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ISDA Master Agreements governed by Australian law

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Part A Introduction and summary

1 Introduction

1.1 Instructions

We refer to our legal opinion to the International Swaps and Derivatives Association, Inc. (“**ISDA**”) dated 30 November 2023 (“**ISDA Netting Opinion**”) in respect of, amongst other things, the enforceability of close-out netting against an *Australian company* under a *Master Agreement*, including where either the *2001 Bridge* or the *2002 Bridge* is included in the Schedule of the *Master Agreement* (each defined in our ISDA Netting Opinion).

You have asked us to consider whether our conclusions in the ISDA Netting Opinion with respect to a *Master Agreement* with an *Australian company* or the Reserve Bank of Australia (“**RBA**”) would apply where the *Master Agreement* is governed by Australian law, including where the *2001 Bridge*, the *2002 Bridge* or the AFMA Bridge Provision (as defined in paragraph 4.1 of Part B) is included in the Schedule of the *Master Agreement*.

We also refer to paragraph 4 of Part C (“Enforceability of the inclusion of the Value of the Credit Support Balance in the calculation of the net amount payable under Section 6(e) of the Master Agreement”) of our opinion dated 30 November 2023 to ISDA on the validity and enforceability under Australian Law of collateral arrangements under the ISDA Credit Support Documents (“**ISDA Collateral Opinion**”, and together with the ISDA Netting Opinion, “**ISDA Opinions**”). You have asked us to confirm whether our conclusion in that Part would apply if the *Master Agreement* and Transfer Annex were governed by Australian law.

We also refer in this memorandum to our memorandum dated on or around the date of this memorandum entitled “Close-out netting: Summary of Australian Netting Legislation and Insolvency Proceedings” (“**Netting Summary**”), which summarises the relevant sections of the *Netting Act*.

This memorandum supersedes and replaces the version dated 31 March 2023.

1.2 Scope

In this memorandum, we advise on the laws of New South Wales, Victoria, Queensland, Western Australia, the Australian Capital Territory and the Commonwealth of Australia (each, an “**Australian Jurisdiction**”). This memorandum relates only to the laws of the Australian Jurisdictions and is given on the basis that it will be construed in accordance with the laws of New South Wales. We express no opinion about the laws of any jurisdiction other than the Australian Jurisdictions, regulatory, licensing, tax, commercial, accounting, financial, prudential or factual matters. However, the *Netting Act* and other statutes mentioned in the ISDA Netting Opinion are Acts of the Commonwealth Parliament applying throughout Australia.

Each part of this memorandum is subject to the rest of this memorandum, including the assumptions and qualifications.

1.3 Summary of conclusions

(a) **Master Agreement and Transfer Annex**

The conclusions in our ISDA Netting Opinion relating to the enforceability of the Netting Provisions (as defined in paragraph 1 of Part B below) of the *Master Agreement* on the *external administration* of an *Australian company* would apply where the *Master Agreement* is governed by Australian law. Those conclusions rely on section 14(2) of the *Netting Act*, which applies subject to the specified stay provisions and provided that neither section 14(4) nor section 14(5) of the *Netting Act* applies. The

application of section 14(2) of the *Netting Act* to a *Master Agreement* that is governed by Australian law is described in paragraph 2 of Part B of this memorandum.

In addition, prior to the *external administration* of the *Australian company*, section 14(1) of the *Netting Act* is available to validate close-out netting against an *Australian company* where the *Master Agreement* is governed by Australian law. Section 14(1) of the *Netting Act* also applies subject to the specified stay provisions and provided that neither section 14(4) nor section 14(5) of the *Netting Act* applies. The application of section 14(1) of the *Netting Act* to a *Master Agreement* that is governed by Australian law is described in paragraph 3 of Part B of this memorandum.

Where the *Master Agreement* is governed by Australian law and includes the 2001 Bridge, the 2002 Bridge or the AFMA Bridge Provision, the Bridge Conclusions (as defined in paragraph 4.2 of Part B below) would apply, subject to the assumptions in paragraph 4.1 of Part B and as if:

- (i) references in the Bridge Conclusions to 'this opinion' were to paragraphs 1 to 3 of Part B below; and
- (ii) in respect of the AFMA Bridge Provision, references in the ISDA Netting Opinion to the 2002 Bridge were to the AFMA Bridge Provision.

The Transfer Annex Conclusions (as defined in paragraph 5 of Part B below) in paragraph 4 of Part C of our ISDA Collateral Opinion would apply if the *Master Agreement* and Transfer Annex were governed by Australian law, as if references in the Transfer Annex Conclusions to the Netting Opinion included our comments in paragraphs 1 to 3 of Part B below.

(b) **RBA**

We confirm that our conclusions in the ISDA Netting Opinion and this memorandum relating to the enforceability of close-out netting against an *Australian company* under a *Master Agreement* governed by Australian law would apply where the *Australian company* is the RBA, subject to our comments in Part E of our Netting Summary relating to the enforceability of close-out netting against the RBA.

1.4 Definitions

Capitalised or italicised terms used but not defined in this memorandum (including the term *Australian company*) have the meaning given to them in the ISDA Opinions, as the context requires, or if not defined in the ISDA Opinions, have the meaning given in our Netting Summary, except where the context requires otherwise.

Part B Netting opinion

In this Part B we refer to the *Payment Systems and Netting Act 1998* (Cth) ("**Netting Act**"). The relevant sections of the *Netting Act* are summarised in our Netting Summary.

1 Close-out netting contract

As noted in paragraph 1(b) of Part D of our ISDA Netting Opinion, the central provisions of each *Master Agreement* which provide for close-out netting following an Event of Default are contained in:

- (a) Section 6(c); and
 - (b) Section 6(e),
- (such provisions, the "**Netting Provisions**").

The definition of "close-out netting contract" in the *Netting Act* is considered in paragraph 1.1 of Part B of our Netting Summary.

We conclude in our ISDA Netting Opinion that, in our view, each of the *1992 ISDA Master Agreement* and *2002 ISDA Master Agreement* is a “close-out netting contract” for the purposes of the *Netting Act*, provided that, in the case of the *1992 ISDA Master Agreement*, “Second Method” is chosen. Our reasons for this are set out in paragraph 2.2 of Part B of our ISDA Netting Opinion. In our view, this conclusion applies equally where the *Master Agreement* is governed by Australian law.

2 **Close-out netting on the external administration of an Australian company and the insolvency regime applicable to an Australian company**

We confirm that the conclusion in our ISDA Netting Opinion that the termination rights and the rights flowing from an early termination which are given to the *solvent party* under a *Master Agreement* following the *external administration* of an *Australian company* are enforceable, subject to any specified stay provision which is applicable to the *Master Agreement*, would apply where the *Master Agreement* is governed by Australian law.

Section 14(2) of the *Netting Act*, which deals with the protection of close-out netting rights in circumstances where a person who is, or has been, a party to a *close-out netting contract* goes into *external administration*, is considered in detail in paragraph 1.3 of Part B of our Netting Summary. As noted in paragraph 1.11 of Part B of the Netting Summary, section 14(2) applies only if either:

- Australian law governs the *close-out netting contract*; or
- Australian law governs the *external administration*.

We assume for the purposes of this memorandum that the *Master Agreement* is governed by Australian law.

As considered in paragraph 1 of Part C of our Netting Summary,¹ the Insolvency Proceedings to which an *Australian company* may be subject under *Australian law* fall within the definition of “external administration” in the *Netting Act*.

Section 14(2)(c) of the *Netting Act* provides that where a person who is, or has been, a party to a *close-out netting contract* goes into *external administration*:

- (a) obligations under a *close-out netting contract* may be terminated;
- (b) termination values may be calculated; and
- (c) a net amount becomes payable,

in accordance with the *close-out netting contract*.²

Section 14(3) of the *Netting Act* provides that, relevantly, section 14(2) of the *Netting Act* applies subject to:

- (i) any specified stay provision which is applicable to the *Master Agreement*, as considered in paragraph 1.8 of Part B of our Netting Summary;³ and
- (ii) sections 14(4) and 14(5) of the *Netting Act*, as considered in paragraphs 1.4 and 1.5 of

¹ This is also considered in paragraph 1 of Part C and Part J of our ISDA Netting Opinion.

² The effect of section 14(2), including 14(2)(d) to (g), is considered further in paragraph 1.3 of Part B of our Netting Summary. Please also refer to paragraph 3.7(a) of Part D of our ISDA Netting Opinion in relation to section 14(2)(d), paragraph 4.3 of Part D of our ISDA Netting Opinion in relation to section 14(2)(e) and paragraph 2.4 of Part B of our ISDA Netting Opinion in relation to section 14(2)(g).

³ Please also refer to paragraphs 2.5 and 2.6 of Part B, and Part K of our ISDA Netting Opinion.

Part B of our Netting Summary.⁴

3 Close-out netting under a *close-out netting contract* governed by Australian law

Section 14(1) of the *Netting Act* contains an alternative statutory validation of close-out netting rights which is not dependent on a party to the contract being in *external administration*. In other words, if section 14(2) cannot apply because there is no *external administration*, then section 14(1) may still apply to validate the Netting Provisions provided its conditions are met.

The effect of section 14(1)(c) of the *Netting Act* is that, in respect of a *close-out netting contract*:

- obligations under a *close-out netting contract* may be terminated;
- termination values may be calculated; and
- a net amount becomes payable,

in accordance with the *close-out netting contract*.⁵

The requirements of section 14(1) of the *Netting Act* may be summarised for present purposes as follows:

- (a) Australian law must govern the *Master Agreement*. As noted in paragraph 2 of Part B above, we assume for the purposes of this memorandum that the *Master Agreement* is governed by Australian law;
- (b) the *Master Agreement* must be entered into in circumstances that are within “Commonwealth constitutional reach” (as defined in the *Netting Act*). Please see paragraph 1.10 of Part B of our Netting Summary with respect to the circumstances which satisfy the requirement for a *close-out netting contract* being within Commonwealth constitutional reach. In summary, these include that a “constitutional corporation” (as defined in the *Netting Act*) is a party to the contract;⁶ and
- (c) the *Master Agreement* must be a “close-out netting contract”. As considered in paragraph 1 of Part B above, we consider that each *Master Agreement* is a *close-out netting contract* for the purposes of the *Netting Act*, provided that in the case of the 1992 ISDA *Master Agreement*, “Second Method” is chosen.

Sections 14(1)(d) and (e) of the *Netting Act* are intended to clarify that netting will not be affected by the interests of third parties in the obligations being netted.⁷

Section 14(3) of the *Netting Act* provides that, relevantly, section 14(1) of the *Netting Act* applies subject to:

- (i) any specified stay provision which is applicable to the *Master Agreement*, as considered in paragraph 1.8 of Part B of our Netting Summary;⁸ and

⁴ Sections 14(4) and 14(5) of the *Netting Act* are also considered in paragraphs 3.5 and 3.6 of Part D of our ISDA Netting Opinion.

⁵ The effect of section 14(1) of the *Netting Act*, including section 14(1)(d) to (e), is considered further in paragraph 1.2 of Part B of our Netting Summary.

⁶ A constitutional corporation is defined as a “foreign corporation” or a “trading or financial corporation formed within the limits of the Commonwealth”.

⁷ Sections 14(1)(d) to (e) of the *Netting Act* are considered further in paragraph 1.2 of Part B of our Netting Summary.

⁸ Please see footnote 3 above. We note that the sections referenced in the paragraphs referred to in footnote 3 are equally applicable to section 14(1) of the *Netting Act*.

- (ii) sections 14(4) or 14(5) of the *Netting Act*, as considered in paragraphs 1.4 and 1.5 of Part B of our Netting Summary.⁹

4 Cross-Agreement Bridges

4.1 AFMA Bridge Provision

We refer to the so-called “Linking clause” set out in section 2.1.4.70.7 (Linking multiple master agreements for netting purposes – Optional) of the Guide to Australian OTC Transactions (“**OTC Guide**”) published by AFMA (“**AFMA Bridge Provision**”). The AFMA Bridge Provision and the explanation of it in the OTC Guide are extracted in Annexure 1 to this memorandum. Capitalised terms used in this paragraph 4 but not otherwise defined in this memorandum or the ISDA Netting Opinion have the meaning given in the AFMA Bridge Provision.

In this paragraph 4, we assume the following facts:

- (a) the AFMA Bridge Provision is included in the Schedule of a *2002 Master Agreement* which is governed by Australian law;
- (b) in respect of each Linked Master Agreement specified in the AFMA Bridge Provision:
 - (i) the Linked Master Agreement is an industry standard master agreement and is itself a “close-out netting contract” (as defined in the *Netting Act*);
 - (ii) the only parties to the Linked Master Agreement are the two parties to the *Master Agreement*;
 - (iii) the Linked Master Agreement includes the “Additional recommended clause for Linked Master Agreements” set out in section 2.1.4.70.7 of the OTC Guide (which is extracted in Annexure 1); and
 - (iv) the calculation of the Close-out Amount for the Terminated Transaction in respect of the rights and obligations under the Linked Master Agreement in accordance with paragraph (d) of the AFMA Bridge Provision (i) gives rise to a single amount payable which can be included in the Section 6(e) calculation in the *Master Agreement* and (ii) does not itself involve dealings with proprietary interests or contractual rights or obligations of a party.

4.2 Bridge Conclusions

We refer to the conclusions in paragraphs 2 and 3 of Part G of our ISDA Netting Opinion, which confirm that, subject to the assumptions and qualifications in paragraph 1 of Part G and on the basis noted in those paragraphs, the conclusions in the ISDA Netting Opinion are unaffected by the inclusion of either the *2001 Bridge* or *2002 Bridge* in a *Master Agreement* (“**Bridge Conclusions**”).

We confirm that, where the *Master Agreement* is governed by Australian law and includes the *2001 Bridge*, the *2002 Bridge* or the AFMA Bridge Provision, the Bridge Conclusions would apply as if:

- (a) references in the Bridge Conclusions to ‘this opinion’ were to paragraphs 1 to 3 of Part B above; and
- (b) in respect of the AFMA Bridge Provision, references in the ISDA Netting Opinion to the *2002 Bridge* were to the AFMA Bridge Provision.

⁹ Please see footnote 4 above. We note that the sections referenced in the paragraphs referred to in footnote 4 are equally applicable to section 14(1) of the *Netting Act*.

5 Collateral opinion

We refer to the conclusions in paragraph 4 of Part C of our ISDA Collateral Opinion relating to the enforceability of the inclusion of the Value of the Credit Support Balance under the *Transfer Annex* in the close-out netting calculations under the *Master Agreement* ("**Transfer Annex Conclusions**"). We confirm that the Transfer Annex Conclusions would apply if the *Master Agreement* and Transfer Annex were governed by Australian law, as if references in the Transfer Annex Conclusions to the Netting Opinion included our comments in paragraphs 1 to 3 of Part B above.

6 RBA

We confirm that our conclusions in the ISDA Netting Opinion and this memorandum relating to the enforceability of close-out netting against an *Australian company* under a *Master Agreement* and Transfer Annex governed by Australian law would apply where the *Australian company* is the RBA, subject to our comments in Part E of our Netting Summary relating to the enforceability of close-out netting against the RBA.

Part C Assumptions and qualifications

1 Assumptions and qualifications

This memorandum should be read in conjunction with our ISDA Opinions¹⁰ and our Netting Summary and is subject to the assumptions and qualifications set out in our ISDA Opinions and our Netting Summary. This memorandum does not purport to update our ISDA Opinions or our Netting Summary, including to the extent they bring down the conclusions in our ISDA Opinions, and our opinion on the application of an ISDA Opinion is given as of the date of that ISDA Opinion.

This memorandum does not purport to be an analysis of all issues which could arise in entering the *Master Agreement*. For example, it does not deal with matters related to power and authority, use of power for a proper purpose, general enforceability of contracts or corporate authorisations.

For the purposes of this memorandum, we also assume that any *external administration* of a party to the *Master Agreement* commences after 1 June 2016.

This memorandum is strictly limited to the matters stated in it and does not apply by implication to other matters.

2 Benefit

2.1 Benefit

This memorandum is addressed to you personally and may not, without our prior written consent, be:

- (a) relied on by another person;
- (b) disclosed, except to current subscribers to the OTC Guide and persons who in the ordinary course of your or their business have access to your or their papers and records. Such disclosure is only made on the basis that such persons will make no further disclosure; or
- (c) filed with a government or other agency or quoted or referred to in a public document.

¹⁰ As if references to English or New York law were to Australian law, where appropriate.

2.2 Reliance by subscribers

We understand that current subscribers to the OTC Guide may wish to have the enforceability of close-out netting against an *Australian company* or the RBA under a *Master Agreement* substantiated for purposes pertaining to bank regulation, in particular capital adequacy rules, and for risk management purposes. This memorandum may be relied upon by the current subscribers to the OTC Guide at that time only for such purposes. Further, on reliance in this way, this memorandum remains confidential and it remains subject to paragraph 2.1 of this Part C, including that we only consent to the disclosure expressly described in paragraph 2.1 on the basis that such persons will make no further disclosure, and that this memorandum will not be filed with a government or other agency or quoted or referred to in a public document. Neither this memorandum nor this statement of reliance creates a solicitor/own client relationship between us and any subscriber to the OTC Guide. We expressly exclude any duty to any such person and any person to whom this memorandum is disclosed in connection with this memorandum or its subject matter (including any document referred to in this memorandum). This memorandum has been produced in accordance with the instructions and comments of our client, AFMA.

This memorandum is given in respect of the laws of the Australian Jurisdictions which are in force at 9.00am local time on the date of this memorandum and we are not obliged to update it.

Yours faithfully

A handwritten signature in black ink, appearing to be 'K+WM', with a large, sweeping underline stroke.

Annexure 1

1. 2.1.4.70.7 Linking multiple master agreements for netting purposes - Optional

Some market participants will want to maintain separate master agreements with the same counterparty in respect of different kinds of transactions. However (as described in the legal analysis of netting in 4.3 "Netting") the Payment Systems and Netting Act 1998 ("Netting Act") provides only for the enforceability of close out netting under a *single* "close out netting contract". It does not deal with netting of amounts due under several close out netting contracts. For this reason, in order to ensure that the aggregation of net amounts payable under several master agreements is enforceable on the insolvency of a counterparty it is necessary to include a clause along the lines of that set out in "Linking clause" below.

The master agreements involved need not all be ISDA Master Agreements and could include any master agreement which, on the occurrence of certain events, allows a party to terminate the transactions governed by it, calculate the termination values of those transactions and then net those values. Examples of master agreements falling into this category include IFEMA, ICOM, FEOMA, PSA/ISMA and AMSLA. However, because the wording suggested below is intended to be as concise as possible, master agreements which do not define the relevant events as "Events of Default" will not be able to be included without some amendment to the clause.

It is critical that no other persons are parties to any of the master agreements included under this clause. The reason for this is explained below.

Prior to inclusion of the clause set out in this part, it is necessary to decide which master agreement is to be the "dominant" master agreement under which the netting of the net amounts payable under the other master agreements is to take place. **The wording suggested below is drafted for inclusion in a dominant master agreement which is an ISDA Master Agreement** but could easily be tailored for use in other master agreements.

The clause set out below needs to be included only in the dominant master agreement although it would be helpful to include a clause in the "linked" agreement as specified below.

2. Explanation of the clause

The Netting Act permits the termination of obligations under a close out netting contract, the calculation of termination values in respect of those terminated obligations and then the netting of those termination values. It follows that, in order for the Netting Act to apply to the netting of amounts owing under different master agreements:

- the net amounts owing under the various master agreements must become obligations owing under a single master agreement (which is the "dominant master agreement");
- the obligations to pay those net amounts must be terminated under the terms of the dominant master agreement;
- the termination value of those terminated obligations must be calculated under the dominant master agreement; and
- those termination values must be netted under the dominant master agreement.

Importantly, using the clause set out below does not ensure that netting is effective in respect of each of the master agreements. For example the incorporation of a net amount payable under a master agreement under another master agreement may take place only if the netting under the first master

agreement is effective. This may not be the case if the requirements of the Payment Systems and Netting Act (as described in 4.3 "Netting") are not satisfied with respect to the first master agreement.

Following is an explanation of the optional clause contained in this part:

- **Introductory wording:** The introductory wording identifies the other master agreements. Before including a master agreement as a Linked Master Agreement it is important that the parties to each of the Linked Master Agreements are identical to those in the master agreement in which this clause is inserted ("**Dominant Master Agreement**"). This is because, as discussed below, part of the clause's operation is to terminate the obligations due under the Linked Master Agreements. This will not be effective if there is another party to the Linked Master Agreement who has not agreed to such termination. In addition, it is important to ensure that the terms of the Linked Master Agreements have defined "Events of Default". If not, some adjustment will be needed to the clause.
- **Paragraph (a).** This provides that, for the purpose of Section 6 of the Dominant Master Agreement (ie, the close-out and netting provisions of an ISDA Master Agreement), the rights and obligations under a particular Linked Master Agreement constitute a Transaction governed by the Dominant Master Agreement and, if an Early Termination Date occurs in respect of all Transactions under the Dominant Master Agreement, a Terminated Transaction. This means that, upon the termination of the Linked Master Agreement following an Event of Default, the net amount payable under the Linked Master Agreement will also be an amount payable in relation to a Transaction under the Dominant Master Agreement. The Linked Master Agreement will not, however, be a Transaction for the other purposes of the ISDA Master Agreement (eg, the tax gross-up provisions in Section 2(d) of the Dominant Master Agreement will not apply to the Linked Master Agreement).

The effect of paragraph (a) (ie making the Linked Master Agreement a "Transaction" for certain purposes under the Dominant Master Agreement) is in essence, the same as the effect of the opening paragraph of the Dominant Master Agreement under which individual transactions are incorporated into the Dominant Master Agreement as "Transactions" ie every Master Agreement needs to have associated "Transactions" - otherwise it is an empty shell. The opening paragraph of the Dominant Master Agreement identifies a process by which dealings become "Transactions". Paragraph (a) incorporates another type of "Transaction" namely a Linked Master Agreement.

- **Paragraphs (b) and (c).** It is important to ensure that the obligations to pay net amounts under each agreement are terminated under the terms of the Dominant Master Agreement (along with the other outstanding transactions under the Dominant Master Agreement).

It is also important to ensure that the terms of each master agreement will allow transactions to be closed out at the same time so that net amounts may be calculated. **The effect of incorporating these paragraphs is that the occurrence of a particular event will be an Event of Default under all of the master agreements if it is an Event of Default under one.** This is the case even if that event would not become an Event of Default under some of the master agreements until a further grace period runs out. Participants should carefully consider whether this is acceptable. It may be appropriate to agree with the counterparty to harmonise the events of default under all the agreements.

The Transaction referred to in the previous bullet point above, is terminated, along with all the other Transactions under the Dominant Master Agreement following the designation of an Early Termination Date in accordance with Section 6 of that agreement. This is separate from the termination of the Linked Master Agreement.

- **Paragraph (d) and (e).** It is important to ensure that the termination value of the terminated obligations are calculated under the Dominant Master Agreement.

As explained above, the net amount owing following the termination of the Linked Master Agreement is also an amount owing in relation to a Transaction under the Dominant Master Agreement. However, although the actual amount payable in relation to this Transaction is to be calculated using the mechanism in the close out provisions of the Linked Master Agreement, from the perspective of the Dominant Master Agreement as a close-out netting contract, this calculation is actually taking place in accordance with sub-paragraph (d) of the additional clause set out below.

This means that the provisions of Section 6(e) of the Dominant Master Agreement will apply to calculate the Termination Currency Amount of the obligation in the same way as the Termination Currency Amounts of other Transactions under the Dominant Master Agreement are calculated following the termination of the Dominant Master Agreement. Accordingly, the termination value of all the amounts to be netted are calculated under the same close-out netting contract.

It is important that those termination values are netted under the Dominant Master Agreement.

This involves the Termination Currency Amount for the Transaction constituted by the Linked Master Agreement being netted against all the Termination Currency Amounts for all the other Transactions under the Dominant Master Agreement in accordance with Section 6(e)(i) of the Dominant Master Agreement. This is achieved through the combined wording of paragraphs (d) and (e) which identifies how the Close Amount for all Transactions is to be calculated.

- **Paragraph (f).** This provides that the parties also agree that the inclusion of the net amount payable under the Linked Master Agreement in the calculation of the net amount payable on the termination of the Dominant Master Agreement has the effect of terminating the obligation under the Linked Master Agreement to pay that amount.

The result of this is that all the amounts payable between the parties in relation to both agreements are payable under the Dominant Master Agreement (ie, a single close-out netting contract).

Care!

The following clause is intended to give guidance on the drafting of a linking clause. Particular care needs to be taken to ensure that it is amended appropriately to take account of the particular circumstances.

Also, the linking clause only covers the linkage of agreements following an Event of Default. It does not apply to a termination following a Termination Event (as defined in the ISDA Master Agreement).

The clause assumes that automatic early termination does not apply under any of the agreements.

3. Linking clause

“The parties agree that each of the following master agreements between them is a “Linked Master Agreement” for the purpose of this Master Agreement:

- [date] [description eg. other ISDA Master Agreement]
- [date] [description eg. IFEMA]

[etc.]

The parties further agree that:

- (a) for the purpose of Section 6 of this Master Agreement, the rights and obligations under a particular Linked Master Agreement constitute a Transaction governed by this Master Agreement and, if an Early Termination Date occurs in respect of all Transactions, a Terminated Transaction;
- (b) if an “Event of Default” as defined in this Master Agreement occurs and the Non-defaulting Party gives a notice designating an Early Termination Date under Section 6(a) of this Master Agreement, then:
 - (i) the event also constitutes an “Event of Default” under the Linked Master Agreement (in addition to any other event that constitutes an Event of Default under the Linked Master Agreement); and
 - (ii) the non-defaulting party under the Linked Master Agreement (however that party is described) in relation to that Event of Default is to be the same as the Non-defaulting Party under this Master Agreement;
- (c) if an “Event of Default” as defined in the Linked Master Agreement occurs:
 - (i) that event constitutes an Event of Default under this Master Agreement;
 - (ii) the giving of the notice that results in the designation of an Early Termination Date under the Linked Master Agreement constitutes the giving of a notice designating an Early Termination Date under Section 6(a) of this Master Agreement; and
 - (iii) the Non-defaulting Party under this Master Agreement in relation to that Event of Default is to be the same as the non-defaulting party (however that party is described) under the Linked Master Agreement;
- (d) if an event described in sub-paragraph (b) or (c) occurs, then for the purpose of calculating the amount payable in respect of the Early Termination Date under Section 6(e)(i) of this Master Agreement, the Close-out Amount for each Transaction referred to in sub-paragraph (a) is to be the amount calculated in accordance with:
 - (i) for the Linked Master Agreement [describe the Agreement], Section [***insert reference to close out calculation provision in that Linked Master Agreement***] of that agreement;
 - (ii) [repeat for each Linked Master Agreement],

and whether the Close-out Amount is expressed as a positive or negative number is to be determined as described in the definition of “Close-Out Amount” in this Master Agreement;
- (e) the Close-out Amount for all Transactions other than those referred to in sub-paragraph (d) is to be calculated in accordance with Section 6 of this Master Agreement; and
- (f) the obligation of a party to pay an amount referred to in sub-paragraph (d) under the Linked Master Agreement and under this Master Agreement is terminated on the inclusion of the

amount in the calculation of the net amount payable between the parties under Section 6(e) of this Master Agreement."

4. Additional recommended clause for Linked Master Agreements

It is recommended that the following additional clause be inserted in each Linked Master Agreement:

"The parties agree that:

- (a) this agreement constitutes a "Linked Master Agreement" for the purpose of the ISDA Master Agreement entered into between the parties on [or about the date of this agreement] ("ISDA Master Agreement"); and
- (b) this agreement is to be read subject to Part 5 (***[insert cross reference to additional clause in ISDA Master Agreement]***) of the Schedule to the ISDA Master Agreement."