount (rounded pursuant to Paragraph 13). Unless otherwise specified in Paragraph 13, the "**Return Amount**" applicable to the Secured Party for any Valuation Date will equal the amount by which:

(i) the Value as of that Valuation Date of all Posted Credit Support held by the Secured Party exceeds

(ii) the Credit Support Amount.

"**Credit Support Amount**" means, unless otherwise specified in Paragraph 13, for any Valuation Date (i) the Secured Party's Exposure for that Valuation Date plus (ii) the aggregate of all Independent Amounts applicable to the Pledgor, if any, minus (iii) all Independent Amounts applicable to the Secured Party, if any, minus (iv) the Pledgor's Threshold; *provided, however*, that the Credit Support Amount will be deemed to be zero whenever the calculation of Credit Support Amount yields a number less than zero.

Paragraph 4. Conditions Precedent, Transfer Timing, Calculations and Substitutions

(a) **Conditions Precedent.** Each Transfer obligation of the Pledgor under Paragraphs 3 and 5 and of the Secured Party under Paragraphs 3, 4(d)(ii), 5 and 6(d) is subject to the conditions precedent that:

(i) no Event of Default, Potential Event of Default or Specified Condition has occurred and is continuing with respect to the other party; and

(ii) no Early Termination Date for which any unsatisfied payment obligations exist has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the other party.

(b) **Transfer Timing.** Subject to Paragraphs 4(a) and 5 and unless otherwise specified, if a demand for the Transfer of Eligible Credit Support or Posted Credit Support is made by the Notification Time, then the relevant Transfer will be made not later than the close of business on the next Local Business Day; if a demand is made after the Notification Time, then the relevant Transfer will be made not later than the close of business on the second Local Business Day thereafter.

(c) **Calculations.** All calculations of Value and Exposure for purposes of Paragraphs 3 and 6(d) will be made by the Valuation Agent as of the Valuation Time. The Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) of its calculations not later than the Notification Time on the Local Business Day following the applicable Valuation Date (or in the case of Paragraph 6(d), following the date of calculation).

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(d) **Substitutions.**

(i) Unless otherwise specified in Paragraph 13, upon notice to the Secured Party specifying the items of Posted Credit Support to be exchanged, the Pledgor may, on any Local Business Day, Transfer to the Secured Party substitute Eligible Credit Support (the "Substitute Credit Support"); and

(ii) subject to Paragraph 4(a), the Secured Party will Transfer to the Pledgor the items of Posted Credit Support specified by the Pledgor in its notice not later than the Local Business Day following the date on which the Secured Party receives the Substitute Credit Support, unless otherwise specified in Paragraph 13 (the "Substitution Date"); *provided* that the Secured Party will only be obligated to Transfer Posted Credit Support with a Value as of the date of Transfer of that Posted Credit Support equal to the Value as of that date of the Substitute Credit Support.

Paragraph 5. Dispute Resolution

If a party (a "Disputing Party") disputes (I) the Valuation Agent's calculation of a Delivery Amount or a Return Amount or (II) the Value of any Transfer of Eligible Credit Support or Posted Credit Support, then (1) the Disputing Party will notify the other party and the Valuation Agent (if the Valuation Agent is not the other party) not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in the case of (I) above or (Y) the date of Transfer in the case of (II) above, (2) subject to Paragraph 4(a), the appropriate party will Transfer the undisputed amount to the other party not later than the close of business on the Local Business Day following (X) the date that the demand is made under Paragraph 3 in the case of (I) above or (Y) the date of Transfer in the case of (II) above, (3) the parties will consult with each other in an attempt to resolve the dispute and (4) if they fail to resolve the dispute by the Resolution Time, then:

(i) In the case of a dispute involving a Delivery Amount or Return Amount, unless otherwise specified in Paragraph 13, the Valuation Agent will recalculate the Exposure and the Value as of the Recalculation Date by:

(A) utilizing any calculations of Exposure for the Transactions (or Swap Transactions) that the parties have agreed are not in dispute;

(B) calculating the Exposure for the Transactions (or Swap Transactions) in dispute by seeking four actual quotations at mid-market from Reference Market-makers for purposes of calculating Market Quotation, and taking the arithmetic average of those obtained; *provided* that if four quotations are not available for a particular Transaction (or Swap Transaction), then fewer than four quotations may be used for that Transaction (or Swap Transaction); and if no quotations are available for a particular Transaction (or Swap Transaction), then the Valuation Agent's original calculations will be used for that Transaction (or Swap Transaction); and

(C) utilizing the procedures specified in Paragraph 13 for calculating the Value, if disputed, of Posted Credit Support.

(ii) In the case of a dispute involving the Value of any Transfer of Eligible Credit Support or Posted Credit Support, the Valuation Agent will recalculate the Value as of the date of Transfer pursuant to Paragraph 13.

Following a recalculation pursuant to this Paragraph, the Valuation Agent will notify each party (or the other party, if the Valuation Agent is a party) not later than the Notification Time on the Local Business Day following the Resolution Time. The appropriate party will, upon demand following that notice by the Valuation Agent or a resolution pursuant to (3) above and subject to Paragraphs 4(a) and 4(b), make the appropriate Transfer.

Paragraph 6. Holding and Using Posted Collateral

(a) **Care of posted Collateral.** Without limiting the Secured Party's rights under Paragraph 6(c), the Secured Party will exercise reasonable care to assure the safe custody of all Posted Collateral to the extent required by applicable law, and in any

event the Secured Party will be deemed to have exercised reasonable care if it exercises at least the same degree of care as it would exercise with respect to its own property. Except as specified in the preceding sentence, the Secured Party will have no duty with respect to Posted Collateral, including, without limitation, any duty to collect any Distributions, or enforce or preserve any rights pertaining thereto.

(b) **Eligibility to Hold Posted Collateral; Custodians.**

(i) **General.** Subject to the satisfaction of any conditions specified in Paragraph 13 for holding Posted Collateral, the Secured Party will be entitled to hold Posted Collateral or to appoint an agent (a "Custodian") to hold Posted Collateral for the Secured Party. Upon notice by the Secured Party to the Pledgor of the appointment of a Custodian, the Pledgor's obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Posted Collateral by a Custodian will be deemed to be the holding of that Posted Collateral by the Secured Party for which the Custodian is acting.

(ii) **Failure to Satisfy Conditions.** If the Secured Party or its Custodian fails to satisfy any conditions for holding Posted Collateral, then upon a demand made by the Pledgor, the Secured Party will, not later than five Local Business Days after the demand, Transfer or cause its Custodian to Transfer all Posted Collateral held by it to a Custodian that satisfies those conditions or to the Secured Party if it satisfies those conditions.

(iii) **Liability.** The Secured Party will be liable for the acts or omissions of its Custodian to the same extent that the Secured Party would be liable hereunder for its own acts or omissions.

(c) **Use of Posted Collateral.** Unless otherwise specified in Paragraph 13 and without limiting the rights and obligations of the parties under Paragraphs 3, 4(d)(ii), 5, 6(d) and 8, if the Secured Party was not a Defaulting Party or an Affected Party with respect to a Specified Condition and no Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Secured Party, then the Secured Party will, notwithstanding Section 9-207 of the New York Uniform Commercial Code, have the right to:

(i) sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise dispose of, or otherwise use in its business any Posted Collateral it holds, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor; and

(ii) register any Posted Collateral in the name of the Secured Party, its Custodian or a nominee for either.

For purposes of the obligation to Transfer Eligible Credit Support or Posted Credit Support pursuant to Paragraphs 3 and 5 and any rights or remedies authorized under this Agreement, the Secured Party will be deemed to continue to hold all Posted Collateral and to receive Distributions made thereon, regardless of whether the Secured Party has exercised any rights with respect to any Posted Collateral pursuant to (i) or (ii) above.

(d) **Distributions and Interest Amount.**

(i) **Distributions.** Subject to Paragraph 4(a), if the Secured Party receives or is deemed to receive Distributions on a Local Business Day, it will Transfer to the Pledgor not later than the following Local Business Day any Distributions it receives or is deemed to receive to the extent that a Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose).

(ii) **Interest Amount.** Unless otherwise specified in Paragraph 13 and subject to Paragraph 4(a), in lieu of any interest, dividends or other amounts paid or deemed to have been paid with respect to Posted Collateral in the form of Cash (all of which may be retained by the Secured Party), the Secured Party will Transfer to the Pledgor at the times specified in Paragraph 13 the Interest Amount to the extent that a Delivery Amount would not be created or increased by that Transfer, as calculated by the Valuation Agent (and the date of calculation will be deemed to be a Valuation Date for this purpose). The Interest Amount or portion thereof not Transferred pursuant to this Paragraph will constitute Posted Collateral in the form of Cash and will be subject to the security interest granted under Paragraph 2.

Paragraph 7. Events of Default.

For purposes of Section 5(a)(iii)(1) of this Agreement, an Event of Default will exist with respect to a party if:

- (i) that party fails (or fails to cause its Custodian) to make, when due, any Transfer of Eligible Collateral, Posted Collateral or the Interest Amount, as applicable, required to be made by it and that failure continues for two Local Business Days after notice of that failure is given to that party;
- (ii) that party fails to comply with any restriction or prohibition specified in this Annex with respect to any of the rights specified in Paragraph 6(c) and that failure continues for five Local Business Days after notice of that failure is given to that party; or
- (iii) that party fails to comply with or perform any agreement or obligation other than those specified in Paragraphs 7(i) and 7(ii) and that failure continues for 30 days after notice of that failure is given to that party.

Paragraph 8. Certain Rights and Remedies

(a) **Secured Party's Rights and Remedies.** If at any time (1) an Event of Default or Specified Condition with respect to the Pledgor has occurred and is continuing or (2) an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Pledgor, then, unless the Pledgor has paid in full all of its Obligations that are then due, the Secured Party may exercise one or more of the following rights and remedies:

- (i) all rights and remedies available to a secured party under applicable law with respect to Posted Collateral held by the Secured Party;
- (ii) any other rights and remedies available to the Secured Party under the terms of Other Posted Support, if any;
- (iii) the right to Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and
- (iv) the right to liquidate any Posted Collateral held by the Secured Party through one or more public or private sales or other dispositions with such notice, if any, as may be required under applicable law, free from any claim or right of any nature whatsoever of the Pledgor, including any equity or right of redemption by the Pledgor (with the Secured Party having the right to purchase any or all of the Posted Collateral to be sold) and to apply the proceeds (or the Cash equivalent thereof) from the liquidation of the Posted Collateral to any amounts payable by the Pledgor with respect to any Obligations in that order as the Secured Party may elect.

Each party acknowledges and agrees that Posted Collateral in the form of securities may decline speedily in value and is of a type customarily sold on a recognized market, and, accordingly, the Pledgor is not entitled to prior notice of any sale of that Posted Collateral by the Secured Party, except any notice that is required under applicable law and cannot be waived.

(b) **Pledgor's Rights and Remedies.** If at any time an Early Termination Date has occurred or been designated as the result of an Event of Default or Specified Condition with respect to the Secured Party, then (except in the case of an Early Termination Date relating to less than all Transactions (or Swap Transactions) where the Secured Party has paid in full all of its obligations that are then due under Section 6(e) of this Agreement):

- (i) the Pledgor may exercise all rights and remedies available to a pledgor under applicable law with respect to Posted Collateral held by the Secured Party;
- (ii) the Pledgor may exercise any other rights and remedies available to the Pledgor under the terms of Other Posted Support, if any;

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(iii) the Secured Party will be obligated immediately to Transfer all Posted Collateral and the Interest Amount to the Pledgor; and

(iv) to the extent that Posted Collateral or the Interest Amount is not so Transferred pursuant to (iii) above, the Pledgor may:

(A) Set-off any amounts payable by the Pledgor with respect to any Obligations against any Posted Collateral or the Cash equivalent of any Posted Collateral held by the Secured Party (or any obligation of the Secured Party to Transfer that Posted Collateral); and

(B) to the extent that the Pledgor does not Set-off under (iv)(A) above, withhold payment of any remaining amounts payable by the Pledgor with respect to any Obligations, up to the Value of any remaining Posted Collateral held by the Secured Party, until that Posted Collateral is Transferred to the Pledgor.

(c) **Deficiencies and Excess Proceeds.** The Secured Party will Transfer to the Pledgor any proceeds and Posted Credit Support remaining after liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b) after satisfaction in full of all amounts payable by the Pledgor with respect to any Obligations; the Pledgor in all events all remain liable for any amounts remaining unpaid after any liquidation, Set-off and/or application under Paragraphs 8(a) and 8(b).

(d) **Final Returns.** When no amounts are or thereafter may become payable by the Pledgor with respect to any Obligations (except for any potential liability under Section 2(d) of this Agreement), the Secured Party will Transfer to the Pledgor all Posted Credit Support and the Interest Amount, if any.

Paragraph 9. Representations

Each party represents to the other party (which representations will be deemed to be repeated as of each date on which it, as the Pledgor, Transfers Eligible Collateral) that:

(i) it has the power to grant a security interest in and lien on any Eligible Collateral it Transfers as the Pledgor and has taken all necessary actions to authorize the granting of that security interest and lien;

(ii) it is the sole owner of or otherwise has the right to Transfer all Eligible Collateral it Transfers to the Secured Party hereunder, free and clear of any security interest, lien, encumbrance or other restrictions other than the security interest and lien granted under Paragraph 2;

(iii) upon the Transfer of any Eligible Collateral to the Secured Party under the terms of this Annex, the Secured Party will have a valid and perfected first priority security interest therein (assuming that any central clearing corporation or any third-party financial intermediary or other entity not within the control of the Pledgor involved in the Transfer of that Eligible Collateral gives the notices and takes the action required of it under applicable law for perfection of that interest); and

(iv) the performance by it of its obligations under this Annex will not result in the creation of any security interest, lien or other encumbrance on any Posted Collateral other than the security interest and lien granted under Paragraph 2.

Paragraph 10. Expenses

(a) **General.** Except as otherwise provided in Paragraphs 10(b) and 10(c), each party will pay its own costs and expenses in connection with performing its obligations under this Annex and neither party will be liable for any costs and expenses incurred by the other party in connection herewith.

(b) **Posted Credit Support.** The Pledgor will promptly pay when due all taxes, assessments or charges of any nature that are imposed with respect to Posted Credit Support held by the Secured Party upon becoming aware of the same,

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regardless of whether any portion of that Posted Credit Support is subsequently disposed of under Paragraph 6(c), except for those taxes, assessments and charges that result from the exercise of the Secured Party's rights under Paragraph 6(c).

(c) **Liquidation/Application of Posted Credit Support.** All reasonable costs and expenses incurred by or on behalf of the Secured Party or the Pledgor in connection with the liquidation and/or application of any Posted Credit Support under Paragraph 8 will be payable, on demand and pursuant to the Expenses Section of this Agreement, by the Defaulting Party or, if there is no Defaulting Party, equally by the parties.

Paragraph 11. Miscellaneous

(a) **Default Interest.** A Secured Party that fails to make, when due, any Transfer of Posted Collateral or the Interest Amount will be obligated to pay the Pledgor (to the extent permitted under applicable law) an amount equal to interest at the Default Rate multiplied by the Value of the items of property that were required to be Transferred, from (and including) the date that Posted Collateral or Interest Amount was required to be Transferred to (but excluding) the date of Transfer of that Posted Collateral or Interest Amount. This interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(b) **Further Assurances.** Promptly following a demand made by a party, the other party will execute, deliver, file and record any financing statement, specific assignment or other document and take any other action that may be necessary or desirable and reasonably requested by that party to create, preserve, perfect or validate any security interest or lien granted under Paragraph 2, to enable that party to exercise or enforce its rights under this Annex with respect to Posted Credit Support or an Interest Amount or to effect or document a release of a security interest on Posted Collateral or an Interest Amount.

(c) **Further Protection.** The Pledgor will promptly give notice to the Secured Party of, and defend against, any suit, action, proceeding or lien that involves Posted Credit Support Transferred by the Pledgor or that could adversely affect the security interest and lien granted by it under Paragraph 2, unless that suit, action, proceeding or lien results from the exercise of the Secured Party's rights under Paragraph 6(c).

(d) **Good Faith and Commercially Reasonable Manner.** Performance of all obligations under this Annex, including, but not limited to, all calculations, valuations and determinations made by either party, will be made in good faith and in a commercially reasonable manner.

(e) **Demands and Notices.** All demands and notices made by a party under this Annex will be made as specified in the Notices Section of this Agreement, except as otherwise provided in Paragraph 13.

(f) **Specifications of Certain Matters.** Anything referred to in this Annex as being specified in Paragraph 13 also may be specified in one or more Confirmations or other documents and this Annex will be construed accordingly.

Paragraph 12. Definitions

As used in this Annex:

"**Cash**" means the lawful currency of the United States of America.

"**Credit Support Amount**" has the meaning specified in Paragraph 3.

"**Custodian**" has the meaning specified in Paragraphs 6(b)(i) and 13.

"**Delivery Amount**" has the meaning specified in Paragraph 3(a).

"**Disputing Party**" has the meaning specified in Paragraph 5.

"**Distributions**" means with respect to Posted Collateral other than Cash, all principal, interest and other payments and distributions of cash or other property with respect thereto, regardless of whether the Secured Party has disposed of that

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Posted Collateral under Paragraph 6(c). Distributions will not include any item of property acquired by the Secured Party upon any disposition or liquidation of Posted Collateral or, with respect to any Posted Collateral in the form of Cash, any distributions on that collateral, unless otherwise specified herein.

"Eligible Collateral" means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

"Eligible Credit Support" means Eligible Collateral and Other Eligible Support.

"Exposure" means for any Valuation Date or other date for which Exposure is calculated and subject to Paragraph 5 in the case of a dispute, the amount, if any, that would be payable to a party that is the Secured Party by the other party (expressed as a positive number) or by a party that is the Secured Party to the other party (expressed as a negative number) pursuant to Section 6(e)(ii)(2)(A) of this Agreement as if all Transactions (or Swap Transactions) were being terminated as of the relevant Valuation Time; *provided* that Market Quotation will be determined by the Valuation Agent using its estimates at mid-market of the amounts that would be paid for Replacement Transactions (as that term is defined in the definition of "Market Quotation").

"Independent Amount" means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

"Interest Amount" means, with respect to an Interest Period, the aggregate sum of the amounts of interest calculated for each day in that Interest Period on the principal amount of Posted Collateral in the form of Cash held by the Secured Party on that day, determined by the Secured Party for each such day as follows:

- (x) the amount of that Cash on that day; multiplied by
- (y) the Interest Rate in effect for that day; divided by
- (z) 360.

"Interest Period" means the period from (and including) the last Local Business Day on which an Interest Amount was Transferred (or, if no Interest Amount has yet been Transferred, the Local Business Day on which Posted Collateral in the form of Cash was Transferred to or received by the Secured Party) to (but excluding) the Local Business Day on which the current Interest Amount is to be Transferred.

"Interest Rate" means the rate specified in Paragraph 13.

"Local Business Day", unless otherwise specified in Paragraph 13, has the meaning specified in the Definitions Section of this Agreement, except that references to a payment in clause (b) thereof will be deemed to include a Transfer under this Annex.

"Minimum Transfer Amount" means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

"Notification Time" has the meaning specified in Paragraph 13.

"Obligations" means, with respect to a party, all present and future obligations of that party under this Agreement and any additional obligations specified for that party in Paragraph 13.

"Other Eligible Support" means, with respect to a party, the items, if any, specified as such for that party in Paragraph 13.

"Other Posted Support" means all Other Eligible Support Transferred to the Secured Party that remains in effect for the benefit of that Secured Party.

"Pledgor" means either party, when that party (i) receives a demand for or is required to Transfer Eligible Credit Support under Paragraph 3(a) or (ii) has Transferred Eligible Credit Support under Paragraph 3(a).

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"Posted Collateral" means all Eligible Collateral, other property, Distributions, and all proceeds thereof that have been Transferred to or received by the Secured Party under this Annex and not Transferred to the Pledgor pursuant to Paragraph 3(b), 4(d)(ii) or 6(d)(i) or released by the Secured Party under Paragraph 8. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(d)(ii) will constitute Posted Collateral in the form of Cash.

"Posted Credit Support" means Posted Collateral and Other Posted Support.

"Recalculation Date" means the Valuation Date that gives rise to the dispute under Paragraph 5; *provided, however*, that if a subsequent Valuation Date occurs under Paragraph 3 prior to the resolution of the dispute, then the "Recalculation Date" means the most recent Valuation Date under Paragraph 3.

"Resolution Time" has the meaning specified in Paragraph 13.

"Return Amount" has the meaning specified in Paragraph 3(b).

"Secured Party" means either party, when that party (i) makes a demand for or is entitled to receive Eligible Credit Support under Paragraph 3(a) or (ii) holds or is deemed to hold Posted Credit Support.

"Specified Condition" means, with respect to a party, any event specified as such for that party in Paragraph 13.

"Substitute Credit Support" has the meaning specified in Paragraph 4(d)(i).

"Substitution Date" has the meaning specified in Paragraph 4(d)(ii).

"Threshold" means, with respect to a party, the amount specified as such for that party in Paragraph 13; if no amount is specified, zero.

"Transfer" means, with respect to any Eligible Credit Support, Posted Credit Support or Interest Amount, and in accordance with the instructions of the Secured Party, Pledgor or Custodian, as applicable:

- (i) in the case of Cash, payment or delivery by wire transfer into one or more bank accounts specified by the recipient;
- (ii) in the case of certificated securities that cannot be paid or delivered by book-entry, payment or delivery in appropriate physical form to the recipient or its account accompanied by any duly executed instruments of transfer, assignments in blank, transfer tax stamps and any other documents necessary to constitute a legally valid transfer to the recipient;
- (iii) in the case of securities that can be paid or delivered by book-entry, the giving of written instructions to the relevant depository institution or other entity specified by the recipient, together with a written copy thereof to the recipient, sufficient if complied with to result in a legally effective transfer of the relevant interest to the recipient; and
- (iv) in the case of Other Eligible Support or Other Posted Support, as specified in Paragraph 13.

"Valuation Agent" has the meaning specified in Paragraph 13.

"Valuation Date" means each date specified in or otherwise determined pursuant to Paragraph 13.

"Valuation Percentage" means, for any item of Eligible Collateral, the percentage specified in Paragraph 13.

"Valuation Time" has the meaning specified in Paragraph 13.

"Value" means for any Valuation Date or other date for which Value is calculated and subject to Paragraph 5 in the case of a dispute, with respect to:

- (i) Eligible Collateral or Posted Collateral that is:
 - (A) Cash, the amount thereof; and
 - (B) a security, the bid price obtained by the Valuation Agent multiplied by the applicable Valuation Percentage, if any;
- (ii) Posted Collateral that consists of items that are not specified as Eligible Collateral, zero; and
- (iii) Other Eligible Support and Other Posted Support, as specified in Paragraph 13.