



International Swaps and Derivatives Association, Inc.

2011 CONVENTION ON PORTFOLIO RECONCILIATION AND THE INVESTIGATION OF DISPUTED MARGIN CALLS

The International Swaps & Derivatives Association, Inc. ("**ISDA**") has published this 2011 Convention on Portfolio Reconciliation and the Investigation of Disputed Margin Calls (this "**Convention**") to enable parties to a 1992 ISDA Master Agreement (Multicurrency – Cross Border) or an ISDA 2002 Master Agreement (each, a "**Master Agreement**"), in each case incorporating a Covered Credit Support Annex (as defined below), to confirm their intentions in respect of portfolio reconciliations and in respect of certain disputes arising under that Covered Credit Support Annex.

Part 1 (Portfolio Reconciliation) of this Convention sets out specific rights and obligations of the parties applicable to portfolio reconciliations in respect of Covered Transactions under a Covered Master Agreement (each as defined below).

Part 2 (Disputed Margin Calls) of this Convention sets out specific rights and obligations of the parties applicable to Disputes arising under a Covered Credit Support Annex (but not to portfolio reconciliations under a Covered Master Agreement in a context other than such a Dispute).

Part 3 (General Provisions) of this Convention sets out general rights and obligations of the parties applicable to portfolio reconciliations under a Covered Master Agreement and to Disputes arising under a Covered Credit Support Annex.

Accordingly, a party (a "**Party**") that has entered and/or anticipates entering into a Covered Master Agreement may incorporate the terms of this Convention and be bound by its terms by adhering to the 2011 ISDA Portfolio Reconciliation and Dispute Resolution Protocol published by ISDA (the "**Protocol**") or by including suitable amendments in that Covered Master Agreement.

Unless otherwise specified in this Convention, references in this Convention to "paragraphs" or "Parts" are to paragraphs or Parts of this Convention. Capitalized terms used herein shall have the meaning given to them in paragraph C3.6 of this Convention or, if not defined therein, in the Protocol, the relevant Covered Master Agreement or Covered Credit Support Annex, as applicable.

PART 1**PORTFOLIO RECONCILIATION**

For the purposes of each Covered Master Agreement, the Parties agree as follows:

C1.1 Portfolio Data and Portfolio Reconciliation

- (a) **Portfolio Data.** On each Data Exchange Date, each Party will provide Portfolio Data and Margin Data to the other Party. For the purposes of this Convention, Portfolio Data or Margin Data will be considered to have been provided to the other Party (and the other Party will be considered to have received the Portfolio Data or Margin Data, as applicable) if it has been provided to a third party service provider agreed to between the Parties for this purpose.
- (b) **Portfolio Reconciliation.** On or as soon as reasonably practicable after each Data Exchange Date on which Portfolio Data or Margin Data is provided by each Party, either Party may perform a Portfolio Reconciliation in respect of Portfolio Data or Margin Data provided pursuant to this Part 1.
- (c) **Data Exchange Requirement Notice.** From time to time, either Party (the "**Requiring Party**") may give to the other Party a notice (a "**Data Exchange Requirement Notice**") in which the Requiring Party represents that it is (in the Requiring Party's good faith belief) necessary for both Parties to exchange Portfolio Data or Margin Data, as applicable, or to perform a Portfolio Reconciliation (or both), in order for:
- (i) the Requiring Party to comply with any law, rule or regulation mandatorily applicable to the Requiring Party or for the Requiring Party to obtain or comply with any governmental or other consent mandatorily applicable to the Requiring Party; or
 - (ii) both Parties to comply with any voluntary commitment made by both Parties (whether individually or otherwise) to one or more competent regulatory, self-regulatory or supervisory authorities with supervisory or regulatory responsibility for or oversight of the Parties.

A Data Exchange Requirement Notice will specify the frequency within which such exchanges or Portfolio Reconciliations are required in accordance with the law, rule, regulation or commitment, as applicable, referred to above, which may be "Daily", "Weekly", "Monthly", "Quarterly" or at any other applicable frequency. If a frequency other than "Daily", "Weekly" or "Monthly" is specified in a Data Exchange Requirement Notice, the Parties will negotiate in good faith to agree on a Data Exchange Date that complies with the relevant frequency.

- (d) **Data Exchange Request Notice.** From time to time, either Party (the "**Requesting Party**") may give to the other Party a notice (a "**Data Exchange Request Notice**") specifying one or more days as Data Exchange Dates, provided that (i) no Data Exchange Date specified in a Data Exchange Request Notice may be less than two Joint Business Days after the date on which that Data Exchange Request Notice becomes effective and (ii) no more than one Data Exchange Date specified in any Data Exchange Request Notice may occur in any consecutive 30 calendar day period.

C1.2 Confidentiality

- (a) Each Party (a "**Recipient**") that receives Portfolio Data or Margin Data from the other Party (the "**Disclosing Party**") (whether pursuant to this Part 1 or Part 2 below) will treat all valuations (whether mark-to-market values or otherwise) comprising part of that Portfolio Data or Margin Data (the "**Confidential Information**") as confidential and will not disclose, copy, reproduce or distribute any of the Confidential Information for the benefit of, or otherwise make it available to, any person other than an Authorised Recipient (subject to paragraphs (b) and (c) below and on condition that the relevant Authorised Recipient does not disclose, copy, reproduce, distribute any of the Confidential Information for the benefit of, or otherwise make it available to any other person who is not an Authorised Recipient).
- (b) The Recipient and each other Authorised Recipient that receives Confidential Information shall use that Confidential Information solely for the Permitted Purposes and for no other purpose.
- (c) The Recipient shall procure that each Authorised Recipient to whom Confidential Information is disclosed is made aware of (in advance of any disclosure of the Confidential Information), and adheres to, the terms of this confidentiality undertaking.
- (d) The Recipient shall, in respect of any Confidential Information provided to the Recipient, be responsible for (i) any breach of this confidentiality undertaking by any Authorised Recipient and (ii) any act by any Authorised Recipient that would be a breach of the terms of this confidentiality undertaking if such Authorised Recipient were a party hereto.
- (e) The confidentiality undertakings contained in this paragraph C1.2 shall not apply to Confidential Information:
 - (i) that at the time of supply is in the public domain;
 - (ii) that subsequently comes into the public domain, except through breach of the undertakings set out in this Convention or through breach of any other duty of confidentiality owed to the Disclosing Party by the Recipient or any Authorised Recipient relating to that Confidential Information;
 - (iii) that is in the Recipient's lawful possession or that of an Authorised Recipient (as evidenced by written records) other than as a result of being provided by the Disclosing Party in accordance with this Convention;
 - (iv) that subsequently comes lawfully into the Recipient's possession from a third party who does not, to the best of the Recipient's belief, owe the Disclosing Party an obligation of confidentiality in relation to it;
 - (v) to the extent that it is required to be disclosed by law, rule or regulation or required or requested to be disclosed by a court of competent jurisdiction or by any governmental or competent taxing authority or agency or by any regulatory, self-regulatory or supervisory authority with supervisory or regulatory responsibility for or oversight of the Recipient (including without limitation, any bank examiner or securities exchange), provided in each case that such law, rule, regulation, requirement or request, as applicable, is either mandatorily applicable to the Recipient or arises in connection with any voluntary commitment made by both Parties (whether individually or otherwise) to one or more

competent regulatory, self-regulatory or supervisory authorities with supervisory or regulatory responsibility for or oversight of the Parties or is disclosed to a competent judicial authority with responsibility for or jurisdiction over an action, suit or proceeding at law or in equity relating to the enforcement of rights and obligations of the Parties under, or the actual or alleged breach by either Party of, the terms of the Covered Master Agreement or Covered Credit Support Annex; or

- (vi) to the extent that (1) the Confidential Information is subject to any other agreement between the Parties requiring the Recipient or any Authorised Recipient to keep that information confidential and (2) such other agreement permits the Confidential Information to be disclosed.

The Recipient will, to the extent reasonably practicable and not prevented from doing so by law, rule or regulation or order of a court of competent jurisdiction, give prior notice to the Disclosing Party of any disclosure made under paragraph (v) above.

- (f) Without affecting any other rights or remedies that the Disclosing Party may have, the Recipient acknowledges that the Disclosing Party may be irreparably harmed by any breach of the terms of this confidentiality undertaking and that damages alone may not necessarily be an adequate remedy. Accordingly, the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief, or any combination of these remedies, for any threatened or actual breach of its terms, and no proof of special damages will be necessary to enforce this confidentiality undertaking.
- (g) The Recipient acknowledges and agrees that the obligations set out in this confidentiality undertaking will survive termination of Transactions between the Parties. The obligations set out in this confidentiality undertaking will apply in respect of any Confidential Information for a period of one year (the "**Confidentiality Period**") after the provision of such Confidential Information.
- (h) For the avoidance of doubt, it is the intention of this confidentiality undertaking that Confidential Information will not be routinely disclosed by a Recipient to employees or other persons who are engaged in sales, trading, investment management, portfolio management or any similar activities ("**Trading Personnel**"), except for the Permitted Purposes.
- (i) The confidentiality undertaking contained in this Part 1 is cumulative and not exclusive of any other duty of confidentiality to which either Party may otherwise be subject.
- (j) For the avoidance of doubt, if the Recipient updates its accounts or records following resolution of a Dispute in accordance with this Convention or following investigation of any discrepancy identified in connection with a Portfolio Reconciliation, the Recipient's updated accounts and records will not constitute Confidential Information of the Disclosing Party.

C1.3 Responsibility for Compliance with Law and Regulation

Notwithstanding anything in this Convention to the contrary, neither Party makes any representation or warranty nor assumes any responsibility with respect to compliance by the other Party with any laws, orders or regulatory requirements to which the other Party is subject.

PART 2**DISPUTED MARGIN CALLS****C2.1 Applicability of Dispute Resolution Procedures**

For the purposes of each Covered Credit Support Annex, the Parties agree as follows:

- (a) Subject to paragraph C2.2(b) below, for so long as the Dispute Resolution Procedures apply to a Dispute, the Suspended Dispute Resolution Provisions of the Covered Credit Support Annex will not apply to that Dispute.
- (b) Any price or value determined in accordance with the Dispute Resolution Procedures in respect of any Disputed Transaction and the election or use of any method or type of valuation is intended for the purpose of the Dispute Resolution Provisions insofar as they apply to the relevant Disputed Transaction and for the purpose of resolving the relevant Dispute. Accordingly, such price, value, election or use does not constitute an agreement to amend any Transaction, an agreement to amend the value or price of any Transaction on the accounts or records of either Party or an agreement as to the value or price of any Disputed Transaction for any purpose (including, without limitation, for the purpose of determining the accounting treatment or fair value of such Disputed Transaction or any other Transaction or potential transaction or the calculation of any payments in connection with a default or termination) other than the Dispute Resolution Provisions.
- (c) Following a valuation, correction or adjustment being determined in accordance with the Dispute Resolution Procedures in relation to one or more Disputed Transactions, the Valuation Agent will recalculate the Delivery Amount or Return Amount, as applicable, using the revised, corrected or adjusted valuation for that Disputed Transaction (the "**Revised Collateral Requirement**") and will determine the difference between the Revised Collateral Requirement and the Undisputed Amount (such difference, the "**Revised Collateral Amount**"). The Valuation Agent will notify each Party (or the other Party, if the Valuation Agent is a Party) (the "**Revised Collateral Amount Notice**") of the Revised Collateral Amount as soon as possible but in any event not later than the Notification Time on the Collateral Business Day following the day on which the Results are determined. The appropriate Party will, following demand by the other Party following such Revised Collateral Amount Notice (such demand, the "**Revised Collateral Amount Demand**") and subject to the Covered Credit Support Annex (including, without limitation, the provisions of the Covered Credit Support Annex specifying the period within which such transfer must be made) and the other provisions (including, without limitation, Section 2(a)(iii)) of the Covered Master Agreement, make the appropriate transfer in an amount equal to the Revised Collateral Amount.
- (d) A Party shall not be required to make a transfer of any Disputed Amount, and the failure by a Party to make a transfer of any Disputed Amount will not constitute an Event of Default, for so long as the Dispute Resolution Procedures apply. Notwithstanding anything to the contrary herein, an obligation of a Party to make a transfer in respect of an Undisputed Amount in accordance with the Dispute Resolution Provisions or of a Revised Collateral Amount in accordance with paragraph C2.1(c) above will constitute a transfer, payment or delivery obligation, as applicable, pursuant to the Covered Credit Support Annex and accordingly a failure to make, when due, such transfer, payment or delivery will constitute an Event of Default in

accordance with the terms of the Covered Master Agreement to the same extent (and subject to the same notice requirements and grace periods) as a failure to make any other transfer, payment or delivery of Eligible Credit Support or Equivalent Credit Support under the Covered Credit Support Annex.

- (e) Upon the determination of the Results in respect of one or more Disputed Transactions, those Results will apply to those Disputed Transactions in respect of each subsequent Valuation Date, until either Party elects that such Results shall cease to apply. Notwithstanding the foregoing, if a demand has been made in accordance with paragraph C2.1(c) above, the Party that is required to make the appropriate transfer in accordance with that paragraph may not elect that the Results will cease to apply unless it has previously given irrevocable instructions to make that transfer.

C2.2 Consolidation of Margin Calls; Remedies Cumulative

- (a) **Margin Call and Counter-Call Situations.** If each Party makes a demand for the transfer of Eligible Credit Support, Equivalent Credit Support or Posted Credit Support in an amount equal to a Delivery Amount or a Return Amount, as applicable, in respect of the same Valuation Date and each Party is a Disputing Party (a "**Counter-Call**"), those Disputes will be consolidated and this Convention will apply to that consolidated Dispute as though a single Margin Call Challenge had occurred on the date of the first of those Margin Call Challenges.
- (b) **Alternative Procedures.**
- (i) Notwithstanding anything to the contrary in this Convention, the Parties may in relation to any Dispute or part of that Dispute in good faith agree to any other procedure (which may, without limitation, include the Dispute Resolution Provisions of the Covered Credit Support Annex) (an "**Alternative Procedure**") that the Parties believe will resolve that Dispute or part of that Dispute, as applicable, whether in addition to or in substitution of the Dispute Resolution Procedures set out in this Part 2.
- (ii) If the Dispute Resolution Provisions of the Covered Credit Support Annex (without regard to this Convention) are the Alternative Procedure agreed between the Parties in accordance with paragraph (i) above, then those Dispute Resolution Provisions will apply as if the day and time on which the Parties reach such agreement were the day and time on which the Disputing Party had notified the other Party and the Valuation Agent of the Dispute.

C2.3 Dispute Resolution Procedures

- (a) **Dispute Resolution Procedures.** Each of the procedures described in paragraphs (b) to (f) (inclusive) below constitutes a "**Dispute Resolution Procedure**" for the purposes of this Convention. Unless the Parties otherwise agree (including, without limitation, by agreeing that Alternative Procedures shall apply to a Dispute instead of the Dispute Resolution Procedures), the Dispute Resolution Procedures will apply to a Dispute upon a Margin Call Challenge and will cease to apply in relation to that Dispute (or part of such Dispute, as applicable) upon the date on which the Dispute (or part of such Dispute, as applicable) is Resolved.
- (b) **Acceleration of Dispute Resolution Procedures.** Either Party may, at any time by written notice to the other Party (an "**Acceleration Notice**"), accelerate any Dispute or any part of a Dispute, as specified in that notice (an "**Acceleration**"), to any later Dispute Resolution Procedure under this

Convention, provided that (i) the Dispute or part of that Dispute, as applicable, has not been Resolved and (ii) in respect of an Acceleration to the Secondary Resolution Method, the accelerating Party has provided Portfolio Data and Margin Data to the other Party in accordance with the terms of this Convention.

If a Party accelerates any Dispute or any part of a Dispute to the Senior Consultation, the effect of such Acceleration will be that the Senior Consultation Start Date will for the purposes of that Dispute or part of the Dispute, as applicable, occur on the day on which the Acceleration Notice becomes effective, unless the Acceleration Notice becomes effective after the Notification Time, in which case the Senior Consultation Start Date will occur on the Collateral Business Day following the day on which the Acceleration Notice becomes effective.

If a Party accelerates any Dispute or part of a Dispute to the Secondary Resolution Procedure, the effect of such Acceleration will be that, for the purposes of that Dispute or part of the Dispute, as applicable:

- (i) the Secondary Resolution Start Date will occur on the day on which the Acceleration Notice becomes effective, unless the Acceleration Notice becomes effective after the Notification Time, in which case the Secondary Resolution Start Date will occur on the Collateral Business Day following the day on which the Acceleration Notice becomes effective; and
 - (ii) for the purposes of and notwithstanding paragraph C2.3(f) below, the Disputed Amount need not be greater than the Tolerance Level.
- (c) ***Portfolio and Margin Data Exchange.*** Each Party will provide to the other Party:
- (i) immediately upon a Margin Call Data Exchange Date that is a day on which a Margin Call Challenge occurs; and
 - (ii) at or prior to the Notification Time on each other Margin Call Data Exchange Date,

Portfolio Data (to the extent it has not already provided such Portfolio Data in respect of that Margin Call Data Exchange Date in accordance with Part 1 above) together with (1) Margin Data and (2) in the case of the English Annex only, the Base Currency Equivalent of all values contained in the Portfolio Data, in each case in respect of that Margin Call Data Exchange Date.

For the purposes of this Convention, Portfolio Data or Margin Data will be considered to have been provided to the other Party (and the other Party will be considered to have received the Portfolio Data or Margin Data, as applicable) if it has been provided to a third party service provider agreed to between the Parties for this purpose.

If in relation to a Margin Call Data Exchange Date:

- (i) a Party fails to provide Portfolio Data or Margin Data at or prior to the Margin Call Data Exchange Cut-off Time relating to that Party and that Margin Call Data Exchange Date; and

- (ii) the other Party provides Portfolio Data and Margin Data at or prior to the Margin Call Data Exchange Cut-off Time relating to that other Party and that Margin Call Data Exchange Date,

the Portfolio Data and Margin Data (including without limitation all values contained in that data) provided by the other Party will, subject to paragraph C2.1(e) above, be conclusive and binding in respect of the Dispute and the Revised Collateral Requirement will be determined in accordance with paragraph C2.1(c) above by reference to that Portfolio Data and Margin Data.

- (d) **Administrative Review.** In respect of each Dispute, each Party must use commercially reasonable efforts to carry out the matters required to be carried out by it in sub-paragraphs (i) and (ii) below (an "**Administrative Review**"):

- (i) each Party will, promptly following the exchange of Portfolio Data and Margin Data in respect of a Margin Call Data Exchange Date, perform a Portfolio Reconciliation (without duplication of any Portfolio Reconciliation performed in respect of the same Portfolio Data or Margin Data under Part 1 above); and

- (ii) as soon as reasonably practicable during the Administrative Review Period relating to that Margin Call Challenge, each Party will investigate the Dispute and consult with each other as to that investigation, which investigation may without limitation include any of the following:

- (A) verify whether each Disputed Transaction should be included in the calculation of Exposure and verify the value of each Disputed Transaction;
- (B) in connection with the verification process described in sub-paragraph (A) above, refer each Disputed Transaction to an appropriate Official or Officials to the extent reasonably necessary to resolve any aspect of the Dispute;
- (C) where appropriate, investigate incorrect matching of Disputed Transactions, data errors and other items causing "false positive" reconciliation results, which may include a review of records held in a central trade registry to assist matching Disputed Transactions;
- (D) identify Unmatched Disputed Transactions and, in respect of such Unmatched Disputed Transactions, provide any supporting documentation that may be available, including (where applicable) confirmations and trade references; and
- (E) agree, where reasonably practicable, any subsequent actions that should be taken by each Party to attempt to resolve the Dispute to the satisfaction of each Party.

- (e) **Senior Consultation.** If a Dispute to which a Margin Call Challenge relates has not been Resolved before the Senior Consultation Start Date, in addition to continuing the Administrative Review:

- (i) either Party may deliver to the other Party a Senior Consultation Selection Notice on or before the Senior Consultation Start Date (and each Party may deliver a Senior Consultation Selection Notice on each subsequent Collateral Business Day until the Dispute has been Resolved);

- (ii) if a Senior Consultation Selection Notice has been given by either Party, each Party must (subject to paragraph C2.3(b)) on or before the Secondary Resolution Start Date, use commercially reasonable efforts to procure that one or more Senior Officials of that Party consults with the corresponding Senior Officials of the other Party in a good faith attempt to identify, understand and resolve the Dispute by reference to each Disputed Transaction identified in each Senior Consultation Selection Notice (a "**Senior Consultation**");
 - (iii) if a Senior Consultation Selection Notice has been given by either Party, each Party will take the actions that it determines are required to prepare itself for any Secondary Resolution Method (including, without limitation, the Market Polling Procedure) that may be applicable to each Disputed Transaction identified in each Senior Consultation Selection Notice.
- (f) **Secondary Resolution.** If a Dispute has not been Resolved before the Secondary Resolution Start Date, then:
- (i) the Parties will continue each of the Administrative Review and the Senior Consultation; and
 - (ii) either:
 - (A) if the Disputed Amount in respect of the most recent Disputed Valuation Date is greater than the Tolerance Level, the Disputing Party will (and the other Party may) on or before the Secondary Resolution Start Date deliver to the other Party a Secondary Resolution Selection Notice; or
 - (B) if the Disputed Amount in respect of the most recent Disputed Valuation Date is equal to or less than the Tolerance Level, either Party may on or before the Secondary Resolution Start Date deliver to the other Party a Secondary Resolution Selection Notice,

and in each case each Party may deliver a Secondary Resolution Selection Notice on each subsequent Collateral Business Day until the Dispute has been Resolved.

Each Secondary Resolution Selection Notice given by a Party will specify the Secondary Resolution Method that such Party proposes to Resolve the part of the Dispute relating to the Disputed Transactions specified in that Secondary Resolution Selection Notice. If such Secondary Resolution Method is not a method published by ISDA, the Secondary Resolution Selection Notice given by a Party will also contain a description in reasonable detail of that Secondary Resolution Method to permit the other Party to determine whether to proceed with that Secondary Resolution Method.

Each Party will negotiate in good faith to agree to the Secondary Resolution Method specified in a Secondary Resolution Selection Notice.

If the Parties are unable to agree on the Secondary Resolution Method applicable to a Disputed Transaction specified in a Secondary Resolution Selection Notice within four hours of the Secondary Resolution Selection Notice becoming effective, then the Secondary Resolution Method will be the Market Polling Procedure.

PART 3

GENERAL PROVISIONS

C3.1 General

- (a) **Good Faith.** The Parties will comply with their obligations under this Convention in good faith and in a commercially reasonable manner.
- (b) **Remedies Cumulative.** Except as provided in this Convention, the rights, powers, remedies and privileges provided in this Convention are cumulative and not exclusive of any rights, powers, remedies and privileges otherwise available to either Party or provided by law.
- (c) **Alternative Procedures.** Notwithstanding anything to the contrary in this Convention, the Parties may in good faith agree to any other procedure for the exchange and reconciliation of data or that the Parties believe will resolve any Dispute between them, whether in addition to or in substitution of the procedures set out in this Convention.

C3.2 Party Agreed Exclusions and Party Agreed Inclusions

- (a) The Parties may agree by separate bilateral agreement(s) (including, for the avoidance of doubt, in the relevant Covered Master Agreement or Covered Credit Support Annex) that:
 - (i) one or more Master Agreements entered into between them shall constitute a "**Party Agreed Excluded Master Agreement**";
 - (ii) one or more specified Credit Support Annexes entered into between them shall constitute a "**Party Agreed Excluded Annex**"; or
 - (iii) one or more Transactions under a Covered Master Agreement that shall constitute a "**Party Agreed Excluded Transaction**".

Upon such agreement(s) becoming effective (which may, without limitation, include an agreement entered into prior to and in anticipation of this Convention becoming effective between the Parties), such Party Agreed Excluded Master Agreement, Party Agreed Excluded Annex or Party Agreed Excluded Transaction, as applicable, shall not be subject to this Convention.

- (b) The Parties may agree by separate bilateral agreement(s) (including, for the avoidance of doubt, in the relevant Covered Master Agreement or Covered Credit Support Annex) that:
 - (i) one or more Master Agreements entered into between them shall constitute a "**Party Agreed Included Master Agreement**";
 - (ii) one or more specified Credit Support Annexes entered into between them that shall constitute a "**Party Agreed Included Annex**"; or
 - (iii) one or more Transactions under a Covered Master Agreement that shall constitute a "**Party Agreed Included Transaction**".

Upon such agreement(s) becoming effective (which may, without limitation, include an agreement entered into prior to and in anticipation of this Convention being published or the Parties being bound by its terms), such Party Agreed Included Master Agreement, Party Agreed Included Annex or Party Agreed Included Transaction, as applicable, shall be subject to this Convention.

C3.3 Consequences; No Waiver

- (a) ***Consequences of Failure to Comply with Procedures.*** Unless the Parties otherwise agree, and subject to paragraph C2.1(d) above (a) the failure by a Party to comply with this Convention will not constitute an Event of Default or a Potential Event of Default under Sections 5(a)(i), (ii) or (iii) of the Covered Master Agreement and (b) no representation given in a Data Exchange Requirement Notice shall constitute a representation for the purposes of Section 5(a)(iv) of the Covered Master Agreement.
- (b) ***No Waiver.*** A failure or delay in exercising any right, power or privilege in respect of this Convention will not be presumed to operate as a waiver. A single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise of that right, power or privilege or the exercise of any other right, power or privilege and the election or use of any method or type of valuation will not be presumed to preclude any subsequent or further election or use of that method or type of valuation or the election of any other method or type of valuation.

C3.4 Governing Law and Jurisdiction

This Convention and all non-contractual rights and obligations arising out of or in connection with this Convention will be governed by and construed in accordance with the law applicable to the applicable Covered Credit Support Annex. With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Convention ("**Convention Proceedings**"), each Party submits to the jurisdiction of the courts to which such Party submits for the purposes of the Covered Credit Support Annex. The provisions of Section 13(c) of the Covered Master Agreement apply to this Convention as if each reference in that Section to "Proceedings" were a reference to "Convention Proceedings" alone.

C3.5 Convention Notices

- (a) Convention Notices must be given, and shall be effective, in accordance with Section 12 of the Covered Master Agreement. Notwithstanding anything to the contrary in Section 12 of the Covered Master Agreement, Convention Notices may be given by e-mail and, if so given, will be effective on the date the e-mail is delivered unless the date of that delivery is not a Local Business Day or that e-mail is delivered after the close of business on a Local Business Day, in which case that e-mail will be deemed given and effective on the first following day that is a Local Business Day. Each reference to a Convention Notice being given in writing shall include, without limitation, such Convention Notice being given by e-mail.
- (b) Any Convention Notice may be combined in the same document or communication as another Convention Notice.

C3.6 Definitions

As used in this Convention:

"**Acceleration**" has the meaning given in paragraph C2.3(b).

"**Acceleration Notice**" has the meaning given in paragraph C2.3(b).

"**Administrative Review**" has the meaning given in paragraph C2.3(d).

"**Administrative Review Period**" means the period from and including the most recent Administrative Review Start Date to and including the date on which the Dispute is Resolved.

"**Administrative Review Start Date**" means the most recent date on which a Margin Call Challenge has occurred in relation to a Disputed Valuation Date in respect of which the Valuation Date (if any) immediately preceding such Disputed Valuation Date to which that Margin Call Challenge relates was an Undisputed Valuation Date.

"**Alternative Procedure**" has the meaning given in paragraph C2.2(b)(i).

"**Authorised Recipient**" means any person (whether employed by the Recipient or otherwise and which may include, without limitation, an affiliate, administrator, custodian or other servicer provider of a Party, or a third party service provider agreed to between the Parties for the purposes of performing a Portfolio Reconciliation), who in each case needs access to the Portfolio Data or Margin Data, as applicable, for the Permitted Purposes.

"**Bespoke Annex**" means any Credit Support Annex entered into between the Parties in respect of which each Covered Transaction would, upon the occurrence of a Margin Call Challenge, constitute a Bespoke Transaction.

["**Bespoke Transaction**" means any Disputed Transaction entered into between the Parties in respect of which:

- (a) the Parties (or, if the Valuation Agent is a Party, the other Party) may not dispute the determination of Exposure;
- (b) the Disputing Party is required to transfer (whether by title transfer, security interest, escrow or other arrangement) the Disputed Amount, or failure to do so will constitute an Event of Default, notwithstanding the occurrence of a Margin Call Challenge;
- (c) the terms of the Covered Master Agreement, Covered Credit Support Annex or any other agreement in writing between the parties provide that Exposure is, upon the occurrence of a Margin Call Challenge, required to be calculated in accordance with any one or more of the following categories:
 - (i) Exposure is to be determined on a basis that is neither a mid-market valuation or quotation nor an average of bid and offer valuations or quotations;

- (ii) Exposure is to be determined on a basis that does not require quotations to be sought by one or more of the Parties or the Valuation Agent or one or more persons appointed by them;
 - (iii) Exposure is to be determined based on a single valuation or quotation source;
 - (iv) Exposure is determined by reference to quotations and any such person from whom a quotation is sought (each, a "**Quote Provider**") is required or requested to provide such quotation based on a methodology other than a methodology that is, at the time at which the quotation is provided, used by the Quote Provider in the regular course of its business in pricing or valuing transactions between the Quote Provider and unrelated third parties that are similar to the Disputed Transaction;
 - (v) Exposure is not to be determined by reference to the value of the relevant Transaction or a replacement transaction; or
 - (vi) Exposure is determined by reference to quotations and both the quotation gathering process and the obligation to transfer (whether by title transfer, security interest, escrow or other arrangement) the revised amount of Eligible Credit Support or Equivalent Credit Support, as applicable, following the conclusion of that quotation gathering process are required to be performed on the date on which the Margin Call Challenge arises; or
- (d) either Party has the ability to influence the value of an underlying asset to which the Transaction relates, other than as a result of normal market activity.]¹

"**CCP Annex**" means any Credit Support Annex between the Parties the terms of which provide for the credit support requirements of at least one Party to be calculated by reference to the amount of credit support or margin determined by a clearing system or organisation.

"**CCP Transaction**" means any Transaction, the Exposure of which is, for the purposes of the Credit Support Annex, calculated by reference to the rules of a clearing system or organisation (whether individually or together with one or more other Transactions that, if they were the subject of a Dispute, would constitute Disputed Transactions).

"**Collateral Asset**" means an item (which may include cash) comprising, in the case of the New York Annex, Posted Credit Support and, in the case of the English Annex, a Credit Support Balance.

"**Collateral Business Day**" means each day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in each place specified for the purposes of determining the Valuation Date.

"**Confidential Information**" has the meaning given in paragraph C1.2(a).

"**Confidentiality Period**" has the meaning given in paragraph C1.2(g).

¹ The types of Transactions that are considered to be Bespoke Transactions, and therefore outside the scope of the Convention, are still under discussion by the Convention drafting group. Further information will be published by ISDA as soon as possible.

"**Convention Notices**" means the following notices: (a) an Acceleration Notice; (b) a Disruption Notice, (c) a Secondary Resolution Selection Notice, (d) a Revised Collateral Amount Demand, (e) a Revised Collateral Amount Notice and (f) a Senior Consultation Selection Notice.

"**Convention Proceedings**" has the meaning specified in paragraph C3.4.

"**Counter-Call**" has the meaning specified in paragraph C2.2(a).

"**Covered Credit Support Annex**" means a Credit Support Annex that either (a) forms part of a Covered Master Agreement and is not an Excluded Annex or (b) is a Party Agreed Included Annex.

"**Covered Master Agreement**" means a Master Agreement entered into between the Parties that either (a) is not a Party Agreed Excluded Master Agreement or (b) is a Party Agreed Included Master Agreement.

"**Covered Transaction**" means a Transaction under a Covered Master Agreement (other than the Transaction constituted by any Credit Support Annex) that either (a) is required, pursuant to the terms of the Covered Credit Support Annex, to be taken into account for the purpose of determining Exposure and is not an Excluded Transaction or (b) is a Party Agreed Included Transaction.

"**Credit Support Annex**" means each of the New York Annex and the English Annex.

"**Data Exchange Date**" means:

- (a) if either Party has provided a Data Exchange Requirement Notice in accordance with this Convention that specifies:
 - (i) "Daily", each Joint Business Day;
 - (ii) "Weekly", the first Joint Business Day in each calendar week;
 - (iii) "Monthly", the first Joint Business Day in each calendar month; or
 - (iv) any other frequency, subject to paragraph C1.1(c) above, a Joint Business Day that complies with such frequency; and
- (b) each Joint Business Day specified in a Data Exchange Request Notice given in accordance with paragraph C1.1(d) above.

"**Data Exchange Requirement Notice**" has meaning given in paragraph C1.1(c).

"**Delayed Margin Call Data Exchange Cut-off Time**" means 5:00 p.m. in the Notification Time City on the day falling one Local Business Day (in such city) after the Scheduled Margin Call Data Exchange Cut-off Time.

"**Disclosing Party**" has the meaning given in paragraph C1.2(a).

"**Dispute**" means a dispute relating to the Valuation Agent's calculation of Exposure, except to the extent that such dispute relates to a Transaction that is not a Covered Transaction.

"Disputed Amount" means, in respect of a Margin Call Challenge, the excess of the Delivery Amount or Return Amount, as applicable, over the Undisputed Amount. For the avoidance of doubt, if a Margin Call Challenge comprises consolidated Disputes as a result of a Counter-Call, the Disputed Amount will be equal to the sum of the excess for each such Dispute.

"Disputed Transaction" means each Covered Transaction and each Party Agreed Included Transaction, in each case, in respect of which the calculation of Exposure is the subject of a Dispute in accordance with the Dispute Resolution Provisions and that has not been Resolved.

"Disputed Valuation Date" means a Valuation Date in respect of which a Margin Call Challenge has occurred.

"Dispute Resolution Procedure" has the meaning given in paragraph C2.3(a).

"Dispute Resolution Provisions" means, in respect of the New York Annex, paragraph 5, as supplemented or amended by any relevant provision in paragraph 13 and, in respect of the English Annex, paragraph 4, as supplemented or amended by any relevant provision in paragraph 11.

"Disruption Event" means that due to either a force majeure or act of state or an operational or technical error affecting a Party, such Party is prevented from determining or providing the Portfolio Data, or it becomes impossible or impracticable for such Party to so determine or provide, so long as the force majeure or act of state is beyond the control of such Party, and such Party could not, after using all reasonable efforts (which will not require such Party to incur a loss, other than immaterial, incidental expenses), overcome such prevention, impossibility or impracticability.

"Disruption Notice" means a written notice by one Party to the other Party certifying the occurrence of a Disruption Event, provided that if a Party is prevented from delivering such notice in writing as a result of that Disruption Event, such Party may give such notice by telephone and confirm such notice as soon as reasonably practicable in writing.

"English Annex" means a 1995 ISDA Credit Support Annex (Bilateral Form – Transfer) between the Parties.

"Excluded Annex" means any Credit Support Annex that is a CCP Annex, a Bespoke Annex or a Party Agreed Excluded Annex.

"Excluded Transaction" means any Bespoke Transaction, CCP Transaction or Party Agreed Excluded Transaction.

"Joint Business Day" means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in each city specified by either Party for this purpose in their Adherence Letters.

"Margin Call Challenge" means that a Disputing Party has, in accordance with the Dispute Resolution Provisions, given notice to the other Party of a Dispute.

"Margin Call Data Exchange Cut-off Time" means, in respect of a Party and a Margin Call Data Exchange Date, the Scheduled Margin Call Data Exchange Cut-off Time or, if that Party has given a Disruption Notice that becomes effective at or prior to the Scheduled Margin Call Data Exchange Cut-off Time, the Delayed Margin Call Data Exchange Cut-off Time.

"Margin Call Data Exchange Date" means each Collateral Business Day falling in the period from, and including, the date on which a Margin Call Challenge occurs to, and including, the date on which the Dispute is Resolved.

"Margin Data" means, in respect of a Party providing or required to provide such data, information relating to all Collateral Assets in a form and standard that is capable of being reconciled, with a level of detail that is reasonably acceptable to the other Party and that describes, without limitation and in reasonable detail, the details of each Collateral Asset (including any applicable ISIN or CUSIP code and the currency of, value attributed by that Party to, and any foreign exchange rate applied by that Party to, each Collateral Asset) and any interest or distributions that are due and payable under, or included in any calculations under, the Covered Credit Support Annex. The information comprising the Margin Data shall be prepared by each Party as at the close of business in the location of that Party on the Business Day immediately preceding the Margin Call Data Exchange Date to which the Margin Data relates.

"Market Polling Procedure" means the ISDA 2011 Formal Market Polling Procedure, as published by ISDA.

"Master Agreement" has the meaning specified in the preamble.

"New York Annex" means a 1994 ISDA Credit Support Annex (Bilateral Form) between the Parties.

"Notification Time City" means the city by reference to which the Notification Time is specified.

"Official" means, in respect of a Dispute, any personnel that may be appropriate to resolve one or more aspects of that Dispute, which may without limitation include the relevant controller, trader, desk head, legal department or other personnel who are involved in or responsible for validating or marking curves, ensuring that other model parameters are updated, and confirming that valuations are sufficiently up-to-date.

"Party" has the meaning given in the preamble to this Convention.

"Party Agreed Excluded Annex" has the meaning specified in paragraph C3.2(a) of this Convention.

"Party Agreed Excluded Master Agreement" has the meaning specified in paragraph C3.2(a) of this Convention.

"Party Agreed Excluded Transaction" has the meaning specified in paragraph C3.2(a) of this Convention.

"Party Agreed Included Annex " has the meaning specified in paragraph C3.2(b) of this Convention.

"Party Agreed Included Master Agreement" has the meaning specified in paragraph C3.2(b) of this Convention.

"Party Agreed Included Transaction" has the meaning specified in paragraph C3.2(b) of this Convention.

"Permitted Purposes" means any of the following purposes:

- (a) performing a Portfolio Reconciliation

- (b) resolving a Dispute in accordance with this Convention (including, without limitation, updating the Recipient's accounts or records to reflect any adjustment to the value or price of any Disputed Transaction); and
- (c) investigating any discrepancy identified in connection with a Portfolio Reconciliation (including, without limitation, updating the Recipient's accounts or records following resolution of any such discrepancy), provided that a person (other than Trading Personnel) appointed by the Recipient in accordance with its then prevailing policies or guidelines reasonably considers in accordance with those policies or guidelines that (i) such discrepancy to be material and (ii) disclosure of the Confidential Information is reasonably required to investigate that discrepancy after having exhausted all other commercially reasonable methods of investigating that discrepancy internally.

"Portfolio Data" means, in respect of a Party providing or required to provide such data, information (which, for the avoidance of doubt, is not required to include calculations or methodologies) relating to all Covered Transactions in a form and standard that is capable of being reconciled, with a level of detail that is reasonably acceptable to the other Party and that describes, without limitation and in reasonable detail, the current mark-to-market value attributed by that Party to each Covered Transaction. The information comprising the Portfolio Data to be delivered by a Party on a Data Exchange Date or Margin Call Data Exchange Date shall be prepared as at the close of business (in the city specified by that Party for this purpose in its Adherence Letter) on the immediately preceding Joint Business Day, as applicable.

"Portfolio Reconciliation" means, in respect of any discrepancy in Portfolio Data or Margin Data or in respect of any Dispute, as applicable, a process of identifying and isolating the items contributing most significantly to that discrepancy or Dispute. A Portfolio Reconciliation may include (but shall not be not limited to) a systematic, line-by-line, field-by-field matching process performed using technological means such as a third party portfolio reconciliation service or a technology engine.

"Recipient" has the meaning given in paragraph C1.2(a).

"Resolve" means, in relation to any Dispute, that the Parties have reached agreement as to the valuation, correction or adjustment (as applicable) to be made to each Disputed Transaction relating to that Dispute or that such a valuation, correction or adjustment has been determined pursuant to the Secondary Resolution Method. A Dispute will be deemed to have been Resolved if an Undisputed Valuation Date has occurred since the date on which the Margin Call Challenge relating to that dispute occurred. **Resolved** shall be interpreted accordingly.

"Results" means any valuations, corrections or adjustments determined in accordance with the Dispute Resolution Procedures.

"Revised Collateral Amount" has the meaning given in paragraph C2.1(c).

"Revised Collateral Amount Demand" has the meaning given in paragraph C2.1(c).

"Revised Collateral Amount Notice" has the meaning given in paragraph C2.1(c).

"Revised Collateral Requirement" has the meaning given in paragraph C2.1(c).

"Scheduled Margin Call Data Exchange Cut-off Time" means, in respect of a Margin Call Data Exchange Date, 5:00 p.m. in the Notification Time City on the day falling one Local Business Day (in such city) after that Margin Call Data Exchange Date.

"Secondary Resolution Method" means, in respect of a Dispute and a Disputed Transaction, the method for resolving that Dispute determined in accordance with paragraph C2.3(f) above.

"Secondary Resolution Selection Notice" means a notice given by e-mail by one Party to the other Party identifying Disputed Transactions that will become subject to the Secondary Resolution Procedure specified in that notice or otherwise determined in accordance with this Convention.

"Secondary Resolution Start Date" means the date falling 10 (ten) calendar days following the Senior Consultation Start Date, or such earlier date as may occur as a result of an Acceleration.

"Senior Consultation" has the meaning given in paragraph C2.3(e).

"Senior Consultation Period" means the period from and including the most recent Senior Consultation Start Date to and including the date on which the Dispute is Resolved.

"Senior Consultation Selection Notice" means a notice given by e-mail by one Party to the other Party identifying such number of Disputed Transactions as that Party may consider appropriate that, if not Resolved on or before the Secondary Resolution Start Date, may be identified in a Secondary Resolution Selection Notice.

"Senior Consultation Start Date" means the day falling 20 calendar days after the Administrative Review Start Date, or such earlier date as may occur as a result of an Acceleration or as the Parties may agree or as may otherwise be required by a regulatory authority having jurisdiction over either Party.

"Senior Official" means an Official who has a senior role within the relevant department, such as a senior controller, senior trader, desk head or other senior management level official.

"Suspended Dispute Resolution Provisions" means any provisions of the Dispute Resolution Provisions that require (a) the parties to consult with each other in an attempt to resolve the Dispute, (b) the Valuation Agent or either Party to obtain or provide any quotations for the purpose of resolving the Dispute or (c) the Valuation Agent to perform a recalculation if the Parties fail to resolve the Dispute by the Resolution Time.

"Tolerance Level" means, in respect of the New York Annex, USD 20,000,000 and, in respect of the English Annex, the Base Currency Equivalent of USD 20,000,000.

"Trading Personnel" has the meaning given in paragraph 1.2(h).

"Undisputed Amount" means in respect of a Margin Call Challenge, the amount, if any, of the Delivery Amount or Return Amount, as applicable, that is not disputed by the Disputing Party.

"Undisputed Valuation Date" means a Valuation Date (other than a Disputed Valuation Date) in respect of which a Party has made a demand for the transfer of Eligible Credit Support, Posted Credit Support or Equivalent Credit Support, as applicable.

"Unmatched Disputed Transaction" means a Disputed Transaction that only one Party considers to be relevant for the purposes of calculating Exposure or the value of Posted Credit Support or Credit Support Balance, as applicable.