



International Swaps and Derivatives Association, Inc.

ISDA ECP GUARANTOR KEEPWELL TERMS

published on April 18, 2013

by the International Swaps and Derivatives Association, Inc.

(a) Incorporation

These ISDA ECP Guarantor Keepwell Terms (“**Keepwell Terms**”) may be incorporated into any agreement, document, instrument, confirmation or other writing, whether in physical or electronic form (“**Writing**”) by indicating in the Writing that, or the extent to which, these Keepwell Terms are incorporated into or otherwise applicable to such Writing. These Keepwell Terms will be deemed to be part of or otherwise applicable to such a Writing to the same extent as if set forth therein except as otherwise modified or provided in that Writing. Terms defined herein shall have their meanings solely for purposes of these Keepwell Terms unless otherwise provided in the relevant Writing.

(b) Keepwell

Each Qualified Keepwell Provider with respect to a Swap Counterparty hereby absolutely, unconditionally and irrevocably undertakes to provide such funds or other credit support as may be needed by any Supported Guarantor of such Swap Counterparty from time to time to honor all of such Supported Guarantor’s obligations under any Guaranty in respect of Swap Obligations of such Swap Counterparty (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such party’s obligations hereunder voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of a Qualified Keepwell Provider with respect to any Swap Counterparty under this paragraph shall remain in full force and effect until all Swap Obligations of such Swap Counterparty in respect of which a Supported Guarantor has provided a Guaranty have been indefeasibly paid and performed in full. The parties intend this provision to constitute, and this provision shall be deemed to constitute, a guarantee of the obligations of, and a “keepwell, support, or other agreement” for the benefit of, each Supported Guarantor for all purposes of the CEA.

(c) Definitions

As used herein, the following terms shall have the following meanings:

“**CEA**” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“**CFTC**” means the Commodity Futures Trading Commission.

“**DCM**” means a board of trade designated as a contract market under Section 5 of the CEA.

“**ECP**” means an “eligible contract participant” as defined in the CEA and regulations thereunder.

“**Eligibility Date**” means, with respect to a Guarantor and a Swap, the date on which a Guaranty becomes effective with respect to such Swap. For the avoidance of doubt, the Eligibility Date shall be the date of the execution of a Swap if the corresponding Guaranty is then in effect, and otherwise it shall be the date of execution and delivery of such Guaranty unless the Guaranty specifies a subsequent effective date.

“**Guarantor**” means any person or entity issuing or providing a Guaranty.

“**Guaranty**” means a guaranty or assumption of liability as surety with respect to obligations of one or more Swap Counterparties.

“**Qualified Keepwell Provider**” means with respect to a Swap Counterparty, each person specified as such in this Writing, and if no such persons are specified, each Guarantor in respect of Swap Obligations of such Swap Counterparty that is, as of the Eligibility Date, (i) a corporation, partnership, proprietorship, organization, trust, or other entity other than a “commodity pool” as defined in Section 1a(10) of the CEA and CFTC regulations thereunder that has total assets exceeding \$10,000,000 or (ii) an ECP that can cause another person to qualify as an ECP on the Eligibility Date under Section 1a(18)(A)(v)(II) of the CEA by entering into a keepwell.

“**Supported Guarantor**” means with respect to a Swap Counterparty, each person specified as such in this Writing, and if no such persons are specified, each Guarantor in respect of Swap Obligations of such Swap Counterparty that is, as of the Eligibility Date, (i) a corporation, partnership, proprietorship, organization, trust or other entity other than a “commodity pool” as defined in Section 1a(10) of the CEA and CFTC regulations thereunder that would not be an ECP on the Eligibility Date but for the effect of these Keepwell Terms or (ii) a person that the CFTC has determined is eligible to qualify as an ECP under Section 1a(18) of the CEA by virtue of being a beneficiary of a keepwell and that would not qualify as an ECP but for the effect of these Keepwell Terms.

“**Swap**” means any “swap” as defined in Section 1a(47) of the CEA and regulations thereunder other than (i) a swap entered into on, or subject to the rules of, a DCM, or (ii) a commodity option entered into pursuant to CFTC Regulation 32.3(a).

“**Swap Counterparty**” means any party hereto who is party to a Swap with one or more Swap Providers, whether at inception, by novation, or otherwise, including any successors to such party.

“**Swap Obligation**” means any obligation to pay or perform under any agreement, contract or transaction that constitutes a Swap between a Swap Counterparty and a Swap Provider of such Swap Counterparty.

“Swap Provider” with respect to a Swap Counterparty, means the person or persons specified as such in this Writing, and if no such persons are specified, each person who is the counterparty to a Swap with such Swap Counterparty hereunder, whether at inception, by novation, or otherwise, including any successors to such party.