

Master Securities Forward Transaction Agreement

Guidance Notes

In connection with its ongoing project to create and update standardized agreements for use in securities transactions, The Bond Market Association (“the Association”) is publishing a Master Securities Forward Transaction Agreement (the “Master Agreement”). The goal of publishing the Master Agreement is to create a standardized document that will find widespread acceptance by market participants. To that end, the Master Agreement is designed to provide a basic contractual framework for forward and other delayed-delivery transactions involving mortgage-backed and asset-backed securities. The Master Agreement offers the parties substantial flexibility, through the use of Annexes, to structure their relationship beyond this basic framework. For example, the parties may elect to broaden the scope of the Master Agreement to cover other types of securities (including non-U.S. securities) and to provide for collateralization of one or both parties’ obligations.

The Master Agreement provides, on a reciprocal basis, the basic legal protections that are essential for forward transaction market participants, including default remedies and standard provisions for delivery of and payment for securities covered by the Master Agreement. The default remedies are intended to bolster those remedies that a party may have under common law or otherwise (*e.g.*, through provisions contained in confirmations). Unless provisions for collateral are included through the use of an Annex, the Master Agreement does not provide for either party to secure its obligations under the Master Agreement. In comparison with some existing models, the Master Agreement has been refined to streamline outdated, redundant or littleused provisions and otherwise reflect user experience with forward transaction agreements.

To further increase the likelihood of widespread market acceptance, the Master Agreement has been drafted with an eye to the following issues—

Reciprocity. While many forward transaction agreements currently in use are largely unilateral in nature, the Master Agreement as drafted is a bilateral document, with identical rights and obligations attaching to each party, whether acting as Buyer, Seller, or both. This reciprocity should increase the comfort of parties with the Master Agreement’s provisions and thereby help establish it as an industry standard. The parties may wish, however, to provide for certain provisions, particularly credit-related provisions, to apply to only one of the parties. This may be accomplished through the use of the Annexes.

Standardization. As noted, this Master Agreement is being developed in connection with the creation and updating of other master form agreements of The Bond Market Association. As a result, the drafters of the Master Agreement have, whenever provisions are common to these Master Agreements, generally conformed the structure and language of the Master Agreement with that of other Association agreements, notably the Master Repurchase Agreement (1996 version). The Association hopes that the familiarity of parties with existing

master agreements will increase their comfort with and willingness to use this Master Agreement in their securities forward transactions. The Association wishes to emphasize that any distinctions between this Master Agreement and other Association agreements formerly or presently in use are not intended to create any negative implications regarding this Master Agreement or such other agreements.

Standardization of Frequently Negotiated Provisions. The Schedule of Optional Provisions attached hereto has been prepared for use in connection with Annex I to the Master Agreement (Supplemental Terms and Conditions). This Schedule contains standard language that parties may elect to use in connection with frequently negotiated supplemental terms, such as provisions regarding submission to jurisdiction and waiver of immunity. In addition, an optional Annex, Annex III, contains mark-to-market provisions for arrangements involving collateral for forward transactions. Finally, an Annex IV has been prepared for use in Transactions where a party is acting as agent for one or more disclosed principals.

The Master Agreement is being circulated in a printed form. The Association authorizes and encourages market participants to use the printed form of the Master Agreement if they wish to do so, but the Master Agreement is not intended, and should not be taken, as legal advice. The Association will permit the use of an amended form of the Master Agreement only if the amendments to the Master Agreement are made in such a way as to be clearly identifiable, e.g., through the use of a supplement, through provisions in Annex I, or in a mark-up of the printed form. Each party using the Master Agreement should assure itself, through review by its own counsel and the implementation of any necessary supplemental provisions in Annex I, that it is authorized to enter into securities forward transactions and that, as a business and as a regulatory matter, the Master Agreement is appropriate for its use.

To assist users of the Master Agreement, the Association has prepared the following guidance notes that explain and summarize on a section-by-section basis the key elements of the Master Agreement. These guidance notes should not be relied upon by any party to determine, without appropriate legal, accounting or other relevant professional advice, whether the Master Agreement is suitable to its particular circumstances and needs. Capitalized terms not otherwise defined have the meanings given to them in the Master Agreement.

Paragraph 1: Applicability

Paragraph 1 delineates the general scope and applicability of the Master Agreement. The Master Agreement applies to all transactions between the parties for the purchase and sale of “Securities” pursuant to delayed delivery transactions. “Securities” is defined as mortgage-backed and other asset-backed securities, as well as any other types of securities the parties specify in Annex I. Delayed delivery transactions include not only forward purchase and sale transactions, but also when-issued, TBA, and dollar roll transactions involving Securities. Each such transaction is referred to in the Master Agreement as a “Transaction.”

This Paragraph also contains the language providing an opportunity for the parties to establish supplemental terms and conditions in Annex I or other Annexes. Although it is not anticipated that supplemental terms and conditions would be desirable in every case, some parties may, as noted above, find it useful to specify certain business aspects of their relationship, provide for collateralization or include particular provisions required by relevant regulatory authorities.

Paragraph 2: Definitions

The definitions in Paragraph 2 cover the principal recurring terms used in subsequent portions of the Master Agreement.

Act of Insolvency

The language of this definition mirrors that in The Bond Market Association Master Repurchase Agreement (July 1996 version), and encompasses those events typically considered to be clear indications of a party's inability to perform. The occurrence of an Act of Insolvency is an Event of Default under Paragraph 7 of the Master Agreement.

Business Day

The definition of Business Day reflects the applicability of the Master Agreement to mortgage-backed and asset-backed securities. Parties that expand the Master Agreement through Annex I to cover additional types of Securities should consider whether the definition of Business Day is appropriate for those types of Securities.

Buyer and Seller

Unless otherwise provided in Annex I, a party may act as Buyer, Seller, or both under the Master Agreement.

Collateral and Forward Collateral

If a party ("Pledgor") is obligated to pledge "Forward Collateral" to the other pursuant to any Annex, then it also pledges, pursuant to Paragraph 4 of the Master Agreement, other property in the Pledgee's possession or control (together with the Forward Collateral, the "Collateral"). Paragraph 7 of the Master Agreement gives the Pledgee remedies upon an Event of Default in respect of all Collateral.

Settlement Date and Trade Date

These definitions are used in the Master Agreement in setting forth when the parties are deemed to repeat certain representations, when certain Events of Default are triggered and when the mark-to-market provisions of Annex III might require the return of Forward Collateral.

Paragraph 3: Initiation and Confirmation

Paragraph 3 describes the mechanics of initiating and confirming a Transaction. The Master Agreement contemplates that either party may initiate a Transaction orally or in writing and that one or both parties (depending typically on whether the Transaction is between a dealer and a customer or between two dealers) shall deliver a Confirmation of the Transaction. The Confirmation may be delivered in writing or as otherwise agreed in accordance with market practice. This formulation is designed to allow flexibility in adapting to technological and regulatory developments, and, in particular, to allow for electronic Confirmations.

Parties may wish to specify in Annex I who will be confirming Transactions, how "promptly" objection to a Confirmation must be made, and what information should be set forth in the Confirmation. In addition, if both parties will be confirming Transactions, they may find it useful to establish a rule of precedence to govern occasions in which their respective Confirmations contain inconsistent terms.

Paragraph 4: Security Interest

Paragraph 4 provides that if a party is obligated to pledge Forward Collateral pursuant to Annex III of the Master Agreement, it also grants the other a first security interest in such Forward Collateral and any other Collateral, in each case as security for the Pledgor's obligations under the Master Agreement. The Pledgee of the Collateral is entitled to repledge such Collateral, but the Pledgee is not relieved of its obligation to transfer Collateral back to the Pledgor when required under the Master Agreement.

Paragraph 5: Payment and Transfer; Market Practice

Paragraph 5 sets forth the manner in which securities and funds are to be transferred. Unless otherwise agreed, each Transaction is to be settled on a delivery-versus-payment basis, and securities are to be transferred in suitable form for transfer, over the federal book-entry system or any other mutually agreeable method. Parties may wish to provide delivery instructions in Annex I or Annex II to the Master Agreement.

This Paragraph also requires each party to conform to market practice for a particular type of Transaction, including the provisions of the *Uniform Practices for the Clearance and Settlement of Mortgage-Backed Securities and Other Related Securities*, provided that such market practice does not conflict with any express terms of any Transaction as agreed between the parties thereto or any rules of a clearing organization, to the extent the rules of such clearing organization apply to the parties and by their terms supersede the provisions of the Master Agreement.

Paragraph 6: Representations

This Paragraph sets forth basic representations, to be made by both parties, concerning the authority and ability of the parties to enter into the Master Agreement and any Transactions thereunder and perform any obligations that arise with respect thereto. The parties are deemed to repeat the representations as of the Trade Date of any Transaction. The Paragraph requires disclosure of a party's status as an agent whenever it is not acting as a principal, and provides for the possibility that parties may wish to utilize Annex IV in Transactions where a party is acting as agent for one or more disclosed principals. Should the parties wish to provide for additional representations to be made by one or both parties, they may be added in Annex I.

Paragraph 7: Events of Default

Paragraph 7 specifies four Events of Default, which can be summarized as follows:

- (i) the failure to perform on the Settlement Date;
- (ii) the occurrence of an Act of Insolvency;
- (iii) the making of a false representation; and
- (iv) the admission by a party of its inability or intention not to perform its obligations under the Master Agreement.

The parties may add events to these standard Events of Default in Annex I, and Annex III contains additional Events of Default in connection with collateral arrangements.

These events do not provide for any prior notice or cure period. This lack of any notice and cure period has been made because market participants have found notice requirements to

be a potential obstacle to the swift exercise of their rights where a default occurs in the context of an impending Act of Insolvency. In this regard, the Association notes that a similar Event of Default provision under the August 1987 version of the Association Master Repurchase Agreement has not generally been invoked to deal with “fails” that occur in the ordinary course of business.

The default provisions of subparagraph 7(a) give the nondefaulting party the option to declare an Event of Default. The notice provision is intended to make clear that, while the nondefaulting party is required to give notice as promptly as practicable of its option to declare an Event of Default, its inability to do so (e.g., as a result of a failure by the defaulting party to answer its telephones or maintain other lines of communication) will not preclude the immediate exercise of the nondefaulting party’s rights. Furthermore, this option is automatically deemed to be exercised immediately and the notice requirement does not apply upon the occurrence of an Act of Insolvency.

The Agreement grants the nondefaulting party several remedies upon an Event of Default. Under Paragraph 7(a), the nondefaulting party may (i) close out any and all Transactions under the Master Agreement, whereupon the defaulting party is liable to nondefaulting party for any resulting loss, damage, cost and expense, including damages equal to the cost of entering into replacement transactions (whether or not actually entered into), (ii) set off any obligations to the defaulting party against any obligation of the defaulting party to the nondefaulting party under the Master Agreement, (iii) sell in a recognized market (or otherwise in a commercially reasonable manner) any non-cash Collateral and apply the proceeds to the obligations of the defaulting party under the Master Agreement or, in its sole discretion, elect to give the defaulting party credit for any Collateral and (iv) take any other necessary or appropriate action.

Paragraph 7(b) addresses the situation where the defaulting party is the pledgee of Collateral, and requires the defaulting party to transfer any Collateral held by it to the nondefaulting party upon an Event of Default. The nondefaulting party may purchase Replacement Securities in the event that any Collateral is not so transferred.

Paragraph 7(c) provides that the defaulting party is liable to the nondefaulting party for reasonable legal or other expenses incurred by the nondefaulting party in connection with an Event of Default, damages equal to the cost (including fees, expenses and commissions) of entering into replacement transactions and entering into or terminating hedge transactions, and any other loss, damage, cost or expense directly arising or resulting from the occurrence of an Event of Default in respect of a Transaction regardless of whether the nondefaulting party enters into or terminates, as the case may be, any such replacement or hedge transaction.

Paragraph 7(d) provides for default interest at the Prime Rate on all amounts owed by the defaulting party.

Paragraph 7(e) provides that, unless otherwise agreed by the parties, any securities included in the Collateral are instruments traded in a “recognized market,” and that, in the absence of a generally recognized source for prices or bid or offer quotations for any Security, the nondefaulting party is entitled in its sole discretion to establish the source therefor. It also provides that all prices, bids and offers shall be determined together with accrued principal

and/or interest thereon, except to the extent contrary to market practice with respect to the relevant securities (e.g., Government National Mortgage Association (GNMA) securities).

Finally, Paragraph 7(f) serves to accord the nondefaulting party all the rights and remedies provided to a secured party under the New York Uniform Commercial Code (whether or not the NYUCC would otherwise be applicable) and any other rights under any other applicable law or agreements.

Paragraph 8: Single Agreement

This paragraph clarifies that all Transactions the parties enter into under the Master Agreement constitute a single business and contractual relationship. Thus, the parties may set off claims and net payments, deliveries and other transfers in respect of any one Transaction against all other Transactions under the Master Agreement.

Paragraph 9: Risk of Loss

This paragraph sets forth in general terms the risk of loss of engaging in when-issued, TBA, dollar roll and other transactions that result or may result in the delayed delivery of securities, and that, before engaging in Transactions, each party should consult its own business, legal, tax and accounting advisers with respect to the proposed Transaction and examine the contractual arrangements contained in the Master Agreement carefully to determine all risks and whether the Transaction is appropriate for that party. It is intended that neither party to the Master Agreement will be relying on the advice of the other, that each party will have made its own decisions regarding the entering into of Transactions under the Master Agreement and that each party understands the risk, terms and conditions of each Transaction. To this end, each party agrees that the other party is not acting as a fiduciary or an advisor to it in respect of the Master Agreement or any Transaction; parties may wish to consider supplemental provisions in Annex I to the Master Agreement in this regard.

Paragraphs 10-14: Miscellaneous

Paragraphs 10 through 14 contain standard provisions on a variety of matters typically included in securities forward agreements and generally conform to the provisions of other Association standard agreements. It is intended in Paragraph 10 that notices will generally be effective upon receipt, with standard exceptions used by market participants covering circumstances in which a notice is received by a party on a day on which it is not open for business or in which the sender of the notice uses reasonable efforts to provide notice but is unable to prove receipt. Paragraph 13 provides for the application of New York law based upon a determination that, among the numerous available U.S. jurisdictions, the greatest percentage of securities forward transactions occur within it and it has a highly developed body of commercial and securities law.

Paragraph 11 establishes that the Master Agreement generally supersedes any agreement in effect between the parties entering into the Agreement. However, to the extent that the parties to the Master Agreement are members of a clearing organization (e.g., the MBS Clearing Corporation) or other entity that has rules that by their own terms apply to the Transactions and supersede any provisions in the Master Agreement, it is intended that such rules would prevail over any inconsistent provisions of the Master Agreement.

Paragraph 15: Use of Employee Plan Assets

This Paragraph contains only those provisions that the Association views as essential in light of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). Because there are a variety of prohibited transactions and exemptions therefrom that might apply if one of the parties is a Plan Party, depending on the exact nature of the delayed-delivery transaction being entered into, the Association does not feel that more specific provisions are useful in this general Master Agreement. Some parties may find the inclusion of additional provisions relating to ERISA desirable under some circumstances and are invited to include any such provisions in Annex I.

Paragraph 16: Intent

This Paragraph makes clear the parties’ intent in respect of the rights of the parties under various federal statutes in the context of a bankruptcy or other default. Paragraph 16(a) provides that Transactions are intended to fall within the Bankruptcy Code definition of a “securities contract,” and Paragraph 16(b) provides that a party’s remedies in an Event of Default constitute a contractual right to liquidate the Transaction, as defined in the Bankruptcy Code.

Paragraph 16(c) confirms the parties’ understanding that, if one or both of them is an “insured depository institution” (as defined in the Federal Deposit Insurance Act (“FDIA”)), then each Transaction is a “qualified financial contract” (as defined in the FDIA), to the extent applicable. This provision is intended to assist parties involved in Transactions with an insured depository institution in obtaining the benefits of the FDIA protections applicable in the event that the Federal Deposit Insurance Corporation is appointed conservator or receiver.

Finally, Paragraph 16(d) confirms the parties’ understanding that, if both of them are “financial institutions” (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991 (“FDICIA”)), then the Master Agreement is a “netting contract” (as defined in FDICIA) and each payment entitlement and payment obligation is a “covered contractual payment entitlement” or “covered contractual payment obligation,” respectively. This provision is intended to assist financial institutions in obtaining netting of their obligations under the Master Agreement in the context of a bankruptcy or other default.

Annex I: Supplemental Terms and Conditions

The Annexes to the Master Agreement are formatted in a manner similar to most Annexes to other Association agreements, namely, they do not contain signature lines and they contain blank spaces at the beginning in which to insert the names of the parties and the date of the agreement. Parties should consider whether they also wish to require separate signatures on each Annex, in particular to help prove, as an evidentiary matter, that a particular party has entered into a particular Annex. Even if not all Annexes are signed, the parties may wish to sign Annex I, which has been drafted to permit the parties to designate the Annexes that will apply to Transactions under the Master Agreement.

Annex I would also include the identification of securities other than mortgage-backed and asset-backed securities that constitute “Securities” under the Master Agreement, and any provisions relating to Transactions involving such Securities, such as specific provisions for settlement, taxes (in the case of international securities or cross-border transactions) and the like.

Schedule of Optional Provisions for Annex I

The Schedule of Optional Provisions attached hereto contains forms of clauses that parties may elect to use in connection with Annex I of the Master Agreement. These clauses provide standard language for frequently negotiated supplemental terms.

The schedule includes a provision under which the parties submit to the non-exclusive jurisdiction of any United States Federal or New York State court and waive any immunity (sovereign or otherwise) with respect to actions brought under the Master Agreement. This provision is designed to address in particular the possibility that foreign parties using the Master Agreement might not otherwise be subject to such jurisdiction.

Additional Events of Default have been provided that parties may elect to use. A failure to perform as result of sovereign action or inaction (directly or indirectly) would trigger an Event of Default. In addition, a cross-default provision is provided that covers the default by either party with respect to any other agreement between the parties. Parties may in some cases also wish to require non-U.S. signatories to appoint an agent in the United States for the purposes of receiving service of process.

In general, parties should also keep in mind the need to specify the circumstances in which the failure to perform any covenant contained in an Annex to the Master Agreement will constitute an Event of Default.

Two provisions relate to the supply of financial statements and a representation and warranty with respect thereto.

Finally, the parties may wish to include a provision clarifying that the failure to request the transfer of any Forward Collateral pursuant to Annex III shall not be deemed to have any impact on the value of any Forward Collateral for purposes of later margin calls or in the exercise of remedies.

Again, the Association emphasizes that it does not intend by the inclusion of these provisions in the Schedule of Optional Provisions to encourage their use or discourage the use of provi-

sions not included in this Schedule. These provisions are merely meant as examples of provisions frequently negotiated and included in securities forward agreements, but the use of which is not so universal as to warrant inclusion in the body of an Master Agreement containing only general terms.

Annex II: Names and Addresses for Communication between the Parties

This Annex provides for the parties to list the names and addresses to be used for all notices, statements, demands or other communications between the parties. The parties may wish to provide in Annex I for additional instructions for wire transactions or other deliveries.

Annex III: Mark-to-Market Provisions

The central objective of these provisions is to assist parties in determining the exposure each party has under the Transactions and to impose margin obligations during the period between the Trade Date and the Settlement Date for all Transactions. Pursuant to this Annex, a party is entitled to call for U.S. Treasury securities or cash as margin having a Market Value at least equal to its “Net Unsecured Forward Exposure”, which is defined as the net, unsecured value of all Transactions, determined in accordance with market practice. The parties should consider whether the standards for determining the market value of the Transactions should be set forth in greater detail.

This Annex incorporates a margin notice deadline (10:00 a.m. on any Business Day) requirement for same-day satisfaction of margin maintenance obligations in connection with Transactions. If the margin notice deadline is met, the party receiving a notice of a margin call must satisfy its margin maintenance obligation no later than the close of business in the relevant market on the same business day on which notice is received. If the margin notice deadline is not met, the party receiving such notice has until the close of business on the next business day following the business day on which notice is received.

The parties may agree upon a minimum dollar amount or percentage threshold below which margin calls will not be permitted. The parties may also agree, with respect to any or all Transactions, to provide for Transaction-by-Transaction margin maintenance obligations. Finally, the parties may agree that one party will deposit a minimum dollar amount or percentage with the other party, either on an initial or ongoing basis.

Another provision requires Forward Collateral (together with any income thereon and proceeds thereof) to be transferred by the holder thereof upon the occurrence of the relevant Settlement Date and the performance by the parties of their respective obligations on such date. The transfer need not be made if such transfer would trigger margin maintenance obligations. Also, the pledgor of Forward Collateral may, subject to the agreement of the pledgee, substitute other securities for any pledged securities Forward Collateral.

This Annex provides an additional Event of Default for Transactions: the failure, after one Business Day’s notice, to perform any covenant or obligation under this Annex. Through the incorporation of “Forward Collateral” into the definition of “Collateral” in Paragraph 4 of the Master Agreement, the nondefaulting party is entitled, as part of its rights under Paragraph 7 of the Master Agreement upon an Event of Default, to sell any or all Forward Collateral and apply the proceeds thereof to, or give the defaulting party credit for such Forward Collateral against, any amounts owing by the defaulting party.

Alternative Mark-to-Market Provisions

The mark-to-market provisions impose mutual obligations, with both parties agreeing to pledge Forward Collateral to the other to address any Net Unsecured Forward Exposure of the other party. The Association has also prepared an alternative Annex III for use in those situations where the parties decide not to impose mutual obligations. Although almost all the provisions that appear in the bilateral mark-to-market Annex III appear in this alternative Annex III as well, the obligations under this alternative Annex III are not bilateral, but rather are owed from Party B, the pledgor, to Party A, the pledgee. Thus, only Party B will pledge Forward Collateral under this Annex (and only Party A will hold a security interest in any Collateral), to secure the net exposure under all Transactions, unless otherwise agreed. Again, the parties should consider whether the standards for determining the market value of the Transactions should be set forth in greater detail.

This Annex also provides for additional Events of Default, namely, (i) the failure by Party B to perform any obligation under any provision of the Annex, (ii) the default by Party B or any affiliate of Party B under any transaction or agreement between Party A or affiliate of Party A and Party B or any affiliate of Party B and (iii) the default by Party B or any affiliate of Party B with respect to any indebtedness or other agreement creating such indebtedness (parties may wish to add a provision specifying that any such default must be in excess of a minimum amount). Likewise, the Annex provides that an Event of Default under the Master Agreement constitutes an Event of Default under all other agreements between Party A, any affiliate of Party A, Party B or any affiliate of Party B. Although this Annex provides for a “cross-default” to transactions with Party B’s affiliates, it does not provide for setoff between those transactions and transactions with Party B or for any assets of Party B’s affiliate to secure the obligations of Party B, in light of regulatory and other concerns that could arise in such an arrangement. The Annex does, however, provide that all Collateral secures not only Party B’s obligations under the Master Agreement, but also all obligations of Party B under any other agreement with Party A or any affiliate of Party A. Furthermore, upon an Event of Default, Party A and its affiliates are entitled to exercise default remedies in all transactions with Party B and its affiliates, and may set off obligations in connection with all transactions with Party B (but not with Party B’s affiliates), and set off obligations in connection with all transactions with a particular affiliate of Party B (but not with Party B or another affiliate of Party B).

Party B also agrees in this Annex to grant adequate assurances of performance, including pledging initial or additional Collateral, whenever Party A has reasonable grounds for insecurity as to the ability of Party B or an affiliate of Party B to perform any obligation it might have under any transaction or agreement with Party A or any affiliate of Party A. Party B must provide adequate assurances of performance within a reasonable time after such demand.

Annex IV: Party Acting as Agent

Annex IV adapts the terms of the Master Agreement to govern agency Transactions. Annex IV addresses a number of practical and legal issues in this context. The central objective of Annex IV is to assist parties entering into Transactions in determining who, as between the agent and its principal(s), is liable for performance under the Master Agreement. It has been modeled after an Annex to the Master Securities Loan Agreement covering agency securities loan transactions, which also forms the basis for a similar Annex to the Master Repurchase Agreement (1996 version).

Paragraphs 1 and 2 require the party acting as agent to disclose the identity of the principal(s) for whom it intends to act as agent and to represent and warrant that each such principal has authorized it to execute and deliver the Master Agreement, to enter into the Transactions and to perform the obligations of the principal(s) thereunder.

Paragraph 3 sets forth general rules limiting the agent's liability under the Master Agreement. Where the agent has, through compliance with the provisions of the Master Agreement, taken the steps necessary to permit the other party to the Master Agreement to assess the creditworthiness of its principal(s), the agent's obligations do not include a guarantee of performance by its principal(s) and the other party's remedies do not include a right of setoff with respect to any obligations between the agent, acting for its own account, and the other party.

Paragraph 4 provides that when an agent acts on behalf of multiple principals, the Master Agreement presumes that the Transactions will be treated as multiple Transactions on behalf of separate principals, unless the parties agree in writing to treat the Transactions as if they were Transactions by a single principal. This Paragraph also sets forth the rights and obligations of the agent with respect to each situation.

Paragraph 5 sets forth a general rule of construction for the terms "party," "parties," "Seller" and "Buyer," as the case may be, in the Master Agreement in the context of agency Transactions, subject to the limitation of an agent's liability in Paragraph 3 of Annex IV. This Paragraph explicitly acknowledges that each principal has the rights, responsibilities, privileges and obligations of a "party" that enters directly into Transactions with another party, and that the agent has been designated as the sole agent of each principal for performance of such party's obligations to the other party, and for receipt of performance by the other party in connection with the Transactions. The terms "party" and "either party" are deemed to refer to both the agent and the principal(s), including inter alia, in the context of a default. The effect of this construction of the terms "party" and "parties" is that a bankruptcy or similar default by the agent will also be deemed a default by the principal(s).

Schedule of Optional Provisions

[]. **Submission to Jurisdiction and Waiver of Immunity.**

- (a) Each party hereto irrevocably and unconditionally (i) submits to the non-exclusive jurisdiction of any United States Federal or New York State court sitting in Manhattan, and any appellate court from any such court, solely for the purpose of any suit, action or proceeding brought to enforce its obligations under the Agreement or relating in any way to the Agreement or any Transaction under the Agreement and (ii) waives, to the fullest extent it may effectively do so, any defense of an inconvenient forum to the maintenance of such action or proceeding in any such court and any right of jurisdiction on account of its place of residence or domicile.
- (b) To the extent that either party hereto has or hereafter may acquire any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from setoff or any legal process (whether service or notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) with respect to itself or any of its property, such party hereby irrevocably waives and agrees not to plead or claim such immunity in respect of any action brought to enforce its obligations under the Agreement or relating in any way to the Agreement or any Transaction under the Agreement.

[]. **Additional Events of Default.** In addition to the Events of Default set forth in Paragraph 7 of the Agreement, it shall be an “Event of Default” if:

- (a) as a result of sovereign action or inaction (directly or indirectly), a party becomes unable to perform any absolute or contingent obligation to make a payment or transfer or to receive a payment or transfer in respect of any Transaction under the Agreement or to comply with any other material provision of the Agreement relating to such Transaction; or
- (b) either party defaults with respect to any other agreement between the parties.

[]. **Representations and Warranties.** In addition to the representations and warranties made pursuant to Paragraph 6 of the Agreement, each party in addition represents and warrants to the other party that no material adverse change in such party’s financial condition has occurred since the date of the most recent financial statements furnished by such party to the other party, and such financial statements are complete and correct and fairly present such party’s financial condition and results of operations as at and for the period ended on the date thereof, all in accordance with generally accepted accounting principles and practices applied on a consistent basis.

[]. **Provision of Financial Statements.** Each party agrees to furnish the other party promptly after the end of each [semi-annual period] [fiscal quarter] copies of its balance sheet and its income statement for the interim period then ended, certified, subject to changes resulting from normal, recurring year-end audit adjustments, by a principal financial officer, and to furnish the other party as soon as available after the end of each fiscal year copies of its balance sheet and income statements as of the end of such year

and of its changes in financial position for the said fiscal year as certified by its independent public accountants.

- []. **Marking of Collateral.** In no event shall the failure of either party to request the transfer of any Forward Collateral pursuant to any Annex to the Agreement be deemed to have any impact of the value of any Forward Collateral, whether for purposes of such Annex or in the exercise of remedies pursuant to Paragraph 7 of the Agreement.



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