

# ISDA<sup>®</sup>

International Swaps and Derivatives Association, Inc.

## ISDA CLOSE-OUT AMOUNT PROTOCOL

published on [23 February 2009]  
by the International Swaps and Derivatives Association, Inc.

The International Swaps and Derivatives Association, Inc. (**ISDA**) has published this ISDA Close-out Amount Protocol (this **Protocol**) to enable parties to Covered Master Agreements to amend the terms of each such Covered Master Agreement to reflect certain provisions of the ISDA 2002 Master Agreement, as published by ISDA (the **2002 Master Agreement**).

Accordingly, a party that has entered into a Covered Master Agreement may adhere to this Protocol and be bound by its terms by completing and delivering a letter substantially in the form of Exhibit 1 to this Protocol (an **Adherence Letter**) to ISDA, as agent, as described below.

### 1. Amendments

- (a) By adhering to this Protocol in the manner set forth in paragraph 2 below, a party (an **Adhering Party**) that wishes to amend the terms of a Covered Master Agreement, in each case on the terms and subject to the conditions set forth in this Protocol and the relevant Adherence Letter, agrees that the terms of each Covered Master Agreement, if any, between it and each other Adhering Party will be amended with effect from the Implementation Date in accordance with the terms of the Attachment and each relevant applicable Annex hereto. For the avoidance of doubt, where an Agent signs an Adherence Letter on behalf of one or more clients, references to the Adhering Party in that instance and for the purposes of this Protocol (including the Attachment and Annexes) shall be to each such client.
- (b) An Adhering Party may specify in its Adherence Letter whether the amendments to the ISDA Definitions Booklets provided for in Annexes 1 - 9 (each inclusive) are applicable (such election, the **Annex 1 - 9 Applicable Election**) or not applicable (such election, the **Annex 1 - 9 Not Applicable Election**) by checking the relevant box in such Adherence Letter (such election, the **Annex 1 - 9 Election**). In respect of any Covered Master Agreement between two Adhering Parties, where at least one Adhering Party has made the Annex 1 - 9 Not Applicable Election, only those amendments contained in Annexes 10 to 14 (each inclusive) in respect of the Credit Support Provisions will be applicable to the extent relevant to such Covered Master Agreement. If an Adhering Party fails to check a box relating to the Annex 1 - 9

Election in its Adherence Letter, it will be deemed to have made the Annex 1 – 9 Applicable Election.

- (c) An Adhering Party may specify in its Adherence Letter whether this Protocol and the amendments provided for in the Attachment and applicable Annexes are applicable (such election, the **Loss Amended Election**) or not applicable (such election, the **Loss Preserved Election**) to (A) any Covered Master Agreement which specifies Loss to be the applicable payment measure with respect to the Events of Default under Section 5(a) of the Covered Master Agreement and/or the Termination Events under Section 5(b)(i) through (iv) of the Covered Master Agreement (whether pursuant to Part 1(f) of the Schedule or otherwise), and (B) any provision of a Covered Master Agreement which specifies Loss to be the applicable payment measure with respect to one or more Additional Termination Events or Additional Events of Default for which all Transactions would be Affected Transactions and/or terminated in their entirety under the Covered Master Agreement other than in the case of a Limited Close-out Event (such election, the **Loss Election**). In respect of any Covered Master Agreement between two Adhering Parties, where at least one Adhering Party has made the Loss Preserved Election, this Protocol and the amendments provided for herein shall not apply to the relevant agreement or provision as referred to in (A) or (B) above between the Adhering Parties even if otherwise a Covered Master Agreement. If an Adhering Party fails to check a box relating to the Loss Election in its Adherence Letter, it will be deemed to have made the Loss Amended Election.

## 2. Adherence and Effectiveness

- (a) Adherence to this Protocol will be evidenced by the execution and delivery, in accordance with paragraph 4(f) below, to ISDA, as agent, of an Adherence Letter. ISDA shall have the right, in its sole and absolute discretion, upon thirty calendar days' notice on the "ISDA Close-out Amount Protocol" section of its website at [www.isda.org](http://www.isda.org) (or by other suitable means) to designate a closing date of this Protocol (such closing date, the **Cut-off Date**). After the Cut-off Date, ISDA will not accept any further Adherence Letters to the Protocol.
- (i) Each Adhering Party will deliver two copies of the Adherence Letter, one a manually signed original and the other a conformed copy containing, in place of each signature, the printed or typewritten name of each signatory.
- (ii) Each Adhering Party agrees that, for evidentiary purposes, a conformed copy of an Adherence Letter certified by the General Counsel (or other appropriate officer) of ISDA will be deemed to be an original.
- (b) The agreement to make the amendments contemplated by this Protocol, on the terms and subject to the conditions set forth in this Protocol, will, as between any two Adhering Parties, be effective on the date of receipt by ISDA, as agent, of an

Adherence Letter from the later of the Adhering Parties to adhere. Any such amendments will apply to each Covered Master Agreement between the Adhering Parties and will be effective from the Implementation Date.

- (c) This Protocol is intended for use without negotiation, but without prejudice to any amendment, modification or waiver in respect of a Covered Master Agreement that the parties may otherwise effect in accordance with the terms of that Covered Master Agreement and:
  - (i) In adhering to this Protocol, an Adhering Party may not specify additional provisions, conditions or limitations in its Adherence Letter or otherwise.
  - (ii) Any purported adherence that ISDA, as agent, determines in good faith is not in compliance with this Protocol will be void and ISDA will inform the relevant party of such fact as soon as reasonably possible after making such determination.

### 3. Representations

Each Adhering Party represents to each other Adhering Party with which it has or may have entered into a Covered Master Agreement, on the Implementation Date that:

- (a) **Status.** It is, if relevant, 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 or, if it otherwise represents its status in or pursuant to the Covered Master Agreement, has such status;
- (b) **Powers.** It has the power to execute and deliver the Adherence Letter and to perform its obligations under the Adherence Letter, this Protocol and the Covered Master Agreement, in each case as amended by this Protocol (including the Attachment hereto), and has taken all necessary action to authorize such execution, delivery and performance;
- (c) **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;
- (d) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to the Adherence Letter and the Covered Master Agreement, in each case as amended by the this Protocol (including the Attachment hereto), have been obtained and are in full force and effect and all conditions of any such consents have been complied with;

- (e) **Obligations Binding.** Its obligations under the Adherence Letter, this Protocol and the Covered Master Agreement, in each case as amended by this Protocol (including the Attachment hereto), constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)); and
- (f) **Credit Support.** Its adherence to this Protocol and any amendment contemplated by this Protocol will not, in and of itself, adversely affect any obligations owed, whether by it or by any third party, under any Credit Support Document or Third Party Credit Support Document in respect of its obligations relating to the Covered Master Agreement.

Each Adhering Party agrees with each other Adhering Party with which it has or may have a Covered Master Agreement that each of the foregoing representations will be deemed to be a representation for purposes of Section 5(a)(iv) of each such Covered Master Agreement.

#### 4. Miscellaneous

- (a) **Entire Agreement; Close-out Amount Multilateral Agreement; Survival.**
  - (i) This Protocol constitutes the entire agreement and understanding of the Adhering Parties with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto. Each Adhering Party acknowledges that in adhering to this Protocol it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to elsewhere in this Protocol or in the Attachment) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Protocol will limit or exclude any liability of an Adhering Party for fraud.
  - (ii) Certain Adhering Parties and other entities entered into a Close-out Multilateral Agreement on August 29, 2008 (the **Close-out Multilateral Agreement**). For the avoidance of doubt, the Close-out Multilateral Agreement shall remain in force as between the parties thereto, and this Protocol shall not take effect as between the parties thereto.
  - (iii) Except for any amendment deemed to be made pursuant to this Protocol in respect of any Covered Master Agreement, all terms and conditions of each Covered Master Agreement will continue in full force and effect in accordance with its provisions as in effect immediately prior to the

Implementation Date. Except as explicitly stated in this Protocol, nothing herein shall constitute a waiver or release of any rights of any Adhering Party under any Covered Master Agreement to which such Adhering Party is a party. This Protocol will, with respect to its subject matter, survive, and any amendments deemed to be made pursuant to it, will form a part of each Covered Master Agreement between the Adhering Parties notwithstanding Section 9(a) of the Covered Master Agreement.

- (b) **Limited Right to Revoke.** Adherence to this Protocol is irrevocable, except that on any Business Day during the Annual Revocation Period, an Adhering Party may deliver to ISDA, as agent, a notice substantially in the form of Exhibit 2 to this Protocol (a **Revocation Notice**) to designate the next Annual Revocation Date as the last date on which any counterparty may adhere to this Protocol in respect of any Covered Master Agreement then or in the future between the counterparty and such Adhering Party.
- (i) Upon the effective designation of the next Annual Revocation Date by an Adhering Party, this Protocol will not amend any Covered Master Agreement between that Adhering Party and a party which adheres to this Protocol after that Annual Revocation Date occurs. The foregoing is without prejudice to (A) any amendment to any Covered Master Agreement between two Adhering Parties effected pursuant to this Protocol on or before the day on which that Annual Revocation Date occurs or is deemed to occur and (B) any amendment effected pursuant to this Protocol to any Covered Master Agreement entered into after the day on which that Annual Revocation Date occurs between two Adhering Parties that each adhered to this Protocol on or before that day, which in each case will be (or continue to be) effective.
- (ii) Each Revocation Notice must be delivered by the means specified in paragraph 4(f) of this Protocol below.
- (iii) Each Adhering Party agrees that, for evidentiary purposes, a conformed copy of a Revocation Notice certified by the General Counsel or an appropriate officer of ISDA will be deemed to be an original.
- (iv) Any purported revocation that ISDA, as agent, determines in good faith is not in compliance with this paragraph 4(b) will be void.
- (c) **Amendments.** An amendment, modification or waiver in respect of the matters contemplated by this Protocol will only be effective in respect of a Covered Master Agreement if made in accordance with the terms of the Covered Master Agreement and then only with effect between the parties to that Covered Master Agreement (and will only be effective to amend or override the provisions contained in paragraph 1 of this Protocol and the Attachment and or any Annexes to this Protocol if it expressly refers in writing to this paragraph 4(c) of this

Protocol and would otherwise be effective in accordance with Section 9(b) of the Covered Master Agreement in effect between the parties).

- (d) **Headings.** The headings used in this Protocol and any Adherence Letter are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Protocol or any Adherence Letter.
- (e) **Governing Law.** This Protocol and each Adherence Letter will, as between two Adhering Parties and in respect of each Covered Master Agreement between them, be governed by and construed in accordance with English law and the amendments to each Covered Master Agreement shall be governed by and construed in accordance with the law specified to govern that Covered Master Agreement and otherwise in accordance with applicable choice of law doctrine.
- (f) **Notices.** Any Adherence Letter must be in writing and delivered as a locked PDF (portable document format) attachment to an email to ISDA at [COAprotocol@isda.org](mailto:COAprotocol@isda.org) and will be deemed effectively delivered on the date it is delivered unless on the date of that delivery ISDA's London office is closed or that communication is delivered after 5:00 p.m., London time, in which case that communication will be deemed effectively delivered on the next day ISDA's London office is open. Each Adhering Party agrees that the determination of the date and time of delivery of any Adherence Letter shall be determined by ISDA in its absolute discretion.

## 5. Definitions

As used in this Protocol, **Credit Support Document** and **Transaction** each has the meaning given that term in the related Covered Master Agreement.

References in this Protocol and the Attachment to the following terms shall have the following meanings:

**Additional Event of Default** means any Event of Default under the Covered Master Agreement other than those specified in Section 5(a) of the pre-printed form of the 1992 ISDA Master Agreement (regardless of any amendment thereto in the relevant Schedule).

**Agent** means an entity that enters into a Covered Master Agreement and this Protocol on behalf of and as agent for one or more clients, and client means the client, investor, fund or other principal on whose behalf the Agent is acting..

**Agent Covered Master Agreement** means any 1992 ISDA Master Agreement signed as an umbrella agreement by an Agent and an Adhering Party prior to the date of receipt by ISDA of an Adherence Letter from the later of the Adhering Party or the Agent on behalf of its client (the other Adhering Party) even if such other Adhering Party is not added to the umbrella agreement until after adherence to this Protocol by the Agent on that client's behalf (provided that such addition does occur prior to the Cut-off Date (if any)).

**Annual Revocation Date** means, with respect to each calendar year, 31 December of such calendar year. If 31 December in any calendar year is not a day on which the ISDA's London office is open, the Annual Revocation Date with respect to such calendar year will be deemed to occur on the next day that the ISDA's London office is open.

**Annual Revocation Period** means the period between 1 October and 31 October of any calendar year.

**Covered Master Agreement** means:

- (i) any 1992 ISDA Master Agreement (Multicurrency – Cross Border), as published by ISDA (a 1992 ISDA Master Agreement) entered into by execution by Adhering Parties of a confirmation pursuant to which an Adhering Party is deemed to have entered into a 1992 ISDA Master Agreement with another Adhering Party until such time as a 1992 Master Agreement has been executed by such Adhering Parties and that is still outstanding as at the Implementation Date;
- (ii) any 1992 ISDA Master Agreement executed by two Adhering Parties; and
- (iii) any Agent Covered Master Agreement

in each case, entered into by the Adhering Parties prior to the Implementation Date or, in the case of an Agent Covered Master Agreement signed by the Agent and the counterparty prior to adherence by both the counterparty and the Agent, on behalf of the relevant client (and including all outstanding Transactions thereunder and outstanding Credit Support Documents entered into by such Adhering Parties in connection therewith); provided that if:

(1)(A) any consent, approval, agreement, authorization or other action of any party to a Third Party Credit Support Document other than either of such Adhering Parties (a Third Party) is expressly required, under the terms of such Third Party Credit Support Document or such 1992 ISDA Master Agreement, to amend or otherwise modify such 1992 ISDA Master Agreement, or (B) such Third Party Credit Support Document or such 1992 ISDA Master Agreement includes express terms to the effect that any amendment or modification of such ISDA Master Agreement without the consent, approval, agreement, authorization or other action of any such Third Party would void, impair or otherwise adversely affect existing or future obligations owed under such Third Party Credit Support Document, or

(2) such 1992 ISDA Master Agreement has been amended by an agreement between the Adhering Parties using the ISDA Form of Amendment to the 1992 Master Agreement or any other form of bilateral amendment which results in replacing Market Quotation or Loss with Close-out Amount as the general measure of damages;

then such 1992 ISDA Master Agreement shall not be a Covered Master Agreement.

**Implementation Date** means with respect to any two Adhering Parties, the date on which adherence is effective as between them pursuant to paragraph 2(b) of this Protocol provided that in the case of an Agent Covered Master Agreement, if the Agent adds a client to the relevant umbrella agreement (the date of such addition, the **Agent Updated Client Date**) after the date on which the Agent's Adherence Letter on behalf of such client is received by ISDA but prior to the Cut-off Date (if any), the Implementation Date between the relevant client and the other Adhering Party shall be the later of the Agent Updated Client Date and the date on which adherence of the other Adhering Party is effective.

**Third Party Credit Support Document** means, with respect to an Adhering Party to a 1992 ISDA Master Agreement, any document in effect on the Implementation Date and executed by one or more Third Parties (whether or not an Adhering Party is a party thereto), which by its terms secures, guarantees or otherwise supports such Adhering Party's obligations under the 1992 ISDA Master Agreement from time to time, as required by the other Adhering Party, whether or not such document is specified as such, or as a Credit Support Document, therein or in the 1992 ISDA Master Agreement.

**EXHIBIT 1**  
**to ISDA Close-out Amount Protocol**

**Form of Adherence Letter**

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**[Letterhead of Adhering Party]**

**[Date]**

**Send to: COAprotocol@isda.org**

Dear Sirs,

**ISDA Close-out Amount Protocol - Adherence**

The purpose of this letter is to confirm our adherence to the ISDA Close-out Amount Protocol as published by the International Swaps and Derivatives Association, Inc. on [23 February 2009] (the **Protocol**). This letter constitutes an Adherence Letter as referred to in the Protocol. The definitions and provisions contained in the Protocol are incorporated into this Adherence Letter, which will supplement and form part of each Covered Master Agreement between us and each other Adhering Party.

**1. Specified Terms**

The amendments in the Attachment and the Annexes to the Protocol shall apply to each Covered Master Agreement to which we are a party in accordance with the terms of the Protocol and this Adherence Letter.

	Applicable	Not Applicable
Annex 1 - 9 Election		

	Amended	Preserved
Loss Election		

We agree that if we do not specify above whether the Annex 1 – 9 Election is “Applicable” or “Not Applicable” and/or whether the Loss Election is “Amended” or “Preserved”, we shall be **deemed to check the Annex 1 – 9 Applicable Election and Loss Amended Election** respectively.

## 2. Appointment as Agent and Release

We hereby appoint ISDA as our agent for the limited purposes of the Protocol and accordingly we waive, and hereby release ISDA from, any rights, claims, actions or causes of action whatsoever (whether in contract, tort or otherwise) arising out of or in any way relating to this Adherence Letter or our adherence to the Protocol or any actions contemplated as being required by ISDA.

## 3. Contact Details

Our contact details for purposes of this Adherence Letter are:

Name:

Address:

Telephone:

Fax:

E-mail:

We consent to the publication of a conformed copy of this letter by ISDA and to the disclosure by ISDA of the contents of this letter.

Yours faithfully,

[ADHERING PARTY]<sup>1</sup>

By:

Name:

Title:

Signature:

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<sup>1</sup> Specify legal name of Adhering Party. If you are an investment or asset manager and act on behalf of multiple funds, you must indicate in the signature block, "Investment/Asset Manager, acting on behalf of each of the funds and accounts [listed in the relevant Covered Master Agreement (or other agreement which deems a Covered Master Agreement to have been created) between it (as agent) and another Adhering Party as updated from time to time]/[identified in the attachment to this Adherence Letter] ". A separate Adherence Letter for each fund does *not* need to be submitted to ISDA. Further, no specific names of clients of the investment or asset manager will be publicly disclosed on the ISDA website in connection with the Protocol (unless such names are listed in the attachment to the Adherence Letter or any other attached appendix). Where an investment or asset manager wishes to adhere on behalf of certain funds or clients only but cannot or does not wish to name such funds or clients, then provided that it can identify such funds or clients by way of a specific identifier which will be known and recognized by all other Adhering Parties with which the relevant funds or clients have entered into Covered Master Agreements, the funds or clients can be listed by such identifier without including any names. In such case, the identifier(s) will be listed on the ISDA website with the Adherence Letter.



**EXHIBIT 2**  
**to ISDA Close-out Amount Protocol**

**Form of Revocation Notice**

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**[Letterhead of Adhering Party]**

**[Date]**

**Send to: COAprotocol@isda.org**

Dear Sirs,

**ISDA Close-out Amount – Designation of Annual Revocation Date**

The purpose of this letter is to notify you that we wish to designate this year's Annual Revocation Date as the last date on which any counterparty may adhere to the ISDA Close-out Amount Protocol as published by the International Swaps and Derivatives Association, Inc. on [23 February 2009] (the **Protocol**) in respect of any Covered Master Agreement (now or in the future) between us.

This letter constitutes a Revocation Notice as referred to in the Protocol.

We consent to the publication of the conformed copy of this notice by ISDA on and after the Annual Revocation Date and to the disclosure by ISDA of the contents of this letter.

Yours faithfully,

[ADHERING PARTY]<sup>2</sup>

By:

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<sup>2</sup> Specify legal name of Adhering Party. If you are an investment or asset manager and act on behalf of multiple funds, you must indicate in the signature block, "Investment/Asset Manager, acting on behalf of each of the funds and accounts [listed in the relevant Covered Master Agreement (or other agreement which deems a Covered Master Agreement to have been created) between it (as agent) and another Adhering Party as updated from time to time] / [identified in the attachment to this Adherence Letter] ". A separate Adherence Letter for each fund does *not* need to be submitted to ISDA. Further, no specific names of clients of the investment or asset manager will be publicly disclosed on the ISDA website in connection with the Protocol (unless such names are listed in the attachment to the Adherence Letter or any other attached appendix). Where an investment or asset manager wishes to adhere on behalf of certain funds or clients only but cannot or does not wish to name such funds or clients, then provided that it can identify such funds or clients by way of a specific identifier which will be known and recognized by all other Adhering Parties with which the relevant funds or clients have entered into Covered Master Agreements, the funds or clients can be listed by such identifier without including any names. In such case, the identifier(s) will be listed on the ISDA website with the Adherence Letter.

Name:

Title:

Signature:

## ATTACHMENT

With effect from the Implementation Date, each Covered Master Agreement shall be modified as follows.

1. The terms of Section 6(d)(i) of each Covered Master Agreement are amended in their entirety as follows:

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

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

2. The terms of Section 6(e) of each Covered Master Agreement are amended in their entirety as follows<sup>3</sup>:

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

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

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<sup>3</sup> Those parties who selected First Method as their payment method should note that this Agreement eliminates First Method and imposes Second Method as the sole payment method.

Party will pay the absolute value of the Early Termination 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 Early Termination Amount will be determined in accordance with Section 6(e)(i), except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.
  - (2) *Two Affected Parties.* If there are two Affected Parties, each party will determine an amount equal to the Termination Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an amount equal to (A) the sum of (I) one-half of the difference between the higher amount so determined (by party "X") and the lower amount so determined (by party "Y") and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.
- (iii) **Adjustment for Bankruptcy.** In circumstances where an Early Termination Date occurs because Automatic Early Termination applies in respect of a party, the Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).
- (iv) **Pre-Estimate.** The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks, and, except as otherwise provided in this Agreement, neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions."

3. The term "Termination Currency Equivalent" in Section 14 of each Covered Master Agreement is hereby amended by replacing "Market Quotation or Loss (as the case may be)" with "Close-out Amount".
4. The following terms are added to Section 14 of each Covered Master Agreement in the appropriate alphabetical position:

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

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

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

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

- (i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;
- (ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation,

relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or

- (iii) information of the types described in clause (i) or (ii) above from internal sources (including any of the Determining Party's Affiliates) if that information is of the same type used by the Determining Party in the regular course of its business for the valuation of similar transactions.

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

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

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

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

**"Determining Party"** means the party determining a Close-out Amount."

**"Early Termination Amount"** has the meaning specified in Section 6(e)."

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

5. In the case of (i) any Illegality, and (ii) any Termination Event (including any Additional Termination Event) with respect to which the parties have specified in the Covered Master Agreement that mid-market quotations or mid-market values should be used in determining Market Quotation or Loss and such payment measure has been amended by this Protocol, the Early Termination Amount will be determined in accordance with Section 6(e)(ii) of the Covered Master Agreement (as amended by this Protocol), except that for the purpose of determining a Close-out Amount or Close-out Amounts, the Determining Party will:
- (i) if obtaining quotations from one or more third parties (or from any of the Determining Party's Affiliates), ask each third party or Affiliate (A) not to take account of the current creditworthiness of the Determining Party or any existing Credit Support Document and (B) to provide mid-market quotations; and
- (ii) in any other case, use mid-market values without regard to the creditworthiness of the Determining Party.
6. This Protocol and the amendments set forth in this Attachment and applicable Annexes to this Protocol shall not amend any Express Provisions. For the avoidance of doubt, to the extent that a Covered Master Agreement contains any Express Provisions, the amendments set forth in this Attachment and the Annexes to the Protocol shall not apply in respect of the Transactions to which such Express Provisions apply.

“Express Provisions” means:

- (i) any provisions expressly set out in any confirmation to a Transaction that supplements, forms a part of, and is subject to, a Covered Master Agreement (each, a “**Confirmation**”) that provide for an early termination, close-out, exercise, election, settlement, amendment, modification or other disposition (each, a “**Disposition**”) of, or under, that Transaction upon the occurrence of one or more events or circumstances, or upon the taking of certain action (including, by way of example, the giving of a notice or the exercise of any right or option), as specified in such provisions for purposes of determining either the amount payable for that Disposition or the right of a party to make that Disposition, excluding any standard provisions contemplated by a form of confirmation or related provisions appearing as exhibits to any of the ISDA Definitions booklets that rely upon the terms “Loss”, “Market Quotation” or “Settlement Amount” appearing in any such ISDA Definitions booklet incorporated by reference into that Confirmation;
- (ii) any provisions expressly set out in any Schedule to a Covered Master Agreement that provide for a Disposition of, or under, one or more Transactions governed by that Covered Master Agreement upon the occurrence of one or more events or circumstances, or upon the taking of certain action (including, by way of example, the giving of a notice or the exercise of any right or option), as specified in such provisions for purposes of determining either the amount payable for that Disposition or the right of a party to make that Disposition, including, without limitation, any

provisions in the Schedule in which the parties have elected “Market Quotation” or “Loss” to be the payment measure applicable to one or more Additional Termination Events or Additional Events of Default which would result in the termination of only specified Transaction(s) (regardless of whether in fact such specified Transaction(s) are all Transactions under the Covered Master Agreement) (a “**Limited Close-out Event**”) but excluding any Early Termination Payments Provisions or any other provisions in the Schedule wherein the parties have elected “Market Quotation” or “Loss” to be the payment measure applicable to (A) the Events of Default under Section 5(a) of the Covered Master Agreement and / or the Termination Events under Section 5(b)(i) through (iv) of the Covered Master Agreement, or (B) one or more Additional Termination Events or Additional Events of Default for which all Transactions would be Affected Transactions and/or terminated in their entirety under the Covered Master Agreement other than a Limited Close-out Event; and

- (iii) Credit Support Provisions except those expressly modified by the amendments set forth in this Attachment (including the Annexes to this Protocol) to the extent so modified.
- 7. The following terms in Section 14 of each Covered Master Agreement are deleted in their entirety except to the extent otherwise used in a Covered Master Agreement (including in any Confirmation) for the purposes of any Express Provisions: "Loss", "Market Quotation", "Reference Market-makers" and "Settlement Amount".
- 8. For the avoidance of doubt, to the extent that a Covered Master Agreement (including any Confirmation) contains Express Provisions, for the purposes of determining the Early Termination Amount following the designation of an Early Termination Date under that Covered Master Agreement, any amount (including any Settlement Amount, Market Quotation or Loss) resulting from the application of such Express Provisions shall be deemed a “Close-out Amount” for the purposes of Sections 6(e)(i) and (ii) (including, for the avoidance of doubt, in the definition of Termination Currency Equivalent) of that Covered Master Agreement. To the extent that the amount resulting from the application of Express Provisions includes any Unpaid Amount, that Unpaid Amount shall not be double counted in the calculation of Early Termination Amount.
- 9. Part 1(f) of the Schedule is deleted in its entirety and the subsequent paragraphs are renumbered sequentially. In case the parties have used another designation for the paragraph of the Schedule specifying the selection of Market Quotation or Loss and First Method or Second Method, the reference herein to Part 1(f) of the Schedule shall be deemed a reference to that paragraph (the "Early Termination Payments Provisions"). Furthermore if, in addition to the selections made for the purposes of the Early Termination Payments Provisions, the Schedule elsewhere specifies that Market Quotation or Loss (whether or not First Method or Second Method is specified in the relevant language) apply for purposes of determining termination payments in respect of FX Transactions and/or Currency Option Transactions (as such terms are defined in the 1998 FX Definitions) (the "FX and Currency Option Early Termination Payments Provisions"), such FX and Currency Option Early

Termination Payments Provisions shall be construed as though they had specified that Close-out Amount should apply for purposes of determining termination payments in respect of FX Transactions and/or Currency Option Transactions.

10. Subject to the terms of an Adhering Party's Adherence Letter, certain amendments are hereby deemed to be made to (a) certain sets of definitions and provisions published by ISDA, as listed in Annexes 1 to 9 (each, an "ISDA Definitions Booklet"), and (b) certain documents containing credit support provisions published by ISDA, as listed in Annexes 10 to 14 (each, "Credit Support Provisions"). The amendments to each such ISDA Definitions Booklet and Credit Support Provisions are set forth in Annexes 1 to 14 attached hereto.

References in the Annexes to the following terms have the meaning indicated below:

<b>Term</b>	<b>Meaning</b>
1994 Equity Option Definitions	1994 ISDA Equity Option Definitions
1996 Equity Definitions	1996 ISDA Equity Derivatives Definitions
1997 Bond Option Definitions	1997 ISDA Government Bond Option Definitions
1998 FX Definitions	1998 FX and Currency Option Definitions
1998 Supplement	1998 Supplement to the 1991 ISDA Definitions
1999 Credit Definitions	1999 ISDA Credit Derivatives Definitions
2000 Definitions	2000 ISDA Definitions
2005 Commodity Definitions	2005 ISDA Commodity Definitions
2006 Definitions	2006 ISDA Definitions
New York Annex	1994 ISDA Credit Support Annex (Bilateral Form; ISDA Agreements Subject to New York Law Only)
English Annex	1995 ISDA Credit Support Annex (Bilateral Form - Transfer; ISDA Agreements Subject to English Law)
English Deed	1995 ISDA Credit Support Deed (Bilateral Form - Security Interest; ISDA Agreements Subject to English Law)
Japanese Annex	1995 ISDA Credit Support Annex (Bilateral Form - Loan and Pledge; Security Interest Subject to Japanese Law) and 2008 ISDA Credit Support Annex (Loan /Japanese Pledge)
2001 Margin Provisions	2001 ISDA Margin Provisions

(each as published by ISDA or, in the case of the 1998 FX Definitions, by ISDA, the Emerging Markets Traders Association and The Foreign Exchange Committee, in each case either in the same form as originally published or as amended and supplemented on or before the date on which the relevant Adhering Parties enter into the relevant transaction or Credit Support Provisions, as applicable).

11. Where the amendments provided for in Annexes 1 to 9 (each inclusive) are applicable to a Covered Master Agreement, for purposes of any documents published by ISDA on or after the date of this Protocol that are incorporated by reference into a Confirmation where the terms "First Method", "Loss", "Market Quotation", "Payment Measure", "Payment Method", "Reference Market-makers", "Second Method" and/or "Settlement Amount" are used, the relevant provisions of such document published by ISDA, as applicable (including related definitions and ancillary provisions) shall be construed, *mutatis mutandis*, as though the Covered Master Agreement were a 2002 Master Agreement for purposes of determining termination payments or other similar payments in respect of such Covered Master Agreement and any transaction thereunder.
12. Where two Adhering Parties have agreed in their Covered Master Agreement to amend certain terms of the ISDA Definitions Booklets or of the Credit Support Provisions (“**Amended Provisions**”) that the applicable Annexes to this Protocol would further amend, then to the extent that the amendments agreed between such Adhering Parties do not conflict with the amendments effected by the Annexes, such Amended Provisions shall be preserved but shall be construed, *mutatis mutandis*, as though the same amendments made by the Annexes to this Protocol to the standard ISDA Definitions Booklets and/or Credit Support Provisions are also made to such Amended Provisions.

## ANNEX 1

### 1994 Equity Option Definitions

When incorporated into any Confirmation or otherwise used in connection with a Covered Master Agreement, the terms of the 1994 Equity Option Definitions are deemed to be amended as follows:

- (a) ***Failure to Deliver; Default Interest.*** The following provision replaces Section 8.7(a)(ii):

"(ii) the amount, if any, payable in respect of the Affected Transaction will be determined in accordance with Section 6(e) of the Master Agreement."

In Section 8.7(c), the reference to ", "Loss"" is deleted.

## ANNEX 2

### 1996 Equity Definitions

When incorporated into any Confirmation or otherwise used in connection with a Covered Master Agreement, the terms of the 1996 Equity Definitions are deemed to be amended as follows:

- (a) **ISDA Master Agreement.** The following definition replaces Section 1.26:

"Section 1.26. **ISDA Master Agreement.** "ISDA Master Agreement" means a standard form ISDA 2002 Master Agreement. The terms "Event of Default", "Additional Termination Event", "Affected Party", "Affected Transaction", "Close-out Amount" and "Early Termination Date" will have the meanings given to those terms in the ISDA Master Agreement."

- (b) **Failure to Deliver.** The following provision replaces Section 6.9(ii):

"(ii) the amount, if any, payable in respect of the Affected Transaction will be determined in accordance with Section 6(e) of the ISDA Master Agreement."

- (c) **Cancellation and Payment.** The following provision replaces Section 9.3(b)(ii):

"(ii) "Cancellation and Payment", then (A) in the case of a Share Option Transaction or Share Basket Option Transaction, the Option Transaction will be cancelled as of the Merger Date and Seller will pay to Buyer the amount specified in Section 9.7 ("Payment upon Certain Extraordinary Events") and (B) in the case of a Share Swap Transaction or a Share Basket Swap Transaction, (X) the occurrence of a Share-for-Share Merger Event will constitute an Additional Termination Event under the relevant ISDA Master Agreement with the relevant Share Swap Transaction or Share Basket Swap Transaction the sole Affected Transaction and the party who is not the Equity Amount Payer the Affected Party; if there are two Equity Amount Payers, then the Equity Amount Payer in relation to whom the Equity Amount is not calculated by reference to the affected Shares shall be the Affected Party or, if the Equity Amount with respect to both parties is calculated by reference to the affected Shares, then both parties will be Affected Parties and (Y) notwithstanding the definition of "Close-out Amount" in the relevant ISDA Master Agreement, any Determining Party will determine a Close-out Amount in respect of the Affected Transaction on the basis of quotations (either firm or indicative) for a replacement transaction supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation (but the Determining Party may not take into account any loss or cost incurred in connection with its terminating,

liquidating or re-establishing any hedge related to the Affected Transaction (or any gain resulting from any of them)); or".

The following provision replaces Section 9.3(c)(ii):

"(ii) "Cancellation and Payment", then (A) in the case of a Share Option Transaction or Share Basket Option Transaction, the Option Transaction will be cancelled as of the Merger Date and Seller will pay to Buyer the amount specified in Section 9.7 ("Payment upon Certain Extraordinary Events") and (B) in the case of a Share Swap Transaction or a Share Basket Swap Transaction, (X) the occurrence of a Share-for-Other Merger Event will constitute an Additional Termination Event under the relevant ISDA Master Agreement with the relevant Share Swap Transaction or Share Basket Swap Transaction the sole Affected Transaction and the party who is not the Equity Amount Payer the Affected Party; if there are two Equity Amount Payers, then the Equity Amount Payer in relation to whom the Equity Amount is not calculated by reference to the affected Shares shall be the Affected Party or, if the Equity Amount with respect to both parties is calculated by reference to the affected Shares, then both parties will be Affected Parties and (Y) notwithstanding the definition of "Close-out Amount" in the relevant ISDA Master Agreement, any Determining Party will determine a Close-out Amount in respect of the Affected Transaction on the basis of quotations (either firm or indicative) for a replacement transaction supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation (but the Determining Party may not take into account any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to the Affected Transaction (or any gain resulting from any of them)); or".

The following provision replaces Section 9.3(d)(ii):

"(ii) "Cancellation and Payment", then (A) in the case of a Share Option Transaction or Share Basket Option Transaction, the Option Transaction will be cancelled as of the Merger Date, and Seller will pay to Buyer the amount specified in Section 9.7 ("Payment upon Certain Extraordinary Events") and (B) in the case of a Share Swap Transaction or a Share Basket Swap Transaction, (X) the occurrence of a Share-for-Combined Merger Event will constitute an Additional Termination Event under the relevant ISDA Master Agreement with the relevant Share Swap Transaction or Share Basket Swap Transaction the sole Affected Transaction and the party who is not the Equity Amount Payer the Affected Party; if there are two Equity Amount Payers, then the Equity Amount Payer in relation to whom the Equity Amount is not calculated by reference to the affected Shares shall be the Affected Party or, if the Equity Amount with respect to both parties is calculated by reference to the affected Shares, then both parties will be Affected Parties and (Y) notwithstanding the definition of "Close-out

Amount" in the relevant ISDA Master Agreement, any Determining Party will determine a Close-out Amount in respect of the Affected Transaction on the basis of quotations (either firm or indicative) for a replacement transaction supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation (but the Determining Party may not take into account any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to the Affected Transaction (or any gain resulting from any of them)); or".

The following definition replaces Section 9.6(c)(ii):

"(ii) "Cancellation and Payment" means that (A) in the case of a Share Option Transaction or Share Basket Option Transaction, the Option Transaction will be cancelled as of the Announcement Date and Seller will pay to Buyer the amount specified in Section 9.7 ("Payment upon Certain Extraordinary Events") and (B) in the case of a Share Swap Transaction or a Share Basket Swap Transaction, (X) the Nationalization or Insolvency will constitute an Additional Termination Event under the relevant ISDA Master Agreement with the relevant Share Swap Transaction or Share Basket Swap Transaction the sole Affected Transaction and the party who is not the Equity Amount Payer the Affected Party; if there are two Equity Amount Payers, then the Equity Amount Payer in relation to whom the Equity Amount is not calculated by reference to the affected Shares shall be the Affected Party or, if the Equity Amount with respect to both parties is calculated by reference to the affected Shares, then both parties will be Affected Parties and (Y) notwithstanding the definition of "Close-out Amount" in the relevant ISDA Master Agreement, any Determining Party will determine a Close-out Amount in respect of the Affected Transaction on the basis of quotations (either firm or indicative) for a replacement transaction supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation (but the Determining Party may not take into account any loss or cost incurred in connection with its terminating, liquidating or re-establishing any hedge related to the Affected Transaction (or any gain resulting from any of them))."

## ANNEX 3

### 1997 Bond Option Definitions

When incorporated into any Confirmation or otherwise used in connection with a Covered Master Agreement, the terms of the 1997 Bond Option Definitions are deemed to be amended as follows:

- (a) ***Failure to Deliver and Buy-in Procedures.*** The following provision replaces Section 6.4(c):

"(c) In the event that a party's failure to deliver is due to the non-existence of the Bonds to be Delivered or the other party is unable to exercise a buy-in, the Government Bond Option Transaction will be terminated in accordance with any applicable provisions set forth in the ISDA Master Agreement or the relevant Confirmation: (i) as if the failure to deliver constituted an Additional Termination Event under the ISDA Master Agreement; (ii) as if the party that failed to deliver were the sole Affected Party; (iii) as if the other party had the sole right to terminate under Section 6(b)(iv) of the ISDA Master Agreement and (iv) as if the relevant Government Bond Option Transaction (after consideration of any partial delivery) were the sole Affected Transaction, or, in the case of an American style Government Bond Option Transaction to which Multiple Exercise is applicable, if less than all Options have been exercised (or deemed exercised) on the relevant Exercise Date, a Government Bond Option Transaction (after consideration of any partial delivery) consisting of the exercised Options only were the sole Affected Transaction."

- (b) ***ISDA Master Agreement.*** The following definition replaces Section 6.4(d):

"(d) "ISDA Master Agreement" means, for purposes of this Section 6.4, the Agreement, if any, referred to in the related Confirmation and otherwise the standard form 2002 Master Agreement published by the International Swaps and Derivatives Association, Inc., and the terms "Event of Default", "Termination Event" and "Affected Transaction" have the respective meanings provided for in the ISDA Master Agreement."

In addition, the reference in the Index to "Loss" is deleted.

## ANNEX 4

### 1998 FX Definitions

When incorporated into any Confirmation or otherwise used in connection with a Covered Master Agreement, the terms of the 1998 FX Definitions are deemed to be amended as follows:

- (a) ***No Fault Termination.*** The following definition replaces Section 5.2(c)(ix):

"(ix) "No Fault Termination" means that the Transaction will terminate in accordance with the applicable provisions set forth in Section 6 of the ISDA Master Agreement (which provisions, excluding Section 6(b)(iii), are hereby incorporated by reference into these Definitions), as if: (A) an Additional Termination Event had been specified and had occurred, (B) any applicable grace periods or "Waiting Period" had lapsed, (C) any notice was effective on the date No Fault Termination became the applicable Disruption Fallback, (D) there were two "Affected Parties" and (E) the Transaction was the only "Affected Transaction". On the date No Fault Termination becomes the applicable Disruption Fallback, either Affected Party may, by notice to the other party, designate such date as an "Early Termination Date". The Termination Currency will be deemed to be the Non-Event Currency. The terms "Additional Termination Event", "Affected Parties", "Affected Transaction", "Early Termination Date" and "Termination Currency Equivalent" have the meanings provided for in the ISDA Master Agreement."

In addition, the reference in the Index to "Loss" is deleted.

## ANNEX 5

### 1998 Supplement

When incorporated into any Confirmation or otherwise used in connection with a Covered Master Agreement, the terms of the 1998 Supplement are deemed to be amended as follows:

- (a) **ISDA Master Agreement.** The following definition replaces Section 18.2(h):

"(h) **ISDA Master Agreement.** "ISDA Master Agreement" means, for the purpose of Sections 17 and 18.2(g), the ISDA Master Agreement, if any, referred to in the related Confirmation and otherwise the standard form 2002 Master Agreement published by the International Swaps and Derivatives Association, Inc., and the terms "Terminated Transaction", "Early Termination Date", "Affected Parties", "Close-out Amount", "Event of Default" and "Potential Event of Default" have the respective meanings provided for in the ISDA Master Agreement."

- (b) **Cash Settlement.** The following provision replaces Section 18.3(a):

"(a) **Cash Price.** If "Cash Price" is specified in the related Confirmation to be the Cash Settlement Method applicable to an Option Transaction, or Swap Transaction to which Mandatory Early Termination is applicable, the Cash Settlement Amount will be an amount determined with respect to the Relevant Swap Transaction as of the Cash Settlement Valuation Time on the Cash Settlement Valuation Date as the amount which would be payable in accordance with the provisions of Section 6(e)(ii)(1) of the ISDA Master Agreement (but without reference to clause (3) of Section 6(e)(ii)), mutatis mutandis, as though the Relevant Swap Transaction were a Terminated Transaction, the Cash Settlement Payment Date were an Early Termination Date and the Cash Settlement Currency were the Termination Currency. Notwithstanding the provisions of Section 6(e) of the ISDA Master Agreement and the definition of "Close-out Amount", the Calculation Agent will determine the Cash Settlement Amount on the basis of quotations (either firm or indicative) for a replacement transaction supplied by Cash Settlement Reference Banks (but the Calculation Agent may not take into account any loss or cost incurred by a party in connection with its terminating, liquidating or re-establishing any hedge related to the Relevant Swap Transaction (or any gain resulting from any of them)). The Calculation Agent will ask each Cash Settlement Reference Bank to provide a quotation using the Quotation Rate specified in the related Confirmation. Notwithstanding the provisions of Section 6(e) of the ISDA Master Agreement and the definition of "Close-out Amount", if fewer than three quotations are provided, the Cash Settlement Amount will be determined by the Calculation Agent in good faith and using commercially reasonable procedures. If the parties specify "Cash Price - Alternate Method" the Calculation Agent will determine the

Cash Settlement Amount on the basis of the quotations obtained by each party separately from the Cash Settlement Reference Banks in accordance with Section 6(e)(ii)(2) of the ISDA Master Agreement (but without reference to clause (3) of Section 6(e)(ii))."

## ANNEX 6

### 1999 Credit Definitions

When incorporated into any Confirmation or otherwise used in connection with a Covered Master Agreement, the terms of the 1999 Credit Definitions are deemed to be amended as follows:

- (a) ***ISDA Master Agreement.*** The following definition replaces Section 1.17:

**"Section 1.17. ISDA Master Agreement.** The terms "Additional Termination Event", "Affected Party", "Affected Transaction", "Affiliate", "Event of Default", "Illegality", "Stamp Tax", "Tax", and "Termination Rate" shall have the meanings given to those terms in the standard form 1992 ISDA Master Agreement (Multicurrency – Cross Border)."

In addition, the reference in the Index to "Market Quotation" is deleted.

- (b) ***Merger of Reference Entity and Seller.*** The following provision replaces Section 2.28:

**"Section 2.28. Merger of Reference Entity and Seller.** In the event that Seller or a Reference Entity consolidates or amalgamates with, or merges into, or transfers all or substantially all its assets to, the Reference Entity or the Seller, as applicable, or Seller and a Reference Entity become Affiliates, an Additional Termination Event will be deemed to have occurred and termination payments will be determined on the basis that Seller is the sole Affected Party and each Credit Derivative Transaction involving such Reference Entity is an Affected Transaction.

## ANNEX 7

### 2000 Definitions

When incorporated into any Confirmation or otherwise used in connection with a Covered Master Agreement, the terms of the 2000 Definitions are deemed to be amended as follows:

(a) **ISDA Master Agreement.** The following definition replaces Section 17.2(i):

"(i) **ISDA Master Agreement.** "ISDA Master Agreement" means, for purposes of Section 17.2(h) (Cash Settlement Currency) and Section 17.2(j) (Quotation Rate), the ISDA Master Agreement, if any, referred to in the related Confirmation and otherwise (and, in any event, for purposes of Section 17.3(a) (Cash Price) and Section 17.3(b) (Cash Price - Alternate Method)) the standard form 2002 Master Agreement published by the International Swaps and Derivatives Association, Inc., and the terms "Terminated Transaction", "Early Termination Date", "Close-out Amount", "Credit Support Document", "Event of Default" and "Potential Event of Default" have the respective meanings provided for in the ISDA Master Agreement."

(b) **Cash Settlement.**

(i) **Cash Price.** The following provision replaces Section 17.3(a):

"(a) **Cash Price.** If "Cash Price" is specified in the related Confirmation to be the Cash Settlement Method applicable to an Option Transaction or Swap Transaction to which Mandatory Early Termination is applicable, the Cash Settlement Amount will be an amount determined with respect to the Relevant Swap Transaction as of the Cash Settlement Valuation Time on the Cash Settlement Valuation Date as the amount which would be payable in accordance with the provisions of Section 6(e)(ii)(1) of the ISDA Master Agreement (but without reference to clause (3) of Section 6(e)(ii)), the necessary changes being made, as though (i) the Relevant Swap Transaction were a Terminated Transaction, (ii) the Cash Settlement Payment Date, Optional Early Termination Date or Mandatory Early Termination Date, as the case may be, were an Early Termination Date and (iii) the Cash Settlement Currency were the Termination Currency. Notwithstanding the provisions of Section 6(e) of the ISDA Master Agreement and the definition of "Close-out Amount", the Calculation Agent will determine the Cash Settlement Amount on the basis of quotations (either firm or indicative) for a replacement transaction supplied by Cash Settlement Reference Banks (but the Calculation Agent may not take into account any loss or cost incurred by a party in connection with its terminating, liquidating or re-establishing any hedge related to the Relevant Swap Transaction (or any gain resulting from any

of them)). The Calculation Agent will ask each Cash Settlement Reference Bank to provide a quotation using the Quotation Rate specified in the related Confirmation. In providing quotations, the Cash Settlement Reference Banks will be asked to assume that the Calculation Agent is a dealer in the relevant market of the highest credit standing which satisfies all the credit criteria which such Cash Settlement Reference Banks apply generally at the time in deciding whether to offer or make an extension of credit, and no account will be taken of any existing Credit Support Document. Notwithstanding the provisions of Section 6(e) of the ISDA Master Agreement and the definition of "Close-out Amount", if fewer than three quotations are provided, the Cash Settlement Amount will be determined by the Calculation Agent in good faith and using commercially reasonable procedures."

- (ii) **Cash Price - Alternate Method.** The following provision replaces Section 17.3(b):

"(b) **Cash Price - Alternate Method.** If "Cash Price - Alternate Method" is specified in the related Confirmation to be the Cash Settlement Method applicable to an Option Transaction or Swap Transaction to which Mandatory Early Termination is applicable, the Cash Settlement Amount will be an amount determined with respect to the Relevant Swap Transaction as of the Cash Settlement Valuation Time on the Cash Settlement Valuation Date as the amount which would be payable in accordance with the provisions of Section 6(e)(ii)(2) of the ISDA Master Agreement (but without reference to clause (3) of Section 6(e)(ii)), the necessary changes being made, as though (i) the Relevant Swap Transaction were a Terminated Transaction, (ii) the Cash Settlement Payment Date, Optional Early Termination Date or Mandatory Early Termination Date, as the case may be, were an Early Termination Date and (iii) the Cash Settlement Currency were the Termination Currency. Notwithstanding the provisions of Section 6(e) of the ISDA Master Agreement and the definition of "Close-out Amount", the Cash Settlement Amount will be determined on the basis of quotations (either firm or indicative) for a replacement transaction supplied by Cash Settlement Reference Banks (but account may not be taken of any loss or cost incurred by a party in connection with its terminating, liquidating or re-establishing any hedge related to the Relevant Swap Transaction (or any gain resulting from any of them)). Each party will ask each Cash Settlement Reference Bank to provide a quotation using the Quotation Rate specified in the related Confirmation. In providing quotations, the Cash Settlement Reference Banks will be asked to assume that the party requesting the quotations is a dealer in the relevant market of the highest credit standing which satisfies all the credit criteria which such Cash Settlement Reference Banks apply generally at the time in deciding whether to offer or make an extension of credit, and no account will be

taken of any existing Credit Support Document. Notwithstanding the provisions of Section 6(e) of the ISDA Master Agreement and the definition of "Close-out Amount", if fewer than three quotations are provided to either party, the Cash Settlement Amount will be the average of the amounts determined by each of the parties in good faith and using commercially reasonable procedures."

## ANNEX 8

### 2005 Commodity Definitions

When incorporated into any Confirmation or otherwise used in connection with a Covered Master Agreement, the terms of the 2005 Commodity Definitions are deemed to be amended as follows:

- (a) ***Disruption Fallbacks Relating to Weather Index Derivative Transactions.*** In Section 11.19(d)(vi), the words "and, if the relevant agreement or Confirmation is, or incorporates the terms of, the 1992 ISDA Master Agreement (Multicurrency-Cross Border), "Loss" applies in relation to the amount payable under Section 6(e) of the 1992 ISDA Master Agreement (Multicurrency-Cross Border)" are deleted.

## ANNEX 9

### 2006 Definitions

When incorporated into any Confirmation or otherwise used in connection with a Covered Master Agreement, the terms of the 2006 Definitions are deemed to be amended as follows:

- (a) **ISDA Master Agreement.** The following definition replaces Section 18.2(i):

"(i) **ISDA Master Agreement.** "ISDA Master Agreement" means, for purposes of Section 18.2(h) (Cash Settlement Currency) and Section 18.2(j) (Quotation Rate), the ISDA Master Agreement, if any, referred to in the related Confirmation and otherwise the standard form 2002 Master Agreement published by the International Swaps and Derivatives Association, Inc., and the terms "Terminated Transaction", "Early Termination Date", "Close-out Amount", "Credit Support Document", "Event of Default" and "Potential Event of Default" have the respective meanings provided for in the ISDA Master Agreement."

- (b) **Cash Settlement.**

- (i) **Cash Price.** The following provision replaces Section 18.3(a):

"(a) **Cash Price.** If "Cash Price" is specified in the related Confirmation to be the Cash Settlement Method applicable to an Option Transaction or Swap Transaction to which Mandatory Early Termination is applicable, the Cash Settlement Amount will be an amount determined with respect to the Relevant Swap Transaction as of the Cash Settlement Valuation Time on the Cash Settlement Valuation Date as the amount which would be payable in accordance with the provisions of Section 6(e)(ii)(1) of the ISDA Master Agreement (but without reference to clause (3) of Section 6(e)(ii)), the necessary changes being made, as though (i) the Relevant Swap Transaction were a Terminated Transaction, (ii) the Cash Settlement Payment Date, Optional Early Termination Date or Mandatory Early Termination Date, as the case may be, were an Early Termination Date and (iii) the Cash Settlement Currency were the Termination Currency. Notwithstanding the provisions of Section 6(e) of the ISDA Master Agreement and the definition of "Close-out Amount", the Calculation Agent will determine the Cash Settlement Amount on the basis of quotations (either firm or indicative) for a replacement transaction supplied by Cash Settlement Reference Banks (but the Calculation Agent may not take into account any loss or cost incurred by a party in connection with its terminating, liquidating or re-establishing any hedge related to the Relevant Swap Transaction (or any gain resulting from any of them)). The Calculation Agent will ask each Cash Settlement Reference Bank to provide a quotation using the Quotation Rate specified

in the related Confirmation. In providing quotations, the Cash Settlement Reference Banks will be asked to assume that the Calculation Agent is a dealer in the relevant market of the highest credit standing which satisfies all the credit criteria which such Cash Settlement Reference Banks apply generally at the time in deciding whether to offer or make an extension of credit, and no account will be taken of any existing Credit Support Document. Notwithstanding the provisions of Section 6(e) of the ISDA Master Agreement and the definition of "Close-out Amount", if fewer than three quotations are provided, the Cash Settlement Amount will be determined by the Calculation Agent in good faith and using commercially reasonable procedures."

- (ii) **Cash Price - Alternate Method.** The following provision replaces Section 18.3(b):

"(b) **Cash Price - Alternate Method.** If "Cash Price - Alternate Method" is specified in the related Confirmation to be the Cash Settlement Method applicable to an Option Transaction or Swap Transaction to which Mandatory Early Termination is applicable, the Cash Settlement Amount will be an amount determined with respect to the Relevant Swap Transaction as of the Cash Settlement Valuation Time on the Cash Settlement Valuation Date as the amount which would be payable in accordance with the provisions of Section 6(e)(ii)(2) of the ISDA Master Agreement (but without reference to clause (3) of Section 6(e)(ii)), the necessary changes being made, as though (i) the Relevant Swap Transaction were a Terminated Transaction, (ii) the Cash Settlement Payment Date, Optional Early Termination Date or Mandatory Early Termination Date, as the case may be, were an Early Termination Date and (iii) the Cash Settlement Currency were the Termination Currency. Notwithstanding the provisions of Section 6(e) of the ISDA Master Agreement and the definition of "Close-out Amount", the Cash Settlement Amount will be determined on the basis of quotations (either firm or indicative) for a replacement transaction supplied by Cash Settlement Reference Banks (but account may not be taken of any loss or cost incurred by a party in connection with its terminating, liquidating or re-establishing any hedge related to the Relevant Swap Transaction (or any gain resulting from any of them)). Each party will ask each Cash Settlement Reference Bank to provide a quotation using the Quotation Rate specified in the related Confirmation. In providing quotations, the Cash Settlement Reference Banks will be asked to assume that the party requesting the quotations is a dealer in the relevant market of the highest credit standing which satisfies all the credit criteria which such Cash Settlement Reference Banks apply generally at the time in deciding whether to offer or make an extension of credit, and no account will be taken of any existing Credit Support Document. Notwithstanding the provisions of Section 6(e) of the ISDA Master Agreement and the

definition of "Close-out Amount", if fewer than three quotations are provided to either party, the Cash Settlement Amount will be the average of the amounts determined by each of the parties in good faith and using commercially reasonable procedures."

## ANNEX 10

### New York Annex

The terms of any New York Annex that supplements, forms part of, and is subject to, a Covered Master Agreement are deemed to be amended as follows:

- (a) ***Dispute Resolution.*** The following provision replaces Paragraph 5(i)(B):

"(B) calculating the Exposure for the Transactions in dispute by seeking four actual quotations at mid-market from third parties for purposes of calculating the relevant Close-out Amount, and taking the arithmetic average of those obtained; *provided* that if four quotations are not available for a particular Transaction, then fewer than four quotations may be used for that Transaction, and if no quotations are available for a particular Transaction, then the Valuation Agent's original calculations will be used for that Transaction; and".

- (b) ***Exposure.*** The following definition replaces the definition of "Exposure" in Paragraph 12:

***"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)(1) of this Agreement if all Transactions were being terminated as of the relevant Valuation Time, on the basis that (i) that party is not the Affected Party and (ii) United States Dollars is the Termination Currency; *provided* that the Close-out Amount will be determined by the Valuation Agent on behalf of that party using its estimates at mid-market of the amounts that would be paid for transactions providing the economic equivalent of (x) the material terms of the Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of the Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in Section 2(a)(iii) of this Agreement); and (y) the option rights of the parties in respect of the Transactions."

## ANNEX 11

### English Annex

The terms of any Confirmation that is constituted by the English Annex are deemed to be amended as follows:

- (a) ***Disputed Calculations or Valuations.*** The following provision replaces Paragraph 4(a)(4)(i)(B):

"(B) calculating that part of the Exposure attributable to the Transactions in dispute by seeking four actual quotations at mid-market from third parties for purposes of calculating the relevant Close-out Amount, and taking the arithmetic average of those obtained; *provided* that if four quotations are not available for a particular Transaction, then fewer than four quotations may be used for that Transaction, and if no quotations are available for a particular Transaction, then the Valuation Agent's original calculations will be used for that Transaction; and".

- (b) ***Default.*** The following provision replaces Paragraph 6:

**"Paragraph 6. Default**

If an Early Termination Date is designated or deemed to occur as a result of an Event of Default in relation to a party or as a result of a Termination Event and all Transactions become Terminated Transactions, an amount equal to the Value of the Credit Support Balance, determined as though the Early Termination Date were a Valuation Date, will be deemed to be an Unpaid Amount due to the Transferor (which may or may not be the Defaulting Party or Affected Party) for purposes of Section 6(e). For the avoidance of doubt, the Close-out Amount determined under Section 6(e) in relation to the Transaction constituted by this Annex will be deemed to be zero. For purposes of this Paragraph 6, the Value of the Credit Support Balance shall be determined on the basis that the Valuation Percentage applicable to each item of Eligible Credit Support is 100%."

- (c) ***Exposure.*** The following definition replaces the definition of "Exposure" in Paragraph 10:

**"*Exposure*"** means, with respect to a party on a Valuation Date and subject to Paragraph 4 in the case of a dispute, the amount, if any, that would be payable to that party by the other party (expressed as a positive number) or by that party to the other party (expressed as a negative number) pursuant to Section 6(e)(ii)(1) of this Agreement if all Transactions (other than the Transaction constituted by this Annex) were being terminated as of the relevant Valuation Time, on the basis that (i) that party is not the Affected Party and (ii) the Base Currency is the Termination Currency; *provided* that the Close-out Amount will be determined by the Valuation Agent on behalf of that party using its estimates at mid-market of

the amounts that would be paid for transactions providing the economic equivalent of (x) the material terms of the Transactions, including the payments and deliveries by the parties under Section 2(a)(i) in respect of the Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in Section 2(a)(iii) of this Agreement); and (y) the option rights of the parties in respect of the Transactions."

## ANNEX 12

### English Deed

The terms of any Credit Support Document in relation to a Covered Master Agreement that is constituted by the English Deed are deemed to be amended as follows:

- (a) ***Dispute Resolution.*** The following provision replaces Paragraph 5(a)(4)(i)(B):

"(B) calculating that part of the Exposure attributable to the Transactions in dispute by seeking four actual quotations at mid-market from third parties for purposes of calculating the relevant Close-out Amount, and taking the arithmetic mean of those obtained; *provided* that if four quotations are not available for a particular Transaction, then fewer than four quotations may be used for that Transaction, and if no quotations are available for a particular Transaction, then the Valuation Agent's original calculations will be used for that Transaction; and".

- (b) ***Exposure.*** The following definition replaces the definition of "Exposure" in Paragraph 12:

"***Exposure***" means, with respect to a party on a Valuation Date and subject to Paragraph 5 in the case of a dispute, the amount, if any, that would be payable to that party by the other party (expressed as a positive number) or by that party to the other party (expressed as a negative number) pursuant to Section 6(e)(ii)(1) of the Agreement if all Transactions were being terminated as of the relevant Valuation Time, on the basis that (i) that party is not the Affected Party and (ii) the Base Currency is the Termination Currency; *provided* that the Close-out Amount will be determined by the Valuation Agent on behalf of that party using its estimates at mid-market of the amounts that would be paid for transactions providing the economic equivalent of (x) the material terms of the Transactions, including the payments and deliveries by the parties under Section 2(a)(i) of the Agreement in respect of the Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in Section 2(a)(iii) of the Agreement); and (y) the option rights of the parties in respect of the Transactions."

## ANNEX 13

### Japanese Annex

The terms of any Credit Support Document in relation to a Covered Master Agreement that is constituted by the Japanese Annex are deemed to be amended as follows:

- (a) ***Dispute Resolution.*** The following provision replaces Paragraph 5(i)(B):

"(B) calculating the Exposure for the Transactions in dispute by seeking four actual quotations at mid-market from third parties for purposes of calculating the relevant Close-out Amount, and taking the arithmetic average of those obtained; *provided* that if four quotations are not available for a particular Transaction, then fewer than four quotations may be used for that Transaction, and if no quotations are available for a particular Transaction, then the Valuation Agent's original calculations will be used for that Transaction; and".

- (b) ***Exposure.*** The following definition replaces the definition of "Exposure" in Paragraph 12:

"***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 Obligee by the other party (expressed as a positive number) or by a party that is the Obligee to the other party (expressed as a negative number) pursuant to Section 6(e)(ii)(1) of the Agreement as if all Transactions were being terminated as of the relevant Valuation Time, on the basis that (i) the Obligee is not the Affected Party and (ii) Japanese Yen is the Termination Currency; *provided* that the Close-out Amount will be determined by the Valuation Agent on behalf of that party using its estimates at mid-market of the amounts that would be paid for transactions providing the economic equivalent of (x) the material terms of the Transactions, including the payments and deliveries by the parties under Section 2(a)(i) of the Agreement in respect of the Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date (assuming satisfaction of the conditions precedent in Section 2(a)(iii) of the Agreement); and (y) the option rights of the parties in respect of the Transactions."

## ANNEX 14

### 2001 Margin Provisions

When a 2001 Margin Supplement supplements, forms part of, and is subject to, a Covered Master Agreement and the 2001 Margin Provisions, the terms of the 2001 Margin Provisions are deemed to be amended as follows:

- (a) **Erratum dated March 28, 2002.** For the avoidance of doubt, the 2001 Margin Provisions apply as amended by the Erratum dated March 28, 2002.
- (b) **Default.** Section 3.2(a) is amended to delete clauses (i) and (ii), to re-number clause (iii) as clause (ii) and to insert immediately before it the following new clause (i):

"(i) in the case of an ISDA Master Agreement, an amount equal to the Value of the Margin Received held by the Taker will be an Unpaid Amount due from the Taker to the Provider for purposes of Section 6(e) of the ISDA Master Agreement, for which purpose the Value of the Margin Received shall be determined on the basis that the Valuation Percentage applicable to each item of Eligible Margin is 100%."

- (c) **ISDA Master Agreement.** The following definition replaces Section 5.25:

"**Section 5.25 ISDA Master Agreement.** "ISDA Master Agreement" means an agreement in the form of the 1992 ISDA Master Agreement (Multicurrency – Cross Border), published by the International Swaps and Derivatives Association, Inc. (together with any elections and amendments thereto agreed by the parties)."