

MARCH 2003

ISDA®

International Swaps and Derivatives Association, Inc.

AMENDMENT¹

dated as of

to the

ISDA MASTER AGREEMENT

dated as of

between

..... and

(the "Agreement")

The parties have previously entered into the Agreement and have now agreed to amend the Agreement by the terms of this Amendment (this "Amendment").

The International Swaps and Derivatives Association, Inc. ("ISDA") has published the [2002 Master Agreement](#). The parties wish to modify the Agreement to reflect certain provisions of the [2002 Master Agreement](#). The specific modifications that the parties wish to incorporate in the Agreement are set forth in the Attachment to this Amendment (the "Attachment"). The purpose of this Amendment is to amend the Agreement on the terms set forth in the Attachment.

Accordingly, in consideration of the mutual agreements contained in this Amendment, the parties agree as follows:

1. Amendment of the Agreement

The Agreement is amended in accordance with the amendments set forth in the Attachment.

¹ PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISERS THEY DEEM APPROPRIATE PRIOR TO USING THIS FORM OF AMENDMENT. BECAUSE OF THE RANGE OF MODIFICATIONS THAT PARTIES MAY HAVE MADE TO THE MASTER AGREEMENT, MODIFICATIONS TO THIS FORM OF AMENDMENT MAY BE NECESSARY OR AN ENTIRELY DIFFERENT FORM OF AMENDMENT MAY BE APPROPRIATE IN REGARD TO A PARTICULAR AGREEMENT.

2. Representations

Each party represents to the other party in respect of the Agreement, as amended pursuant to this Amendment, that all representations made by it pursuant to the Agreement are true and accurate as of the date of this Amendment.

3. Miscellaneous

(a) **Entire Agreement; Restatement.**

- (i) This Amendment constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto.
- (ii) Except for any amendment to the Agreement made pursuant to this Amendment, all terms and conditions of the Agreement will continue in full force and effect in accordance with its provisions on the date of this Amendment. References to the Agreement will be to the Agreement, as amended by this Amendment.

(b) **Amendments.** No amendment, modification or waiver in respect of the matters contemplated by this Amendment will be effective unless made in accordance with the terms of the Agreement.

(c) **Counterparts.** This Amendment may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(d) **Headings.** The headings used in this Amendment are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Amendment.

(e) **Governing Law.** This Amendment will be governed by and construed in accordance with [English law][the laws of the State of New York (without reference to choice of law doctrine)].²

IN WITNESS WHEREOF the parties have executed this Amendment on the respective dates specified below with effect from the date specified first on the first page of this Amendment.

.....
(Name of Party)

.....
(Name of Party)

By:
Name:
Title:
Date:

By:
Name:
Title:
Date:

² Delete as applicable.

ATTACHMENT
Amendments to Master Agreement

1. The terms of [Section 6\(d\)\(i\) of the Agreement](#) are amended in their entirety as follows:

“(d) **Calculations; Payment Date.**

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

2. The terms of [Section 6\(e\) of the Agreement](#) are amended in their entirety as follows³:

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

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

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:?

(1) **One Affected Party.** Subject to clause (3) below, if there is one Affected Party, the Early Termination Amount will be determined in accordance with Section 6(e)(i), except that references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and to the Non-affected Party, respectively.

(2) **Two Affected Parties.** Subject to clause (3) below, if there are two Affected Parties, each party will determine an amount equal to the Termination Currency Equivalent of the sum of the Close-out Amount or Close-out Amounts (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions, as the case may be, and the Early Termination Amount will be an amount equal to (A) the sum of (I) one-half of the difference between the

³ Those parties who selected First Method as their payment method should note that this Amendment eliminates First Method and imposes Second Method as the sole payment method.

higher amount so determined (by party “X”) and the lower amount so determined (by party “Y”) and (II) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to Y. If the Early Termination Amount is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of the Early Termination Amount to Y.

(iii) **Adjustment for Bankruptcy.** In circumstances where an Early Termination Date occurs because “Automatic Early Termination” applies in respect of a party, the Early Termination Amount will be subject to such adjustments as are appropriate and permitted by applicable law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate.** The parties agree that an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of the termination of the Terminated Transactions.”

3. The term “Termination Currency Equivalent” in [Section 14 of the Agreement](#) is hereby amended by replacing “Market Quotation or Loss (as the case may be)” with “Close-out Amount”.

4. The following terms are added to [Section 14 of the Agreement](#) in the appropriate alphabetical position:

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

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

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

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

(i) quotations (either firm or indicative) for replacement transactions supplied by one or more third parties that may take into account the creditworthiness of the Determining Party at the time the quotation is provided and the terms of any relevant documentation, including credit support documentation, between the Determining Party and the third party providing the quotation;

(ii) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or

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

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

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

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

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

(2) application of different valuation methods to Terminated Transactions or groups of Terminated Transactions depending on the type, complexity, size or number of the Terminated Transactions or group of Terminated Transactions.”

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

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

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

5. The following terms in [Section 14 of the Agreement](#) are deleted in their entirety: “*Loss*”, “*Market Quotation*”, “*Reference Market-makers*” and “*Settlement Amount*”⁴.

If any of these terms are used in any Annex or Schedule to the Agreement or a Confirmation, the [1994 ISDA Equity Option Definitions](#), the [1996 ISDA Equity Derivatives Definitions](#), the [2002 ISDA Equity Derivatives Definitions](#), the [1997 ISDA Government Bond Option Definitions](#), the [1998 FX and Currency Option Definitions](#), the [1999 ISDA Credit Derivatives Definitions](#) or any other ISDA document incorporated by reference or executed by the parties hereto, the terms will have the respective meanings ascribed to them in the standard form [1992 ISDA Master Agreement \(Multicurrency-Cross Border\)](#).

6. Part 1(f) of the Schedule is deleted in its entirety and the subsequent paragraphs are renumbered sequentially. In case the parties have used another designation for the paragraph of the Schedule specifying the selection of Market Quotation or Loss and First Method or Second Method, the reference herein to Part 1(f) of the Schedule shall be deemed a reference to that paragraph.