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January 31, 2018

VIA HAND DELIVERY

Gwen R. Pinson, Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

Re: IN THE MATTER OF: THE APPLICATION OF SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION FOR APPROVAL OF MASTER POWER PURCHASE AND SALE AGREEMENT AND TRANSACTIONS THEREUNDER - **Case No. 2018-00050**

Ms. Pinson:

Please find enclosed and accept for filing on behalf of South Kentucky Rural Electric Cooperative Corporation ("South Kentucky"): (i) a redacted original and ten (10) redacted copies of South Kentucky's Application in the above-styled matter; (ii) an original and ten (10) copies of South Kentucky's Motion for Confidential Treatment concerning portions of its Application; and (iii) a sealed envelope marked "Confidential" containing a complete, un-redacted copy of its Application with the confidential information highlighted.

I appreciate your assistance with this matter, and please do not hesitate to contact me with any questions or concerns.

Respectfully submitted,

Mark David Goss

Enclosures

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION FOR APPROVAL OF MASTER POWER PURCHASE AND SALE AGREEMENT AND TRANSACTIONS THEREUNDER	))))	Case No. 2018-00050

APPLICATION

Comes South Kentucky Rural Electric Cooperative Corporation ("South Kentucky"), by counsel, pursuant to KRS 278.300, 807 KAR 5:001 Sections 14 and 18, and other applicable law, and respectfully submits this Application to the Kentucky Public Service Commission ("Commission") for approval of that certain Master Power Purchase and Sale Agreement (together with the Collateral Annex thereto, and each attachment, exhibit and schedule, the "Agreement") and related energy and capacity transactions entered into by and between South Kentucky and Morgan Stanley Capital Group Inc. ("Morgan Stanley Capital Group") on or about December 19, 2017. In support of this Application, South Kentucky respectfully states as follows:

Introduction

1. South Kentucky has contracted with Morgan Stanley Capital Group for the 7x24x365 provision of 58 Megawatts ("MW") of firm energy for twenty (20) years, beginning June 1, 2019, at a fixed price of $[redacted] per Megawatt-hour ("MWh"), and for a financial capacity hedge of 68 MW (which includes a reserve requirement) for eighteen (18) years, beginning June 1, 2021, at a price of $[redacted] per Megawatt-day ("MW-day"). South Kentucky and its expert consultant conservatively estimate this course of action will result in wholesale power cost savings for the

cooperative totaling between $[redacted] and $[redacted] (Net Present Value) over the next two decades. Consistent with statutory, regulatory, and contractual requirements,[1] as well as the best interests of the cooperative and its members, South Kentucky respectfully requests an Order from the Commission approving and authorizing the Agreement and the energy and capacity transactions entered into thereunder, as further described in this Application and its accompanying Exhibits.

Background

2. South Kentucky is a not-for-profit, member-owned, rural electric distribution cooperative organized under KRS Chapter 279. South Kentucky incorporated in the Commonwealth of Kentucky on October 13, 1938, and attests that it is presently a Kentucky corporation in good standing. South Kentucky's mailing address is P.O. Box 910, Somerset, Kentucky 42502 and its electronic mail address for purposes of this proceeding is kypscinfo@skrecc.com.

3. South Kentucky is engaged in the business of distributing retail electric power to approximately 50,000 members located in the counties of Pulaski, Wayne, McCreary, Cumberland, Lincoln, Rockcastle, Casey, Russell, Laurel, Clinton and Adair, all in Kentucky, and Pickett and Scott counties in Tennessee. As of November 30, 2017, South Kentucky had 67,575 active services for members. It has 6,863 miles of distribution lines in its thirteen (13) county service territory, and owns additional facilities necessary to support this distribution system. The total original cost of these distribution lines and additional facilities, as of November 30, 2017, was $258,233,722.

[1] South Kentucky's purchase of energy and capacity from Morgan Stanley Capital Group is conditional upon approvals of the Agreement and transactions from the Commission and the Rural Utilities Service ("RUS"). *See* **Exhibit 7**, Firm Physical Energy Confirmation, Item 14; *see also* **Exhibit 8**, Financial Capacity Confirmation, Item 17.

4. South Kentucky is one (1) of sixteen (16) Owner-Members of East Kentucky Power Cooperative, Inc. ("EKPC").[2] South Kentucky and EKPC (as well as each other Owner-Member distribution cooperative and EKPC, respectively) have entered into a Wholesale Power Contract, dated October 1, 1964, as approved by the Rural Electrification Administration and as amended, pursuant to which, *inter alia*, EKPC sells and delivers to each distribution cooperative, and each distribution cooperative purchases and receives, electric power and energy required for the operation of its retail electric system.

5. From the inception of the Wholesale Power Contracts until 2003, EKPC's Owner-Members were required to satisfy all of their electric power and energy requirements through purchases made from EKPC. However, by agreements reached in late 2003, each Wholesale Power Contract was amended to grant the distribution cooperatives the ability to obtain power and energy from non-EKPC sources, subject to certain limitations and required procedures. This amendment was designated and is known as "Amendment No. 3." A copy of Amendment No. 3 to the Wholesale Power Contract between South Kentucky and EKPC is attached hereto and incorporated herein as **Exhibit 1**.

6. On or about July 23, 2015, EKPC and each of its Owner-Members entered into that certain Memorandum of Understanding and Agreement Regarding Alternate Power Sources ("MOU"), a copy of which (exclusive of signature pages) is attached hereto as **Exhibit 2**. The MOU provides a framework by which EKPC's Owner-Members may pursue and contract with parties other than EKPC (*i.e.*, "Alternate Sources") to satisfy a defined portion of their future power needs, and it

[2] South Kentucky's sister cooperatives are: Big Sandy Rural Electric Cooperative Corporation; Blue Grass Energy Cooperative Corporation; Clark Energy Cooperative, Inc.; Cumberland Valley Electric, Inc.; Farmers Rural Electric Cooperative Corporation; Fleming-Mason Energy Cooperative, Inc.; Grayson Rural Electric Cooperative Corporation; Inter-County Energy Cooperative Corporation; Jackson Energy Cooperative Corporation; Licking Valley Rural Electric Cooperative Corporation; Nolin Rural Electric Cooperative Corporation; Owen Electric Cooperative, Inc.; Salt River Electric Cooperative Corporation; Shelby Energy Cooperative, Inc.; and Taylor County Rural Electric Cooperative Corporation.

includes provisions relating to, among other matters, limits on the quantities of alternate-source power that can be acquired by each Owner-Member, the length of term for which the alternate-source power can be acquired, and the advance notice that must be provided by an Owner-Member before acquiring alternate-source power.[3]

7. South Kentucky began exploring opportunities for alternate-source power, consistent with Amendment No. 3 and the MOU, in the spring of 2017 after being approached by a company seeking to develop generation assets in Kentucky and sell the output at wholesale. Following several months of investigation and analysis, and in coordination with South Kentucky's retained expert consulting firm, EnerVision, Inc. ("EnerVision"), a request-for-proposals ("RFP") process was undertaken to identify additional potential counterparties capable of providing competitively-priced wholesale power in the quantity desired—58 MW.[4] South Kentucky examined numerous proposals for the provision of energy and/or capacity, evaluating each against the base case of maintaining the *status quo* (specifically, an EKPC all-requirements arrangement). Ultimately, after fully considering the expected benefits and possible risks of each opportunity, South

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[3] In Case No. 2012-00503, *In the Matter of: Petition and Complaint of Grayson Rural Electric Cooperative Corporation for an Order Authorizing Purchase of Electric Power at the Rate of Six Cents per Kilowatts of Power vs a Rate in Excess of Seven Cents per Kilowatt Hour Purchased from East Kentucky Power Cooperative under a Wholesale Power Contract as amended between Grayson Rural Electric Cooperative Corporation and East Kentucky Power Cooperative Inc.* (filed November 19, 2012), the Commission ultimately ordered an investigation to determine "whether Amendment 3 requires or a need exists for a methodology for sharing among all members the allocation of alternative sourced power authorized under Amendment 3." *See* Order, at p. 20 (Ky. P.S.C. July 17, 2013). In its Final Order in the case, the Commission found that the MOU was comprehensive in nature, did not violate any legal or regulatory principle, and resulted in a reasonable resolution of all issues to be investigated in the case. *See* Order, at p. 5 (Ky. P.S.C. Dec. 18, 2015). The Commission also commended the parties for their ability to collectively resolve all pending issues in a reasonable and efficient manner and directed EKPC to place the MOU within its published tariff. *Id.*

[4] 58 MW represents slightly less than the proportional allotment of alternate-source power available to South Kentucky under the terms of Amendment No. 3 and the MOU. *See* **Exhibit 16**, Direct Testimony of Dennis Holt, South Kentucky's President and Chief Executive Officer, at p. 8. Prior to the adoption and execution of the MOU, certain Owner-Members in the EKPC system elected to obtain power and energy from non-EKPC sources under the terms of Amendment No. 3. These projects were/are relatively small, ranging in scope from approximately 1.0 MW to 3.6 MW, and as of the date of South Kentucky's Alternate Source Notice to EKPC totaled 11.2 MW of alternatively-sourced power.

Kentucky determined that contracting with Morgan Stanley Capital Group for a portion of the cooperative's long-term wholesale power supply needs represented the best path forward for the cooperative and its members.[5]

Discussion

8. By letter dated November 28, 2017, and in conformity with paragraph 4 of the MOU, South Kentucky provided formal written notice to EKPC of its intent to reduce and substitute 58 MW of its purchases from EKPC by using electric power and energy from an Alternate Source beginning June 1, 2019.[6] A copy of the Alternate Source Notice from South Kentucky to EKPC is attached hereto and incorporated herein as **Exhibit 4**.

9. The terms by which South Kentucky will purchase and receive capacity and energy from Morgan Stanley Capital Group are set forth in the Agreement and are specifically detailed in the Firm Physical Energy Confirmation and Financial Capacity Confirmation executed thereunder.[7] The Agreement is based on standardized forms promulgated by the Edison Electric Institute ("EEI") and National Energy Marketers Association that are widely utilized in the industry, with specific elections made by the parties to reflect the agreed-upon terms of their commercial relationship. A copy of the EEI Master Purchase and Sale Agreement, including Cover Sheet and Schedule P, is attached hereto and incorporated herein as **Exhibit 5**; a copy of the Collateral Annex

[5] A copy of a Resolution of the Board of Directors of South Kentucky, dated December 19, 2017, and pursuant to which the cooperative determined to proceed with and close the commercial transactions that underlie this Application (subject to appropriate regulatory and lender approvals), is attached hereto and incorporated herein as **Exhibit 3**.

[6] This date complies with the 18-month notice requirement contained in the MOU and also coincides with the beginning of the 2019-20 Delivery Year of PJM Interconnection, LLC ("PJM").

[7] A detailed discussion of the terms of the transactions between South Kentucky and Morgan Stanley Capital Group is provided in the Direct Testimony submitted herewith. *See* **Exhibit 16**, Direct Testimony of Dennis Holt, South Kentucky's President and Chief Executive Officer, beginning at p. 11; **Exhibit 17**, Direct Testimony of Michelle Herrman, South Kentucky's Vice President of Finance, beginning at p. 7; **Exhibit 18**, Direct Testimony of Carter Babbit, EnerVision's Vice President of Power Supply, beginning at p. 15.

to the EEI Master Purchase and Sale Agreement, including Paragraph 10, is attached hereto and incorporated herein as **Exhibit 6**; a copy of the Firm Physical Energy Confirmation is attached hereto and incorporated herein as **Exhibit 7**; and a copy of the Financial Capacity Confirmation is attached hereto and incorporated herein as **Exhibit 8**.

10. To minimize risk and ensure appropriate recourse in the event of a payment failure by Morgan Stanley Capital Group, South Kentucky negotiated and obtained an irrevocable and unconditional payment guarantee from Morgan Stanley Capital Group's parent company, Morgan Stanley, as part of the transactions described herein. A copy of the Morgan Stanley Guarantee is attached hereto and incorporated herein as **Exhibit 9**.

11. Due to the nature of the capacity transaction agreed upon by South Kentucky and Morgan Stanley Capital Group, and because the product purchased by South Kentucky under the Financial Capacity Confirmation is financially-settled, certain provisions of the Dodd–Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") are implicated. Specifically, federal law requires the parties to exchange certain representations, disclosures and information prior to entering into a derivative or "swap" transaction, as well as places upon the "swap dealer" (in this case, Morgan Stanley Capital Group) various ongoing reporting obligations. To address these issues, South Kentucky and Morgan Stanley Capital Group have entered into two (2) agreements, forms which are promulgated by the Internal Energy Credit Association ("IECA"), that adopt, incorporate, and amend certain industry-standard Dodd-Frank protocol agreements and supplements designed by the International Swaps and Derivatives Association, Inc. ("ISDA"). A copy of the ISDA August 2012 DF Protocol Agreement is attached hereto and incorporated herein as **Exhibit 10**; a copy of the ISDA August 2012 DF Supplement is attached hereto and incorporated herein as **Exhibit 11**; a copy of the IECA Amendment Adopting, Incorporating and Amending the

ISDA August 2012 DF Supplement executed by South Kentucky and Morgan Stanley is attached hereto and incorporated herein as **Exhibit 12**; a copy of the ISDA March 2013 DF Protocol Agreement is attached hereto and incorporated herein as **Exhibit 13**; a copy of the ISDA March 2013 DF Supplement is attached hereto and incorporated herein as **Exhibit 14**; and a copy of the IECA Amendment Adopting, Incorporating and Amending the ISDA March 2013 DF Supplement executed by South Kentucky and Morgan Stanley is attached hereto and incorporated herein as **Exhibit 15**.

12. The wholesale power cost-savings South Kentucky expects to realize as a consequence of its decision to contract with Morgan Stanley Capital Group are substantial. South Kentucky believes that the financial benefits anticipated to result by diversifying its power supply portfolio far outweigh the risks and obligations attendant to the subject transactions, and thus it seeks the Commission's authorization to proceed as described herein.

Request for Relief

13. Pursuant to KRS 278.300(1), "[n]o utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the commission."

14. Though KRS 278.300 is most clearly and most often relevant in cases involving utility financing (notes, stocks, bonds, etc.), applicable precedent of the Commission strongly suggests that regulatory approval should be sought and obtained for long-term power purchase agreements like those presented in this Application.[8] Because the transactions at issue include ongoing, fixed

[8] *See* Administrative Case No. 350, *In the Matter of the Consideration and Determination of the Appropriateness of Implementing a Rate Making Standard Pertaining to the Purchase of Long-Term Wholesale Power by Electric Utilities as Required in Section 712 of the Energy Policy Act of 1992* (Ky. P.S.C. Oct. 25, 1993) ("[T]hese contracts may well require prior approval under KRS 278.300 if they constitute evidence of indebtedness. In particular, the inclusion in such contracts of minimum payment obligations or take/pay provisions may necessitate prior approval."); *see also* Case No. 2014-00321, *In the Matter of: Application of Louisville Gas & Electric Company and Kentucky Utilities Company for a Declaratory Order and Approval Pursuant to KRS 278.300 for a Capacity Purchase and*

take/pay obligations and represent long-term commitments that will require footnote disclosure in South Kentucky's annual financial statements, the utility seeks an Order of the Commission approving and authorizing the Agreement and transactions as a proper issue of evidences of indebtedness.

15. The Agreement and transactions which serve as the basis for this proceeding are for a lawful object within the corporate purposes of South Kentucky, are necessary or appropriate for or consistent with the proper performance by South Kentucky of its service to the public and will not impair its ability to perform that service, and are reasonably necessary and appropriate for such purpose. These conclusions are supported by the facts and evidence presented in this Application and its accompanying Exhibits, and an Order from the Commission approving and authorizing the Agreement and transactions is appropriate.

16. South Kentucky requests that the relief prayed for herein be awarded by the Commission on an expedited basis, *to wit*, on or before April 25, 2018. Pursuant to the terms of the parties' agreements, a final, non-appealable Order approving the Agreement and Confirmations must be obtained from the Commission on or before May 31, 2018.[9] Thus, South Kentucky requests that the Commission issue a decision on the merits in this case slightly more than thirty (30) days prior to the contractual deadline.

Tolling Agreement (Ky. P.S.C. Nov. 24, 2014) ("[T]he Commission finds that the minimum payment obligations in the form of fixed capacity and O&M charges and the requirement that the Companies take a minimum amount of production over the term of the Agreement constitute long-term financial obligations that are appropriate for Commission review and approval under KRS 278.300.").

[9] *See* **Exhibit 7**, Firm Physical Energy Confirmation, Item 14; *see also* **Exhibit 8**, Financial Capacity Confirmation, Item 17. *See also* **Exhibit 16**, Direct Testimony of Dennis Holt, South Kentucky's President and Chief Executive Officer, at pp. 15-16.

Overview of Testimony and Filing Requirements

17. As part of its Application and in support thereof, South Kentucky tenders herewith the Direct Testimony of three (3) witnesses, as follows:

a. Mr. Dennis Holt, South Kentucky's President and Chief Executive Officer, in which testimony he describes the general business of the cooperative, its past wholesale power procurement practices, Amendment No. 3, the MOU, and the decision by South Kentucky to engage an expert consultant and ultimately pursue an Alternate Source to satisfy a portion of the cooperative's load. Mr. Holt's Direct Testimony is attached hereto and incorporated herein as **Exhibit 16**.

b. Mrs. Michelle Herrman, South Kentucky's Vice President of Finance, in which testimony she describes the financial health of the cooperative, its wholesale power expenses, and the anticipated impact of the proposed transactions on the future performance of the cooperative. Mrs. Herrman's Direct Testimony is attached hereto and incorporated herein as **Exhibit 17**.

c. Mr. Carter Babbit, Vice President of Power Supply of EnerVision, in which testimony he describes the scope of work performed by his firm, the process by which his firm solicited and refined proposals for the desired products, and the analysis performed to determine the expected benefits and possible risks associated with all competitive RFP responses. Mr. Babbit's Direct Testimony is attached hereto and incorporated herein as **Exhibit 18**.

18. Pursuant to 807 KAR 5:001 Section 18(1)(a), the information required by Section 14 of 807 KAR 5:001 is contained in paragraph 2 of this Application.

19. Pursuant to 807 KAR 5:001 Section 18(1)(b), a general description of South Kentucky's property and the field of its operation, together with a statement of the original cost of the same and the cost to South Kentucky, is contained in paragraph 3 of this Application.

20. Pursuant to 807 KAR 5:001 Section 18(2)(a), attached hereto as **Exhibit 19** is the financial exhibit described in 807 KAR 5:001 Section 12.

21. Pursuant to 807 KAR 5:001 Section 18(2)(b), South Kentucky provides copies of its mortgages at Attachment A and Attachment B to Exhibit 19.

22. In light of the nature of South Kentucky's Application, the other filing requirements set forth in Commission regulation 807 KAR 5:001 Section 18 appear inapplicable. South Kentucky does not propose to issue, assume or use the proceeds related to any kind of stock, bond, or note, no property is being acquired, constructed, improved or extended, and no obligations are being discharged or refunded as part of this Application. To the extent necessary, South Kentucky requests permission, pursuant to 807 KAR 5:001 Section 22 and for good cause shown, to deviate from the remaining filing requirements of 807 KAR 5:001 Section 18 due to their inapplicability.

Conclusion

23. The Agreement and related transactions described herein represent a remarkable opportunity for South Kentucky to significantly reduce a portion of its wholesale power expense over the next two (2) decades. South Kentucky's mission of providing reliable and cost-effective retail electric service is substantially furthered by its arrangement with Morgan Stanley Capital Group, and the obligations South Kentucky must assume in order to realize the benefits of its proposed course of action are reasonably necessary and appropriate to fulfill its duties to its members. This Application, including the Exhibits attached hereto and incorporated herein,

contains fully the facts on which South Kentucky's request for relief is based, and an Order from the Commission approving the Agreement and related transactions is appropriate.

WHEREFORE, South Kentucky respectfully requests that the Commission issue an Order approving and authorizing the Agreement and transactions with Morgan Stanley Capital Group described herein, that such Order be issued on or before April 25, 2018, and that such Order award South Kentucky any other relief to which it may appear entitled.

Dated this 31st day of January, 2018.

Respectfully submitted,

Mark David Goss
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Counsel for South Kentucky Rural Electric Cooperative Corporation

VERIFICATION

The undersigned, Dennis Holt, being first duly sworn, states that he is the President and Chief Executive Officer of South Kentucky Rural Electric Cooperative Corporation, that he has personal knowledge of the matters set forth in the foregoing Application, and that the statements contained therein are true and correct to the best of his knowledge, information, and belief.

Dennis Holt

Dennis Holt, President & CEO
South Kentucky Rural Electric Cooperative Corporation

Subscribed and sworn to before me by Dennis Holt, President and Chief Executive Officer of South Kentucky Rural Electric Cooperative Corporation, this 29th day of January, 2018.

Amy A Acton

Notary Public, Kentucky State At Large

My Commission Expires: July 16, 2018

Commission #: 515365

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION FOR APPROVAL OF MASTER POWER PURCHASE AND SALE AGREEMENT AND TRANSACTIONS THEREUNDER	) Case No. 2018-00050

MOTION FOR CONFIDENTIAL TREATMENT

Comes now South Kentucky Rural Electric Cooperative Corporation ("South Kentucky"), by and through counsel, pursuant to KRS 61.878, 807 KAR 5:001, Section 13 and other applicable law, and for its Motion requesting that the Commission afford confidential treatment to certain portions of South Kentucky's Application and related exhibits and direct testimony filed in the above-captioned proceeding, respectfully states as follows:

1. South Kentucky's Application requests that the Commission consider and approve, consistent with KRS 278.300, a long-term power purchase agreement and related energy and capacity transactions entered into on or about December 19, 2017, by and between the cooperative and Morgan Stanley Capital Group Inc. ("Morgan Stanley Capital Group"). South Kentucky's proposal to diversify its power supply portfolio is the result of many months of discussions and analysis and is expected to yield significant wholesale power cost-savings for the benefit of South Kentucky's approximately 50,000 members.

2. Information which is proprietary, confidential, sensitive, and commercially valuable is set forth throughout South Kentucky's Application, exhibits and direct testimony. In particular, South Kentucky seeks confidential treatment for: (i) the identities of and pricing terms

submitted by the various bidders that participated in the request-for-proposals ("RFP") process conducted by South Kentucky and its retained expert consultant, EnerVision, Inc. ("EnerVision"), as part of the cooperative's due diligence in considering alternate wholesale power supply opportunities; (ii) the detailed economic data, forecasts, and conclusions of the Net Present Value (NPV) analysis conducted by South Kentucky and EnerVision in conjunction with consideration of the bids received; (iii) the specific pricing, collateral, and related terms of the proposal ultimately selected by South Kentucky; and (iv) certain banking and related commercially-sensitive identifying information contained in the contract documents executed by South Kentucky and Morgan Stanley Capital Group. The Kentucky Open Records Act and applicable Commission precedent renders this information appropriate for protection from public disclosure.[1]

3. KRS 61.878(1)(c)(1) protects "records confidentially disclosed to an agency or required by an agency to be disclosed to it, generally recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records." The Kentucky Supreme Court has stated, "information concerning the inner workings of a corporation is 'generally accepted as confidential or proprietary'" *Hoy v. Kentucky Industrial Revitalization* Authority, 907 S.W.2d 766, 768 (Ky. 1995). All of the confidential information is critical to South Kentucky's effective execution of business decisions and strategy. If disclosed, the confidential information would give South Kentucky's competitors insights into the cooperative's business operations and strategies that are otherwise publicly unavailable. Accordingly, the confidential information satisfies both the statutory and common law standards for affording confidential treatment.

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[1] *See* KRS 61.878(1)(c); *see also, e.g.*, Case No. 2016-00269, *In the Matter of: Application of East Kentucky Power Cooperative, Inc. for Issuance of a Certificate of Public Convenience and Necessity, Approval of Certain Assumption of Evidences of Indebtedness and Establishment of a Community Solar Tariff*, Order at pp. 2-3 (Ky. P.S.C. Nov. 30, 2016).

4. Notably, as part of the RFP process South Kentucky and the various bidders agreed that certain information should and would be kept confidential. Moreover, the terms of the contractual agreement entered into by and between South Kentucky and Morgan Stanley Capital Group similarly provide that pricing terms and other sensitive information will be withheld from public disclosure. Of course, South Kentucky's competitive position in the marketplace will be significantly harmed if public disclosure of commercially-sensitive information is permitted, and potential vendors and competitors armed with confidential information would maintain a competitive advantage in negotiations both with South Kentucky and others. Disclosure of the confidential information could result in unnecessarily higher costs paid by South Kentucky, translating into higher rates paid by South Kentucky's members, and thus confidential protection is requested and warranted.

5. While unlikely, it is conceivable that the Commission's Final Order in this matter could deny in whole or in part the Application which could require South Kentucky to seek alteration or amendment to certain portions of the transaction, or partially or wholly re-bid it. If this were to occur and South Kentucky's potential counterparties had access to essential commercial terms such as price, NPV analyses, and the identities of their competitor-bidders responding to the initial RFP, South Kentucky would be placed at a significant competitive disadvantage ultimately resulting in financial harm to the cooperative and its Owner-Members.

6. The confidential information is proprietary information that is retained by South Kentucky on a "need-to-know" basis and that is not publicly available. The confidential information is distributed within South Kentucky only to those employees and agents who must have access for business reasons, and is generally recognized as confidential and proprietary in the energy industry.

7. South Kentucky does not necessarily object to limited disclosure of certain of the confidential information described herein (consistent with Commission regulations and its long-standing practice and procedures), pursuant to an acceptable confidentiality and nondisclosure agreement, to intervenors with a legitimate interest in reviewing the same for the sole purpose of participating in this case. However, South Kentucky reserves the right to object to providing said information to any intervenor if said provision could result in liability to South Kentucky under any confidentiality provision or non-disclosure agreement associated with the RFP process or the ultimate arrangement with Morgan Stanley Capital Group.

8. In accordance with the provisions of 807 KAR 5:001, Section 13(2), South Kentucky is filing, separately and under seal, one (1) unredacted copy of its Application (including exhibits and direct testimony) with the confidential information highlighted. A redacted original and ten (10) redacted copies of the Application have also been tendered to the Commission.

9. In accordance with the provisions of 807 KAR 5:001, Section 13(2), South Kentucky respectfully requests that the confidential information be withheld from public disclosure for a period of ten (10) years. The public disclosure of the confidential information prior to the expiration of this time period will result in a competitive disadvantage to South Kentucky and could be detrimental to future negotiations with vendors and competitors.

10. If, and to the extent, the Confidential Information becomes publicly available or otherwise no longer warrants confidential treatment., South Kentucky will notify the Commission and have its confidential status removed, pursuant to 807 KAR 5:001 Section 13(10).

WHEREFORE, on the basis of the foregoing, South Kentucky respectfully requests that the Commission classify and protect as confidential the specific confidential information described herein for a period of ten (10) years.

Dated this 31st day of January, 2018.

Respectfully submitted,

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Counsel for South Kentucky Rural Electric Cooperative Corporation

SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION
CASE NO. 2018-00050
INDEX OF EXHIBITS TO APPLICATION

1. Amendment No. 3 to the Wholesale Power Contract between South Kentucky Rural Electric Cooperative Corporation and East Kentucky Power Cooperative, Inc., dated November 13, 2003

2. Memorandum of Understanding and Agreement Regarding Alternate Power Sources dated July 23, 2015

3. Resolution of the Board of Directors of South Kentucky, dated December 19, 2017

4. Alternate Source Notice dated November 28, 2017

5. EEI Master Purchase and Sale Agreement (including Cover Sheet and Schedule P) between South Kentucky Rural Electric Cooperative Corporation and Morgan Stanley Capital Group Inc. dated December 18, 2017

6. Collateral Annex to the EEI Master Purchase and Sale Agreement (including Paragraph 10) dated December 18, 2017

7. Firm Physical Energy Confirmation dated December 19, 2017

8. Financial Capacity Confirmation dated December 19, 2017

9. Guarantee of Morgan Stanley dated December 20, 2017

10. ISDA August 2012 DF Protocol Agreement

11. ISDA August 2012 DF Supplement

12. IECA Amendment Adopting, Incorporating and Amending the ISDA August 2012 DF Supplement dated December 18, 2017

13. ISDA March 2013 DF Protocol Agreement

14. ISDA March 2013 DF Supplement

15. IECA Amendment Adopting, Incorporating and Amending the ISDA March 2013 DF Supplement dated December 18, 2017

16. Direct Testimony of Mr. Dennis Holt, South Kentucky's President and Chief Executive Officer

17. Direct Testimony of Mrs. Michelle Herrman, South Kentucky's Vice President of Finance

18. Direct Testimony of Mr. Carter Babbit, Vice President of Power Supply of EnerVision

Exhibit CB-1 – EnerVision's Background and Qualifications

Exhibit CB-2 – Qualifications of Additional EnerVision Team Members

Exhibit CB-3 – Initial Proposal Matrix

Exhibit CB-4 – Original Proposals - All-in Economic Comparison to EKPC

Exhibit CB-5 – Original Proposals – NPV Savings Comparison to EKPC

Exhibit CB-6 – Original Shortlist and Rationale

Exhibit CB-7 – Revised Proposal Matrix and Revised Shortlist

Exhibit CB-8 – Scenario Analysis on Final Zone Price Risk for Morgan Stanley Capital Group

Exhibit CB-9 – Revised Shortlist Annual Savings versus the EKPC Base Case

Exhibit CB-10 – Final Shortlist Total NPV Savings versus EKPC Base Case

19. Financial Exhibit (807 KAR 5:001 Section12)

Attachment A – Restated Mortgage and Security Agreement dated November 1, 2016, between South Kentucky, United States of America Rural Utilities Service, National Rural Utilities Cooperative Finance Corporation, and CoBank, ACB

Attachment B – Mortgage dated December 31, 2007, between South Kentucky Rural Electric Cooperative Corporation and the City of Monticello, Kentucky

Attachment C – Existing Notes Outstanding

Attachment D – Balance Sheet

Attachment E – Statement of Operations

U.S. DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE

RUS BORROWER DESIGNATION Kentucky 54 Wayne

THE WITHIN Amendment No. 3 dated November 13, 2003 to the Wholesale Power Contract dated October 1, 1964 between East Kentucky Power Cooperative, Inc. and South Kentucky Rural Electric Cooperative Corporation

SUBMITTED BY THE ABOVE DESIGNATED BORROWER PURSUANT TO THE TERMS OF THE LOAN CONTRACT, IS HEREBY APPROVED SOLELY FOR THE PURPOSES OF SUCH CONTRACT.

FOR THE ADMINISTRATOR

DATED
5/6/04

RUS FORM 28a REV 5-73
(a computer generated facsimile)

AMENDMENT NO. 3 TO WHOLESALE POWER CONTRACT
BETWEEN EAST KENTUCKY POWER COOPERATIVE, INC. AND
SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

This Agreement dated the 13th day of NOVEMBER, 2003, amends the Wholesale Power Contract dated October 1, 1964 between East Kentucky Power Cooperative, Inc. (hereinafter "Seller") and SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION (hereinafter "Member") as follows:

I. Numerical Section 1 of the Wholesale Power Contract shall be amended and restated to read in its entirety as follows:

1. General - The Seller shall sell and deliver to the Member and the Member shall purchase and receive from the Seller all electric power and energy which shall be required to serve the Member's load, including all electric power and energy required for the operation of the Member's system. Notwithstanding the foregoing, the Member shall have the option, from time to time, with notice to the Seller, to receive electric power and energy, from persons other than the Seller, or from facilities owned or leased by the Member, provided that the aggregate amount of all members' elections (measured in megawatts in 15-minute intervals) so obtained under this paragraph shall not exceed five percent (5%) of the rolling average of Seller's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the 3 twelve month periods immediately preceding any election by the Member from time to time, as provided herein and further provided that no Member shall receive more than fifteen percent (15%) of the rolling average of its coincident peak demand for the single calendar month with the highest average peak demand occurring during each of the 3 twelve

month periods immediately preceding any election by the Member from time to time, as provided herein.

For any election made or cancelled under this Section, the following provisions shall apply:

a. During any calendar year, the Member may make or cancel any such election or elections by giving at least 90 days' notice to the Seller with respect to any load or loads with an average coincident peak demand (calculated in the same manner as provided in the preceding paragraph) of 5.0 Megawatts or less, in the annual aggregate.

b. During any calendar year, the Member may make or cancel any such election or elections by giving at least 18 months or greater notice to the Seller with respect to any load or loads with an average coincident peak demand (calculated in the same manner as provided in the preceding paragraph) of 5.0 Megawatts or more, in the annual aggregate

Upon the effective date of the Member's cancellation of any such election under this Agreement, the load or loads shall be governed by the all requirements obligations of the Seller and the Member in this Section, and notice of same shall be provided to the Rural Utilities Service ("RUS") by the member. Such loads which are transferred to Seller's all-requirements obligations shall not thereafter be switched by Member to a different power supplier.

c. Should any such election by Member involve the acquisition of new service territory currently served by another power supplier or municipal utility, Member shall provide evidence to Seller and RUS in the new Load Purchase Agreement that the acquired territory must be served by the current power supplier as a condition of the acquisition of the new load.

Seller will provide transmission, substation, and ancillary services without

discrimination or adverse distinction with regard to rates, terms of service or availability of such service as between power supplies under paragraphs above and Member will pay charges therefore to Seller. Seller also agrees to allow, at Member's sole cost and expense, such additional interconnection as may be reasonably required to provide such capacity and energy as contemplated in the above paragraphs.

Member will be solely responsible for all additional cost associated with the exercise of elections under the above paragraphs including but not limited to administrative, scheduling, transmission tariff and any penalties, charges and costs, imposed by the Midwest Independent System Operator ("MISO") or other authorities.

II. Section 10 of the Wholesale Power Contract shall be restated as Section 11 and new Section 10 and Section 11 shall read in their entirety as follows:

10. Retail Competition - Seller and its subsidiaries, shall not, during the term of this contract, without the consent of the Member, (i) sell or offer to sell electric power or energy at retail within the Member's assigned or expanded geographic area, if any, established by applicable laws or regulations or (ii) provide or offer to provide retail electric service to any person which is a customer of the Member.

11. Term – This Agreement shall become effective only upon approval in writing by the Administrator and shall remain in effect until January 1, 2041, and thereafter until terminated by either party's giving to the other not less than six months' written notice of its intention to terminate. Subject to the provisions of Section 1 hereof, service hereunder and the obligation of the Member to pay therefore shall commence upon completion of the facilities necessary to provide service.

Executed the day and year first above mentioned.

EAST KENTUCKY POWER
COOPERATIVE, INC.

BY: Delno Tolliver

Delno Tolliver

ITS: CHAIRMAN OF THE BOARD

Sam Penn

ATTEST, SECRETARY

Sam Penn

SOUTH KENTUCKY RURAL ELECTRIC
COOPERATIVE CORPORATION

BY: Allen Anderson

ITS: Manager & CEO

Tom Estes

ATTEST, SECRETARY

(H:Legal/misc/amend-3-wpc)

RESOLUTION

At a regular meeting of the Board of Directors of South Kentucky Rural Electric Cooperative Corporation held at Somerset, Kentucky on January 15, 2004, the following business was transacted:

> A document entitled Third Amendment to Wholesale Power Contract, as Amended, dated November 13, 2003, with East Kentucky Power Cooperative, Inc. was presented. This Amendment reaffirms two earlier Amendments, two Supplemental Agreements and a Memorandum of Understanding, and extends the term of the Wholesale Power Contract from January 1, 2025 to January 1, 2041; in addition to providing, for the first time, some flexibility in the Cooperative's obligation to secure all of its system power supply needs from EKPC, all in compliance with RUS Loan Policy and Requirements.
>
> After discussion, a motion was made, seconded and passed to approve this Third Amendment to Wholesale Power Contract, as Amended, and authorize Allen Anderson, CEO of the Corporation to execute same.

The foregoing is a true and exact copy of a resolution passed at a meeting called pursuant to proper notice at which a quorum was present and which now appears on the Minute Book of Proceedings of the Board of Directors of the cooperative and said resolution has not been rescinded or modified.

Witness my hand this 15th day of January, 2004.

Tom Estes

SECRETARY

JAN 1 9 2004

MEMORANDUM OF UNDERSTANDING AND AGREEMENT
REGARDING ALTERNATE POWER SOURCES

This Memorandum of Understanding and Agreement (**"MOU&A"**) is entered into and effective as of this 23 day of [July], 2015, by and between East Kentucky Power Cooperative, Inc. (**"EKPC"**), and each of the following Member Distribution Cooperatives (also referred to herein as **"Owner Member"**):

Member Distribution Cooperatives

Big Sandy Rural Electric Cooperative Corporation
Blue Grass Energy Cooperative Corporation
Clark Energy Cooperative, Inc.
Cumberland Valley Electric
Farmers Rural Electric Cooperative Corporation
Fleming-Mason Energy Cooperative
Grayson Rural Electric Cooperative Corporation
Inter-County Energy Cooperative Corporation
Jackson Energy Cooperative Corporation
Licking Valley Rural Electric Cooperative Corporation
Nolin Rural Electric Cooperative Corporation
Owen Electric Cooperative, Inc.
Salt River Electric Cooperative Corporation
Shelby Energy Cooperative, Inc.
South Kentucky Rural Electric Cooperative Corporation
Taylor County Rural Electric Cooperative Corporation

Factual Recitals

0.1 Each Owner Member is an electric cooperative, organized under the laws of the State of Kentucky, engaged in the business of supplying and distributing electric power and energy to its members within a certain service area, for which business the Owner Member operates an electric distribution system, among other operations.

0.2 EKPC is a generation and transmission cooperative corporation, organized under the laws of the State of Kentucky, which is owned by its Owner Members, which are certain electric cooperatives operating in the State of Kentucky (**"Owner Members"**).

0.3 EKPC and each Owner Member are parties to a Wholesale Power Contract, dated October 1, 1964, as amended, pursuant to which (among other things) EKPC sells and delivers to that Owner Member, and that Owner Member purchases and receives, electric power and energy

required for the operation of the Owner Member's electric system. Such Wholesale Power Contracts are identical in all material respects, except for the identification of the respective Owner Member that is a party to each such agreement. A reference herein to **"Wholesale Power Contract"** refers to each and every such agreement.

0.4 As of October 23, 2003, each Wholesale Power Contract was amended by the execution of that certain amendment designated and known as **"Amendment No. 3"** thereto, to provide, among other things, for the obtaining by the subject Owner Member of electric power and energy from sources other than EKPC for use in operating the Owner Member's electric system, subject to certain limitation and required procedures set forth therein. Except for the identification of the respective Owner Member that is a party to each such Amendment No. 3, all of such amendments are identical. A reference herein to **"Amendment No. 3"** refers to each and every such amendment.

0.5 EKPC and certain Owner Members have, in the past, disagreed on the interpretation of some provisions of Amendment No. 3 and, therefore, to the Wholesale Power Contract as amended thereby.

0.6 The Owner Members each have a keen interest in pursuing or investigating opportunities to develop or otherwise obtain and use sources of electric power and energy other than EKPC. Such non-EKPC sources are hereinafter referred to as **"Alternate Sources"** and further defined in Section 2(A) below.

0.7 EKPC and each Owner Member each desire to avoid litigation over the provisions of the Wholesale Power Contract that pertain to Alternate Sources, and thereby avoid the costs and uncertainty of such litigation.

NOW THEREFORE, in consideration of the mutual covenants, understandings, and undertakings set forth herein, each of the Owner Members and EKPC, agree as follows:

Understandings, Stipulations, and Agreements

1. Term

(A) This MOU&A shall become effective on the date first written above and shall continue in effect until the termination of the Wholesale Power Contract. If the Wholesale Power Contract between EKPC and one of the Owner Members terminates before the other Wholesale Power Contracts, then this MOU&A shall terminate with respect to that Owner Member, but shall remain in effect with respect to the other Owner Members.

2. Scope

(A) The purpose of this MOU&A is to memorialize EKPC's and the Owner Members' mutually agreed interpretation of Amendment No. 3 with respect to Alternate Sources. Except as provided in Section 2(B), an **"Alternate Source"** is any generating resource that is owned (directly or indirectly, in whole or in part) or controlled (directly or indirectly, in whole or in part) by an Owner Member, regardless of whether the resource is connected to the Owner

Member's distribution system, or any power purchase arrangement under which an Owner Member purchases capacity or energy (or both), if such generating resource or power purchase arrangement is used to serve any portion of the Owner Member's load.

(B) A generating resource that meets the definition of a "Behind the Meter Source" as set forth in Section 4(A)(v)(a) that is used by a Member solely to provide energy to serve interruptible retail load during times when service for such load through PJM has been interrupted pursuant to the load's participation in PJM's demand response program will not be considered an "Alternate Source" subject to the requirements of this MOU&A. If an Owner Member desires to use such a generating resource at any other time, the Owner Member must comply with the requirements of this MOU&A with respect to that generating resource.

(C) Nothing in this MOU&A is intended to modify any of the express provisions of Amendment No. 3. During the term of this MOU&A, neither EKPC nor any Owner Member shall assert that this MOU&A is invalid for the reason that it is contrary to or inconsistent with the Wholesale Power Contract. In the event of an actual conflict between the Wholesale Power Contract, as amended, including by Amendment No. 3, and this MOU&A, the Wholesale Power Contract, as amended, including by Amendment No. 3, shall control.

3. Maximum Permissible Demand Reduction.

(A) The maximum demand reduction that an Owner Member can obtain through the use of Alternate Sources shall be determined as follows:

(i) All demand measurements, whether of EKPC aggregate demand or an Owner Member's demand, called for in this Section 3 shall be measured in megawatts in 15-minute intervals and shall be adjusted to include any interruptible load that was interrupted at the time of measurement.

(ii) If in connection with its acquisition of new service territory the Owner Member provides evidence to EKPC and the RUS in the related acquisition agreement that the acquired service territory must continue to be served by the current power supplier as a condition of the acquisition, the acquired service territory may be supplied by such current power supplier for so long as is required under the terms of such acquisition agreement. Until such supply from the current power supplier is terminated, the load of such acquired service territory shall not be included in the calculations of the 5% and 15% limitations set forth below in this Section 3 applicable to the Owner Member that acquired the service territory or any other Owner Member. From and after the termination of such supply from the current power supplier, the load of such acquired service territory (including such load during the three (3) twelve-month (12-month) periods immediately preceding the date of termination of such supply from the current power supplier) shall be included in calculations of the 5% and 15% limitations set forth below in this Section 3 applicable to the Owner Member or any Other Member.

(iii) If, at the time the Owner Member submits an election notice pursuant to Section 4, the aggregate amount of all Owner Members' loads being served with Alternate Sources (including the load proposed to be served by the Owner Member's new Alternate Source) would be less than two and one half percent (2.5%) of the rolling average of EKPC's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding the date the Owner Member delivers such election notice, the Owner Member's aggregate demand reduction from Alternate Sources (including the demand reduction from the proposed new Alternate Source) may not exceed 15% of the rolling average of the Owner Member's coincident peak demand for the single calendar month with the highest average peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding the date the Owner Member delivers such election notice. If this 15% threshold would be exceeded, the Alternate Source shall not be permitted unless the load proposed to be served by it is reduced such that this 15% threshold is not exceeded.

(iv) If, at the time the Owner Member submits an election notice pursuant to Section 4, the aggregate amount of all Owner Members' loads being served with Alternate Sources (including the load proposed to be served by the Owner Member's new Alternate Source) would be equal to or greater than two and one half percent (2.5%) of the rolling average of EKPC's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding the date the Owner Member delivers such election notice, the Owner Member's aggregate demand reduction from Alternate Sources (including the demand reduction from the proposed new Alternate Source) may not exceed five percent (5%) of the rolling average of the Owner Member's coincident peak demand for the single calendar month with the highest average peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding the date the Owner Member delivers such election notice. If this five percent (5%) threshold would be exceeded, the Alternate Source shall not be permitted unless the load proposed to be served by it is reduced such that this five percent (5%) threshold is not exceeded.

(v) If, at the time the Owner Member submits an election notice pursuant to Section 4, the aggregate amount of all Owner Members' loads being served with Alternate Sources (including the load proposed to be served by the Owner Member's new Alternate Source) would be greater than five percent (5%) of the rolling average of EKPC's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding the date the Owner Member delivers such election notice, the

Alternate Source shall not be permitted unless the load proposed to be served by it is reduced such that this five percent (5%) threshold is not exceeded.

(vi) The term of any Alternate Source (inclusive of any renewal options), whether the Alternate Source is a generating facility owned or controlled by the Owner Member or a contract with a third party, shall not exceed twenty (20) years.

(a) Any Alternate Source that is a contract in effect at the time when the 2.5% threshold defined in Section 3(A)(iii) is reached will be honored for the remaining term of the contract (without exercise of any renewal option). However, if at the end of the existing contract's term that was in effect when the 2.5% threshold was reached, the 2.5% threshold continues to be reached or is exceeded, and the Owner Member's aggregate amount of Alternate Source elections then exceeds the 5% threshold defined in Section 3(A)(iv), then the Alternate Source contract may not be renewed unless the Owner Member reduces the aggregate amount of the Owner Member's load served by Alternate Sources such that the aggregate amount of the Owner Member's load served by Alternate Sources (taking into account the renewal of the contract) does not exceed the 5% threshold set forth in Section 3(A)(iv). The Owner Member may meet this requirement by using demand reduction available to another Owner Member, in accordance with Section 3(B).

(b) Any Alternate Source that is a generating facility owned or controlled by the Owner Member that is in effect when the 2.5% threshold defined in Section 3(A)(iii) is reached will be honored for the remaining term of the Alternate Source as set forth in the notice provided under Section 4(A).

(B) Demand reduction available to one Owner Member may be used by another Owner Member if those two Owner Members so agree; provided, however, that in no event may a new Alternate Source proposed by an Owner Member in an election notice pursuant to Section 4 be approved if:

(i) the aggregate amount of all Owner Members' loads being served with Alternate Sources (including the load proposed to be served by the Owner Member's new Alternate Source) would be greater than five percent (5%) of the rolling average of EKPC's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding the date the Owner Member delivers such election notice; or

(ii) the aggregate amount of the Owner Member's load being served by Alternate Sources (including the load proposed to be served by the Owner Member's new Alternate Source) would be greater than fifteen percent (15%) of the rolling average of the Owner Member's coincident peak demand for the single calendar month with the highest average peak demand occurring during each of the three (3) twelve-month (12-month) periods immediately preceding such notice.

4. Alternate Source Notices

(A) In order for an Owner Member to reduce its purchases from EKPC by using electric power and energy from an Alternate Source, that Owner Member shall have provided EKPC with prior written notice of such reduction in accordance with the procedures and requirements set forth herein. Each such notice hereunder (an **"Alternate Source Notice"**) shall set forth the following information regarding the subject Alternate Source:

(i) the term during which the Alternate Source will be used to reduce the Owner Member's purchases from EKPC under the Wholesale Power Contract, including the date on which such use will begin, and the length of time during which such use will continue, which length may not exceed 20 years (including any renewal options for an Alternate Source that is a contract with a third party);

(ii) the maximum electrical capacity, in kW, to be available from the Alternate Source and the corresponding amount of reduction in demands to be served by EKPC as a result of the use of the Alternate Source, appropriately taking into account expected losses, if any;

(iii) a general description of the nature of the Alternate Source and the primary generating facilities from which the subject electric power and energy will be produced;

(iv) the approximate, expected pattern of use or dispatching of the Alternate Source and the corresponding pattern of hourly reductions in energy to be purchased by the Owner Member from EKPC; and

(v) a designation of whether the Alternate Source will be:

(a) interconnected to the Owner Member's distribution system (and not to any transmission system) and will not produce energy in any hour in excess of the Owner Member's load at the Related EKPC Point of Delivery. Such Alternate Sources are referred to in this MOU&A as **"Behind the Meter Sources"**. The **"Related EKPC Point of Delivery"** with respect to any Alternate Source is the point of delivery under the Owner Member's Wholesale

Power Contract through which energy purchased from EKPC would be used to serve the load served by the Alternate Source if the Alternate Source did not exist;

(b) interconnected or delivered to EKPC's or another entity's transmission system; or

(c) interconnected to the Owner Member's distribution system and will produce energy that exceeds the Owner Member's load at the Related EKPC Point of Delivery.

(B) Except as provided in Section 4(C) below, each Alternate Source Notice shall be provided to EKPC in writing at least eighteen (18) months prior to the date on which the use of the subject Alternate Source is to begin.

(C) For each Alternate Source having a noticed demand reduction of 5,000 kW or less, the required prior written notice may be provided to EKPC up to, but not later than ninety (90) days prior to the date on which the Owner Member intends to begin using that Alternate Source.

(D) An Owner Member may change or cancel an Alternate Source Notice only by providing to EKPC prior written notice of such change or cancellation, as follows: If after three years of operation an Alternate Source has a three-year rolling average peak capacity less than the maximum capacity set forth in the initial Alternate Source Notice, the Owner Member may reduce the maximum capacity of such Alternate Source by providing written notice to EKPC. Any such reduction shall not change the term or other characteristics of the Alternate Source. Ninety (90) days' prior written notice of any other change or any cancellation shall be required for an Alternate Source having an associated demand reduction of 5,000 kW or less. Otherwise, eighteen (18) months' prior written notice to EKPC of a change or cancellation shall be required. If any change is made to the demand reduction amount of an Alternate Source, the thresholds provided in Section 3 will be re-calculated as of the date the notice of change is submitted.

(E) If the Owner Member does not implement an Alternate Source within six (6) months after the date set forth in its notice for commencement of deliveries from the Alternate Source, the Owner Member may not implement the Alternate Source without re-submitting the notice required under this Section 4 and such notice shall be subject to re-calculation of the thresholds provided in Section 3 as of the date of such re-submitted notice. During the six (6) month period described in this Section (E), EKPC shall continue to serve the load intended to be served by the Alternate Source through sales of power and energy to the Owner Member under its Wholesale Power Contract.

5. Development and Use of Alternate Sources

(A) During the noticed term of use of that Alternate Source, it shall be the responsibility of the Owner Member to use commercially reasonable efforts to develop or otherwise acquire the subject Alternate Source so that such source may be used to supply a portion of the Owner Member's requirements beginning on the noticed date. EKPC shall use

commercially reasonable efforts to cooperate with and assist the Owner Member in its development or acquisition; provided that EKPC shall not be required to make out-of-pocket expenditures or provide or facilitate financing for any Alternate Source.

(B) Except as otherwise agreed to by EKPC and an Owner Member, the owning Owner Member shall use commercially reasonable efforts to operate, maintain, and dispatch the facilities comprising each of its Alternate Sources (or to cause such operation, maintenance, and dispatching) so as to reduce the maximum electrical demand placed on EKPC's system by the corresponding noticed demand reduction.

(C) With respect to each noticed Alternate Source of an Owner Member, the obligations set forth in the foregoing two paragraphs shall continue until the end of the noticed term of the Alternate Source; provided, however, that such term may be shortened or lengthened at any time by the Owner Member by providing to EKPC prior written notice of such change, as follows: For each such change, ninety (90) days' prior written notice of such change shall be required for an Alternate Source having an associated demand reduction of 5,000 kW or less. Otherwise, eighteen (18) months' prior written notice to EKPC of such change shall be required.

(D) Other requirements for Behind the Meter Sources are as follows:

(i) To the extent that the Alternate Source does not deliver capacity or energy sufficient to serve the actual load of the Owner Member intended to be served by the Alternate Source, EKPC will charge the Owner Member for capacity and energy at the rates for electric service provided under the Wholesale Power Contract.

(ii) The Owner Member must provide to EKPC information regarding the expected generation from the Behind the Meter Source, including planned and unplanned outages, as needed by EKPC so that EKPC can include such information in its schedules of load submitted to PJM and minimize to the extent reasonably practicable any PJM penalties for deviations in load attributable to differences between the estimated and actual generation from the Behind the Meter Source.

(iii) The Alternate Sources will be metered with revenue class meters.

(E) Other requirements for Alternate Sources interconnected or delivered to EKPC's or another entity's transmission system are as follows:

(i) To the extent that the Alternate Source does not deliver capacity or energy sufficient to serve the actual load of the Owner Member intended to be served by the Alternate Source, EKPC will charge the Owner Member for capacity and energy as provided in this MOU&A, and not at the rates for electric service provided under the Wholesale Power Contract. EKPC will purchase amounts of replacement capacity and energy based on the historical amounts of capacity and energy provided by the Alternate Source.

(ii) The Owner Member must provide to EKPC a day-ahead schedule of generation. EKPC will work with the Owner Member to develop the day-ahead schedule.

(iii) The day-ahead schedule of load to be served by the Alternate Source will be deemed to equal the day-ahead generation schedule of the Alternate Source.

(iv) EKPC will pass through to the Owner Member all revenues, credits and charges from PJM associated with the Alternate Source, including without limitation PJM day-ahead and real-time energy market revenues, charges and credits, PJM capacity market revenues, charges and credits, PJM operating reserve revenues, credits and charges, and PJM operating services necessary to serve the load served by the Alternate Source (i.e. capacity, energy, ancillary services (including operating reserves), NITS transmission, RTEP, etc.).

(v) The Alternate Sources will be metered with revenue class meters.

(vi) The Owner Member will pay an administrative fee to EKPC to cover the increased operation and administrative costs.

(vii) PJM market participant activities for the Alternate Source and related load will be managed by EKPC or EKPC's agent. The Owner Member shall pay EKPC a non-discriminatory, cost-based fee for such PJM market participant services, which shall be performed in accordance with good utility practices. Any dispute regarding such fee shall be submitted to the Kentucky Public Service Commission for a determination of the appropriate fee.

(F) Other requirements for Alternate Sources interconnected to an Owner Member's distribution system that produce energy that exceeds the Owner Member's load at the Related EKPC Point of Delivery shall be developed based on the requirements set forth above in Sections 5(D) and 5(E).

6. Other Matters.

(A) EKPC shall not be entitled to charge any Owner Member for so-called "stranded costs" related to the Owner Member's implementation of its rights to use Alternate Sources. As a result, to the extent that an Owner Member's use of Alternate Sources reduces its billing demands under EKPC's rates under the Wholesale Power Contract as in effect from time to time, EKPC shall not be entitled to charge any special rate or charge to the Owner Member attributable to such billing demand reduction. EKPC will, however, be entitled to continue to set its rates for all Owner Members under the Wholesale Power Contracts to produce revenues that are sufficient to cover all of its costs, in accordance with the Wholesale Power Contracts.

(B) EKPC covenants and agrees to revise or rescind existing Board Policies so that its Board Policies are consistent with this MOU&A.

(C) This Agreement may be executed in counterpart, which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature pages have been intentionally omitted for filing economy]

Dennis Holt
Interim CEO
Phone (606) 6784121

South Kentucky RECC
A Touchstone Energy® Cooperative

200 Electric Avenue
P. O. Box 910
Somerset, KY 42501

BOARD RESOLUTION

WHEREAS, South Kentucky Rural Electric Cooperative Corporation is one of sixteen (16) owner-members of East Kentucky Power Cooperative, Inc. ("East Kentucky Power"); and,

WHEREAS, South Kentucky Rural Electric Cooperative Corporation is a signatory of that certain Wholesale Power Contract with East Kentucky Power dated October 1, 1964, as amended, which requires, among other things, that South Kentucky Rural Electric Cooperative Corporation purchase all of its power requirements from East Kentucky Power; and,

WHEREAS, the owner-members of East Kentucky Power are signatories to virtually identical Wholesale Power Contracts with East Kentucky Power; and,

WHEREAS, South Kentucky Rural Electric Cooperative Corporation and the other fifteen (15) owner-members of East Kentucky Power are signatories to a third amendment of the Wholesale Power Contract executed in 2003 ("Amendment Three"), which provides, under certain circumstances and within certain limitations, for an exception to the Wholesale Power Contract allowing owner-members of East Kentucky Power to purchase power from third-party providers ("Alternate Source"); and,

WHEREAS, South Kentucky Rural Electric Cooperative Corporation and the other 15 owner-members comprising East Kentucky Power are signatories to a Memorandum of Understanding and Agreement Regarding Alternate Power Sources ("Memorandum of Understanding") dated July 24, 2015, which is meant to clarify the terms and conditions of Amendment Three to the Wholesale Power Contract; and,

WHEREAS, under the provisions of the Memorandum of Understanding, South Kentucky Rural Electric Cooperative Corporation may currently purchase up to 58 Megawatts of power from an Alternate Source; and,

WHEREAS, as a result of a Request for Proposals authorized by its Board of Directors, South Kentucky Rural Electric Cooperative Corporation has received bids from several power marketers and other power suppliers for the provision and furnishing of long-term fixed-price power and a financial capacity hedge;

WHEREAS, following a comprehensive analysis of the bids received conducted in coordination with South Kentucky Rural Electric Cooperative Corporation's retained consultant, EnerVision, Inc., it is clear that the 58 Megawatts of power sought by South Kentucky Rural Electric Cooperative Corporation is currently being offered at an all-in cost less than the wholesale cost currently being charged, and projected in the future to be charged, by East Kentucky Power; and,

WHEREAS, by Resolution dated November 9, 2017, the Board of Directors of South Kentucky Rural Electric Cooperative Corporation approved and authorized the giving of due and proper notice by Dennis Holt, Interim President and Chief Executive Officer, to East Kentucky Power that South Kentucky Rural Electric Cooperative Corporation intended to purchase 58 Megawatts of power from the PJM Interconnection, LLC market beginning on or about June 1, 2019 for a period of 20 years; and,

WHEREAS, South Kentucky Rural Electric Cooperative Corporation gave such notice to East Kentucky Power on November 29, 2017; and,

WHEREAS, in the Resolution dated November 9, 2017, the Board of Directors of South Kentucky Rural Electric Cooperative Corporation further directed and authorized its executive management and legal counsel to take all necessary and appropriate actions to negotiate and conclude a commercial contract with Morgan Stanley Capital Group, Inc. for the furnishing of the 58 Megawatts of Alternate Source power and a financial capacity hedge; and,

WHEREAS, the Board of Directors of South Kentucky Rural Electric Cooperative Corporation has been fully briefed on the essential terms of the described commercial contract package along with the Net Present Value savings anticipated to be realized from the transaction which range from approximately $[redacted] to $[redacted], possible risks of the transaction, issues pertaining to membership in PJM, and other matters important to the Board of Directors' analysis of cost/risk versus benefit/reward; and,

WHEREAS, after commencing all aspects of the comprehensive analysis of the transaction provided by executive management, legal counsel and its retained consultant, the Board of Directors of South Kentucky Cooperative Corporation believes that entering into the described commercial transaction with Morgan Stanley Capital Group, Inc. is clearly in the best interests of its retail-members and of the corporation;

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors of South Kentucky Rural Electric Cooperative Corporation approves and authorizes Dennis Holt, Interim President and Chief Executive Officer, to take all necessary and appropriate action to bind the corporation by entering into a commercial contract with Morgan Stanley Capital Group, Inc., with Morgan Stanley (the parent of Morgan Stanley Capital Group, Inc.) acting as Guarantor, for the 7x24x365 provision of 58 Megawatts of electric power for 20 years, beginning June 1, 2019, at a fixed price of $[redacted]/MWh, and for a financial capacity hedge of 68 Megawatts (which includes a reserve requirement) for a period of 18 years, beginning June 1, 2021, at a price of $[redacted]/MW-day, and other related terms and conditions which are contained in the Firm Physical Energy and Financial Capacity Confirmations which are attached and incorporated into this Board Resolution; and,

BE IT FURTHER RESOLVED that Dennis Holt, Interim President and Chief Executive Officer is duly vested with the authority to execute any and all documents of any kind or nature which are necessary to close this commercial transaction and effectuate the intentions and directions of the Board of Directors of South Kentucky Rural Electric Cooperative Corporation; and,

BE IT FURTHER RESOLVED that executive management and legal counsel shall proceed with all haste and diligence to prepare, file and obtain all necessary federal and state regulatory approvals, including any approvals from South Kentucky Rural Electric Cooperative Corporation's lenders and the Kentucky Public Service Commission; and that the underlying transaction herein described be fully conditioned upon receipt of all such approvals.

Greg Board
SECRETARY

12/19/17
DATE

Dennis Holt
Interim CEO
Phone (606) 678-4121

South Kentucky RECC
A Touchstone Energy® Cooperative

200 Electric Avenue
P. O. Box 910
Somerset KY 42502

November 28, 2017

Mr. Anthony S. Campbell
President and Chief Executive Officer
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P.O. Box 707
Winchester, Kentucky 40392-0707

Dear Mr. Campbell,

Pursuant to the provisions of Amendment No. 3 to the Wholesale Power Contract between East Kentucky Power Cooperative, Inc. ("EKPC"), and South Kentucky Rural Electric Cooperative Corporation ("South Kentucky") dated November 13, 2003 ("Amendment 3"), and the Memorandum of Understanding and Agreement Regarding Alternate Power Sources, between EKPC and the 16 Owner Members of EKPC including South Kentucky, dated July 15, 2015 ("MOU"), South Kentucky does hereby provide the following notice of its election to reduce its purchases of electric power from EKPC and replace same with electric power furnished from an Alternate Source.

According to the provisions of Section 4(A) of the MOU there are five (5) primary procedures and requirements for the content of this notice; in compliance with these provisions, South Kentucky provides the required information with respect to its Alternate Source election immediately following each listed item.

(i) *the term during which the Alternate Source will be used to reduce the Owner Member's purchases from EKPC under the Wholesale Power Contract, including the date on which such use will begin, and the length of time during which such use will continue, which length may not exceed 20 years (including any renewal options for an Alternate Source that is a contract with a third party)*

The Alternate Source (which is further described below) will be used to supply 58 MW's of South Kentucky's power requirements outside of and separate from the Wholesale Power contract between South Kentucky RECC and East Kentucky Power Cooperative for a term of 20 years commencing at 12:00 a.m. (EST) on June 1, 2019.

(ii) *the maximum electrical capacity, in kW, to be available from the Alternate Source and the corresponding amount of reduction in demands to be served by*

EKPC as a result of the use of the Alternate Source, appropriately taking into account expected losses, if any

The maximum electrical capacity to be available from the Alternate Source, and the corresponding amount of reduction in demands to be served by EKPC as a result of the use of the Alternate Source, is 58,000 kW.

(iii) *a general description of the nature of the Alternate Source and the primary generating facilities from which the subject electric power and energy will be produced*

The Alternate Source shall be in the form of South Kentucky RECC becoming a PJM member and purchasing energy, capacity, transmission and services required by PJM policies from the PJM market.

(iv) *the approximate, expected pattern of use or dispatching of the Alternate Source and the corresponding pattern of hourly reductions in energy to be purchased by the Owner Member from EKPC*

The Alternate Source will supply the 58,000 KW of energy all hours of each year of the 20 year term, by purchasing same from the PJM wholesale market.

(v) *a designation of whether the Alternate Source will be:*

(a) *interconnected to the Owner Member's distribution system (and not to any transmission system) and will not produce energy in any hour in excess of the Owner Member's load at the Related EKPC Point of Delivery. Such Alternate Sources are referred to in this MOU&A as "Behind the Meter Sources". The "Related EKPC Point of Delivery" with respect to any Alternate Source is the point of delivery under the Owner Member's Wholesale Power Contract through which energy purchased from EKPC would be used to serve the load served by the Alternate Source if the Alternate Source did not exist;*

(b) *interconnected or delivered to EKPC's or another entity's transmission system; or*

(c) *interconnected to the Owner Member's distribution system and will produce energy that exceeds the Owner Member's load at the Related EKPC Point of Delivery.*

The Alternate Source will be: (b) interconnected or delivered to EKPC's or another entity's transmission system.

South Kentucky remains proud to be an Owner-Member of EKPC and looks forward to working with its leadership and others in effectuating the terms of the Wholesale Power Agreement, as amended, and the MOU.

I appreciate your time and attention to this matter, and please do not hesitate to contact me with any questions or concerns.

Sincerely Yours,

Dennis Holt

Dennis Holt
Interim President and
Chief Executive Officer
South Kentucky Rural
Electric Cooperative Corporation

Master Power Purchase & Sale Agreement

EDISON ELECTRIC INSTITUTE

Version 2.1 (modified 4/25/00)

MASTER POWER PURCHASE AND SALES AGREEMENT

TABLE OF CONTENTS

Execution

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* ("*Master Agreement*") is made as of the following date: December 18, 2017 ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

South Kentucky Rural Electric Cooperative Corporation ("Party A" or "SKRECC")

All Notices:

Street: 200 Electric Avenue
P.O. Box 910

City: Somerset
State: Kentucky
Zip: 42502

Attn: Vice President, Finance
Phone: 606-451-4337
Facsimile: 606-451-4103
Duns: 006946214
Federal Tax ID Number: 61-0344362

Invoices:
Attn: Vice President of Finance
Phone: 606-451-4337
Facsimile: 606-451-4103
Email: PPAAdmin@skrecc.com

Scheduling:
Attn: Vice President of Operations
Phone: 606-678-4121
Facsimile: 606-451-4103
Email: PPAAdmin@skrecc.com

Payments:
Attn: Vice President of Finance
Phone: 606-451-4337
Facsimile: 606-451-4103
Email: PPAAdmin@skrecc.com

Wire Transfer:
BNK: Cumberland Security Bank
ABA: [redacted]
ACCT: [redacted]

Morgan Stanley Capital Group Inc. ("Party B")

All Notices:

Commodities Dept. – 3rd Floor
1585 Broadway

City: New York
State: NY
Zip: 10036

Attn: Power Manager
Phone: (914) 225-1500
Facsimile:
Duns: 130198013
Federal Tax ID Number: 13-3200368

Invoices:
Attn: Commodities Settlements
Phone: (443) 627-6673
Facsimile: N/A
Email: commodpsg@morganstanley.com

Scheduling:
Attn: 24-hour Scheduling in US:
Phone: (914) 225-1500
Pre-scheduling:
(914) 225-1501
24-hour Scheduling in Vancouver:
(604) 658-8120
Facsimile: (212) 507-4821
Email: schedulers@morganstanley.com

Payments:
Attn: Commodities Settlements
Phone: (443) 627-6673
Facsimile: _____
Email: commodpsg@morganstanley.com

Wire Transfer:
BNK: Northern Trust International NY
ABA: [redacted]
ACCT: [redacted]

Credit and Collections:
Attn: Vice President of Finance
Phone: 606-451-4337
Facsimile: 606-451-4103

Collateral:

Attn: Vice President of Finance
Phone: 606-451-4337
Facsimile: 606-451-4103
Email: PPAAdmin@skrecc.com

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: Mark David Goss, General Counsel
Phone: (859) 368-7740
Facsimile: N/A
Email: mdgoss@gosssamfordlaw.com

Credit and Collections:
Attn: Credit Manager—Commodities
Phone: (212) 762-2680
Facsimile: (212) 762-0344

Collateral:

Attn: Collateral Management
Phone: (212) 761-0933
Facsimile: N/A
Email: Nycoll1@morganstanley.com

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: Morgan Stanley Capital Group Inc.
1585 Broadway
New York, New York 10036-8293
Attention: Close-out Notices
Phone:
Facsimile:
With a mandatory copy to:
Facsimile No.: (212) 507-4622

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff N/A Dated _____ Docket Number _____

Party B Tariff Tariff Market Based Rate Tariff Dated 11/8/94 Docket Number ER94-1384-000

Article Two

Transaction Terms and Conditions [x] Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive [x] Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

[x] Cross Default for **Party A**:

[x] Party A:_____ Cross Default Amount $[redacted]

[] Other Entity: Cross Default Amount:

[x] Cross Default for **Party B**:

[] Party B:_____ Cross Default Amount

[x] Other Entity: Morgan Stanley

Cross Default Amount
$[redacted]

5.6 Closeout Setoff

[x] Option A (Applicable if no other selection is made.)

[] Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:_____

_____

[] Option C (No Setoff)

Article Eight

Credit and Collateral Requirements

8.1 **Party A Credit Protection**:

(a) Financial Information:

[] Option A
[x] Option B Specify: Financial Statements for Morgan Stanley
[] Option C Specify: _____

(b) Credit Assurances:

[x] Not Applicable
[] Applicable

(c) Collateral Threshold:

[] Not Applicable
[x] Applicable

If applicable, the provisions of Section 8.1(c) of the Agreement shall be replaced by the provisions of the Collateral Annex

(d) Downgrade Event:

[x] Not Applicable
[] Applicable

If applicable, complete the following:

[] It shall be a Downgrade Event for Party B if Party B's Credit Rating (or Party B Guarantor's Credit Rating (if applicable) falls below

"BBB" (or its equivalent) from S&P or

"Baa2" from Moody's or

if Party B (or Party B's Guarantor) is not rated by either S&P or Moody's

[] Other:
Specify: Material adverse change in financial condition of Party B.

(e) Guarantor for Party B: Morgan Stanley, a Delaware corporation

Guarantee Amount: Unlimited.

8.2 **Party B** Credit Protection:

(a) Financial Information:

[x] Option A
[] Option B Specify: _____
[] Option C Specify: _____

(b) Credit Assurances:

[x] Not Applicable
[] Applicable

(c) Collateral Threshold:

[] Not Applicable
[x] Applicable

If applicable, the provisions of Section 8.2(c) of the Agreement shall be replaced by the provisions of the Collateral Annex

(d) Downgrade Event:

[x] Not Applicable
[] Applicable

If applicable, complete the following:

[x]

[] Other:
Specify:

(e) Guarantor for Party A: N/A

Guarantee Amount: N/A

Article Ten

Confidentiality [x] Confidentiality Applicable **If not checked, inapplicable.**

Schedule M

[] Party A is a Governmental Entity or Public Power System
[] Party B is a Governmental Entity or Public Power System
[] Add Section 3.6. If not checked, inapplicable
[] Add Section 8.6. If not checked, inapplicable

Other Changes

Article One shall be amended as follows:

- Section 1.1, "Affiliate" shall be amended by adding the following at the end thereof: "; provided, however, that in the case of Party A, the term "Affiliate" shall not include Morgan Stanley Derivative Products Inc."

- Section 1.11, "Costs", shall be amended by inserting the following after the word "Party" in the third line: ", after using commercially reasonable efforts to mitigate costs,".

- Section 1.12, "Credit Rating", is amended by replacing the word "issues" in the fourth line with the word "issuer."

- Section 1.23, "Force Majeure", is amended by (1) in the first sentence, deleting "anticipated" and inserting "reasonably foreseeable"; (2) in the second sentence, inserting the following after the word "hereunder" in clause (ii): "or Buyer's ability to obtain the Product at a more advantageous price or advantageous terms and conditions from a third party supplier"; (3) in the first sentence, inserting the following after the word "Price" in clause (iv): "or on more advantageous terms and conditions to another purchaser."; and (4) insert the word "two" before "foregoing factors" in the next to last sentence.

- Section 1.27, "Letter of Credit", shall be deleted in its entirety and replaced with the following:

  "1.27 "Letter of Credit" means an irrevocable, transferable, standby letter of credit, issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank or a financial institution with a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, and (c) assets of at least $10,000,000,000. The Letter of Credit must be substantially in a form acceptable to the Party in whose favor the letter of credit is issued, with such changes to the terms in that form as the issuing bank may require and as may be reasonably acceptable to the beneficiary thereof. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit."

- Section 1.50, "Recording", shall be amended by changing "Section 2.4" to "Section 2.5".

- Section 1.51, "Replacement Price", shall be amended by (1) adding the phrase "for delivery" immediately before the phrase "at the Delivery Point" in the second line; and (2) deleting the phrase "at Buyer's option" from the fifth line and replacing it with the following: "absent a purchase".

- Section 1.53, "Sales Price", shall be amended by (1) deleting the phrase "at the Delivery Point" from the second line; (2) deleting the phrase "at Seller's option" from the fifth line and replace it with the following: "absent a sale"; and (3) inserting after the phrase "commercially reasonable manner" in the sixth line, the following phrase "; plus, in the event any portion of such Product is not generated by Seller, the amount of the costs and expenses avoided by Seller as a result of not generating such portion of the Product;".

Article Two shall be amended as follows:

- Section 2.4, "Additional Confirmation Terms", shall be amended by deleting the phrase "either orally or" from the seventh line.

Article Three shall be amended as follows:

- Section 3.2, "Transmission and Scheduling", shall be amended by adding the following at the end thereof:

  "Product deliveries shall be scheduled in accordance with the then-current applicable tariffs, protocols, operating-procedures and scheduling practices for the relevant region. Buyer shall assume all liability for and reimburse Seller in accordance with the invoicing and payment provisions of Article 6 for any imbalance charges incurred as a result of Buyer's failure to (i) notify Seller of a failure to schedule or a change in a schedule or (ii) abide by a transmitting utility's tariff and scheduling policies. Seller shall assume all liability for and reimburse Buyer in accordance with the invoicing and payment provisions of Article 6 for any imbalance charges incurred as a result of Seller's failure to (i) notify Buyer of a failure to schedule or a change in a schedule or (ii)

abide by a transmitting utility's tariff and scheduling policies. The Parties shall promptly notify each other as soon as reasonably practicable of any imbalance that is occurring or has occurred and shall cooperate to eliminate the imbalance and minimize imbalance charges to the extent reasonably practicable. Imbalance charges shall be defined as any fees, liabilities, assessments or similar charges assessed by a Transmission Provider as a result of a Party's failure to comply with its obligations hereunder."

- Section 3.3, "Force Majeure" is hereby further amended by adding at the end thereof: "The non-Claiming Party shall have until the end of the next Business Day to notify the Claiming Party that it objects to or disputes the existence of Force Majeure."

- The following new section is inserted at the end of Article Three:

  "Section 3.4. Agreement to Deliver Documents: Party A and Party B will deliver, upon execution of this Agreement: either (1) a signature booklet containing secretary's certificate and board resolutions ("authorizing resolutions") authorizing the Party to enter into transactions of the type contemplated by the parties; or (2) a secretary's certificate, authorizing resolutions and incumbency certificate for such party authorizing the Party to enter into this Agreement, in either case reasonably satisfactory in form and substance to the other Party. In addition, Party A agrees to promptly deliver to Party B from time to time upon request, any information reasonably required by Party B to calculate or confirm the calculation of the TIER and DSC coverage ratios, as required under the Collateral Annex."

Article Four shall be amended as follows:

- Section 4.1, "Seller Failure", shall be amended by (1) deleting "schedule and/or" from the first line; and (2) deleting the last sentence and replacing it with the following sentence: "The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount and the origin of the values used in said calculation which must be derived from a commercially reasonable source; provided, that the Buyer may redact therefrom any confidential or proprietary information, including the identity of any counterparty."

- Section 4.2, "Buyer Failure", shall be amended by (1) deleting "schedule and/or" from the first line; and (2) deleting the last sentence and replacing it with the following sentence: "The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount and the origin of the values used in said calculation which must be derived from a commercially reasonable source; provided, that the Seller may redact therefrom any confidential or proprietary information, including the identity of any counterparty."

Article Five shall be amended as follows:

- Section 5.1(a), "Events of Default", shall be amended by immediately after the word "notice", inserting ", which shall be sent simultaneously to the Defaulting Party and the Guarantor, if applicable".

- Section 5.1(h)(ii), "Events of Default", shall be amended by deleting the following phrase from the third and fourth line thereof: "and such failure shall not be remedied within three (3) Business Days after written notice".

- Section 5.1, "Events of Default", shall be further amended by adding a new clause (i) as follows: "(i) the unexcused failure of such Party to meet its obligation to deliver or receive all or part of the Product, if such failure occurs continuously for a period of ten (10) days after receipt of Notice of such failure (each such day after receipt of Notice is a "Failure Day") or through repeated occurrences cumulates to thirty (30) Failure Days over any rolling one (1) year period."

- Section 5.1 is further amended by inserting the following new subsection (j) at the end thereof: "(j) the occurrence with respect to such party (or any Guarantor or Affiliate of such party) of an Event of Default (howsoever defined) under any contract (other than this Agreement) or any physically- or financially-settled transaction (not subject to this Agreement, and whether or not documented under or effected pursuant to another master agreement) now existing or hereafter entered into between Party A (or any Guarantor of Party A or any Affiliate of Party A) and Party B (or any Guarantor of Party B or any Affiliate of Party B)."

- Section 5.2, "Declaration of an Early Termination Date and Calculation of Settlement Amounts", shall be deleted in its entirety and replaced with the following:

  "Declaration of an Early Termination Date and Calculation of Settlement Amount. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right, but not the obligation, to declare the Defaulting Party in default, and to (i) designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance under this Agreement. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, then each such Transaction (individually, an "Excluded Transaction" and collectively, the "Excluded Transactions") shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. It is expressly agreed that neither Party shall be required to enter into a replacement transaction in order to determine a market price. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets; provided, however, if adequate information is not available from one or more third parties, then the Non-Defaulting Party may reference information available to it internally. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information."

- Section 5.3 is amended by inserting the phrase "plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Defaulting Party pursuant to Article Eight," between the words "that are due to the Non-Defaulting Party," and "plus any and all other amounts" in the sixth line thereof.

- Section 5.4, "Notice of Payment of Termination Payment", shall be amended by (1) replacing "two (2)" from the sixth line with "three (3)"; and (2) adding the following at the end of Section 5.4:

  "Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any Termination Payment under Article 5 until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party under this Agreement or otherwise which are due and payable as of the Early Termination Date (including for these

purposes amounts payable pursuant to Excluded Transactions) have been fully and finally performed, or otherwise netted-out in accordance with the Termination Payment calculation."

- Section 5.7, "Suspension of Performance", shall be amended by replacing "ten (10) NERC Business Days" with "twenty (20) NERC Business Days".

Article Seven shall be amended as follows:

- Section 7.1, "Limitation of Remedies, Liability and Damages", shall be amended by (1) deleting "EXCEPT AS SET FORTH HEREIN" from the first sentence; (2) inserting "NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY" at the beginning of the fifth sentence; and (3) inserting "SET FORTH IN THIS AGREEMENT" after "INDEMNITY PROVISION" and before "OR OTHERWISE", also in the fifth sentence.

Article Eight shall be amended as follows:

- Sections 8.1(b), 8.1(c), 8.1(d), 8.2(b), 8.2(c), 8.2(d) and 8.3 are deleted in their entirety and the rights and obligations of the parties with respect to Performance Assurance as collateral shall be governed exclusively by the Collateral Annex, which is attached hereto and incorporated herein by reference.

Article Ten shall be amended as follows:

- Section 10.2, "Representations and Warranties" is amended by adding at the end of clause (viii): "; it is understood that information and explanations of the terms and conditions of each such Transaction shall not be considered investment or trading advice or a recommendation to enter into that Transaction, and the other Party is not acting with respect to any communication (written or oral) as a "municipal advisor," as such term is defined in Section 975 of the U.S. Dodd-Frank Wall Street Reform & Consumer Protection Act; no communication (written or oral) received from the other Party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction; and the other Party is not acting as a fiduciary for or an adviser to it in respect of that Transaction;"

- Section 10.2, "Representations and Warranties", shall be further amended by (1) inserting "and until the end of the term of each Transaction," after "Transaction" in the first sentence; and (2) adding the following new clauses at the end thereof: "(xiii) Each Party is eligible to file as a debtor under Chapter 7 and/or Chapter 11 of the Bankruptcy Code; (xiv) Each Party is an "Eligible Contract Participant" as defined in Section 1a(18) of the Commodity Exchange Act, as amended, 7 U.S.C. § 1a(18); (xv) It continuously represents that it is not (i) an employee benefit plan (hereinafter an "ERISA Plan"), as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), subject to Title I of ERISA or a plan subject to Section 4975 of the Internal Revenue Code of 1986, as amended, or subject to any other statute, regulation, procedure or restriction that is materially similar to Section 406 of ERISA or Section 4975 of the Code (together with ERISA Plans, "Plans"), (ii) a person any of the assets of whom constitute assets of a Plan, or (iii) in connection with any Transaction under this Agreement, a person acting on behalf of a Plan, or using the assets of a Plan. It will provide notice to the other party in the event that it is aware that it is in breach of any aspect of this representation or is aware that with the passing of time, giving of notice or expiry of any applicable grace period it will breach this representation; (xvi) With respect to every Transaction under the Agreement, it has the capacity to make or take, as applicable, physical delivery of the commodity in accordance with each Transaction, and is entering into such Transaction with the intent of making or taking such physical delivery."

- Section 10.4, "Indemnity", shall be amended by adding the phrase "except to the extent a Claim is due to such Party's gross negligence, willful misconduct or bad faith" at the end of the first sentence.

- Section 10.5, "Assignment", shall be amended by (1) deleting the phrase "which consent may be withheld in the exercise of its sole discretion" and replacing with the following: "which consent shall not be unreasonably withheld"; (2) in clause (ii), replacing the words "affiliate" and "affiliate's" with, respectively, "Affiliate" and "Affiliate's"; and (3) in clause (iii), immediately after the words "substantially all of the assets" inserting the words "of such Party and".

- Section 10.6, "Governing Law", shall be amended by (1) changing "New York" to "Kentucky"; and (2) deleting the last sentence.

- Section 10.7, "Notices", is amended by deleting from the sixth line the phrase "at the close of business".

- Section 10.11, "Confidentiality", shall be amended by deleting the language in that Section in its entirety and replacing it with the following (italicized text reflects modifications from the Master Power Purchase & Sale Agreement):

  10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement *or the completed Cover Sheet to, or any annex to, this Master Agreement* to a third party (other than the Party's *or the Party's Affiliates* agents, employees, lenders, counsel, accountants or advisors *(all collectively referred to as "Representatives")* who have a need to know such information and *who the Party is satisfied will* keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding *or request by a regulatory authority, and in the event that any disclosure is requested or required by the regulatory authority or a government body by interrogatory, request for information or documents, subpoena, deposition, civil investigative demand or applicable law, the Party subject to such request or requirement may disclose to the extent so requested or required but shall promptly notify the other Party, prior to such disclosure, if such Party's counsel determines that such notice is permitted by law, so that the other Party may seek an appropriate protective order or waive compliance with the provisions of this Section 10.11. Failing the entry of a protective order or the receipt of a waiver hereunder, that Party may disclose that portion of the Confidential Information as requested or required. In any event, a Party will not oppose action by the other to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information;* provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. *Each Party shall be liable for breach of any confidentiality obligation pursuant to this Master Agreement by such Representatives.* The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. *Notwithstanding the foregoing, a Party may disclose any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index."*

- Section 10.12, "Electronic Imaged Documents", shall be added to Article Ten as follows:

  "10.12 Electronic Imaged Documents. Any document generated by the Parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically ("Imaged Documents"). Imaged Documents may be introduced as evidence in any proceeding as if such were original business records, and neither Party shall contest the admissibility of any documents as evidence in any proceeding by virtue of the fact that such documents are Imaged Documents,

provided, however, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence."

- Section 10.13, "Resolution of Disputes", shall be added to Article Ten as follows:

"10.13 Resolution of Disputes. Any dispute or need of interpretation between the Parties involving or arising under this Agreement first shall be referred for resolution to a senior representative of each Party. Upon receipt of a notice describing the dispute and designating the notifying Party's senior representative and that the dispute is to be resolved by the Parties' senior representatives under this Agreement, the other Party shall promptly designate its senior representative to the notifying Party. The senior representatives so designated shall attempt to resolve the dispute on an informal basis as promptly as practicable. If the dispute has not been resolved within ten (10) days after the notifying Party's notice was received by the other Party, or within such other period as the Parties may jointly agree, the Parties may pursue any remedies available at law or in equity to enforce its rights provided in the Agreement. Notwithstanding any inconsistent provision herein, either Party may be entitled to injunctive or other equitable relief without resort to the settlement or resolution procedures set forth in this Section 10.13."

- Section 10.14, "No Agency", shall be added to Article Ten as follows:

"10.14 No Agency. In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party."

- Section 10.15, "Utility Disclaimer", shall be added to Article Ten as follows:

"10.15 Utility Disclaimer. Each Party agrees that, for the purposes of the Agreement, the other Party is not a "utility" as such term is used in 11 U.S.C. § 366, and each Party agrees to waive and not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding involving such Party, and further agrees that the other Party is not a provider of last resort."

- Section 10.16, "Review", shall be added to Article Ten as follows:

"10.16 Review: (a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc., v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008) (commonly known as the "Mobile-Sierra" doctrine); and (b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or any other applicable federal or state statutory, administrative or common law, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a), neither Party shall seek any

such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing section (a)."

- Section 10.17, "Wavier of Trial by Jury", shall be added to Article Ten as follows:

  "10.17 Waiver of Trial by Jury. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THE AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THE AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION."

- Section 10.19, "Jurisdiction", shall be added to Article Ten as follows:

  "10.19 Jurisdiction. Each party agrees that any suit, action, dispute or other proceeding arising out of the Agreement or any transaction contemplated by the Agreement shall be heard exclusively in, and hereby irrevocably submits to the exclusive jurisdictions of, the United States District Court for the Eastern District of Kentucky, Lexington Division, and the related appellate courts. Each party further agrees that service of any process, summons, notice or document by U.S. registered mail to such Party's respective address set forth in the Agreement shall be effective service of process for any actions, suit, dispute or other proceeding described herein. Each Party irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated by the Agreement in the aforementioned courts and the related appellate courts, and hereby and thereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum."

The following is a list of the EEI documents included with this Cover Sheet as a part of the Master Agreement:

Master Purchase and Sale Agreement (EEI Version 2.1, modified 4-25-00)
Schedule P to the Master Purchase and Sale Agreement (EEI Version 2.1, modified 4-25-00)
Cover Sheet to the Master Purchase and Sale Agreement
Collateral Annex (Version 1.0, dated 2-21-02)
Paragraph 10 to the Collateral Annex

[Signature Page Immediately Follows]

Execution

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A- **South Kentucky Rural Electric Cooperative Corporation**	Party B- **Morgan Stanley Capital Group Inc.**
By: Dennis Holt	By: _____
Name: **Dennis Holt**	Name: _____
Title: **President and Chief Executive Officer**	Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

Execution

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A- **South Kentucky Rural Electric Cooperative Corporation**	Party B- **Morgan Stanley Capital Group Inc.**
By: _____	By: Charmaine Fearon
Name: **Dennis Holt**	Name: Charmaine Fearon
Title: **President and Chief Executive Officer**	Title: Authorized Signatory

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 "Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 "Agreement" has the meaning set forth in the Cover Sheet.

1.3 "Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.4 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 "Buyer" means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 "Call Option" means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 "Claiming Party" has the meaning set forth in Section 3.3.

1.8 "Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 "Confirmation" has the meaning set forth in Section 2.3.

1.10 "Contract Price" means the price in $U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.12 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 "Cross Default Amount" means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 "Defaulting Party" has the meaning set forth in Section 5.1.

1.15 "Delivery Period" means the period of delivery for a Transaction, as specified in the Transaction.

1.16 "Delivery Point" means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 "Downgrade Event" has the meaning set forth on the Cover Sheet.

1.18 "Early Termination Date" has the meaning set forth in Section 5.2.

1.19 "Effective Date" has the meaning set forth on the Cover Sheet.

1.20 "Equitable Defenses" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 "Event of Default" has the meaning set forth in Section 5.1.

1.22 "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.23 "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 "Non-Defaulting Party" has the meaning set forth in Section 5.2.

1.33 "Offsetting Transactions" mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 "Option" means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 "Option Buyer" means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 "Option Seller" means the Party specified in a Transaction as the seller of an option , as defined in Schedule P.

1.37 "Party A Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 "Party B Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 "Party A Independent Amount" means the amount , if any, set forth in the Cover Sheet for Party A.

1.40 "Party B Independent Amount" means the amount , if any, set forth in the Cover Sheet for Party B.

1.41 "Party A Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 "Party B Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 "Party A Tariff" means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 "Party B Tariff" means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 "Potential Event of Default" means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 "Product" means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 "Put Option" means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 "Quantity" means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 "Recording" has the meaning set forth in Section 2.4.

1.51 "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer's option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 "Schedule" or "Scheduling" means the actions of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 "Seller" means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 "Settlement Amount" means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 "Strike Price" means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 "Terminated Transaction" has the meaning set forth in Section 5.2.

1.59 "Termination Payment" has the meaning set forth in Section 5.3.

1.60 "Transaction" means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 "Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation ("Confirmation") substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer's receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller's receipt thereof, failing

which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services

with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;

(d) such Party becomes Bankrupt;

(e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;

(f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

(g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);

(h) with respect to such Party's Guarantor, if any:

(i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

(iii) a Guarantor becomes Bankrupt;

(iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or

(v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if "Accelerated Payment of Damages" is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month,

each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

(a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and

(b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR

OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.l(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) ("Party A Performance Assurance"), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a "Pledgor") hereby grants to the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes , so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.

(v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(ix) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

(x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;

(xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and

(xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be

made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

[Schedule M (page 28 through page 31) has been intentionally omitted as inapplicable]

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

"Ancillary Services" means any of the services identified by a Transmission Provider in its transmission tariff as "ancillary services" including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

"Capacity" has the meaning specified in the Transaction.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

"Firm (LD)" means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

"Firm Transmission Contingent - Contract Path" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Section 1.23 to the contrary.

"Firm Transmission Contingent - Delivery Point" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of "Force Majeure" in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

"Firm (No Force Majeure)" means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

"Into _____ (the "Receiving Transmission Provider"), Seller's Daily Choice" means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface ("Interface") either (a) on the Receiving Transmission Provider's transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An "Into" Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer ("Seller's Notification") of Seller's immediate upstream counterparty and the Interface (the "Designated Interface") where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer's immediate downstream counterparty.

2. Availability of "Firm Transmission" to Buyer at Designated Interface; "Timely Request for Transmission," "ADI" and "Available Transmission." In determining availability to Buyer of next-day firm transmission ("Firm Transmission") from the Designated Interface, a "Timely Request for Transmission" shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller's Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller's Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an "ADI") either (a) on the Receiving Transmission Provider's transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as "Available Transmission") within the Receiving Transmission Provider's transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this "Into Product" (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

"Native Load" means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

"Non-Firm" means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

"System Firm" means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the "System") with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller's failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer's failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system's, or the control area's, or reliability council's reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller's performance. Buyer's failure to receive shall be excused (i) by Force Majeure; (ii) by Seller's failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer's performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

"Transmission Contingent" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller's proposed generating source to the Buyer's proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Article 1.23 to the contrary.

"Unit Firm" means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller's failure to deliver under a "Unit Firm" Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer's failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

COLLATERAL ANNEX

This Collateral Annex, together with the Paragraph 10 Elections, (the "Collateral Annex") supplements, forms a part of, and is subject to, the EEI Master Power Purchase and Sale Agreement, dated December 18, 2017, including the Cover Sheet and any other annexes thereto between South Kentucky Rural Electric Cooperative Corporation ("Party A") and Morgan Stanley Capital Group Inc. ("Party B"). Capitalized terms used in this Collateral Annex but not defined herein shall have the meanings given such terms in the Agreement.

The obligations of each Party under the Agreement shall be secured in accordance with the provisions of this Collateral Annex, which, except as provided below, sets forth the exclusive conditions under which a Party will be required to Transfer Performance Assurance in the form of Cash, a Letter of Credit or other property as agreed to by the Parties, as well as the exclusive conditions under which a Party will release such Performance Assurance. This Collateral Annex supercedes and replaces in its entirety Sections 8.1(c), 8.2(c) and 8.3 of the Agreement and the defined terms used therein to the extent that such terms are otherwise defined and used in this Collateral Annex. In addition, to the extent that the Parties have specified on the Cover Sheet that Sections 8.1(b), 8.1(d), 8.2(b) or 8.2(d) of the Agreement are applicable, then the definition of Performance Assurance as used in this Collateral Annex shall apply and Paragraphs 2, 6, 7 and 9 of this Collateral Annex shall apply to any such Performance Assurance posted under such provisions, it being understood that nothing contained in this Collateral Annex shall change any election that the Parties have specified on the Cover Sheet with respect to Sections 8.1(b), 8.1(d), 8.2(b) or 8.2(d) of the Agreement, which provisions require a Party to Transfer Performance Assurance under certain circumstances not contemplated by this Collateral Annex.

Paragraph 1. Definitions.

For purposes of this Collateral Annex, the following terms have the respective definitions set forth below:

"Calculation Date" means any Local Business Day on which a Party chooses or is requested by the other Party to make the determinations referred to in Paragraphs 3, 4, 5 or 8 of this Collateral Annex.

"Cash" means U.S. dollars held by or on behalf of a Party as Performance Assurance hereunder.

"Collateral Account" shall have the meaning attributed to it in Paragraph 6(a)(ii)(B).

"Paragraph 10 Cover Sheet" means the Cover Sheet attached to this Collateral Annex setting forth certain elections governing this Collateral Annex.

"Collateral Requirement" shall have the meaning attributed to it in Paragraph 3(b).

"Collateral Threshold" means, with respect to a Party, the collateral threshold, if any, set forth in the Paragraph 10 Cover Sheet for a Party.

"Collateral Value" means (a) with respect to Cash, the face amount thereof; (b) with respect to Letters of Credit, the Valuation Percentage multiplied by the stated amount then available under the Letter of Credit to be unconditionally drawn by the beneficiary thereof; and (c) with respect to other forms of Performance Assurance, the Valuation Percentage multiplied by the fair market value on any Calculation Date of each item of Performance Assurance on deposit with, or held by or for the benefit of, a Party pursuant to this Collateral Annex as determined by such Party in a commercially reasonable manner.

"Credit Rating" means with respect to any entity, on any date of determination, the respective ratings then assigned to such entity's unsecured, senior long-term debt or deposit obligations (not supported by third party credit enhancement) by S&P, Moody's or other specified rating agency or agencies or if such entity does not have a rating for its unsecured, senior long-term debt or deposit obligations, then the rating assigned to such entity as its "corporate credit rating" by S&P.

"Credit Rating Event" shall have the meaning attributed to it in Paragraph 6(a)(iii).

"Current Mark-to-Market Value" of an outstanding Transaction, on any Calculation Date, means the amount, as calculated in good faith and in a commercially reasonable manner, which a Party to the Agreement would pay to (a negative Current Mark-to-Market Value) or receive from (a positive Current Mark-to-Market Value) the other Party as the Settlement Amount (calculated at the mid-point between the bid price and the offer price) for such Transaction.

"Custodian" shall have the meaning attributed to it in Paragraph 6(a)(i).

"Downgraded Party" shall have the meaning attributed to it in Paragraph 6(a)(i).

"Eligible Collateral" means, with respect to a Party, the Performance Assurance specified for such Party on the Paragraph 10 Cover Sheet.

"Exposure" of one Party ("Party X") to the other Party ("Party Y") for each Transaction means (without duplication) as of any Calculation Date the sum of the following:

(a) the aggregate of all amounts in respect of such Transaction that are owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) to Party X and that remain unpaid as of such Calculation Date minus the aggregate of all amounts in respect of such Transaction that are owed or otherwise accrued and payable (regardless of whether such amounts have been or could be invoiced) to Party Y and that remain unpaid as of such Calculation Date; plus

(b) the Current Mark-to-Market Value of such Transaction to Party X.

"Exposure Amount" shall have the meaning set forth in Paragraph 3(a).

"Independent Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party (which amount, if designated, shall either be a Fixed Independent Amount, a Full Floating Independent Amount or a Partial Floating Independent Amount, in each case, as designated on the Paragraph 10 Cover Sheet), or if no amount is specified, zero, or with respect to either Party, an additional or reduced amount agreed to as such for that Party in respect of a Transaction.

"Interest Amount" means with respect to a Party and an Interest Period, the sum of the daily interest amounts for all days in such Interest Period; each daily interest amount to be determined by such Party as follows: (a) the amount of Cash held by such Party on that day; multiplied by (b) the Interest Rate for that day, divided by (c) 360.

"Interest Period" means the period from (and including) the last Local Business Day on which an Interest Amount was Transferred by a Party (or if no Interest Amount has yet been Transferred by such Party, the Local Business Day on which Cash was Transferred to such Party) to (but excluding) the Local Business Day on which the current Interest Amount is to be Transferred.

"Interest Rate" means, in respect of a Party holding Cash, the rate specified for such Party in the Paragraph 10 Cover Sheet.

"Letter of Credit" means an irrevocable, transferable, standby letter of credit, issued by a major U.S. commercial bank or the U.S. branch office of a foreign bank with, in either case, a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, substantially in the form set forth in Schedule 1 attached hereto, with such changes to the terms in that form as the issuing bank may require and as may be acceptable to the beneficiary thereof.

"Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events: (a) the issuer of such Letter of Credit shall fail to maintain a Credit Rating of at least (i) "A-" by S&P or "A3" by Moody's, if such issuer is rated by both S&P and Moody's, (ii) "A-" by S&P, if such issuer is rated only by S&P, or (iii) "A3" by Moody's, if such issuer is rated only by Moody's; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (c) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (d) such Letter of Credit shall expire or terminate, or shall fail or cease to be in full force and effect at any time during the term of the Agreement, in any such case without replacement; or (e) the issuer of such Letter of Credit shall become Bankrupt; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Collateral Annex.

"Local Business Day" means, a day on which commercial banks are open for business (a) in relation to any payment, in the place where the relevant account is located and (b) in relation to any notice or other communication, in the city specified in the address for notice provided by the recipient.

"Minimum Transfer Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party.

"Net Exposure" shall have the meaning attributed to it in Paragraph 3(a).

"Notification Time" means 11:00, New York time, on any Calculation Date or any different time specified in the Paragraph 10 Cover Sheet.

"Obligations" shall have the meaning attributed to it in Paragraph 2.

"Performance Assurance" means all Eligible Collateral, all other property acceptable to the Party to which it is Transferred, and all proceeds thereof, that has been Transferred to or received by a Party hereunder and not subsequently Transferred to the other Party pursuant to Paragraph 5 or otherwise received by the other Party. Any Interest Amount or portion thereof not Transferred pursuant to Paragraph 6(a)(iv) and any Cash received and held by a Party after drawing on any Letter of Credit will constitute Performance Assurance in the form of Cash, until all or any portion of such Cash is applied against Obligations owing to such Party pursuant to the provisions of this Collateral Annex. Any guaranty agreement executed by a Guarantor of a Party shall not constitute Performance Assurance hereunder.

"Pledging Party" shall have the meaning attributed to it in Paragraph 3(b).

"Qualified Institution" means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, and (ii) having a capital and surplus of at least $1,000,000,000.

"Reference Market-maker" means a leading dealer in the relevant market selected by a Party determining its Exposure in good faith from among dealers of the highest credit standing which satisfy all the criteria that such Party applies generally at the time in deciding whether to offer or to make an extension of credit.

"Rounding Amount" means, with respect to a Party, the amount, if any, set forth in the Paragraph 10 Cover Sheet for such Party.

"Secured Party" shall have the meaning attributed to it in Paragraph 3(b).

"Transfer" means, with respect to any Performance Assurance or Interest Amount, and in accordance with the instructions of the Party entitled thereto:

(a) in the case of Cash, payment or transfer by wire transfer into one or more bank accounts specified by the recipient;

(b) in the case of Letters of Credit, delivery of the Letter of Credit or an amendment thereto to the recipient; and

(c) in the case of any other type of Performance Assurance, delivery thereof as specified by the recipient.

"Valuation Percentage" means, with respect to any Performance Assurance designated as Eligible Collateral on the Paragraph 10 Cover Sheet, the Valuation Percentage specified for such Performance Assurance on the Paragraph 10 Cover Sheet.

Paragraph 2. Encumbrance; Grant of Security Interest.

As security for the prompt and complete payment of all amounts due or that may now or hereafter become due from a Party to the other Party and the performance by a Party of all covenants and obligations to be performed by it pursuant to this Collateral Annex, the Agreement, all outstanding Transactions and any other documents, instruments or agreements executed in connection therewith (collectively, the "Obligations"), each Party hereby pledges, assigns, conveys and transfers to the other Party, and hereby grants to the other Party a present and continuing security interest in and to, and a general first lien upon and right of set off against, all Performance Assurance which has been or may in the future be Transferred to, or received by, the other Party and/or its Custodian, and all dividends, interest, and other proceeds from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the foregoing and each Party agrees to take such action as the other Party reasonably requests in order to perfect the other Party's continuing security interest in, and lien on (and right of setoff against), such Performance Assurance.

Paragraph 3. Calculations of Collateral Requirement.

(a) On any Calculation Date, the "Exposure Amount" for each Party shall be calculated for all Transactions for which there are any Obligations remaining unpaid or unperformed, by calculating each Party's Exposure to the other Party in respect of each such Transaction and determining the net aggregate sum of all Exposures for all Transactions for each Party. The Party having the greater Exposure Amount at any time (the "Secured Party") shall be deemed to have a "Net Exposure" to the other Party equal to the Secured Party's Exposure Amount.

(b) The "Collateral Requirement" for a Party (the "Pledging Party") means the Secured Party's Net Exposure minus the sum of:

(1) the Pledging Party's Collateral Threshold; plus

(2) the amount of Cash previously Transferred to the Secured Party, the amount of Cash held by the Secured Party as Performance Assurance as a result of drawing under any Letter of Credit, and any Interest Amount that has not yet been Transferred to the Pledging Party; plus

(3) the Collateral Value of each Letter of Credit and any other form of Performance Assurance (other than Cash) maintained by the Pledging Party for the benefit of the Secured Party; provided, however, that, the Collateral Requirement of a Party will be

deemed to be zero (0) whenever the calculation of such Party's Collateral Requirement yields a number less than zero (0).

Paragraph 4. Delivery of Performance Assurance.

On any Calculation Date on which (a) no Event of Default or Potential Event of Default has occurred and is continuing with respect to the Secured Party, (b) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party for which there exist any unsatisfied payment Obligations, and (c) the Pledging Party's Collateral Requirement equals or exceeds its Minimum Transfer Amount, then the Secured Party may demand that the Pledging Party Transfer to the Secured Party, and the Pledging Party shall, after receiving such notice from the Secured Party, Transfer, or cause to be Transferred to the Secured Party, Performance Assurance for the benefit of the Secured Party, having a Collateral Value at least equal to the Pledging Party's Collateral Requirement. The amount of Performance Assurance required to be Transferred hereunder shall be rounded up to the nearest integral multiple of the Rounding Amount. Unless otherwise agreed in writing by the Parties, (i) Performance Assurance demanded of a Pledging Party on or before the Notification Time on a Local Business Day shall be provided by the close of business on the next Local Business Day and (ii) Performance Assurance demanded of a Pledging Party after the Notification Time on a Local Business Day shall be provided by the close of business on the second Local Business Day thereafter. Any Letter of Credit or other type of Performance Assurance (other than Cash) shall be Transferred to such address as the Secured Party shall specify and any such demand made by the Secured Party pursuant to this Paragraph 4 shall specify account information for the account to which Performance Assurance in the form of Cash shall be Transferred.

Paragraph 5. Reduction and Substitution of Performance Assurance.

(a) On any Local Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to Cash), a Pledging Party may request a reduction in the amount of Performance Assurance previously provided by the Pledging Party for the benefit of the Secured Party, provided that, after giving effect to the requested reduction in Performance Assurance, (i) the Pledging Party shall in fact have a Collateral Requirement of zero; (ii) no Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing; and (iii) no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations. A permitted reduction in Performance Assurance may be effected by the Transfer of Cash to the Pledging Party or the reduction of the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party. The amount of Performance Assurance required to be reduced hereunder shall be rounded down to the nearest integral multiple of the Rounding Amount. The Pledging Party shall have the right to specify the means of effecting the reduction in Performance Assurance. In all cases, the cost and expense of reducing Performance Assurance (including, but not limited to, the reasonable costs, expenses, and attorneys' fees of the Secured Party) shall be borne by the Pledging Party. Unless otherwise agreed in writing by the Parties, (i) if the Pledging Party's reduction demand is made on or before the Notification Time on a Business Day, then the Secured Party shall have one (1) Local Business Day to effect a permitted reduction in Performance Assurance and (ii) if the Pledging

Party's reduction demand is made after the Notification Time on a Local Business Day, then the Secured Party shall have two (2) Local Business Days to effect a permitted reduction in Performance Assurance, in each case, if such reduction is to be effected by the return of Cash to the Pledging Party. If a permitted reduction in Performance Assurance is to be effected by a reduction in the amount of an outstanding Letter of Credit previously issued for the benefit of the Secured Party, the Secured Party shall promptly take such action as is reasonably necessary to effectuate such reduction.

(b) Except when (i) an Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations, the Pledging Party may substitute Performance Assurance for other existing Performance Assurance of equal Collateral Value upon one (1) Local Business Day's written notice (provided such notice is made on or before the Notification Time, otherwise the notification period shall be two (2) Local Business Days) to the Secured Party; provided, however, that if such substitute Performance Assurance is of a type not otherwise approved by this Collateral Annex, then the Secured Party must consent to such substitution. Upon the Transfer to the Secured Party and/or its Custodian of the substitute Performance Assurance, the Secured Party and/or its Custodian shall Transfer the relevant replaced Performance Assurance to the Pledging Party within two (2) Local Business Days. Notwithstanding anything herein to the contrary, no such substitution shall be permitted unless (i) the substitute Performance Assurance is Transferred simultaneously or has been Transferred to the Secured Party and/or its Custodian prior to the release of the Performance Assurance to be returned to the Pledging Party and the security interest in, and general first lien upon, such substituted Performance Assurance granted pursuant hereto in favor of the Secured Party shall have been perfected as required by applicable law and shall constitute a first priority perfected security interest therein and general first lien thereon, and (ii) after giving effect to such substitution, the Collateral Value of such substitute Performance Assurance shall equal the greater of the Pledging Party's Collateral Requirement or the Pledging Party's Minimum Transfer Amount. Each substitution of Performance Assurance shall constitute a representation and warranty by the Pledging Party that the substituted Performance Assurance shall be subject to and governed by the terms and conditions of this Collateral Annex, including without limitation the security interest in, general first lien on and right of offset against, such substituted Performance Assurance granted pursuant hereto in favor of the Secured Party pursuant to Paragraph 2.

(c) The Transfer of any Performance Assurance by the Secured Party and/or its Custodian in accordance with this Paragraph 5 shall be deemed a release by the Secured Party of its security interest, general first lien and right of offset granted pursuant to Paragraph 2 hereof only with respect to such returned Performance Assurance. In connection with each Transfer of any Performance Assurance pursuant to this Paragraph 5, the Pledging Party will, upon request of the Secured Party, execute a receipt showing the Performance Assurance Transferred to it.

Paragraph 6. Administration of Performance Assurance.

(a) Cash. Performance Assurance provided in the form of Cash to a Party that is the Secured Party shall be subject to the following provisions.

(i) If such Party is entitled to hold Cash, then it will be entitled to hold Cash or to appoint an agent which is a Qualified Institution (a "Custodian") to hold Cash for it provided that the conditions for holding Cash that are set forth on the Paragraph 10 Cover Sheet for such Party are satisfied. If such Party is not entitled to hold Cash, then the provisions of Paragraph 6(a)(ii) shall not apply with respect to such Party and Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B). Upon notice by the Secured Party to the Pledging Party of the appointment of a Custodian, the Pledging Party's obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Cash by a Custodian will be deemed to be the holding of Cash by the Secured Party for which the Custodian is acting. If the Secured Party or its Custodian fails to satisfy any conditions for holding Cash as set forth above or in the Paragraph 10 Cover Sheet or if the Secured Party is not entitled to hold Cash at any time, then the Secured Party will Transfer, or cause its Custodian to Transfer, the Cash to a Qualified Institution and the Cash shall be maintained in accordance with Paragraph 6(a)(ii)(B), with the Party not eligible to hold Cash being considered the "Downgraded Party" (as defined below). Except as set forth in Paragraph 6(c), the Secured Party will be liable for the acts or omissions of its Custodian to the same extent that the Secured Party would be liable hereunder for its own acts or omissions.

(ii) Use of Cash. Notwithstanding the provisions of applicable law, if no Event of Default has occurred and is continuing with respect to the Secured Party and no Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party for which there exist any unsatisfied payment Obligations, then the Secured Party shall have the right to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise use in its business any Cash that it holds as Performance Assurance hereunder, free from any claim or right of any nature whatsoever of the Pledging Party, including any equity or right of redemption by the Pledging Party; provided, however, that if a Party or its Custodian is not eligible to hold Cash pursuant to Paragraph 6(a) (such Party shall be the "Downgraded Party" and the event that caused it or its Custodian to be ineligible to hold Cash shall be a "Credit Rating Event") then:

(A) the provisions of this Paragraph 6(a)(ii) will not apply with respect to the Downgraded Party; and

(B) the Downgraded Party shall be required to Transfer (or cause to be Transferred) not later than the close of business on the next Local Business Day following such Credit Rating Event all Cash in its possession or held on its behalf to a Qualified Institution approved by the non-Downgraded Party (which approval shall not be unreasonably withheld), to a segregated, safekeeping or custody account (the "Collateral Account") within such Qualified Institution with the title of the account indicating that the property contained therein is being held as Cash for the Downgraded Party. The Qualified Institution shall serve as Custodian with respect to the Cash in the Collateral Account, and shall hold such Cash in accordance with the terms of this Collateral Annex and for the security interest of the Downgraded Party and execute such account control agreements as are necessary or applicable to perfect the security interest of the Non-Downgraded Party therein pursuant to Section 9-314 of the Uniform Commercial Code or otherwise, and subject to such security interest, for the ownership and benefit of the non-Downgraded Party. The Qualified Institution holding the Cash will invest and reinvest or procure the investment and reinvestment of the Cash in

accordance with the written instructions of the Pledging Party, subject to the approval of such instructions by the Downgraded Party (which approval shall not be unreasonably withheld), provided that the Qualified Institution shall not be required to so invest or reinvest or procure such investment or reinvestment if an Event of Default or Potential Event of Default with respect to the Pledging Party shall have occurred and be continuing. The Downgraded Party shall have no responsibility for any losses resulting from any investment or reinvestment effected in accordance with the Pledging Party's instructions.

(iii) Interest Payments on Cash. So long as no Event of Default or Potential Event of Default with respect to the Pledging Party has occurred and is continuing, and no Early Termination Date for which any unsatisfied payment Obligations of the Pledging Party exist has occurred or been designated as the result of an Event of Default with respect to the Pledging Party, and to the extent that an obligation to Transfer Performance Assurance would not be created or increased by the Transfer, in the event that the Secured Party or its Custodian is holding Cash, the Secured Party will Transfer (or caused to be Transferred) to the Pledging Party, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which may be retained by the Secured Party or its Custodian), the Interest Amount. The Pledging Party shall invoice the Secured Party monthly setting forth the calculation of the Interest Amount due, and the Secured Party shall make payment thereof by the later of (A) the third Local Business Day of the first month after the last month to which such invoice relates or (B) the third Local Business Day after the day on which such invoice is received. On or after the occurrence of a Potential Event of Default or an Event of Default with respect to the Pledging Party or an Early Termination Date as a result of an Event of Default with respect to the Pledging Party, the Secured Party or its Custodian shall retain any such Interest Amount as additional Performance Assurance hereunder until the obligations of the Pledging Party under the Agreement have been satisfied in the case of an Early Termination Date or for so long as such Event of Default is continuing in the case of an Event of Default.

(b) Letters of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions.

(i) Unless otherwise agreed to in writing by the parties, each Letter of Credit shall be provided in accordance with Paragraph 4, and each Letter of Credit shall be maintained for the benefit of the Secured Party. The Pledging Party shall (A) renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit, (B) if the bank that issued an outstanding Letter of Credit has indicated its intent not to renew such Letter of Credit, provide either a substitute Letter of Credit or other Eligible Collateral, in each case at least twenty (20) Local Business Days prior to the expiration of the outstanding Letter of Credit, and (C) if a bank issuing a Letter of Credit shall fail to honor the Secured Party's properly documented request to draw on an outstanding Letter of Credit, provide for the benefit of the Secured Party either a substitute Letter of Credit that is issued by a bank acceptable to the Secured Party or other Eligible Collateral, in each case within one (1) Local Business Day after such refusal, provided that, as a result of the Pledging Party's failure to perform in accordance with (A), (B), or (C) above, the Pledging Party's Collateral Requirement would be greater than zero.

(ii) As one method of providing Performance Assurance, the Pledging Party may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.

(iii) Upon the occurrence of a Letter of Credit Default, the Pledging Party agrees to Transfer to the Secured Party either a substitute Letter of Credit or other Eligible Collateral, in each case on or before the first Local Business Day after the occurrence thereof (or the fifth (5th) Local Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies).

(iv) (A) Upon or at any time after the occurrence and continuation of an Event of Default with respect to the Pledging Party, or (B) if an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party for which there exist any unsatisfied payment Obligations, then the Secured Party may draw on the entire, undrawn portion of any outstanding Letter of Credit upon submission to the bank issuing such Letter of Credit of one or more certificates specifying that such Event of Default or Early Termination Date has occurred and is continuing. Cash proceeds received from drawing upon the Letter of Credit shall be deemed Performance Assurance as security for the Pledging Party's obligations to the Secured Party and the Secured Party shall have the rights and remedies set forth in Paragraph 7 with respect to such cash proceeds. Notwithstanding the Secured Party's receipt of Cash proceeds of a drawing under the Letter of Credit, the Pledging Party shall remain liable (y) for any failure to Transfer sufficient Performance Assurance or (z) for any amounts owing to the Secured Party and remaining unpaid after the application of the amounts so drawn by the Secured Party.

(v) In all cases, the costs and expenses (including but not limited to the reasonable costs, expenses, and attorneys' fees of the Secured Party) of establishing, renewing, substituting, canceling, and increasing the amount of a Letter of Credit shall be borne by the Pledging Party.

(c) Care of Performance Assurance. Except as otherwise provided in Paragraph 6(a)(iii) and beyond the exercise of reasonable care in the custody thereof, the Secured Party shall have no duty as to any Performance Assurance in its possession or control or in the possession or control of any Custodian or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. The Secured Party shall be deemed to have exercised reasonable care in the custody and preservation of the Performance Assurance in its possession, and/or in the possession of its agent for safekeeping, if the Performance Assurance is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Performance Assurance, or for any diminution in the value thereof, by reason of the act or omission of any Custodian selected by the Secured Party in good faith except to the extent such loss or damage is the result of such agent's willful misconduct or negligence. Unless held by a Custodian, the Secured Party shall at all times retain possession or control of any Performance Assurance Transferred to it. The holding of Performance Assurance by a Custodian for the benefit of the Secured Party shall be deemed to be the holding and possession of such Performance Assurance by the Secured Party for the purpose of perfecting the security interest in the Performance Assurance. Except as otherwise provided

in Paragraph 6(a)(ii), nothing in this Collateral Annex shall be construed as requiring the Secured Party to select a Custodian for the keeping of Performance Assurance for its benefit.

Paragraph 7. Exercise of Rights Against Performance Assurance.

(a) In the event that (i) an Event of Default with respect to the Pledging Party has occurred and is continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Pledging Party, the Secured Party may exercise any one or more of the rights and remedies provided under the Agreement, in this Collateral Annex or as otherwise available under applicable law. Without limiting the foregoing, if at any time (i) an Event of Default with respect to the Pledging Party has occurred and is continuing, or (ii) an Early Termination Date occurs or is deemed to occur as a result of an Event of Default with respect to the Pledging Party, then the Secured Party may, in its sole discretion, exercise any one or more of the following rights and remedies:

(i) all rights and remedies available to a secured party under the Uniform Commercial Code and any other applicable jurisdiction and other applicable laws with respect to the Performance Assurance held by or for the benefit of the Secured Party;

(ii) the right to set off any Performance Assurance held by or for the benefit of the Secured Party against and in satisfaction of any amount payable by the Pledging Party in respect of any of its Obligations;

(iii) the right to draw on any outstanding Letter of Credit issued for its benefit; and/or

(iv) the right to liquidate any Performance Assurance held by or for the benefit of the Secured Party through one or more public or private sales or other dispositions with such notice, if any, as may be required by applicable law, free from any claim or right of any nature whatsoever of the Pledging Party, including any right of equity or redemption by the Pledging Party (with the Secured Party having the right to purchase any or all of the Performance Assurance to be sold) and to apply the proceeds from the liquidation of such Performance Assurance to and in satisfaction of any amount payable by the Pledging Party in respect of any of its Obligations in such order as the Secured Party may elect.

(b) The Pledging Party hereby irrevocably constitutes and appoints the Secured Party and any officer or agent thereof, with full power of substitution, as the Pledging Party's true and lawful attorney-in-fact with full irrevocable power and authority to act in the name, place and stead of the Pledging Party or in the Secured Party's own name, from time to time in the Secured Party's discretion, for the purpose of taking any and all action and executing and delivering any and all documents or instruments which may be necessary or desirable to accomplish the purposes of Paragraph 7(a).

(c) Secured Party shall be under no obligation to prioritize the order with respect to which it exercises any one or more rights and remedies available hereunder. The Pledging Party shall in all events remain liable to the Secured Party for any amount payable by the Pledging

Party in respect of any of its Obligations remaining unpaid after any such liquidation, application and set off.

(d) In addition to the provisions of Paragraph 7(a), if at any time (i) an Event of Default with respect to the Secured Party has occurred and is continuing or (ii) an Early Termination Date has occurred or been designated as a result of an Event of Default with respect to the Secured Party, then:

(1) the Secured Party will be obligated immediately to Transfer all Performance Assurance (including any Letter of Credit) and the Interest Amount, if any, to the Pledging Party;

(2) the Pledging Party may do any one or more of the following: (x) exercise any of the rights and remedies of a pledgor with respect to the Performance Assurance, including any such rights and remedies under law then in effect; (y) to the extent that the Performance Assurance or the Interest Amount is not Transferred to the Pledging Party as required in (1) above, setoff amounts payable to the Secured Party against the Performance Assurance (other than Letters of Credit) held by the Secured Party or to the extent its rights to setoff are not exercised, withhold payment of any remaining amounts payable by the Pledging Party, up to the value of any remaining Performance Assurance held by the Secured Party, until the Performance Assurance is Transferred to the Pledging Party; and (z) exercise rights and remedies available to the Pledging Party under the terms of any Letter of Credit; and

(3) the Secured Party shall be prohibited from drawing on any Letter of Credit that has been posted by the Pledging Party for its benefit.

Paragraph 8. Disputed Calculations

(a) If the Pledging Party disputes the amount of Performance Assurance requested by the Secured Party and such dispute relates to the amount of the Net Exposure claimed by the Secured Party, then the Pledging Party shall (i) notify the Secured Party of the existence and nature of the dispute not later than the Notification Time on the first Local Business Day following the date that the demand for Performance Assurance is made by the Secured Party pursuant to Paragraph 4, and (ii) provide Performance Assurance to or for the benefit of the Secured Party in an amount equal to the Pledging Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Collateral Requirement in accordance with Paragraph 4. In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Business Day following the date that the demand is made by the Secured Party, then the Secured Party's Net Exposure shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Current Mark-to-Market Value of each Transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall inform the Pledging Party of the results of

such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

(b) If the Secured Party disputes the amount of Performance Assurance to be reduced by the Secured Party and such dispute relates to the amount of the Net Exposure claimed by the Secured Party, then the Secured Party shall (i) notify the Pledging Party of the existence and nature of the dispute not later than the Notification Time on the first Local Business Day following the date that the demand to reduce Performance Assurance is made by the Pledging Party pursuant to Paragraph 5(a), and (ii) effect the reduction of Performance Assurance to or for the benefit of the Pledging Party in an amount equal to the Secured Party's own estimate, made in good faith and in a commercially reasonable manner, of the Pledging Party's Collateral Requirement in accordance with Paragraph 5(a). In all such cases, the Parties thereafter shall promptly consult with each other in order to reconcile the two conflicting amounts. If the Parties have not been able to resolve their dispute on or before the second Local Business Day following the date that the demand is made by the Pledging Party, then the Secured Party's Net Exposure shall be recalculated by each Party requesting quotations from one (1) Reference Market-Maker within two (2) Business Days (taking the arithmetic average of those obtained to obtain the average Current Mark-to-Market Value; provided, that, if only one (1) quotation can be obtained, then that quotation shall be used) for the purpose of recalculating the Current Mark-to-Market Value of each Transaction in respect of which the Parties disagree as to the Current Mark-to-Market Value thereof, and the Secured Party shall inform the Pledging Party of the results of such recalculation (in reasonable detail). Performance Assurance shall thereupon be provided, returned, or reduced, if necessary, on the next Local Business Day in accordance with the results of such recalculation.

Paragraph 9. Covenants; Representations and Warranties; Miscellaneous.

(a) The Pledging Party will execute and deliver to the Secured Party (and to the extent permitted by applicable law, the Pledging Party hereby authorizes the Secured Party to execute and deliver, in the name of the Pledging Party or otherwise) such financing statements, assignments and other documents and do such other things relating to the Performance Assurance and the security interest granted under this Collateral Annex, including any action the Secured Party may deem necessary or appropriate to perfect or maintain perfection of its security interest in the Performance Assurance, and the Pledging Party shall pay all costs relating to its Transfer of Performance Assurance and the maintenance and perfection of the security interest therein.

(b) On each day on which Performance Assurance is held by the Secured Party and/or its Custodian under the Agreement and this Collateral Annex, the Pledging Party hereby represents and warrants that:

(i) the Pledging Party has good title to and is the sole owner of such Performance Assurance, and the execution, delivery and performance of the covenants and agreements of this Collateral Annex, do not result in the creation or imposition of any lien or security interest upon any of its assets or properties, including, without limitation,

the Performance Assurance, other than the security interests and liens created under the Agreement and this Collateral Annex;

(ii) upon the Transfer of Performance Assurance by the Pledging Party to the Secured Party and/or its Custodian, the Secured Party shall have a valid and perfected first priority continuing security interest therein, free of any liens, claims or encumbrances, except those liens, security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest; and

(iii) it is not and will not become a party to or otherwise be bound by any agreement, other than the Agreement and this Collateral Annex, which restricts in any manner the rights of any present or future holder of any of the Performance Assurance with respect hereto.

(c) This Collateral Annex has been and is made solely for the benefit of the Parties and their permitted successors and assigns, and no other person, partnership, association, corporation or other entity shall acquire or have any right under or by virtue of this Collateral Annex.

(d) The Pledging Party shall pay on request and indemnify the Secured Party against any taxes (including without limitation, any applicable transfer taxes and stamp, registration or other documentary taxes), assessments, or charges that may become payable by reason of the security interests, general first lien and right of offset granted under this Collateral Annex or the execution, delivery, performance or enforcement of the Agreement and this Collateral Annex, as well as any penalties with respect thereto (including, without limitation costs and reasonable fees and disbursements of counsel). The Parties each agree to pay the other Party for all reasonable expenses (including without limitation, court costs and reasonable fees and disbursements of counsel) incurred by the other in connection with the enforcement of, or suing for or collecting any amounts payable by it under, the Agreement and this Collateral Annex.

(e) No failure or delay by either Party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

(f) The headings in this Collateral Annex are for convenience of reference only, and shall not affect the meaning or construction of any provision thereof.

SCHEDULE 1 to Collateral Annex

IRREVOCABLE STANDBY LETTER OF CREDIT FORMAT
DATE OF ISSUANCE: _____

[Address]

Re: Credit No. _____

We hereby establish our Irrevocable Transferable Standby Letter of Credit in your favor for the account of _____ (the "Account Party"), for the aggregate amount not exceeding _____ United States Dollars ($_____), available to you at sight upon demand at our counters at (Location) on or before the expiration hereof against presentation to us of one or more of the following statements, dated and signed by a representative of the beneficiary:

1. "An Event of Default (as defined in the Master Purchase and Sale Agreement dated as of _____ between beneficiary and Account Party, as the same may be amended (the "Master Agreement")) has occurred and is continuing with respect to Account Party under the Master Agreement and no Event of Default has occurred and is continuing with respect to the beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of the entire undrawn amount of the Letter of Credit"; or

2. "An Early Termination Date (as defined in the Master Purchase and Sale Agreement dated as of _____ between beneficiary and Account Party, as the same may be amended (the "Master Agreement")) has occurred and is continuing with respect to Account Party under the Master Agreement and no Event of Default has occurred and is continuing with respect to the beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of the entire undrawn amount of the Letter of Credit".

This Letter of Credit shall expire on _____.

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through the Issuing Bank referencing this Letter of Credit No. ____. Partial drawings are permitted hereunder.

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 13(b) and 17 of the UCP, in which case the terms of this Letter of Credit shall govern.

With respect to Article 13(b) of the UCP, the Issuing Bank shall have a reasonable

amount of time, not to exceed three (3) banking days following the date of its receipt of documents from the beneficiary, to examine the documents and determine whether to take up or refuse the documents and to inform the beneficiary accordingly.

In the event of an Act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business (collectively, an "Interruption Event") and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

This Letter of Credit is transferable, and we hereby consent to such transfer, but otherwise may not be amended, changed or modified without the express written consent of the beneficiary, the Issuing Bank and the Account Party.

[BANK SIGNATURE]

Execution

PARAGRAPH 10
to the
COLLATERAL ANNEX
to the
EEI MASTER POWER PURCHASE AND SALE AGREEMENT
BETWEEN
SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION (PARTY A)
And
MORGAN STANLEY CAPITAL GROUP INC. (PARTY B)

CREDIT ELECTIONS COVER SHEET

Paragraph 10. Elections and Variables

I. Collateral Threshold.

A. Party A Collateral Threshold.

☒ The Collateral Threshold for Party A shall be the amount set forth under the "Threshold Amount" in the table below opposite the Calendar Year on the relevant date of determination; provided, however, that the Collateral Threshold for Party A shall be zero ($0) upon the occurrence and during the continuance of a Credit Event, an Event of Default or a Potential Event of Default with respect to Party A; and provided further that, in the event that, and on the date that, Party A cures the Credit Event or Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Credit Event or Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

Calendar Year	Threshold Amount	
2017	[redacted]	
2018		
2019		
2020		
2021		
2022		
2023		
2024		
2025		
2026		
2027		
2028		
2029		
2030		
2031		

2032	[redacted]	
2033		
2034		
2035		
2036		
2037		
2038		
2039		

"Credit Event" shall mean, with respect to Party A, any of the following events or circumstances: (a) Party A's TIER Ratio shall fall below a high average TIER Ratio of 1.25 using two of the last three calendar years; (b) Party A's DSC Ratio shall fall below a high average DSC Ratio of 1.25 using two of the last three calendar years; or (c) Party A suffers a Regulatory Event.

"CFC" means the National Rural Utilities Cooperative Finance Corporation.

"Change in Law" means, for purposes of this Collateral Annex (i) a material change or the enactment, promulgation or issuance or material amendment of any constitution, charter, act, statute, regulation, ordinance, order (including any order waiving application of a legal requirement as to a Party), ruling, rule or other applicable law, or (ii) other legislative or administrative action of any Government Authority of competent jurisdiction or a final decree, judgment, or order of a court of competent jurisdiction (including temporary restraining orders) occurring subsequent to the Trade Date, in each case related to the regulation, generation, transmission, transportation or consumption of energy, its emissions or by-products, or of the regulation of the environment related to any of the foregoing. For purposes of this definition, no enactment, adoption, promulgation, amendment or modification of an Applicable Law shall be considered a Change in Law if, as of the Trade Date, (1) such Applicable Law would have directly affected the performance of the obligations hereunder by either Party after the Trade Date in the absence of this Agreement and (2) either such Applicable Law was (A) officially proposed by the responsible agency and promulgated in final form in the Federal Register or equivalent federal, state or local publication and thereafter becomes effective without further action or (B) enacted into law or promulgated by the appropriate federal, state or local body before the Trade Date, and (i) the comment period with respect to which expired on or before the Trade Date and (ii) any required hearings concluded on or before the Trade Date, in accordance with applicable administrative procedures and which thereafter becomes effective without further action. For the avoidance of doubt, a "Change in Law" hereunder shall not include any change with respect to the regulation of banks or financial firms or their affiliates, nor with respect to the treatment of such entities or their contracts in bankruptcy, insolvency or receivership proceedings.

"CoBank" means CoBank, ACB, an agricultural credit bank organized pursuant to the Farm Credit Act of 1971.

"DSC Ratio" means, for Party A for any calendar year, the debt service coverage ratio set forth in Party A's annual financial report on Form 7 to Party A's primary Lender. In the event Party A's Lender ceases to use Form 7 or its equivalent, the Debt Service Coverage Ratios shall be as calculated in the same manner as calculated by Party A's Lender.

"Form 7" means the Financial and Statistical Report on Form 7, or its successor or equivalent, as adopted for use by the RUS, for the applicable calendar year.

"Lender" means, from time-to-time throughout the Term, the entity having at the time the largest principal amount loaned to Party A then outstanding from the following list of entities: (a) RUS, (b) CFC (c) CoBank, or (d) in the event Party A has no outstanding

obligations with the foregoing, any other bank, savings-and-loan, surety, financial institution or governmental or quasi-governmental entity acting as a lender of borrowed money or that has extended lines of credit (including for letters of credit) to the applicable Party or its Guarantor.

"Regulatory Event" means a Change in Law which results in the creation of retail access opportunities for one or more classes of consumers of electric energy in Party A's service territory and thereafter the total number of members taking electric service from Party declines by 13,400 or more from the Trade Date.

"RUS" means the Rural Utilities Service, a Division of the United States Department of Agriculture.

"TIER Ratio" means, for Party A for any calendar year, the times interest earned ratio set forth in Party A's annual financial report on Form 7 to Party A's primary Lender. In the event Party A's Lender ceases to use Form 7 or its equivalent, the TIER Ratio shall be as calculated in the same manner as calculated by Party A's Lender.

☐ (a) The amount (the "Threshold Amount") set forth below under the heading "Party A Collateral Threshold" opposite the Credit Rating for Party A on the relevant date of determination, and if Party A's Credit Ratings shall not be equivalent, the lower Credit Rating shall govern or (b) zero if on the relevant date of determination Party A does not have a Credit Rating from the rating agency(ies) specified below or an Event of Default or a Potential Event of Default with respect to Party A has occurred and is continuing; provided, however, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from zero to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand:

Party A Collateral Threshold	**S&P Credit Rating**	**Moody's Credit Rating**

The foregoing paragraph notwithstanding, so long as Party A is not experiencing an Event of Default or Potential Event of Default, its Threshold Amount shall be [an amount equal to an estimated 12 months of payments owed to MSCG]. The Collateral Threshold for Party A shall be [an amount equal to an estimated 3 months of payments owed to MSCG] upon the occurrence and during the continuance of an Event of Default or a Potential Event of Default with respect to Party A; and provided further that, in the event that, and on the date that, Party A cures the Potential Event of Default on or prior to the date that Party A is required to post Performance Assurance to Party B pursuant to a demand made by Party B pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party A shall automatically increase from the amount set forth herein to the Threshold Amount and (ii) Party A shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

☐ The amount of the Guaranty Agreement dated _____ from _____, as amended from time to time but in no event shall Party B's Collateral Threshold be greater than $_____.

B. Party B Collateral Threshold.

☐ $_____ (the "Threshold Amount"); provided, however, that the Collateral Threshold for Party B shall be zero upon the occurrence and during the continuance of an Event of Default

or a Potential Event of Default with respect to Party B; and provided further that, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand.

X (a) The amount (the "Threshold Amount") set forth below under the heading "Party B Collateral Threshold" opposite the Credit Rating for Party B's Guarantor on the relevant date of determination, and if Party B's Guarantor's Credit Ratings shall not be equivalent, the lower Credit Rating shall govern or (b) zero if on the relevant date of determination its Guarantor does not have a Credit Rating from the rating agency(ies) specified below or an Event of Default or a Potential Event of Default with respect to Party B has occurred and is continuing; provided, however, in the event that, and on the date that, Party B cures the Potential Event of Default on or prior to the date that Party B is required to post Performance Assurance to Party A pursuant to a demand made by Party A pursuant to the provisions of the Collateral Annex on or after the occurrence of such Potential Event of Default, (i) the Collateral Threshold for Party B shall automatically increase from zero to the Threshold Amount and (ii) Party B shall be relieved of its obligation to post Performance Assurance pursuant to such demand:

Party B Collateral Threshold	S&P Credit Rating
[redacted]	A+ and above
	A- / A
	BBB- to BBB+
	Below BBB-

☐ The amount of the Guaranty Agreement dated _____ from _____, as amended from time to time but in no event shall Party B's Collateral Threshold be greater than $_____.

II. **Eligible Collateral and Valuation Percentage**.

The following items will qualify as "Eligible Collateral" for the Party specified:

		Party A	Party B	Valuation Percentage
(A)	Cash	[X]	[X]	100%
(B)	Letters of Credit issued by a Qualified Issuer	[X]	[X]	100% unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii) twenty (20) or fewer Business Days remain prior to the expiration of such Letter of Credit, in which cases the Valuation Percentage shall be zero (0).
(C)	Letter of Credit issued by National Rural Utilities Cooperative Finance Corporation ("CFC") or CoBank as long as CFC or CoBank, as applicable, has a	[X]	[X]	100% unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii) twenty (20) or fewer Business Days remain prior to the expiration of such Letter of Credit,

	Credit Rating of at least (i) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (ii) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both.			in which cases the Valuation Percentage shall be zero (0).
(D)	Negotiable debt obligations (other than interest-only securities) issued by the U.S. Treasury Department having a remaining maturity of more than 1 year but not more than 5 years	[ ]	[ ]	96%
(E)	Negotiable debt obligations (other than interest-only securities) issued by the U.S. Treasury Department having a remaining maturity of more than 5 years	[ ]	[ ]	94%

III. **Independent Amount.**

A. **Party A Independent Amount.**

X Party A shall have a Fixed Independent Amount [redacted]. If the Fixed Independent Amount option is selected for Party A, then Party A (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party B (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party A's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.

☐ Party A shall have a Full Floating Independent Amount of $_____. If the Full Floating Independent Amount option is selected for Party A, then for purposes of calculating Party A's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party A shall be added by Party B to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.

☐ Party A shall have a Partial Floating Independent Amount of $_____. If the Partial Floating Independent Amount option is selected for Party A, then Party A will be required to Transfer or cause to be Transferred to Party B Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party A otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced so long as Party A has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not

be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

B. **Party B Independent Amount.**

X Party B shall have a Fixed Independent Amount [redacted]. If the Fixed Independent Amount Option is selected for Party B, then Party B (which shall be a Pledging Party with respect to the Fixed IA Performance Assurance) will be required to Transfer or cause to be Transferred to Party A (which shall be a Secured Party with respect to the Fixed IA Performance Assurance) Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Fixed IA Performance Assurance"). The Fixed IA Performance Assurance shall not be reduced for so long as there are any outstanding obligations between the Parties as a result of the Agreement, and shall not be taken into account when calculating Party B's Collateral Requirement pursuant to the Collateral Annex. Except as expressly set forth above, the Fixed IA Performance Assurance shall be held and maintained in accordance with, and otherwise be subject to, Paragraphs 2, 5(b), 5(c), 6, 7 and 9 of the Collateral Annex.

☐ Party B shall have a Full Floating Independent Amount of $_____. If the Full Floating Independent Amount Option is selected for Party B then for purposes of calculating Party B's Collateral Requirement pursuant to Paragraph 3 of the Collateral Annex, such Full Floating Independent Amount for Party B shall be added by Party A to its Exposure Amount for purposes of determining Net Exposure pursuant to Paragraph 3(a) of the Collateral Annex.

☐ Party B shall have a Partial Floating Independent Amount of $_____. If the Partial Floating Independent Amount option is selected for Party B, then Party B will be required to Transfer or cause to be Transferred to Party A Performance Assurance with a Collateral Value equal to the amount of such Independent Amount (the "Partial Floating IA Performance Assurance") if at any time Party B otherwise has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount) pursuant to Paragraph 3 of the Collateral Annex. The Partial Floating IA Performance Assurance shall not be reduced for so long as Party B has a Collateral Requirement (not taking into consideration the Partial Floating Independent Amount). The Partial Floating Independent Amount shall not be taken into account when calculating a Party's Collateral Requirements pursuant to the Collateral Annex. Except as expressly set forth above, the Partial Floating Independent Amount shall be held and maintained in accordance with, and otherwise be subject to, the Collateral Annex.

IV. **Minimum Transfer Amount.**

A. **Party A Minimum Transfer Amount:** [redacted]

B. **Party B Minimum Transfer Amount:** [redacted]

V. **Rounding Amount.**

A. **Party A Rounding Amount:** [redacted]

B. **Party B Rounding Amount:** [redacted]

VI. Administration of Cash Collateral.

A. Party A Eligibility to Hold Cash.

☐ Party A shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party A shall pay to Party B in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party B.

X Party A shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not subject to an Event of Default or Potential Event of Default, (2) a Downgrade Event has not occurred with respect to Party A, and (3) Cash shall be held only in any jurisdiction within the United States. To the extent Party A is entitled to hold Cash, the Interest Rate payable to Party B on Cash shall be as selected below:

Party A Interest Rate.

X Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

☐ Other - _____

B. Party B Eligibility to Hold Cash.

☐ Party B shall not be entitled to hold Performance Assurance in the form of Cash. Performance Assurance in the form of Cash shall be held in a Qualified Institution in accordance with the provisions of Paragraph 6(a)(ii)(B) of the Collateral Annex. Party B shall pay to Party A in accordance with the terms of the Collateral Annex the amount of interest it receives from the Qualified Institution on any Performance Assurance in the form of Cash posted by Party A.

X Party B shall be entitled to hold Performance Assurance in the form of Cash provided that the following conditions are satisfied: (1) it is not subject to an Event of Default or Potential Event of Default, (2) a Downgrade Event has not occurred with respect to Party B's guarantor, and (3) Cash shall be held only in any jurisdiction within the United States. To the extent Party B is entitled to hold Cash, the Interest Rate payable to Party A on Cash shall be as selected below:

Party B Interest Rate.

X Federal Funds Effective Rate - the rate for that day opposite the caption "Federal Funds (Effective)" as set forth in the weekly statistical release designated as H.15(519), or any successor publication, published by the Board of Governors of the Federal Reserve System.

☐ Other - _____

VII. Notification Time.

☐ Other – 10:00 AM, Eastern Time

VIII. **General.**

With respect to the Collateral Threshold, Independent Amount, Minimum Transfer Amount and Rounding Amount, if no selection is made in this Cover Sheet with respect to a Party, then the applicable amount in each case for such Party shall be zero (0). In addition, with respect to the "Administration of Cash Collateral" section of this Paragraph 10, if no selection is made with respect to a Party, then such Party shall not be entitled to hold Performance Assurance in the form of Cash and such Cash, if any, shall be held in a Qualified Institution pursuant to Paragraph 6(a)(ii)(B) of the Collateral Annex. If a Party is eligible to hold Cash pursuant to a selection in this Paragraph 10 but no Interest Rate is selected, then the Interest Rate for such Party shall be the Federal Funds Effective Rate as defined in Section VI of this Paragraph 10.

IX. **Collateral Annex Amendments**

A. **Definitions**

- "Letter of Credit" shall be deleted in its entirety and replaced with the following:

  ""Letter of Credit" shall have the meaning ascribed to it in the Master Agreement Cover Sheet."

- "Credit Rating Event" shall be amended by replacing "6(a)(iii)" with "6(a)(ii)".

- "Downgraded Party" shall be amended by replacing "6(a)(i)" with "6(a)(ii)".

- "Letter of Credit Default" shall be amended by deleting "or" in the third line and replacing it with "and".

- "Performance Assurance" shall be amended by replacing "6(a)(iv)" with "6(a)(iii)".

- "Secured Party" shall be amended by replacing "3(b)" with "3(a)".

- "Qualified Institution" shall be deleted in its entirety and replaced with the following:

  ""Qualified Institution" means a commercial bank or trust company or financial institution, in each case not affiliated with either Party A or Party B, organized under the laws of the United States or a political subdivision thereof, with (i) a Credit Rating of at least (a) "A-" by S&P and "A3" by Moody's, if such entity is rated by both S&P and Moody's or (b) "A-" by S&P or "A3" by Moody's, if such entity is rated by either S&P or Moody's but not both, and (ii) having assets of at least $10,000,000,000; or, as it relates to Party A, the Cooperative Finance Corporation, CoBank and the Rural Utilities Service."

- "Reference Market-Maker" shall be amended by adding the following phrase at the end thereof: "; provided, however, such leading dealers shall not be Party A or Party B or Affiliates of Party A or Party B".

B. **General Amendments**

- The opening paragraph shall be amended by replacing "Paragraph 10 Elections" with "Paragraph 10 Cover Sheet".

- For purposes of the Collateral Annex, "setoff", "set off" and "offset" shall have the same meaning.

- Paragraph 2, "Encumbrance; Grant of Security Interest", shall be amended by adding the following language as the last sentence thereof:

"Notwithstanding any language to the contrary in this Paragraph 2, the Parties recognize that Party A's assets are subject to certain mortgages and other debt agreements, including with the Cooperative Finance Corporation, CoBank and Rural Utilities Service. This section shall not be read to require Party A to act inconsistently with its obligations under such mortgages and other debt agreements and Party A shall not be deemed to be in breach of this Master Agreement by virtue of its compliance with the requirements of its mortgage and debt agreements."

- Paragraph 3(b)(2) shall be amended by inserting "that has not been returned to the Pledging Party pursuant to this Collateral Annex" after the phrase "the Secured Party" in the first line.

- Paragraph 5(a) shall be amended by deleting "before the Notification Time on a Business Day" and replacing it with "before the Notification Time on a Local Business Day" and by inserting "so long as the amount of the requested reduction is equal to or greater than the Minimum Transfer Amount" after "the Pledging Party for the benefit of the Secured Party" in the third line thereof.

- Paragraph 6(a)(ii)(A) is amended by inserting "(other than subparagraph (B) below)" after "the provisions of this Paragraph 6(a)(ii)" in the first line thereof.

- Paragraph 6(a)(ii)(B) shall be amended by (1) replacing "on the next Local Business Day" with "on the fifth (5th) Local Business Day"; (2) in the eleventh line, changing "Non-Downgraded Party" to "Downgraded Party"; and (3) at the end thereof adding "In the event the Collateral Account is not established or otherwise ready to receive the Transfer of the Cash Performance Assurance by the close of business on the fifth (5th) Local Business Day, the Pledging Party shall either (a) temporarily waive the requirement that such Cash be held in a Collateral Account until the Parties, working diligently together and with the Custodian, are able to establish the Collateral Account and Transfer the Cash Performance Assurance into the Collateral Account, or (b) substitute the Cash Performance Assurance for other Performance Assurance of equal Collateral Value in accordance with Paragraph 5(b)."

- Paragraph 6(a)(iii) ("Interest Payments on Cash") is amended so that all references therein to "the third Local Business Day" shall read "the fifth (5th) Local Business Day".

- Paragraph 6(b)(iii) shall be amended by replacing "first" in line three, with "second".

- A new Paragraph 6(d) is added as follows:

  "(d) Negative Interest Rates. If the Interest Amount for an Interest Period would be a negative number it will be deemed to be zero, and for so long as the Interest Amount is a negative number then within 15 Business Days the Pledging Party will substitute and maintain, in accordance with the provisions of Paragraph 5(b), a Letter of Credit for any Eligible Collateral it has previously Transferred in the form of Cash, and upon receipt of such substitute Letter of Credit the Cash shall be returned in accordance with Paragraph 5(b)."

- Paragraph 7(a)(iv) shall be amended by inserting ", in a commercially reasonable manner," between "liquidate" and "any" in the first line.

- Paragraph 8(b) shall be amended in the first line by replacing "to be reduced by the Secured Party" with "to be reduced by the Pledging Party" immediately after "Performance Assurance".

- Paragraph 8 is amended by inserting the following new subparagraph 8(c) at the end thereof:

  "(c) Each quotation from a Reference Market-maker will be for an amount, if any, that would be paid to the Party requesting the quotation (expressed as a negative number) or by the Party requesting the quotation (expressed as a positive number) in consideration of an agreement between such Party (taking into account this Collateral Annex and the existence of any Guarantor with respect to the obligations of such Party) and the quoting Reference Market-maker to enter into a transaction that would have the effect of preserving for the Party requesting the quotation the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the Parties in respect of such Transaction

or group of Transactions. The costs of retaining Reference Market-makers for the purposes of this Paragraph 8 shall be borne equally by the Secured Party and the Pledging Party. The determination made by such Reference Market-makers shall be binding and conclusive on the Parties absent manifest error."

[The remainder of this page is intentionally left blank]

Execution

IN WITNESS WHEREOF, the Parties have caused this Paragraph 10 the Collateral Annex the EEI Master Power Purchase and Sale Agreement to be executed as of the date first above written.

Party A- **South Kentucky Rural Electric Cooperative Corporation**	Party B- **Morgan Stanley Capital Group Inc.**
By: Dennis Holt	By: _____
Name: **Dennis Holt**	Name: _____
Title: **President and Chief Executive Officer**	Title: _____

Execution

IN WITNESS WHEREOF, the Parties have caused this Paragraph 10 the Collateral Annex the EEI Master Power Purchase and Sale Agreement to be executed as of the date first above written.

Party A- **South Kentucky Rural Electric Cooperative Corporation**	Party B- **Morgan Stanley Capital Group Inc.**
By: _____	By: Charmaine Fearon
Name: **Dennis Holt**	Name: Charmaine Fearon
Title: **President and Chief Executive Officer**	Title: Authorized Signatory

Execution

Morgan Stanley
Commodities

Morgan Stanley Capital Group Inc.
Attn: Commodities
1585 Broadway
New York, NY 10036

Date:	December 19, 2017
To:	South Kentucky Rural Electric Cooperative Corporation 200 Electric Ave. P.O. Box 910 Somerset, KY 42502
Attention:	Vice President, Finance
Telephone No.:	606-451-4337
Facsimile No.:	606-451-4103
From: Operations Contact:	Morgan Stanley Capital Group Inc. Confirmations Group
Telephone No.:	914-225-1500
Re:	FIRM PHYSICAL ENERGY CONFIRMATION

MSCGI reference number: / 5830210 Version ___

Dear Sir or Madam:

This confirmation letter ("Confirmation") confirms the terms and conditions of the Transaction entered into between South Kentucky Rural Electric Cooperative Corporation ("Party A" or "SKRECC") and Morgan Stanley Capital Group Inc. ("Party B" or "MSCG"), as described below. Each of SKRECC and MSCG may be referred to herein individually as a "Party" or collectively as the "Parties".

This Confirmation supplements, forms part of and is subject to the terms of the Master Agreement described below.

The terms and conditions of the Transaction are described below. As used herein, the words "include" or "including" shall be deemed to be followed by the words "without limitation." The words "hereof," "herein," "hereto," "hereunder" and words of similar import when used in this Confirmation shall, unless otherwise expressly specified, refer to this Confirmation as a whole and not to any particular provision of this Confirmation.

1. Trade Date:	December 19, 2017
2. Buyer:	SKRECC
3. Seller:	MSCG
4. Master Agreement:	EEI Master Power Purchase and Sale Agreement dated as of December 18, 2017, between MSCG and SKRECC (together with the Collateral Annex thereto, and each attachment, exhibit and schedule, all as amended and supplemented from time to time).
5. Delivery Start Date:	June 1, 2019.
6. Delivery End Date:	May 31, 2039.
7. Delivery Period:	Commencing Hour Ending ("HE") 0100 Eastern Prevailing Time ("EPT") on the Delivery Start Date through and including HE 2400 EPT on the Delivery End Date.
8. Product:	Firm (LD) Energy. No other product (such as capacity, operational reserves or planning reserves) or service (except scheduling service, as expressly set forth herein) is included in the "Product" hereunder, notwithstanding any Change in Law or change in market practice.
9. Delivery Point:	Seller shall deliver to the following PJM Delivery Point: EKPC Residual Aggregate (EKPC_Resid_AGG) PJM PnodeID 1127872598. provided, if after the Trade Date there is a material change implemented in the make-up of a Delivery Point (including (i) the separation of the Delivery Point from PJM to another Control Area, (ii) the splitting of the Delivery Point into one or more separate points, zones or hubs, or (iii) the material reduction in the size or material change in the composition of the existing Delivery Point), then Buyer and Seller agree to exercise commercially reasonable efforts to modify this Confirmation to put the Parties in substantially the same relative economic position as they were prior to the change, or, if that is not practicable, to eliminate the material net adverse impact of such changes upon Seller.

10. Contract Quantity:	58 MWs (ATC) in each hour during the Delivery Period.
11. Contract Price:	[redacted] per MWh
12. PJM Arrangements & Settlements:	(a) For the avoidance of doubt, MSCG will not act as SKRECC's agent, for billing purposes, scheduling purposes or otherwise, under the PJM Agreements. (b) SKRECC covenants to promptly apply for and diligently pursue membership in PJM as a Market Participant, and agrees to maintain its status as a Market Participant in good standing throughout the Delivery Period. SKRECC understands and agrees that, as between PJM and SKRECC, SKRECC shall be solely responsible for any amounts charged by PJM to SKRECC as Market Participant and as owner of the load asset represented by this Confirmation. (c) SKRECC agrees to promptly enter into and file with PJM (or arrange to have filed by EKPC) a Declaration of Authority specifying SKRECC as principal and EKPC as its designated agent for purposes of EKPC acting as SKRECC's billing and scheduling agent for all purposes under this Transaction.
13. Scheduling:	The Contract Quantity shall be scheduled by MSCG using PJM's Internal Bilateral Transaction (IBT) InSchedule tool to the SKRECC PJM account in the Day Ahead Market.
14. Conditions Subsequent:	This Transaction and Confirmation shall be effective and binding upon both Parties as of the Trade Date, provided, however, that, in the event any one or more of the conditions subsequent set forth below are not satisfied or waived on or before the date applicable to such condition subsequent (as set forth below), either Party may, by delivering written notice to the other Party after the applicable date specified below, terminate this Transaction, which shall thereupon become void with no further obligations hereunder. As conditions subsequent to this Confirmation: (i) The Rural Utilities Service ("RUS") shall have approved or otherwise consented to the terms of the Agreement and this Confirmation by no later than 120 days following the Trade Date: (ii) MSCG shall have received reasonable satisfactory written evidence that the Board of Directors of SKRECC shall have approved, consented to, and ratified the terms of the Agreement and of this Confirmation by close of business on the Business Day after the Trade Date; and

	(iii) The PSC has issued a final, non-appealable order approving the Agreement and this Confirmation on or before 05/31/2018. Notwithstanding the foregoing, SKRECC shall be bound by, and liable to MSCG for any losses, costs and expenses (including those associated with hedging this Transaction) occasioned by any breach of, Section 15 (Buyer Additional Representations & Warranties) and Section 16 (Buyer Additional Covenants) notwithstanding the failure of SKRECC to procure RUS or PSC approval. To the extent that the representations and warranties made by SKRECC in Section 10.2(ii) of the Agreement (with respect to regulatory authorizations) and Section 10.2(iii) of the Agreement (with respect to violating contracts to which it is a party) would otherwise be untrue prior to the satisfaction of the conditions subsequent set forth above, they shall be deemed not to apply to the extent of such breach until such conditions are satisfied.
15. Buyer Additional Representations & Warranties	SKRECC makes the following additional representations and warranties as of the Trade Date: (a) The WPC is in full force and effect and SKRECC is not in material breach of any term or condition of the WPC; (b) This Transaction constitutes an "Alternate Source" as such term is used in the MOU&A; (c) The full Contract Quantity under this Transaction is permitted as a "demand reduction" under the terms of Amendment No. 3, as interpreted by Section 3 of the MOU&A; and (d) SKRECC has given to EKPC the "Alternate Source Notice" described in Section 4 of the MOU&A with respect to this Transaction.
16. Buyer Additional Covenants	(a) SKRECC shall maintain and preserve its existence as a Kentucky non-profit cooperative corporation and all material rights, privileges and franchises necessary or desirable for it to maintain the normal conduct of its business, including all required governmental approvals necessary for the performance of its obligations under this Confirmation. (b) SKRECC shall promptly apply for and diligently pursue RUS approval of the Agreement and this Confirmation. (c) SKRECC shall promptly file a petition for approval of the Agreement and this Confirmation with the PSC as soon as reasonably practicable after the Trade Date, but in no event later than forty-five (45) days after the Trade Date, and shall diligently pursue such PSC approval, including by using all reasonable efforts to promptly respond to any PSC staff inquiry and promptly furnish or cause to be furnished any information

	or documents requested by the PSC. Throughout the approval process, Buyer shall provide Seller with timely updates as to the progress of the petition, and will inform Seller of any material interaction between Buyer or its agents and the PSC or its staff considering the petition for approval. In the event that the PSC denies the petition, or approves the petition with material conditions, SKRECC shall promptly and diligently appeal such decision. Once a final, non-appealable order approving this Agreement and this Confirmation (without material modification) has been issued by the PSC, SKRECC will not seek to amend, oppose, protest or contest such PSC order and will undertake reasonable efforts to support the order if any entity seeks to amend, oppose, protest or contest such PSC order. (d) SKRECC agrees to establish and maintain rates for electric capacity and energy and related services to its consumers which shall provide to SKRECC revenues at least sufficient, together with other available funds, to meet its obligations to MSCG under this Confirmation. (e) The obligations of SKRECC to make payments under this Confirmation constitute obligations payable as an ordinary and usual operating expense of SKRECC.
17. Environmental Change in Law:	(a) Except as provided in this Section 17, each Party shall bear responsibility for any change in costs or operational characteristics relating to any generating resource or contract resource which it owns or to which it has entitlement rights. (b) In the event of a Change in Law with respect to any Environmental Law or Tax Law, (i) MSCG shall provide to SKRECC a good faith market-based quotation of the amount required to reimburse MSCG for assuming responsibility for such Additional Environmental Costs; and, (ii) MSCG shall have an obligation to take commercially reasonable efforts to minimize any Additional Environmental Costs. SKRECC shall be responsible for and shall pay or reimburse Seller for any Additional Environmental Costs suffered or incurred by Seller, but only to the extent that such Additional Environmental Costs are paid, incurred or suffered during the Delivery Period, and relate to obligations incurred or due to be performed or settled during the Delivery Period.
18. Additional Defined Terms:	Capitalized terms used but not defined in this Confirmation nor in the Master Agreement have the meanings given such terms in the PJM Agreements. For purposes of this Confirmation, the following terms shall have the respective meanings as follows: "Additional Environmental Costs" means: (i) any and all fees, licenses, charges, green tags, certificates, expenses and products (including but not limited to any charges or

	products required on a per unit-of-energy-output, per-unit-of-energy-input, per-weight-of-pollutant, cap and-trade or other basis) and all losses, costs and liabilities with respect thereto, imposed or required by a Governmental Authority with respect to this Transaction or supplied hereunder; and (ii) any and all Taxes and all costs and liabilities with respect thereto, imposed or required by a Governmental Authority with respect to this Transaction or supplied hereunder; in each case, only to the extent such Additional Environmental Costs result from or are attributable to a Change in Law with respect to any Environmental Law or Tax Law and directly cause the price of Product paid by SKRECC to be increased.. "Amendment No. 3" means an amendment to the WPC dated as of October 23, 2003 which provides, under the conditions set forth therein, that SKRECC may procure energy and capacity from sources other than EKPC. "Applicable Laws" means all laws, ordinances, rules, regulations, orders, interpretations, licenses, permits, judgments, decrees, injunctions, writs and orders of any court, arbitrator, or Governmental Authority that are applicable to either or both of the Parties or the terms of the Agreement. "Change in Law" means, with respect to this Confirmation, (i) a material change or the enactment, promulgation or issuance or material amendment of any constitution, charter, act, statute, regulation, ordinance, order (including any order waiving application of a legal requirement as to Buyer), ruling, rule or other Applicable Law, or (ii) a material change in the specified standards or objective criteria contained in a permit, license, or other approvals, which standard or criteria must be met in order for a Seller Resource to generate electric energy, or (iii) other legislative or administrative action of any Government Authority of competent jurisdiction or a final decree, judgment, or order of a court of competent jurisdiction (including temporary restraining orders) occurring subsequent to the Trade Date, in each case related to the regulation, generation, transmission, transportation or consumption of energy, its emissions or by-products, or of the regulation of the environment related to any of the foregoing, and including the creation of a new retail access environment for consumers of electric energy in Kentucky. For purposes of this definition, no enactment, adoption, promulgation, amendment or modification of an Applicable Law shall be considered a Change in Law if, as of the Trade Date, (1) such Applicable Law would have directly affected the performance of the obligations hereunder by either Party after the Trade Date in the absence of this Agreement and (2) either such Applicable Law was (A) officially proposed by the responsible agency and promulgated in final form in the Federal Register or equivalent federal,

	state or local publication and thereafter becomes effective without further action or (B) enacted into law or promulgated by the appropriate federal, state or local body before the Trade Date, and (i) the comment period with respect to which expired on or before the Trade Date and (ii) any required hearings concluded on or before the Trade Date, in accordance with applicable administrative procedures and which thereafter becomes effective without further action. For the avoidance of doubt, a "Change in Law" hereunder shall not include any change with respect to the regulation of banks or financial firms or their affiliates, nor with respect to the treatment of such entities or their contracts in bankruptcy, insolvency or receivership proceedings. "Control Area" means an electrical system, bounded by interconnection (tie line) metering and telemetry, which continuously regulates its generation and interchange schedules to match its system load, contributes to frequency regulation of the interconnected system, and meets all or substantially all of the applicable requirements of NERC. "EKPC" means the East Kentucky Power Cooperative, Inc. "Environment" means soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, ambient air, and any other environmental medium. "Environmental Law" means any Applicable Law relating to pollution, GHGs or the protection of the Environment whether existing as of the Trade Date or previously enforced. "GHGs" means any emissions of carbon dioxide (CO2), nitrous oxide (N2O), methane (CH4) and other greenhouse gases that have been alleged or are alleged in the future to contribute to the actual or potential threat of altering the Earth's climate. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF6), which are generated in a variety of industrial processes. "Governmental Authority" means a Federal, state, local or municipal governmental body; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority, jurisdictional power; any court or governmental tribunal; or any applicable independent system operator, Regional Transmission Organization, regional power pool, NERC or other regional entity performing similar functions. "MOU&A" means the Memorandum of Understanding and Agreement Regarding Alternate Power Sources between EKPC and its owner-members, including SKRECC, and dated as of July 16, 2015. "NERC" means the North American Electric Reliability Corporation.

	"PJM" means PJM Interconnection, L.L.C. "PJM Agreements" means the PJM Tariff, PJM Operating Agreement and PJM Manuals. "PJM Manuals" shall mean the instructions, rules, procedures and guidelines established by the Office of the Interconnection for the operation, planning, and accounting requirements of the PJM Region and the PJM Interchange Energy Market. "PJM Operating Agreement" means the "Operating Agreement of the PJM Interconnection, L.L.C." dated as of April 1, 1997 and as amended and restated as of June 2, 1997, including all schedules, exhibits, appendices, addenda or supplements thereto, as amended from time to time thereafter, among the members of PJM. "PJM Settlement" means PJM Settlement, Inc. "PJM Tariff" means the Open Access Transmission Tariff of PJM on file with the Federal Energy Regulatory Commission, and as revised from time to time. "PSC" means the Kentucky Public Service Commission. "Schedule", "Scheduled" or "Scheduling" means communicating with and confirming with the appropriate party that a particular quantity of Energy is to be delivered to and/or received by the applicable party and providing all such information and satisfying all such requirements as may be necessary to cause the delivery or receipt of the Energy to be recognized and confirmed, including compliance with the PJM Agreements. "Taxes" means any or all Federal, state and/or local, municipal, ad valorem, property, occupation, severance, generation, first use, conversion, power, transmission, utility, gross receipts, privilege, fuel, fuel conversion, sales, use, consumption, excise, lease, transaction, and other taxes (including taxes on GHGs), together with interest and penalties thereon, other than taxes based on net income or net worth. "Tax Law" means any Applicable Law with respect to any Taxes (including interest, penalties and additions thereto) that is imposed by any Governmental Authority. "WPC" means the Wholesale Power Contract between SKRECC and EKPC, dated as of October 1, 1964, as amended, including by Amendment No. 3.

[Signature Page Follows]

Please confirm that the foregoing correctly sets forth the terms and conditions of our agreement by returning via electronic communication an executed copy of this Confirmation, or by sending a letter substantially similar to this letter, which letter sets forth the material terms of the Transaction to which this Confirmation relates and indicates agreement to those terms, in either case within three (3) Business Days of your receipt of this Confirmation, to the above Operations Contact.

Morgan Stanley Capital Group Inc. is pleased to have entered into this Transaction with you.

South Kentucky Rural Electric Cooperative Corporation		**Morgan Stanley Capital Group Inc.**	
By:	Dennis Holt	By:	
Name:	DENNIS HOLT	Name:	
Title:	INTERIM CEO	Title:	
Date:	12-19-2017	Date:	

Please confirm that the foregoing correctly sets forth the terms and conditions of our agreement by returning via electronic communication an executed copy of this Confirmation, or by sending a letter substantially similar to this letter, which letter sets forth the material terms of the Transaction to which this Confirmation relates and indicates agreement to those terms, in either case within three (3) Business Days of your receipt of this Confirmation, to the above Operations Contact.

Morgan Stanley Capital Group Inc. is pleased to have entered into this Transaction with you.

South Kentucky Rural Electric Cooperative Corporation		**Morgan Stanley Capital Group Inc.**	
By:	_____	By:	Karen Kochonies
Name:	_____	Name:	Karen Kochonies
Title:	_____	Title:	Vice President
Date:	_____	Date:	12/20/17

Execution

Morgan Stanley
Commodities

Morgan Stanley Capital Group Inc.
Attn: Commodities
1585 Broadway
New York, NY 10036

Date:	December 19, 2017
To:	South Kentucky Rural Electric Cooperative Corporation 200 Electric Ave. P.O. Box 910 Somerset, KY 42502
Attention:	Vice President, Finance
Telephone No.:	606-451-4337
Facsimile No.:	606-451-4103
From: Operations Contact:	Morgan Stanley Capital Group Inc. Confirmations Group
Telephone No.:	914-225-1500
Re:	FINANCIAL CAPACITY CONFIRMATION

MSCGI reference number: / 5830213 Version __

Dear Sir or Madam:

This confirmation letter ("Confirmation") confirms the terms and conditions of the Transaction entered into between South Kentucky Rural Electric Cooperative Corporation ("Party A" or "SKRECC") and Morgan Stanley Capital Group Inc. ("Party B" or "MSCG"), as described below. Each of SKRECC and MSCG may be referred to herein individually as a "Party" or collectively as the "Parties".

This Confirmation supplements, forms part of and is subject to the terms of the Master Agreement described below.

The terms and conditions of the Transaction are described below. As used herein, the words "include" or "including" shall be deemed to be followed by the words "without limitation." The words "hereof," "herein," "hereto," "hereunder" and words of similar import when used in this Confirmation shall, unless otherwise expressly specified, refer to this Confirmation as a whole and not to any particular provision of this Confirmation.

1. Trade Date:	December 19, 2017
2. Buyer:	SKRECC
3. Seller:	MSCG
4. Master Agreement:	EEI Master Power Purchase and Sale Agreement dated as of December 18, 2017, between MSCG and SKRECC (together with the Collateral Annex thereto, and each attachment, exhibit and schedule, all as amended and supplemented from time to time).
5. Delivery Start Date:	June 1, 2021.
6. Delivery End Date:	May 31, 2039.
7. Delivery Period:	Commencing Hour Ending ("HE") 0100 Eastern Prevailing Time ("EPT") on the Delivery Start Date through and including HE 2400 EPT on the Delivery End Date.
8. Product:	Financially-settled PJM Unforced Capacity ("UCAP") Annual Capacity Performance. This Transaction is not tied to, or contingent upon, any specific generation unit(s) or that any specific generation unit(s) be operating or operational. MSCG does not represent or warrant that this financially-settled Product will satisfy any of SKRECC's RPM-imposed performance obligations to PJM. No other product (such as energy, operational reserves or planning reserves) or service is included in the "Product" hereunder, notwithstanding any Change in Law or change in market practice.
9. Delivery Point / Locational Deliverability Areas:	Rest of RTO
10. Contract Quantity:	68 MW
11. Contract Price:	[redacted] per MW-Day, where "MW-Day" means MW of Daily UCAP.

12. Buyer's Fixed Amount:	The "Fixed Amount" is equal to the product of the Contract Price and the Contract Quantity multiplied by the number of days in the Calculation Period.
13. Seller's Floating Amount:	The "Floating Amount" is equal to the product of the Floating Price and the Contract Quantity multiplied by the number of days in the Calculation Period. Where "Floating Price" is, commencing in the 2021/2022 Delivery Year, the Resource Clearing Price ("RCP") (expressed in dollars per MW-Day of UCAP), for Annual Capacity Performance ("CP") Resources located in the rest of RTO LDA, established pursuant to the Base Residual Auction ("BRA") for the applicable Delivery Year as published by PJM (without taking into account any adjustment for any subsequent Incremental Auction) on their official website under the heading: RPM Auction Clearing Price http://www.pjm.com/markets-and-operations/rpm.aspx Capitalized terms not defined in the preceding sentences shall have the meaning given to them in the PJM Tariff.
14. Calculations:	If the Fixed Amount exceeds the Floating Amount for the Calculation Period, SKRECC shall pay MSCG an amount equal to such excess. If the Floating Amount exceeds the Fixed Amount for the Calculation Period, MSCG shall pay SKRECC an amount equal to such excess.
15. Calculation Period:	Each calendar month during the term of this Transaction.
16. Calculation Agent:	MSCG shall be responsible for calculating the Floating Price and preparing and providing to SKRECC monthly invoices and summaries of the Calculations for each Calculation Period, regardless which Party owes the excess amount to the other Party.
17. Conditions Subsequent:	This Transaction and Confirmation shall be effective and binding upon both Parties as of the Trade Date, provided, however, that, in the event any one or more of the conditions subsequent set forth below are not satisfied or waived on or before the date applicable to such condition subsequent (as set forth below), either Party may, by delivering written notice to the other Party after the applicable date specified below, terminate this Transaction, which shall thereupon become void with no further obligations hereunder. As conditions subsequent to this Confirmation: (i) The Rural Utilities Service ("RUS") shall have approved or otherwise consented to the terms of the Agreement and this Confirmation by no later than 120 days following the Trade Date.

	(ii) MSCG shall have received reasonable satisfactory written evidence that the Board of Directors of SKRECC shall have approved, consented to, and ratified the terms of the Agreement and of this Confirmation by close of business on the Business Day after the Trade Date; (iii) The PSC has issued a final, non-appealable order approving the Agreement and this Confirmation on or before 5/31/18; and (iv) Each condition subsequent to the Firm (LD) Energy Transaction memorialized in Section 14 of the Confirmation dated as of the same date as this Confirmation has been satisfied on or before the date set forth for such condition in such Confirmation. Notwithstanding the foregoing, SKRECC shall be bound by, and liable to MSCG for any losses, costs and expenses (including those associated with hedging this Transaction) occasioned by any breach of, Section 15 (Buyer Additional Representations & Warranties) and Section 16 (Buyer Additional Covenants) notwithstanding the failure of SKRECC to procure RUS or PSC approval. To the extent that the representations and warranties made by SKRECC in Section 10.2(ii) of the Agreement (with respect to regulatory authorizations) and Section 10.2(iii) of the Agreement (with respect to violating contracts to which it is a party) would otherwise be untrue prior to the satisfaction of the conditions subsequent set forth above, they shall be deemed not to apply to the extent of such breach until such conditions are satisfied.
18. Buyer Additional Representations & Warranties	SKRECC makes the following additional representations and warranties as of the Trade Date: (a) The WPC is in full force and effect and SKRECC is not in material breach of any term or condition of the WPC; (b) This Transaction constitutes an "Alternate Source" as such term is used in the MOU&A; (c) The full Contract Quantity under this Transaction is permitted as a "demand reduction" under the terms of Amendment No. 3, as interpreted by Section 3 of the MOU&A; and (d) SKRECC has given to EKPC the "Alternate Source Notice" described in Section 4 of the MOU&A with respect to this Transaction.
19. Buyer Additional Covenants	(a) SKRECC shall maintain and preserve its existence as a Kentucky non-profit cooperative corporation and all material rights, privileges and franchises necessary or desirable for it to maintain the normal conduct of

	its business, including all required governmental approvals necessary for the performance of its obligations under this Confirmation. (b) SKRECC shall promptly apply for and diligently pursue RUS approval of the Agreement and this Confirmation. (c) SKRECC shall promptly file a petition for approval of the Agreement and this Confirmation with the PSC as soon as reasonably practicable after the Trade Date, but in no event later than forty-five (45) days after the Trade Date, and shall diligently pursue such PSC approval, including by using all reasonable efforts to promptly respond to any PSC staff inquiry and promptly furnish or cause to be furnished any information or documents requested by the PSC. Throughout the approval process, SKRECC shall provide MSCG with timely updates as to the progress of the petition, and will inform MSCG of any material interaction between SKRECC or its agents and the PSC or its staff considering the petition for approval. In the event that the PSC denies the petition, or approves the petition with material conditions, SKRECC shall promptly and diligently appeal such decision. Once a final, non-appealable order approving this Agreement and this Confirmation (without material modification) has been issued by the PSC, SKRECC will not seek to amend, oppose, protest or contest such PSC order and will undertake reasonable efforts to support the order if any entity seeks to amend, oppose, protest or contest such PSC order. (d) SKRECC agrees to establish and maintain rates for electric capacity and energy and related services to its consumers which shall provide to SKRECC revenues at least sufficient, together with other available funds, to meet its obligations to MSCG under this Confirmation. (e) The obligations of SKRECC to make payments under this Confirmation constitute obligations payable as an ordinary and usual operating expense of SKRECC.
20. Environmental Change in Law:	(a) Except as provided in this Section 20, each Party shall bear responsibility for any change in costs or operational characteristics relating to any generating resource or contract resource which it owns or to which it has entitlement rights. (b) In the event of a Change in Law with respect to any Environmental Law or Tax Law, (i) MSCG shall provide to SKRECC a good faith market-based quotation of the amount required to reimburse MSCG for assuming responsibility for such Additional Environmental Costs; and, (ii) MSCG shall have an obligation to take commercially reasonable efforts to minimize any Additional Environmental Cost. SKRECC shall be responsible for and shall pay or reimburse MSCG for any Additional Environmental Costs suffered or incurred by MSCG, but only to the extent that such Additional Environmental Costs are paid, incurred or suffered

	during the Delivery Period, and relate to obligations incurred or due to be performed or settled during the Delivery Period.
21. Special Provision Regarding Pricing Finality	Each Party acknowledges that it is aware of the recent decision of the U.S. Court of Appeals for the District of Columbia Circuit in NRG Power Marketing, LLC v. FERC (Case No. 15-1452 (July 7, 2017) remanding to FERC for review certain aspects of PJM's Tariff (the "NRG Decision"). Each Party further acknowledges that the consequences of the NRG Decision, including but not limited to future actions by FERC and PJM in response thereto, are unknown and unquantifiable at this time. The Parties have entered into this Transaction with full knowledge of this uncertainty, with the agreement that, notwithstanding any such actions or their consequences: (a) In the event that FERC or PJM, in response to or in contemplation of the NRG Decision, issues any order or takes any action which has the effect of altering the Floating Price, or any component of or formula or input used in determining the Floating Price, after such Floating Price has been posted by PJM (other than a correction of a mistake in its calculation) (a "Revised Floating Price"), then, the Revised Floating Price shall be the Floating Price hereunder for all purposes; and (b) For the avoidance of doubt, a Revised Floating Price does not constitute a "Market Disruption Event" under the terms of this Confirmation, nor does it constitute the basis for terminating this Transaction or the declaration of any Early Termination Date under the Agreement.
22. Corrections to Published Prices:	For purposes of determining a Floating Price, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement (including PJM) prior to the actual calculation or settlement that is to be made hereunder with respect to such Floating Price, either Party may notify the other Party of (a) that correction and (b) the amount (if any) that is payable as a result of that correction. If, not later than sixty (60) days after publication or announcement of that correction, a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.

23. Additional Defined Terms:	Capitalized terms used but not defined in this Confirmation nor in the Master Agreement have the meanings given such terms in the PJM Agreements. For purposes of this Confirmation, the following terms shall have the respective meanings as follows: "Additional Environmental Costs" means: (i) any and all fees, licenses, charges, green tags, certificates, expenses and products (including but not limited to any charges or products required on a per unit-of-energy-output, per-unit-of-energy-input, per-weight-of-pollutant, cap and-trade or other basis) and all losses, costs and liabilities with respect thereto, imposed or required by a Governmental Authority with respect to this Transaction or supplied hereunder; and (ii) any and all Taxes and all costs and liabilities with respect thereto, imposed or required by a Governmental Authority with respect to this Transaction or supplied hereunder; in each case, only to the extent such Additional Environmental Costs result from or are attributable to a Change in Law with respect to any Environmental Law or Tax Law and directly cause the price of Product paid by SKRECC to be increased. "Amendment No. 3" means an amendment to the WPC dated as of October 23, 2003 which provides, under the conditions set forth therein, that SKRECC may procure energy and capacity from sources other than EKPC. "Applicable Laws" means all laws, ordinances, rules, regulations, orders, interpretations, licenses, permits, judgments, decrees, injunctions, writs and orders of any court, arbitrator, or Governmental Authority that are applicable to either or both of the Parties or the terms of the Agreement. "Change in Law" means, with respect to this Confirmation, (i) a material change or the enactment, promulgation or issuance or material amendment of any constitution, charter, act, statute, regulation, ordinance, order (including any order waiving application of a legal requirement as to SKRECC), ruling, rule or other Applicable Law, or (ii) a material change in the specified standards or objective criteria contained in a permit, license, or other approvals, which standard or criteria must be met in order for a MSCG resource to generate electric energy, or (iii) other legislative or administrative action of any Government Authority of competent jurisdiction or a final decree, judgment, or order of a court of competent jurisdiction (including temporary restraining orders) occurring subsequent to the Trade Date, in each case related to the regulation, generation, transmission, transportation or consumption of energy, its emissions or by-products, or of the regulation of the environment related to any of the

	foregoing, and including the creation of a new retail access environment for consumers of electric energy in Kentucky. For purposes of this definition, no enactment, adoption, promulgation, amendment or modification of an Applicable Law shall be considered a Change in Law if, as of the Trade Date, (1) such Applicable Law would have directly affected the performance of the obligations hereunder by either Party after the Trade Date in the absence of this Agreement and (2) either such Applicable Law was (A) officially proposed by the responsible agency and promulgated in final form in the Federal Register or equivalent federal, state or local publication and thereafter becomes effective without further action or (B) enacted into law or promulgated by the appropriate federal, state or local body before the Trade Date, and (i) the comment period with respect to which expired on or before the Trade Date and (ii) any required hearings concluded on or before the Trade Date, in accordance with applicable administrative procedures and which thereafter becomes effective without further action. For the avoidance of doubt, a "Change in Law" hereunder shall not include any change with respect to the regulation of banks or financial firms or their affiliates, nor with respect to the treatment of such entities or their contracts in bankruptcy, insolvency or receivership proceedings. "Control Area" means an electrical system, bounded by interconnection (tie line) metering and telemetry, which continuously regulates its generation and interchange schedules to match its system load, contributes to frequency regulation of the interconnected system, and meets all or substantially all of the applicable requirements of NERC. "EKPC" means the East Kentucky Power Cooperative, Inc. "Environment" means soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata, ambient air, and any other environmental medium. "Environmental Law" means any Applicable Law relating to pollution, GHGs or the protection of the Environment whether existing as of the Trade Date or previously enforced. "GHGs" means any emissions of carbon dioxide (CO2), nitrous oxide (N2O), methane (CH4) and other greenhouse gases that have been alleged or are alleged in the future to contribute to the actual or potential threat of altering the Earth's climate. Other greenhouse gases may include hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF6), which are generated in a variety of industrial processes. "Governmental Authority" means a Federal, state, local or municipal governmental body; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy,

	regulatory or taxing authority, jurisdictional power; any court or governmental tribunal; or any applicable independent system operator, Regional Transmission Organization, regional power pool, NERC or other regional entity performing similar functions. "MOU&A" means the Memorandum of Understanding and Agreement Regarding Alternate Power Sources between EKPC and its owner-members, including SKRECC, and dated as of July 16, 2015. "NERC" means the North American Electric Reliability Corporation. "PJM" means PJM Interconnection, L.L.C. "PJM Agreements" means the PJM Tariff, PJM Operating Agreement and PJM Manuals. "PJM Manuals" shall mean the instructions, rules, procedures and guidelines established by the Office of the Interconnection for the operation, planning, and accounting requirements of the PJM Region and the PJM Interchange Energy Market. "PJM Operating Agreement" means the "Operating Agreement of the PJM Interconnection, L.L.C." dated as of April 1, 1997 and as amended and restated as of June 2, 1997, including all schedules, exhibits, appendices, addenda or supplements thereto, as amended from time to time thereafter, among the members of PJM. "PJM Settlement" means PJM Settlement, Inc. "PJM Tariff" means the Open Access Transmission Tariff of PJM on file with the Federal Energy Regulatory Commission, and as revised from time to time. "PSC" means the Kentucky Public Service Commission. "Schedule", "Scheduled" or "Scheduling" means communicating with and confirming with the appropriate party that a particular quantity of Energy is to be delivered to and/or received by the applicable party and providing all such information and satisfying all such requirements as may be necessary to cause the delivery or receipt of the Energy to be recognized and confirmed, including compliance with the PJM Agreements. "Taxes" means any or all Federal, state and/or local, municipal, ad valorem, property, occupation, severance, generation, first use, conversion, power, transmission, utility, gross receipts, privilege, fuel, fuel conversion, sales, use, consumption, excise, lease, transaction, and other taxes (including taxes on GHGs), together with interest and penalties thereon, other than taxes based on net income or net worth. "Tax Law" means any Applicable Law with respect to any Taxes (including interest, penalties and additions thereto) that is imposed by any Governmental Authority.

	"WPC" means the Wholesale Power Contract between SKRECC and EKPC, dated as of October 1, 1964, as amended, including by Amendment No. 3.

[Signature Page Follows]

Please confirm that the foregoing correctly sets forth the terms and conditions of our agreement by returning via electronic communication an executed copy of this Confirmation, or by sending a letter substantially similar to this letter, which letter sets forth the material terms of the Transaction to which this Confirmation relates and indicates agreement to those terms, in either case within three (3) Business Days of your receipt of this Confirmation, to the above Operations Contact.

Morgan Stanley Capital Group Inc. is pleased to have entered into this Transaction with you.

South Kentucky Rural Electric Cooperative Corporation		**Morgan Stanley Capital Group Inc.**	
By:	Dennis Holt	By:	
Name:	DENNIS HOLT	Name:	
Title:	INTERIM CEO	Title:	
Date:	12-19-2017	Date:	

Please confirm that the foregoing correctly sets forth the terms and conditions of our agreement by returning via electronic communication an executed copy of this Confirmation, or by sending a letter substantially similar to this letter, which letter sets forth the material terms of the Transaction to which this Confirmation relates and indicates agreement to those terms, in either case within three (3) Business Days of your receipt of this Confirmation, to the above Operations Contact.

Morgan Stanley Capital Group Inc. is pleased to have entered into this Transaction with you.

South Kentucky Rural Electric Cooperative Corporation		**Morgan Stanley Capital Group Inc.**	
By:	_____	By:	Karen Kochonies
Name:	_____	Name:	Karen Kochonies
Title:	_____	Title:	Vice President
Date:	_____	Date:	12/20/17

Morgan Stanley

1585 BROADWAY
NEW YORK, NY10036-8293

December 20, 2017

To:
SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION
200 ELECTRIC AVENUE P.O. BOX 910
SOMERSET, KY 42501

Ladies and Gentlemen:

In consideration of SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION (hereinafter "Counterparty") having entered into or entering into that certain EEI Master Agreement dated as of December 18, 2017 with Morgan Stanley Capital Group Inc. (hereinafter "Obligor") (such EEI Master Agreement, together with each Confirmation exchanged between the parties pursuant thereto, hereinafter the "Agreement"), Morgan Stanley, a Delaware corporation (hereinafter "Guarantor"), hereby irrevocably and unconditionally guarantees to Counterparty, with effect from the date of the Agreement, the due and punctual payment of all amounts payable by Obligor under the Agreement when the same shall become due and payable, whether on scheduled payment dates, upon demand, upon declaration of termination or otherwise, in accordance with, and subject to, the terms of the Agreement and giving effect to any applicable grace period. Upon failure of Obligor punctually to pay any such amounts, and upon written demand by Counterparty to Guarantor at its address set forth in the signature block of this guarantee (the "Guarantee") (or to such other address as Guarantor may specify in writing), Guarantor agrees to pay or cause to be paid such amounts; *provided* that delay by Counterparty in giving such demand shall in no event affect Guarantor's obligations under this Guarantee. This Guarantee is a guarantee of payment and not of collection. For the avoidance of doubt, this Guarantee does not apply to transactions that are given up for clearing to a derivatives clearing organization.

Guarantor hereby agrees that its obligations hereunder shall be continuing and unconditional and will not be discharged except by complete payment of the amounts payable under the Agreement, irrespective of (1) any claim as to the Agreement's validity, regularity or enforceability or the lack of authority of Obligor to execute or deliver the Agreement; or (2) any change in or amendment to the Agreement; or (3) any waiver or consent by Counterparty with respect to any provisions thereof; or (4) the absence or existence of any action to enforce the Agreement, or the recovery of any judgment against Obligor or of any action to enforce a judgment against Obligor under the Agreement; or (5) the dissolution, winding up, liquidation or insolvency of Obligor, including any discharge of obligations therefrom; or (6) any similar circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor generally.

Guarantor hereby waives diligence, presentment, demand on Obligor for payment or otherwise (except as provided hereinabove), filing of claims, requirement of a prior proceeding against Obligor and protest or notice, except as provided for in the Agreement with respect to amounts payable by Obligor. If at any time payment under the Agreement is rescinded or must be otherwise restored or returned by Counterparty upon the insolvency, bankruptcy or

reorganization of Obligor or Guarantor or otherwise, Guarantor's obligations hereunder with respect to such payment shall be reinstated upon such restoration or return being made by Counterparty.

Guarantor represents to Counterparty, as of the date hereof, that:

1. it is duly organized and validly existing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guarantee and to perform the provisions of this Guarantee on its part to be performed;

2. its execution, delivery and performance of this Guarantee have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;

3. all consents, authorizations, approvals and clearances (including, without limitation, any necessary exchange control approval) and notifications, reports and registrations requisite for its due execution, delivery and performance of this Guarantee have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and

4. this Guarantee is its legal, valid and binding obligation enforceable against it in accordance with its terms except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles.

Each of the provisions contained in this Guarantee shall be severable and distinct from one another and if one or more of such provisions are now or hereafter becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Guarantee shall not in any way be affected, prejudiced or impaired thereby.

By accepting this Guarantee and entering into the Agreement, Counterparty agrees that Guarantor shall be subrogated to all rights of Counterparty against Obligor in respect of any amounts paid by Guarantor pursuant to this Guarantee, *provided* that Guarantor shall be entitled to enforce or to receive any payment arising out of or based upon such right of subrogation only to the extent that it has paid all amounts payable by Obligor under the Agreement.

This Guarantee shall be governed by and construed in accordance with the laws of the State of New York, without reference to its choice of law doctrine. All capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Agreement.

MORGAN STANLEY

By:
Name: Robert Vesey
Title: Assistant Treasurer
Address: 1585 Broadway
New York, NY 10036
Attn: Treasurer
Fax No.: 212-762-0337
Phone: 212-761-4000

Signature page to Morgan Stanley Guarantee issued to SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION
and dated December 20, 2017

SECRETARY'S CERTIFICATE

I, Jarett H. Schultz, a duly elected and acting Assistant Secretary of Morgan Stanley, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certify as follows:

(1) Pursuant to the resolutions adopted by the Board of Directors of the Corporation on May 22, 2017, attached hereto as **Exhibit A**, John Ryan is the duly elected Treasurer and Katherine Clune, Simon Evenson, Kevin Sheehan and Robert Vesey are duly elected Assistant Treasurers of the Corporation; and

(2) Pursuant to Section 7.01 of the Amended and Restated Bylaws of the Corporation and resolutions adopted by the Board of Directors of the Corporation on October 31, 2013, attached hereto as **Exhibits B and C**, respectively, the Treasurer is authorized to enter into agreements and other instruments on behalf of the Corporation, and the Treasurer may delegate such powers to others as set forth therein; and

(3) Pursuant to the Delegation of Authority attached hereto as **Exhibit D**, which was executed on April 29, 2016 by such individual in her capacity as Treasurer, and which remains in full force and effect as of the date hereof, each Assistant Treasurer (as set forth therein) is authorized to sign any and all guarantees, secured and unsecured lending agreements, keepwells, comfort letters, swap agreements and credit support arrangements and other commitments or arrangements arising in the ordinary course of business (collectively, "Treasury Obligations"), on behalf of the Corporation, including any letters, notices, agreements or related documents to give effect to such Treasury Obligations on behalf of the Corporation; and

(4) The signatures of the Treasurer and Assistant Treasurers appearing on the signatory list attached hereto as **Exhibit E** are true copies of their genuine signatures.

IN WITNESS WHEREOF, I have hereunto set my name and affixed the seal of the Corporation as of the 8th day of December, 2017.

MORGAN STANLEY

Jarett H. Schultz
Assistant Secretary

EXHIBIT A

MORGAN STANLEY

Excerpt of resolutions adopted by the Board of Directors on May 22, 2017

RESOLVED FURTHER, that each of the persons listed below is elected to the office set forth opposite his or her name, to serve subject to the Amended and Restated Bylaws of the Corporation or his or her earlier death, resignation, removal or termination of employment with the Corporation or any affiliate of the Corporation; provided, that any individual currently holding a title listed below whose name is not set forth below shall hereby be removed from that office of the Corporation, without cause, effective immediately:

	Title
John M. Ryan	Treasurer
Katherine Clune	Assistant Treasurer
Simon Alan Evenson	Assistant Treasurer
Kevin J.W. Sheehan	Assistant Treasurer
Robert A. Vesey	Assistant Treasurer

RESOLVED FURTHER, that any and all prior actions taken by the individuals in the respective offices listed above are ratified, confirmed and approved.

EXHIBIT B

MORGAN STANLEY

Section 7.01 of the Amended and Restated Bylaws of Morgan Stanley, as amended to date

SECTION 7.01. Contracts. Except as otherwise required by law, the Amended and Restated Certificate of Incorporation or these Amended and Restated Bylaws, any contracts or other instruments may be executed and delivered in the name and on the behalf of the Corporation by such officer or officers of the Corporation as the Board of Directors may from time to time direct. Such authority may be general or confined to specific instances as the Board of Directors may determine. Subject to the control and direction of the Board of Directors, the Chairman of the Board, the Chief Executive Officer, the President, the Chief Financial Officer, the Chief Risk Officer, the Chief Legal Officer and the Treasurer may enter into, execute, deliver and amend bonds, promissory notes, contracts, agreements, deeds, leases, guarantees, loans, commitments, obligations, liabilities and other instruments to be made or executed for or on behalf of the Corporation. Subject to any restrictions imposed by the Board of Directors, such officers of the Corporation may delegate such powers to others under his or her jurisdiction, it being understood, however, that any such delegation of power shall not relieve such officer of responsibility with respect to the exercise of such delegated power.

EXHIBIT C

MORGAN STANLEY

Resolutions adopted by the Board of Directors on October 31, 2013

RESOLVED, that the resolutions passed on September 19, 2006, December 25, 2009, July 5, 2010 and January 19, 2011 by the Board of Directors of the Corporation authorizing certain officers to execute, deliver and perform certain contracts, agreements and instruments of the Corporation be amended and restated as follows:

RESOLVED, that the Corporation is authorized to execute, deliver and perform any and all Authorized Contracts that shall be approved by any Authorized Officer or any Authorized Delegate as to such Authorized Contract (the execution of any Authorized Contract by any Authorized Officer or by any such Authorized Delegate to evidence conclusively such approval); and

RESOLVED FURTHER, that each of the Authorized Officers is authorized, on behalf of the Corporation, to execute and deliver any and all Authorized Contracts; and

RESOLVED FURTHER, that any Authorized Officer may delegate (which delegation need not be in writing) any and all powers and authority (whether in whole or in part and whether relating to one or more Contracts or Authorized Contracts) granted, pursuant to the preceding two paragraphs, to one or more persons each of whom (i) is an officer of the Corporation or an elected officer of any subsidiary of the Corporation or (ii) is the duly appointed agent or representative of such Authorized Officer (each such person being, as to any one or more Contracts or Authorized Contracts, to the extent of such delegation, an "Authorized Delegate"), such delegation to have the same effect as if such power and authority (to the extent of such delegation) had been authorized, and granted, to such person directly by the Corporation; provided, however, that no such delegation of power or authority by an Authorized Officer shall relieve such Authorized Officer of responsibility with respect to the exercise of such power or authority; and

RESOLVED FURTHER, that, as used in this and the preceding three paragraphs, the following terms shall have the respective meanings set forth below:

"**Authorized Contract**" means, as of any date of determination, any of the following Contracts:

(a) any Contract (irrespective of its duration or the Maximum Exposure hereunder) which, as determined by an Authorized Officer or an Authorized Delegate as to such Contract, either (i) replaces (in whole or in part), or is of the same or a similar type (or for the same or a similar purpose) as, one or more Contracts which the Corporation or any of its subsidiaries (A) executed and delivered in the ordinary course of its business (as determined as of the date of such execution and delivery) or (B) performs in the ordinary course of its business (as determined as of such date of determination); or (ii) arises from the ordinary course of business of the Corporation or any of its subsidiaries (as determined as of such date of determination); or

(b) any Contract (irrespective of its duration or the Maximum Exposure thereunder) between the Corporation and any one or more of its wholly owned subsidiaries; or

(c) any other Contract authorized by the Board or by a committee appointed by the Board (whether prior to or subsequent to these resolutions and subject, always, to the terms and conditions of such authorization); or

(d) any other Contract of the Corporation (irrespective of its duration); provided that the Maximum Exposure under such Contract and all Related Contracts (including, without limitation, the Contracts referred to in clause (e) below, but excluding, in any event, Contracts that constitute (directly, or by application of clause (e) below) Authorized Contracts in accordance with clauses (a) through (c) above) (X) does not exceed $5 billion, (Y) is above $5 billion but does not exceed $10 billion, provided that such Contract is approved by the Chief Executive Officer and (Z) is in excess of $10 billion, provided that such Contract has been approved by any two independent members of the Board; or

(e) any Contract which amends, supplements, modifies, extends, restates, novates or replaces any other Contract (whether or not an Authorized Contract), to the extent that, after giving effect to such amendment, supplement, modification, extension, restatement, novation or replacement, such Contract would constitute an Authorized Contract in accordance with clauses (a) through (d) above or clause (f) below; or

(f) any series of Related Contracts, provided that (i) each such Contract constitutes an Authorized Contract in accordance with one or more of clauses (a) through (e) above.

"**Authorized Officer**" means each of the Chief Executive Officer, the President, the Chief Financial Officer, the Chief Operating Officer, the President of Institutional Securities, the President of Wealth Management, the President of Investment Management, the Chief Risk Officer, the Chief Legal Officer, the Treasurer, the Deputy Chief Financial Officer, the Global Head of Human Resources, the Company Audit Director, the Global Head of Corporate Services and Security, the Corporate Secretary, including any individuals fulfilling any of the offices above in an acting or interim capacity or as co-heads, and such other officers as the Board may from time to time designate as an Authorized Officer; provided, however, that the Maximum Exposure of any Authorized Contract and all Related Contracts executed and delivered by the Deputy Chief Financial Officer, the Global Head of Human Resources, the Company Audit Director, the Global Head of Corporate Services and Security or the Corporate Secretary shall not exceed $5 million.

"**Contract**" means any contract, agreement or instrument of the Corporation (in any capacity), including, without limitation, bonds, notes, deeds, leases, guarantees, loan or credit agreements, letters of credit (including related reimbursement and other obligations), indentures, mortgages, deeds, security agreements, hedge and derivative products, repurchase and reverse repurchase agreements, commitments, other obligations or liabilities (in each case, whether actual or contingent) and other contracts, agreements and instruments.

"**Maximum Exposure**" means, as to any Contract as at any time, the maximum net aggregate amount (as determined, without duplication, by an Authorized Officer or an Authorized Delegate as to such Contract) of liabilities (and, in the case of contingent liabilities, the maximum amount that, in light of all the facts and circumstances existing at such time, an Authorized Officer or an Authorized Delegate as to such Authorized Contract or Contract reasonably expects to become actual or matured liabilities) that may be incurred under such Contract by the Corporation or any of its subsidiaries (including its wholly owned subsidiaries) to third parties or by the Corporation to its subsidiaries (other than its wholly owned subsidiaries).

"**Related Contract**" means, in relation to any other Contract, a Contract that, as determined by an Authorized Officer or an Authorized Delegate as to such Contract, arose from the same transaction, or from the same series of related transactions, as such other Contract.

RESOLVED, that any and all actions to be taken, caused to be taken or heretofore taken by any officer of the Corporation in executing any and all documents, agreements and instruments and in taking any and all steps (including the payment of all expenses) deemed by such officer as necessary or desirable to carry out the intent and purposes of the foregoing resolutions are authorized, ratified and confirmed.

EXHIBIT D

Morgan Stanley

DELEGATION OF AUTHORITY

I, Celeste Mellet Brown, Global Treasurer of Morgan Stanley, a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby delegate to each Assistant Treasurer (each, an "Authorized Signatory") the authority to sign any and all guarantees, secured and unsecured lending agreements, keepwells, comfort letters, swap agreements and credit support arrangements and other commitments or arrangements arising in the ordinary course of business (collectively, "Treasury Obligations"), on behalf of the Corporation, including any letters, notices, agreements or related documents to give effect to such Treasury Obligations. For Authorized Signatories located outside of the United States, such authority shall be for purposes of facilitating the timely documentation of such Treasury Obligations under the supervision of the Global Treasurer and/or Authorized Signatories in New York Treasury.

This Delegation of Authority shall cease automatically upon the Authorized Signatory's resignation, removal, or termination of their employment with Morgan Stanley or any of its affiliates, or upon a substantive change in the Authorized Signatory's job function resulting in the Authorized Signatory no longer performing the job functions to which the above relates.

This Delegation of Authority supersedes, effective as of the date hereof, the Delegation of Authority dated the 3rd day of June, 2015.

IN WITNESS WHEREOF, the Corporation has caused its corporate name to be subscribed hereto by the Global Treasurer and its corporate seal to be affixed, attested by an Assistant Secretary, this 29th day of April, 2016.

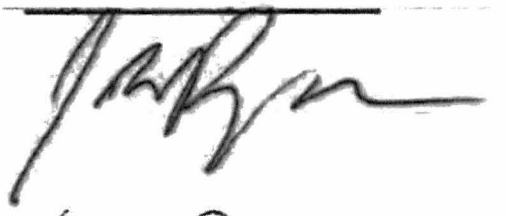
MORGAN STANLEY

By: _____
Celeste Mellet Brown
Global Treasurer

Attest: _____
Jarett H. Schultz
Assistant Secretary

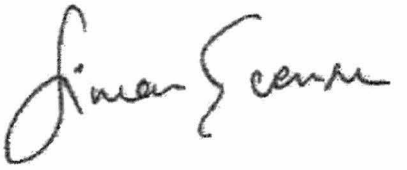
EXHIBIT E

John Ryan

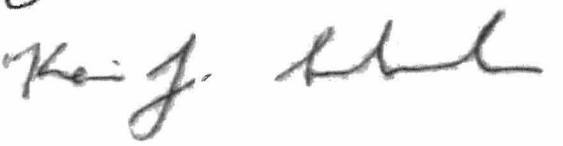


Katherine Clune

Simon Evenson



Kevin Sheehan



Robert Vesey

ISDA Safe, Efficient Markets

International Swaps and Derivatives Association, Inc.

ISDA AUGUST 2012 DF PROTOCOL AGREEMENT

published on August 13, 2012,
by the International Swaps and Derivatives Association, Inc.
Annotated in Red as of April 11, 2013

THE ANNOTATIONS AND INSTRUCTIONS IN THIS DOCUMENT DO NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES IN CONNECTION WITH YOUR CONSIDERATION OF THE ISDA AUGUST 2012 DF PROTOCOL OR THE RELATED DOCUMENTS. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISERS THEY DEEM APPROPRIATE AS PART OF THEIR CONSIDERATION OF THE PROTOCOL PRIOR TO ADHERING TO THE PROTOCOL. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

The International Swaps and Derivatives Association, Inc. ("**ISDA**") has published this ISDA August 2012 DF Protocol Agreement (this "**Protocol Agreement**") to enable parties to enter into a DF Terms Agreement (as defined below) or supplement the terms of existing Protocol Covered Agreements (as defined below) by incorporating therein selected portions of the ISDA August 2012 DF Supplement published on August 13, 2012 by ISDA (the "**DF Supplement**").

1. Use of Protocol

(a) A person who adheres to this Protocol Agreement (a "**Protocol Participant**") in the manner set forth in paragraph 2 may use the terms of this Protocol Agreement to supplement one or more existing Protocol Covered Agreements by exchanging questionnaires substantially in the form of Exhibit 2 to this Protocol Agreement or in the form provided on ISDA Amend (in either form, a "**Questionnaire**"), in respect of such Protocol Covered Agreements in the manner set forth in paragraph 3. This Protocol Agreement may also be used by a Protocol Participant to enter into new Protocol Covered Agreements in the form of a DF Terms Agreement by exchanging Questionnaires with another Protocol Participant in the manner set forth in paragraph 3. As described below, the Protocol Participant may be either a principal or an agent in respect of a Protocol Covered Agreement.

(b) "**Protocol Covered Agreement**" means a DF Terms Agreement or an existing written agreement between two parties that governs the terms and conditions of one or more transactions in Swaps (as defined in the DF Supplement) that each such party has or may enter into as principal.[1] "**DF Terms Agreement**" means the ISDA August 2012 DF Terms Agreement published by ISDA on August 13, 2012.[2] "**PCA Principal**"

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[1] Note that the Protocol is not limited to ISDA Master Agreements, and may be used to amend all agreements between a pair of parties that govern the terms and conditions of one or more transactions in Swaps.

[2] Even if a party has incorporated the provisions of the DF Supplement into its existing written agreements, it should consider entering into the DF Terms Agreement so that the provisions of the DF Supplement that it has elected to incorporate into such existing written agreements would also be applicable to any swap that it executes or may execute that is not governed by an existing written agreement. (This may be particularly relevant for certain parties or types of transactions. For example, parties may use so-called "long-form

means a party who is or may become a principal to one or more Swaps under a Protocol Covered Agreement. "**PCA Agent**" means a party who has executed a Protocol Covered Agreement as agent on behalf of one or more PCA Principals.

(c) An existing Protocol Covered Agreement may have been executed directly by a PCA Principal or by a PCA Agent. In the case of an existing Protocol Covered Agreement executed by a PCA Principal, only such PCA Principal may supplement such Protocol Covered Agreement pursuant to this Protocol Agreement. In the case of an existing Protocol Covered Agreement executed by a PCA Agent on behalf of a PCA Principal, only such PCA Agent may supplement such Protocol Covered Agreement on behalf of a PCA Principal pursuant to this Protocol Agreement (even if such PCA Principal is also a Protocol Participant in respect of one or more other Protocol Covered Agreements).[3]

(d) A DF Terms Agreement may be entered into pursuant to this Protocol Agreement by a PCA Principal or a PCA Agent. The capacity in which a Protocol Participant enters into a DF Terms Agreement pursuant to this Protocol Agreement is the same as the capacity in which it completes a Matched Questionnaire (as defined below). Each of such Protocol Participants is an "**Executing Party**" under the DF Terms Agreement and their Matched Questionnaires shall constitute the "**Annex**" to their DF Terms Agreement. Each of the relevant PCA Principals in a Matched Questionnaire is a "**DF Terms Principal**" under the DF Terms Agreement.[4]

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confirmations" to document certain trades and in parts of the foreign exchange market it is common for trades to not be documented under master agreements. In these cases and others, the DF Terms Agreement would allow for the swaps to be covered by the relevant provisions of the DF Supplement.) Protocol Participants may elect to enter into the DF Terms Agreement by indicating that election in Question 10 of Part III of the Questionnaire.

Parties should be aware that the DF Terms Agreement, on its own, would not satisfy the requirements of CFTC Regulation 23.504, which requires "swap trading relationship documentation" between the parties to a Swap. In the ISDA March 2013 DF Protocol, parties can elect to enter into a deemed ISDA Master Agreement that would serve to satisfy the requirements of Regulation 23.504 for swaps not otherwise governed by master agreements. Regulation 23.504 is scheduled to go into effect on July 1, 2013.

[3] A swap counterparty who has entered into an agreement governing swaps (such as an ISDA Master Agreement) directly with a swap dealer is referred to in the Protocol as the "PCA Principal." If that same party enters into swaps through an agent (such as an investment manager) under an agreement entered into by that agent, the agent is referred to as the "PCA Agent." Often, a PCA Agent will enter into an "umbrella agreement" with a swap dealer under which the PCA Agent may enter into swaps on behalf of one or more PCA Principals. The Protocol differentiates between PCA Principals and PCA Agents to enable a swap dealer to identify the *agreements* that are modified via the Protocol (*e.g.*, only a PCA Agent may use the Protocol to modify an "umbrella agreement").

[4] Like the other components of the DF Protocol, the DF Terms Agreement differentiates between the parties that make the representations and agreements provided in the DF Supplement (such parties are called "DF Terms Principals" in the DF Terms Agreement), and parties that may execute the DF Terms Agreement as agents for those parties. The DF Terms Agreement is drafted according to the principle that the party that executes the DF Terms Agreement (whether through the DF Protocol or on a bilateral basis) is the party that may execute swaps covered by its terms. To address situations where an investment manager or other third party agent will execute swaps on behalf of a client, the relevant agent should execute the DF Terms Agreement as agent for the relevant party. This may be done via the Protocol by such agent delivering a Questionnaire as "PCA Agent." To address situations where a party will execute swaps on its own behalf, that party should execute the DF Terms Agreement. This may be done via the Protocol by such party delivering a Questionnaire as "PCA Principal."

2. Adherence Letters

(a) Adherence to this Protocol Agreement will be evidenced by the execution and online delivery, in accordance with this paragraph 2, by a Protocol Participant to ISDA, as agent, of a letter substantially in the form of Exhibit 1 (an "**Adherence Letter**"). A person wishing to participate in this Protocol Agreement, whether as PCA Principal or PCA Agent, or both, shall submit, using an online form, a single Adherence Letter to ISDA pursuant to this paragraph 2. ISDA will have the right, in its sole and absolute discretion, upon thirty calendar days' notice on the "ISDA August 2012 DF Protocol" section of its website at www.isda.org (or by other suitable means) to designate a closing date of the adherence period for this Protocol (such closing date, the "**Adherence Cut-off Date**"). After the Adherence Cut-off Date, ISDA will not accept any further Adherence Letters with respect to this Protocol Agreement.

(b) Each Protocol Participant executing an Adherence Letter will access the "Protocol Management" section of the ISDA website at www.isda.org to enter information online that is required to generate its form of Adherence Letter and will submit payment of any applicable fee. Either by directly downloading the populated Adherence Letter from the Protocol Management system or upon receipt via e-mail of the populated Adherence Letter, each Protocol Participant will print, sign and upload the signed Adherence Letter as a PDF (portable document format) attachment into the Protocol Management system. Once the signed Adherence Letter has been approved and accepted by ISDA, the Protocol Participant will receive an e-mail confirmation of the Protocol Participant's adherence to the Protocol.

(c) ISDA will publish, so that it may be viewed by all Protocol Participants, a conformed copy of each Adherence Letter containing, in place of each signature, the printed or typewritten name of each signatory.[5]

(d) Each Protocol Participant executing and submitting an Adherence Letter agrees that, for evidentiary purposes, a conformed copy of an Adherence Letter certified by the General Counsel (or other appropriate officer) of ISDA will be deemed to be an original.

(e) Each Protocol Participant agrees that the determination of the date and time of acceptance of any Adherence Letter will be determined by ISDA in its absolute discretion.

3. Questionnaires

(a) A Questionnaire in respect of Protocol Covered Agreements may only be executed and submitted by a Protocol Participant who has previously, or simultaneously, executed and submitted an Adherence Letter. A Protocol Participant who wishes to enter into or supplement Protocol Covered Agreements with multiple counterparties may (but is not required to) execute multiple Questionnaires in order to deliver different Questionnaires to different counterparties pursuant to this paragraph 3; provided that a Protocol Participant who is a PCA Principal may not deliver more than one Questionnaire to the same Protocol Participant and a Protocol Participant who is a PCA Agent may not deliver more than one Questionnaire to the same Protocol Participant on behalf a single PCA Principal.

(b) A Protocol Participant may extend an offer to enter into or supplement Protocol Covered Agreements by executing a completed Questionnaire and delivering such Questionnaire to another Protocol Participant in the manner set forth in this paragraph 3. If and when a Protocol Participant receiving a Questionnaire also delivers a Questionnaire to the offering Protocol Participant, the receiving Protocol Participant will be deemed to have accepted the offer to supplement their existing Protocol Covered Agreements and enter into DF Terms Agreements, in each case if and to the extent set forth in paragraph 4. For purposes of this Protocol Agreement, each such Protocol Covered Agreement is referred to as a "**Matched PCA**," both PCA Principals thereto are referred to together as "**Matched PCA Parties**," and the Questionnaires

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[5] In order to incorporate provisions of the DF Supplement into agreements between a dealer and a counterparty, the Protocol requires the exchange of Questionnaires as described below. Information made public on ISDA's website allows a Protocol Participant to identify other parties with whom it may wish to exchange Questionnaires as well as the method by which such other parties will accept delivery of Questionnaires. The exchange may also be effected via ISDA Amend.

delivered by or on behalf of the Matched PCA Parties in respect of the Matched PCA are referred to together as "**Matched Questionnaires.**" For the avoidance of doubt, if a PCA Agent has not delivered a Questionnaire on behalf of a particular PCA Principal, such PCA Agent will not have entered into or supplemented any Protocol Covered Agreement on behalf of such PCA Principal pursuant to this Protocol Agreement even if the PCA Agent has delivered a Questionnaire in respect of other PCA Principals.[6]

(c) For purposes of this Protocol Agreement, when a Protocol Participant delivers a Questionnaire to another Protocol Participant, each PCA Principal on whose behalf such Questionnaire is delivered is referred to as a "**Delivering PCA Principal.**" Delivery of a Questionnaire by a PCA Agent in the manner set forth in this paragraph 3 will be deemed to be delivery by each Delivering PCA Principal identified by the PCA Agent in such Questionnaire. Delivery of a Questionnaire to a PCA Agent in the manner set forth in this paragraph 3 will be deemed to be delivery by a relevant Delivering PCA Principal (i) to each PCA Principal on whose behalf the PCA Agent has entered into an existing Protocol Covered Agreement with such Delivering PCA Principal or (ii) if there is no existing Protocol Covered Agreement with respect to a Delivering PCA Principal, to each PCA Principal identified in the reciprocal Questionnaire delivered by the PCA Agent to such Delivering PCA Principal.

(d) Delivery of a Questionnaire must be made in the manner described in this paragraph 3(d) not later than the 30th calendar day following the Adherence Cut-off Date (the "**Matching Cut-off Date**"). Delivery of a Questionnaire to a Protocol Participant shall be effective if delivered in a manner specified by such Protocol Participant in its Adherence Letter. In addition, without regard to the election that a Protocol Participant has made in its Adherence Letter, if such Protocol Participant has taken all steps necessary to establish the ability to receive a Questionnaire via ISDA Amend, delivery of a Questionnaire to such Protocol Participant via ISDA Amend shall be effective.

(e) In using this Protocol Agreement to enter into or supplement Matched PCAs, a Protocol Participant may not specify additional provisions, conditions or limitations in its Questionnaire, except as expressly provided therein.

4. DF Terms Agreements and Matched PCA Supplements

(a) Every pair of Matched PCA Parties will be deemed to have entered into a DF Terms Agreement if both of such Matched PCA Parties have agreed in the Matched Questionnaires to enter into a DF Terms Agreement, in which case such DF Terms Agreement is a "Matched PCA" for purposes of this Protocol.

(b) Every pair of Matched PCA Parties will be deemed to have supplemented each Matched PCA by incorporating therein DF Schedules 1 and 2 and, in the case of any other DF Schedule, as follows:

(i) with respect to DF Schedule 3, if (i) both of such Matched PCA Parties have agreed in the Matched Questionnaires to incorporate such DF Schedule into such Matched PCA and (ii) with respect to any Matched PCA Party who has represented that it has a Designated Evaluation Agent, each Designated Evaluation Agent has countersigned such Questionnaire to make the representations and agreements applicable to it; and [7]

(ii) with respect to any of DF Schedules 4, 5, and 6, if (i) both of such Matched PCA Parties have agreed in the Matched Questionnaires to incorporate such DF Schedule into such Matched PCA and (ii) with respect to any Matched PCA Party who is a Special Entity, each Designated QIR (in

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[6] *See supra* note 3.

[7] As described in the annotations to the DF Supplement, a counterparty who designates a "Designated Evaluation Agent" for purposes of Schedule 3 of the DF Supplement must arrange for each Designated Evaluation Agent to make the representations and agreements set forth in that Schedule. Please note that CP is not required to designate a "Designated Evaluation Agent" to enter into Schedule 3, provided that CP can make the representations about itself in Part II of DF Schedule 3. In addition, please note that the term "Designated Evaluation Agent" is defined to exclude an employee of the CP.

the case of DF Schedule 4) or Designated Fiduciary (in the case of DF Schedules 5 and 6) of such Special Entity has countersigned such Questionnaire to make the representations and agreements applicable to it. [8]

5. Effectiveness

(a) The agreement to enter into or supplement a Matched PCA on the terms and conditions set forth in this Protocol Agreement, the Matched Questionnaires and the DF Supplement, will, as between any Matched PCA Parties, be effective on the date on which the later of two Matched PCA Parties delivers its completed Questionnaire in accordance with paragraph 3 (such date, the "**Implementation Date**").

(b) This Protocol Agreement is intended for use without negotiation, but without prejudice to any amendment, modification or waiver in respect of a Protocol Covered Agreement that the parties may otherwise effect in accordance with the terms of that Protocol Covered Agreement or as otherwise provided by applicable law.

(i) In adhering to this Protocol Agreement, a party may not specify additional provisions, conditions or limitations in its Adherence Letter; and

(ii) Any purported adherence that ISDA, as agent, determines in good faith is not in compliance with this Protocol Agreement will be void and ISDA will inform the relevant parties of such fact as soon as reasonably possible after making such determination and will remove the party's Adherence Letter from the ISDA website.

6. Representations and Agreements

(a) Representations by a PCA Principal. In the case of a Protocol Participant who is a PCA Principal in respect of a Matched Questionnaire and Matched PCA, the PCA Principal represents to the other PCA Principal that is party to such Matched PCA that, as of the Implementation Date:

(i) ***Status***. It is, if relevant, duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing or, if it otherwise represents its status in or pursuant to a Matched PCA, has such status;

(ii) ***Powers***. It has the power to execute and deliver the Adherence Letter and the Matched Questionnaire and to perform its obligations under the Adherence Letter, this Protocol Agreement, the Matched Questionnaire and each Matched PCA (as supplemented by this Protocol Agreement), and has taken all necessary action to authorize such execution, delivery and performance;

(iii) ***No Violation or Conflict***. Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) ***Credit Support***. Such execution, delivery and performance will not, in and of itself, adversely affect any obligations owed, whether by it or by any third party, under any Credit Support Document in respect of its obligations relating to any Matched PCA;

(v) ***Consents***. All governmental and other consents that are required to have been obtained by it with respect to the Adherence Letter, the Matched Questionnaire and each Matched PCA (as

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[8] As described in the annotations to the DF Supplement, a Special Entity who wishes to incorporate the safe harbor provisions of Schedule 4, 5 or 6 of the DF Supplement must arrange for each Designated Fiduciary or Designated QIR to make the representations and agreements set forth in the applicable Schedule.

supplemented by this Protocol Agreement) have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(vi) ***Obligations Binding***. Its obligations under the Adherence Letter, this Protocol Agreement, the Matched Questionnaire and each Matched PCA (as supplemented by this Protocol Agreement) constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) Representations by a PCA Agent. In the case of a Protocol Participant who is a PCA Agent acting on behalf of a Delivering PCA Principal in respect of a Matched Questionnaire and Matched PCA, the Agent represents to the other PCA Principal that is party to such Matched PCA that, as of the Implementation Date:

(i) ***Status***. Each of the Delivering PCA Principal and the PCA Agent is, if relevant, duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing or, if it otherwise represents its status in or pursuant to a Matched PCA, has such status;

(ii) ***Powers***. The Delivering PCA Principal has the power to execute and deliver each Matched PCA (as supplemented by this Protocol Agreement) and to perform its obligations thereunder, and has taken all necessary action to authorize such execution, delivery and performance. The PCA Agent has the power to execute and deliver the Adherence Letter and the Matched Questionnaire and to perform its obligations under the Adherence Letter, this Protocol Agreement, the Matched Questionnaire and each Matched PCA (as supplemented by this Protocol Agreement), and has taken all necessary action to authorize such execution, delivery and performance. The PCA Agent has all necessary authority to enter into the Adherence Letter, this Protocol Agreement and the Matched Questionnaire on behalf of the Delivering PCA Principal and has in its files a written agreement or power of attorney authorizing it to act on the Delivering PCA Principal's behalf in respect thereof;

(iii) ***No Violation or Conflict***. Such execution, delivery and performance by the Delivering PCA Principal and the PCA Agent, respectively, do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) ***Credit Support***. Such execution, delivery and performance will not, in and of itself, adversely affect any obligations owed, whether by the Delivering PCA Principal or by any third party, under any Credit Support Document in respect of its obligations relating to any Matched PCA;

(v) ***Consents***. All governmental and other consents that are required to have been obtained by the Delivering PCA Principal or the PCA Agent with respect to the Adherence Letter, the Matched Questionnaire and each Matched PCA (as supplemented by this Protocol Agreement) have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(vi) ***Obligations Binding***. The respective obligations of the Delivering PCA Principal and the PCA Agent under the Adherence Letter, this Protocol Agreement, the Matched Questionnaire and each Matched PCA (as supplemented by this Protocol Agreement) constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(c) Agreements by Matched PCA Parties. Each Matched PCA Party agrees with the other Matched PCA Party that:

(i) any Credit Support Document between Matched PCA Parties that relates to a Matched PCA will be deemed to be supplemented to the extent necessary such that the operation thereof is not affected by the adherence by such Matched PCA Parties or any supplements contemplated by this Protocol Agreement and the relevant Matched Questionnaires;

(ii) the following information shall be "**DF Supplement Information**" for purposes of the DF Supplement: (A) all information and representations provided by it or by its PCA Agent on its behalf in the Matched Questionnaire and (B) all Substitute Part II Information with respect to it;[9]

(iii) solely for purposes of delivering notices of the type specified in Section 2.3 of the DF Supplement in respect of information or representations set forth in the Matched Questionnaire of the other Matched PCA Party, the other Matched PCA Party may provide such notices pursuant to Section 2.3 of the DF Supplement to any address to which delivery of a Questionnaire to such Matched PCA Party would be effective under paragraph 3(d) hereof or to any substitute address provided by such Matched PCA Party under Section 2.3 of the DF Supplement;[10] and

(iv) solely for purposes of delivering notices and disclosures of the types specified in Section 2.12 of the DF Supplement, the "Notice Procedures" applicable to a Matched PCA Party include written notice by e-mail delivered to an address specified in Part II, Section 10 of such Matched PCA Party's Questionnaire or to any substitute e-mail address provided under Section 2.3 of the DF Supplement. Such written notice shall be deemed delivered when sent to the specified address.[11]

7. Miscellaneous

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

(i) This Protocol Agreement constitutes the entire agreement and understanding of the Protocol Participants with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto. Each Protocol Participant acknowledges that, in adhering to this Protocol Agreement, it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to elsewhere in this Protocol Agreement or in a Questionnaire) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Protocol Agreement will limit or exclude any liability of a Protocol Participant for fraud.

(ii) Except for any supplement deemed to be made pursuant to this Protocol Agreement in respect of any Protocol Covered Agreement, all terms and conditions of each Protocol Covered Agreement will continue in full force and effect in accordance with its provisions as in effect immediately prior to the Implementation Date. Except as explicitly stated in this Protocol Agreement, nothing herein will constitute a waiver or release of any rights of any party under any Protocol Covered Agreement.

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[9] Under the DF Supplement, a party makes various representations about its DF Supplement Information, and agrees to update such information and representations.

[10] Under Section 2.3 of the DF Supplement, a counterparty agrees to provide written notice of any updated information and representations.

[11] Section 2.12 of the DF Supplement provides that a swap dealer may provide various notifications and informational disclosures required by CFTC rules, including standardized notifications and disclosures applicable to multiple Swaps. as well as oral disclosures of pre-trade mid-market marks. This provision indicates that the e-mail address provided by a party in its Questionnaire may be used for such purposes.

(b) ***Amendments***. An amendment, modification or waiver in respect of the matters contemplated by this Protocol Agreement will only be effective in respect of a Matched PCA if made in accordance with the terms of such Matched PCA.

(c) ***Headings and Footnotes***. The headings and footnotes used in this Protocol Agreement, any Questionnaire and any Adherence Letter are for informational purposes and convenience of reference only, and are not to affect the construction of or to be taken into consideration in interpreting this Protocol Agreement, any Questionnaire or any Adherence Letter.

(d) ***Governing Law***. This Protocol Agreement and each Adherence Letter will, as between Matched PCA Parties, be governed by and construed in accordance with the laws of the State of New York, without reference to choice of law doctrine, provided that supplements to each Matched PCA effected by this Protocol Agreement shall be governed by and construed in accordance with the law governing such Matched PCA.

8. Definitions

As used in this Protocol Agreement, the terms "**Designated Evaluation Agent**," "**Designated Fiduciary**," "**Designated QIR**," "**LEI/CICI**," and "**Special Entity**" shall be given the meanings provided in the form of questionnaire attached hereto as Exhibit 2, and the following terms will have the following meanings:

"**Credit Support Document**" means, with respect to a Matched PCA Party, a document, which by its terms secures, guarantees or otherwise supports the obligations of one or both of the Matched PCA Parties under a Matched PCA, whether or not such document is specified as a "Credit Support Document" in such Matched PCA.

"**ISDA Amend**" means the web-based platform that has been developed by ISDA and Markit Group Limited and is available at http://www.markit.com/en/products/distribution/document-exchange/registration.page.

"**Substitute Part II Information**" means the information requested to be provided by a party in Part II, Sections 2 through 5 of the Questionnaire, as applicable, that (a) such party represents it has previously provided in writing to the Matched PCA Party receiving such Questionnaire in lieu of providing such information in the Questionnaire or (b) appears in the publicly available portion of the LEI/CICI database with respect to such Matched PCA Party.[12]

[12] *See* Section 6(c)(ii). As a matter of convenience, certain information that is required by the Questionnaire and that a party has previously provided to a dealer or submitted in the publicly-available portion of the LEI/CICI database may be omitted from the Questionnaire, although such information will be subject to the same representations and obligations to update as information contained in the Questionnaire. However, for operational and systems reasons, parties may prefer that all such information be set forth in a complete Questionnaire.

EXHIBIT 1
to ISDA August 2012 DF Protocol Agreement

Form of Adherence Letter

[Letterhead of Protocol Participant]

[Date]

Dear Sirs:

Re: ISDA August 2012 DF Protocol – Adherence

The purpose of this letter is to confirm our adherence as a "**Protocol Participant**" to the ISDA August 2012 DF Protocol Agreement as published by the International Swaps and Derivatives Association, Inc. on August 13, 2012 (the "**Protocol Agreement**"). This letter constitutes an Adherence Letter as referred to in the Protocol Agreement. The definitions and provisions contained in the Protocol Agreement are incorporated into this Adherence Letter.

We agree to pay a one-time fee of $500 to ISDA at or before the submission of this Adherence Letter.

1. Specific Terms

We hereby represent that this is the only Adherence Letter submitted by us to ISDA in respect of the Protocol Agreement.

2. Appointment as Agent and Release

We hereby appoint ISDA as our agent for the limited purposes of the Protocol Agreement and accordingly we waive, and hereby release ISDA from, any rights, claims, actions or causes of action whatsoever (whether in contract, tort or otherwise) arising out of or in any way relating to this Adherence Letter or our adherence to the Protocol Agreement or any actions contemplated as being required by ISDA.

3. Contact Details

Our contact information, solely for purposes of this Adherence Letter (and unrelated to the Questionnaire delivery options in the subsequent section) is:

Name:
Address:
Telephone:
Fax:
E-mail:

4. Delivery of Questionnaire

Delivery of a Questionnaire by another Protocol Participant may be made to us pursuant to Section 3 of the Protocol Agreement as follows, where the relevant box has been checked:

☐ if submitted via ISDA Amend in accordance with the terms thereof.

☐ if in writing and delivered in person or by courier, or by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested) to:

[Address]
[Address]
[Address]
[Attention]

☐ if sent by facsimile transmission, to:

[Fax Number]
[Attention]

☐ if sent by e-mail or other electronic messaging system, to:

[Address]

☐ 5. We understand that the Protocol is designed to allow "matching" of Questionnaires between a swap dealer and other counterparties (including other swap dealers). Accordingly, to assist in the administration of the Protocol, we have checked this box to indicate that for purposes of receiving Questionnaires (a) we are, or expect to be, a swap dealer or (b) we are submitting this letter to act under the Protocol Agreement on behalf of a PCA Principal that is, or expects to be, a swap dealer and whose legal name is: _____.[13]

We consent to the publication of a conformed copy of this letter by ISDA and to the disclosure by ISDA of the contents of this letter.

Yours faithfully,

[PROTOCOL PARTICIPANT]

Signature: _____
Name: _____
Title: _____

[13] A party who expects to become a registered swap dealer may wish to adhere to the Protocol in advance of becoming registered so that its swap agreements with counterparties will incorporate provisions of the DF Supplement when its registration becomes effective.

EXHIBIT 2
to August 2012 ISDA DF Protocol Agreement

Form of Questionnaire

ISDA Safe, Efficient Markets

International Swaps and Derivatives Association, Inc.

ISDA AUGUST 2012 DF SUPPLEMENT[1]

published on August 13, 2012,
by the International Swaps and Derivatives Association, Inc.
Annotated in Red as of April 11, 2013

THE ANNOTATIONS AND INSTRUCTIONS IN THIS DOCUMENT DO NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES IN CONNECTION WITH YOUR CONSIDERATION OF THE ISDA AUGUST 2012 DF PROTOCOL OR THE RELATED DOCUMENTS. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISERS THEY DEEM APPROPRIATE AS PART OF THEIR CONSIDERATION OF THE PROTOCOL PRIOR TO ADHERING TO THE PROTOCOL. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

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[1] This DF Supplement is intended to address requirements of the following final rules:

(1) CFTC, Final Rule, *Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties*, 77 Fed. Reg. 9734 (Feb. 17, 2012);

(2) CFTC, Final Rule, *Large Trader Reporting for Physical Commodity Swaps*, 76 Fed. Reg. 43851 (July 22, 2011);

(3) CFTC, Final Rule, *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71626 (Nov. 18, 2011);

(4) CFTC, Final Rule, *Real-Time Public Reporting of Swap Transaction Data*, 77 Fed. Reg. 1182 (Jan. 9, 2012);

(5) CFTC, Final Rule, *Swap Data Recordkeeping and Reporting Requirements*, 77 Fed. Reg. 2136 (Jan. 13, 2012);

(6) CFTC, Final Rule, *Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants*, 77 Fed. Reg. 20128 (Apr. 3, 2012); and

(7) CFTC, Final Rule, *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*, 77 Fed. Reg. 35200 (June 12, 2012).

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ISDA®

International Swaps and Derivatives Association, Inc.

ISDA August 2012 DF Supplement[2]

(published on August 13, 2012)

Any of the following schedules of this ISDA August 2012 DF Supplement (as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**")) (this "**DF Supplement**") may be incorporated into an agreement (such agreement, a "**Covered Agreement**") by written agreement of the relevant parties indicating which schedules of this DF Supplement (each such schedule, a "**DF Schedule**") shall be incorporated into such Covered Agreement.[3] All DF Schedules so incorporated in a Covered Agreement will be applicable to such Covered Agreement unless otherwise provided in such Covered Agreement, and any term defined in this DF Supplement and used in any DF Schedule that is incorporated by reference in a Covered Agreement will have the meaning set forth in this DF Supplement unless otherwise provided in such Covered Agreement. Any term used in a Covered Agreement will, when combined with the name of a party, have meaning with respect to the named party only. The headings and footnotes used in this DF Supplement are for informational purposes and convenience of reference only, and are not to affect the construction of or to be taken into consideration in interpreting this DF Supplement.

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[2] This Supplement is designed to be used by (i) a swap dealer (referred to herein as the "Swap Dealer" or "SD") and (ii) another counterparty (referred to herein as the "Counterparty" or "CP") who may also be a swap dealer. Where both parties are swap dealers, each is considered to be the "Swap Dealer" (or "SD") *and* the "Counterparty" (or "CP") for purposes of this Supplement.

[3] The "written agreement of the relevant parties" may include any written agreement by which the parties agree to incorporate the provisions of this Supplement. Such an agreement will be established if both parties have adhered to the August 2012 DF Protocol and exchanged Questionnaires in accordance with the terms thereof. Parties may also incorporate such provisions through any other bilateral agreement. In either case, the relevant provisions of this Supplement would be incorporated into "Covered Agreements."

Under the Protocol Agreement, a "Covered Agreement" refers to an agreement between the parties that (1) governs the terms and conditions of one or more transactions in Swaps and (2) is in existence at the time the parties have (i) adhered to the Protocol and (ii) matched Questionnaires. The DF Terms Agreement would qualify as a Covered Agreement under the Protocol Agreement. See DF Terms Agreement and annotations thereto.

Schedule 1
Defined Terms

The following terms shall have the following meanings when used in this DF Supplement:

"**Agreement,**" as used in a provision of this DF Supplement that is incorporated into a Covered Agreement or any defined term used in such provision, means such Covered Agreement, as amended or supplemented from time to time.[4]

"**Agricultural Commodity**" means any "agricultural commodity," as defined in CFTC Regulation 1.3(zz).[5]

"**Associated Person**" means, with respect to a Swap Dealer, any person acting for or on behalf of such Swap Dealer, including an associated person as defined in Section 1a(4) of the Commodity Exchange Act.[6]

"**Applicable U.S. Law**" means all applicable laws of the United States and rules, regulations, orders and written interpretations of U.S. federal authorities, self-regulatory organizations, markets, exchanges, and clearing facilities.

"**Business Day**" means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits).

"**CFTC**" means the U.S. Commodity Futures Trading Commission.

"**CFTC Regulations**" means the rules, regulations, orders and interpretations published or issued by the CFTC.

"**Commodity Exchange Act**" means the Commodity Exchange Act, as amended.

"**Commodity Trade Option**" means a commodity option entered into pursuant to CFTC Regulation 32.3(a).[7]

"**Counterparty**" or "**CP**" means a party that is the counterparty to a Swap Dealer in respect of the Agreement. For the avoidance of doubt, if two Swap Dealers are parties to the Agreement, each Swap Dealer is a Counterparty or CP for purposes of this DF Supplement.

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[4] Because "Covered Agreement" means any agreement that the parties may amend or supplement with the terms provided in this DF Supplement, the term "Agreement" is used to identify the specific agreement that is supplemented when these terms are incorporated into that agreement. An "Agreement" can be a master agreement governing the terms and conditions of swaps or general terms of business such as the DF Terms Agreement.

[5] This term is used in Section 2.8. *See* discussion of "Commodity Trade Options" below.

[6] The CFTC External Business Conduct Rules, adopted at 77 Fed. Reg. 9734 (Feb. 17, 2012) ("**EBCR**"), provide that the term "swap dealer," when used in those rules, includes any person acting for or on behalf of a swap dealer, including associated persons (as defined in Section 1(a)(49) of the Commodity Exchange Act), "as appropriate."

[7] This term is used in Sections 2.7 and 2.8 of the Supplement.

"**DCM**" means a "designated contract market," as such term is used in the CFTC Regulations.

"**DCO**" means a "derivatives clearing organization," as such term is defined in Section 1a(15) of the Commodity Exchange Act and the CFTC Regulations.

"**Designated Evaluation Agent**" means, with respect to a party to the Agreement, a person (if any), other than an employee of such party, that such party has represented in writing to its counterparty is its "Designated Evaluation Agent."[8]

"**Designated Fiduciary**" means, with respect to a party to the Agreement, a person (if any) that such party has represented in writing to its counterparty is its "Designated Fiduciary."[9]

"**Designated QIR**" means, with respect to a party to the Agreement, a person (if any) that such party has represented in writing to its counterparty is its "Designated QIR."[10]

"**DF Schedule**" shall have the meaning given to such term in the introductory paragraph of this DF Supplement.

"**DF Supplement Rules**" means the CFTC Regulations adopted in the following Federal Register citations, as amended and supplemented from time to time: (1) *Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties*, 77 Fed. Reg. 9734 (Feb. 17, 2012); (2) *Large Trader Reporting for Physical Commodity Swaps*, 76 Fed. Reg. 43851 (July 22, 2011); (3) *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71626 (Nov. 18, 2011); (4) *Real-Time Public Reporting of Swap Transaction Data*, 77 Fed. Reg. 1182 (Jan. 9, 2012); (5) *Swap Data Recordkeeping and Reporting Requirements*, 77 Fed. Reg. 2136 (Jan. 13, 2012); (6) *Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants*, 77 Fed. Reg. 20138 (Apr. 3, 2012); (7) *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*, 77 Fed. Reg. 35200 (June 12, 2012); and (8) solely for purposes of Sections 2.4, 2.5, 2.12 and 2.19 of this DF Supplement, any comparable non-U.S. regulation with which SD is permitted by the CFTC to comply in lieu of any of the foregoing CFTC Regulations.[11]

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[8] This definition is used exclusively in DF Schedule 3. It is therefore only applicable to a counterparty who is eligible for (*i.e.*, not a Special Entity), and elects to enter into, that DF Schedule.

[9] This definition is used exclusively in DF Schedules 5 and 6. It is therefore only applicable to a counterparty who is an ERISA Special Entity that is eligible for, and elects to enter into, either or both of those DF Schedules.

[10] This definition is used exclusively in DF Schedule 4. It is therefore only applicable to a CP who is a Special Entity that is eligible for, and elects to enter into, that DF Schedule.

[11] Part 8 of this definition is intended to cover, to a limited extent, non-U.S. regulatory requirements that a non-U.S. swap dealer would be allowed by the CFTC to comply with in lieu of compliance with applicable CFTC regulations. Note that this Supplement is not intended to cover rules governing swaps beyond those listed in this definition (for example, non-U.S. reporting rules). *See* Final Exemptive Order Regarding Compliance with Certain Swap Regulations, 78 Fed. Reg. 858 (Jan. 7, 2013).

"**DF Supplement Information**" means (i) any information or representation agreed in writing by the parties to be DF Supplement Information; and (ii) any information provided pursuant to Section 2.4 of this DF Supplement, in each case, as amended or supplemented from time to time in accordance with Section 2.3 of this DF Supplement or in another manner agreed by the parties.[12]

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.

"**ERISA Special Entity**" means a party to the Agreement that has represented in writing to its counterparty that it is an employee benefit plan subject to Title I of ERISA.

"**Exempt Commodity**" means any "exempt commodity" under Section 1a(20) of the Commodity Exchange Act.[13]

"**FCM**" means a futures commission merchant subject to regulation under the Commodity Exchange Act.

"**Hedging Entity ECP**" means a party to the Agreement that (i) has represented in writing to its counterparty that it is a corporation, partnership, proprietorship, organization, trust, or other entity that has a net worth exceeding $1,000,000 and enters into Swaps in connection with the conduct of the party's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the party in the conduct of the party's business, but (ii) has not represented that it qualifies as an "eligible contract participant" as defined in Section 1a(18) of the Commodity Exchange Act other than as provided above.[14]

"**Hedging Individual ECP**" means a party to the Agreement that (i) has represented in writing to its counterparty that it is an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of $5,000,000 and who enters into Swaps in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the party, but (ii) has not represented that it qualifies as an "eligible contract participant" as defined in Section 1a(18) of the Commodity Exchange Act other than as provided above.[15]

"**Local Business Day**" shall have the meaning specified in the Agreement; *provided, however,* in the event the Agreement does not specify the meaning of "Local Business Day," the term shall

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[12] *See* Sections 2.1-2.3. "DF Supplement Information" includes information and representations provided in a counterparty's Questionnaire or equivalent bilateral documentation, as well as updates of that information and other information provided to the dealer counterparty so that it can satisfy regulatory requirements under the DF Supplement Rules.

[13] This term is used in Section 2.8.

[14] This term is used in Section 2.20. It describes a type of counterparty that can only lawfully enter into swaps in connection with the conduct of its business. *See* Commodity Exchange Act § 1a(18)(A)(v)(III) and CFTC Regulation 1.3(m)(7).

[15] This term is used in Section 2.21. It describes a type of counterparty that is a natural person and can only lawfully enter into swaps to manage certain risks. See Commodity Exchange Act § 1a(18)(A)(xi)(III) and CFTC Regulation 1.3(m)(7).

mean, with respect to a party, a day on which commercial banks are open for business (including for dealings in foreign exchange and foreign currency deposits) in the city that is specified in the Agreement for receipt of notices by such party.

"**Major Security-Based Swap Participant**" means a party to the Agreement that has represented in writing to its counterparty that it is registered with the SEC as a "major security-based swap participant" as defined in Section 3a(67) of the Securities Exchange Act and Rule 3a67-1 thereunder.

"**Major Swap Participant**" means a party to the Agreement that has represented in writing to its counterparty that it is registered (fully or provisionally) with the CFTC as a "major swap participant" as defined in Section 1a(33) of the Commodity Exchange Act and CFTC Regulation 1.3(hhh) thereunder.

"**Material Confidential Information**" means "material confidential information" as such term is used in CFTC Regulation 23.410(c).[16]

"**Non-Reporting Counterparty**" means, in respect of any Swap subject to the CFTC Regulations, the party to such Swap that is not the Reporting Counterparty.

"**Notice Effective Date**" means the Local Business Day following the date on which a notice would be effective pursuant to the Notice Procedures or such other date as the parties may specify in writing.[17]

"**Notice Procedures**" means (1) the procedure specified in the Agreement regarding delivery of notices or information to a party and (2) such other means as may be agreed in writing between the parties from time to time.[18]

"**Notifications**" means the notifications set forth in Part VII of DF Schedule 2.

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[16] *See* Sections 2.13-2.16 of the Supplement. The EBCR do not define this term, although it is used extensively therein. It is likely that CFTC interpretations will emerge over time. For this reason, this definition is tied to the meaning of the term in the EBCR as it evolves.

[17] Certain types of notices from a CP may require the SD counterparty to change its policies and procedures to remain in compliance with DF Supplement Rules (*e.g.*, an eligible counterparty notifies its dealer counterparty that it elects to be treated as a "special entity" or that it will cease making a representation needed to satisfy a safe harbor that it has previously elected). This term provides that such notices are deemed effective one Local Business Day after notices are generally effective to give the dealer counterparty time to update its internal systems and procedures with the new information in order to be in compliance. Note that this delayed effective date only applies to the specific types of notices that a counterparty may give under Sections 2.3, 3.1(c), 4.3(c), 4.4, 5.4, and 6.4 of the Supplement. It does not change the effective date of counterparty notices in other situations.

[18] Provides that notice hereunder may be provided in the manner agreed upon in the original agreement, unless otherwise agreed. Note that in addition to a general notice address, that would likely have been provided in the underlying agreement, a counterparty is asked in Part II, Section 10 of the Questionnaire to provide an email address to which certain types of trading information and risk disclosure can be delivered. Pursuant to Section 6(c)(iv) of the Protocol Agreement, "Notice Procedures" includes written notice by email to the address specified in the Questionnaire or to any substitute e-mail address provided pursuant to Section 2.3 of the DF Supplement.

"**Regulated Swap Entity**" means a Swap Dealer, Security-Based Swap Dealer, Major Swap Participant or Major Security-Based Swap Participant.

"**Reporting Counterparty**" means, in respect of any Swap subject to the CFTC Regulations, the party to such Swap that is determined to be the "reporting counterparty" in accordance with CFTC Regulation 45.8; *provided that*, in the event that CFTC Regulation 45.8 requires the parties to agree which party shall be the reporting Counterparty, the Reporting Counterparty in respect of a Swap shall be the party agreed by the parties.[19]

"**SDR**" means a "swap data repository" as defined in Section 1a(48) of the Commodity Exchange Act and the CFTC Regulations.

"**SEC**" means the U.S. Securities and Exchange Commission.

"**Securities Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Security-Based Swap Dealer**" means a party to the Agreement that has represented in writing to its counterparty that it is registered with the SEC as a "security-based swap dealer" as defined in Section 3(a)(71) of the Securities Exchange Act and Rule 3a71-1 thereunder.

"**SEF**" means a "swap execution facility" as defined in Section 1a(50) of the Commodity Exchange Act and the CFTC Regulations.

"**Special Entity**" means a "special entity" as defined in Section 4s(h)(2)(C) of the Commodity Exchange Act and CFTC Regulation 23.401(c) thereunder.

"**Swap**" means a "swap" as defined in the Section 1a(47) of the Commodity Exchange Act and CFTC Regulation 1.3(xxx) that is governed by or proposed to be governed by the Agreement. The term "Swap" also includes any foreign exchange swaps and foreign exchange forwards that may be exempted from regulation as "swaps" by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the Commodity Exchange Act.[20]

"**Swap Communication Event**" means each (1) Swap Transaction Event, (2) offer to enter into a Swap under the Agreement or a Swap Transaction Event and (3) Swap Recommendation.[21]

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[19] The Supplement is drafted on the basis that at least one CP will be an SD. If the other CP is not an SD, then the SD will always be the "Reporting Counterparty" under CFTC rules regarding the reporting of swap data with respect to swaps between the parties. If both CPs are SDs, they must enter into additional agreements to establish which party will be the Reporting Counterparty, which may include industry standards for determining which swap dealer is the Reporting Counterparty.

[20] While the Secretary of the Treasury has the authority to exempt certain types of FX transactions from the definition of "swap" under the Commodity Exchange Act (which authority has been exercised, *see* 77 Fed. Reg. 69694 (Nov. 20, 2012)), the EBCR and reporting rules still apply to any exempted transactions. Commodity Exchange Act § 1a(47)(E).

[21] Under the EBCR, certain so-called "suitability" obligations are triggered when a swap dealer makes a "recommendation" regarding a swap or a trading strategy or an offer to enter into a swap. Such obligations may be satisfied through safe harbors available under the EBCR, which depend upon representations being made at the appropriate times. The term "Swap Communication Event" defines these times and is used in DF Schedules 3, 4, 5, and 6. Representations in DF Schedule 2, on the other hand, are tied to Swap Transaction Events.

"**Swap Dealer**" or "**SD**" means a party to the Agreement that has represented in writing to a counterparty that it is registered (fully or provisionally) with the CFTC as a "swap dealer" as defined in Section 1a(49) of the Commodity Exchange Act and CFTC Regulation 1.3(ggg) thereunder, *provided that* the term "Swap Dealer" also includes, as appropriate, any Associated Person of such Swap Dealer.

"**Swap Recommendation**" means a "recommendation" (as such term is used in CFTC Regulations 23.434 and 23.440) with respect to a Swap or trading strategy involving a Swap that is governed by or proposed to be governed by the Agreement.[22]

"**Swap Transaction Event**" means, with respect to any two parties, the execution of a new Swap between such parties under the Agreement or any material amendment, mutual unwind or novation of an existing Swap between such parties under the Agreement.[23]

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[22] This term is defined by reference to its use in the EBCR due to the facts-and-circumstances nature of the determination. For further detail on what constitutes a "recommendation" under the EBCR, see 77 Fed. Reg. 9734, 9828 (Feb. 17, 2012).

[23] *See* 77 Fed. Reg. 9734, 9741 (Feb. 17, 2012). The EBCR treat the events identified in this definition as new swaps for purposes of a swap dealer's duties under those rules. The term "Swap Transaction Event" defines these events and is used in DF Schedule 2 to establish when certain representations are repeated. It is also embedded in the definition of "Swap Communication Event," discussed above.

Schedule 2
Agreements Between a Swap Dealer and Any Other Party

This DF Schedule 2 may be incorporated into an agreement between a Swap Dealer and any other party, including another Swap Dealer. For the avoidance of doubt, if this DF Schedule 2 is incorporated into an agreement between two Swap Dealers, each such Swap Dealer will be both "SD" and "CP" for purposes of this DF Schedule 2.

If the parties to an agreement have specified that this DF Schedule 2 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this DF Schedule 2 shall be deemed to be a part of such agreement to the same extent as if this DF Schedule 2 were restated therein in its entirety.[24]

Part I. Representations and Agreements.

2.1. Each party represents to the other party (which representation is deemed repeated as of the time of each Swap Transaction Event) that, as of the date of each Swap Transaction Event, (i) all DF Supplement Information (excluding financial information and representations) furnished by or on behalf of it to the other party is true, accurate and complete in every material respect, (ii) no representation provided in the DF Supplement Information or in this DF Supplement is incorrect or misleading in any material respect, and (iii) all DF Supplement Information that is financial information furnished by or on behalf of it to the other party has been prepared in accordance with applicable accounting standards, consistently applied.[25]

2.2. Each party acknowledges that the other party has agreed to incorporate one or more DF Schedules into the Agreement, and if the parties enter into any Swaps on or after the date of such incorporation the other party will do so, in reliance upon the DF Supplement Information and the representations provided by such party or its agent in the DF Supplement Information and this DF Supplement. Notwithstanding the foregoing, each party agrees that an event of default, termination event, or other similar event shall not occur under the Agreement or any other contract between the parties solely on the basis of (i) a representation provided solely in DF Supplement Information or in this DF Supplement being incorrect or misleading in any material respect, or (ii) a breach of any covenant or agreement set forth solely in this DF Supplement; *provided, however*, that nothing in this Section 2.2 shall prejudice any other right or remedy of a party at law or under the Agreement or any other contract in respect of any misrepresentation or

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[24] If the parties have adhered to the August 2012 DF Protocol and exchanged Questionnaires in accordance with its terms, this Schedule 2 will be automatically incorporated into the agreements between the parties that are covered by the Protocol.

[25] CFTC Regulation 23.402(d). Under the EBCR, a swap dealer is required to obtain certain information and representations from its counterparties. Such information and representations are provided via the Protocol in the Questionnaire. The purpose of this Section is to provide representations from the counterparty in support of the information and representations it has provided. *See also* Section 2.3 below regarding the update of such representations and information.

breach hereunder or thereunder. For the avoidance of doubt, this Section 2.2 shall not alter a party's termination rights or remedies, if any, applicable to a breach of any representation, warranty, covenant, or agreement that is not provided or set forth solely in DF Supplement Information or in this DF Supplement, including any such breach relating to any event or condition that could also cause or constitute an event specified in (i) or (ii) above.[26]

2.3. Each party agrees to promptly notify the other party in writing in accordance with the Notice Procedures (i) of any material change to DF Supplement Information (other than representations) previously provided by such party or on behalf of such party and (ii) if any representations made in DF Supplement Information or this DF Supplement by or on behalf of such party become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the notifying party shall timely amend such representation by giving notice of such amendment to the other party in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 2.3 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.[27]

2.4. Each party agrees to promptly provide the other party, in accordance with the Notice Procedures, any information reasonably requested by such other party to enable such other party to comply with Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the DF Supplement Rules in connection with any Swap outstanding between the parties under the Agreement.[28]

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[26] As described above, parties are allowed to incorporate the representations and agreements of this Supplement into their agreements, including existing agreements. Parties may use the August 2012 DF Protocol as an efficient means of incorporating the Supplement into existing agreements. Because the Protocol does not afford parties the opportunity to modify the terms of the Supplement, Section 2.2 provides that an event of default or similar event will not occur due to a misrepresentation or breach arising solely from the provisions of the Supplement incorporated into their agreement and will not be a cross-default under other agreements between the parties. On the other hand, if (for example) a CP provides a representation in both the Questionnaire and in an underlying ISDA agreement (such as an ECP representation), Section 2.2 does not alter any remedies the dealer counterparty may have under that ISDA agreement as a result of the inaccuracy of the representation in the ISDA agreement, even though a breach of that representation would also likely be a breach of a representation made in the Questionnaire and incorporated into that same ISDA agreement.

[27] CFTC Regulation 23.402(d). Under the EBCR, a swap dealer is permitted to rely on CP representations that are made in relationship documentation (rather than in connection with specific trades) in order to satisfy certain obligations, *provided* that the counterparty undertakes to "timely" update the representations. Section 2.3 is designed to satisfy this requirement. This Section works in conjunction with Section 2.1 (which updates CP representations as of each trade date). The last sentence delays the effectiveness of such updates to avoid compliance problems that could arise if a counterparty were to provide a last minute notice immediately prior to trading.

[28] *See, e.g.*, CFTC Regulations 20.5(a); 43.3-43.4; 45.2-45.4; 46.3. Various provisions of Title VII and the DF Supplement Rules require swap dealers to obtain information from CPs. This information includes, but is not limited to, the requirements of the DF Supplement Rules (i) to satisfy swap reporting requirements (which

2.5. Notwithstanding anything to the contrary in the Agreement or in any non-disclosure, confidentiality or similar agreement between the parties, each party hereby consents to the disclosure of information to the extent required by the DF Supplement Rules which mandate reporting of transaction and similar information. Each party acknowledges that disclosures made pursuant to this Section 2.5 may include, without limitation, the disclosure of trade information including a party's identity (by name, identifier or otherwise) to an SDR and relevant regulators and that such disclosures could result in certain anonymous Swap transaction and pricing data becoming available to the public. Each party further acknowledges that, for purposes of complying with regulatory reporting obligations, an SDR may engage the services of a global trade repository regulated by one or more governmental regulators, provided that such regulated global trade repository is subject to comparable confidentiality provisions as is an SDR registered with the CFTC. For the avoidance of doubt, to the extent that applicable non-disclosure, confidentiality, bank secrecy or other law imposes non-disclosure requirements on transaction and similar information required to be disclosed pursuant to the DF Supplement Rules but permits a party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by each party for purposes of such other applicable law.[29]

2.6. To the fullest extent permitted by applicable law, each party consents to the recording of conversations of its trading, marketing, operations and other relevant personnel by the other party and its affiliates, with or without the use of a warning tone or similar warning, in connection with any Swap or proposed Swap. Each

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require reporting of certain counterparty information as well as information about the terms of a swap) and (ii) to satisfy "Know Your Counterparty" provisions requiring a swap dealer to have policies reasonably designed to ascertain facts needed to (a) comply with applicable laws, (b) implement the swap dealer's credit and operational risk management policies, and (c) establish the authority of persons acting for the counterparty. Certain requirements under the DF Supplement Rules are not currently well defined (such as whether a party is a "U.S. Person"), and may require additional information when the law becomes more clear. Other requirements may require a swap dealer to obtain additional information at a later date. Recognizing the broad scope of information a swap dealer may be required to obtain from a counterparty, this provision was designed to be limited to outstanding Swaps and information required to comply with Title VII and the DF Supplement Rules. Note that information provided under this Section 2.4 is covered by the representations made in Section 2.1.

[29] CFTC Regulations 20.4, 20.5, 23.204, 23.205, 43.3, 43.4, 45.3. 45.4, and 46.3. Swap dealers are required to report data regarding counterparties and swaps entered into with those counterparties to swap data repositories or "**SDRs**" regulated by the CFTC. Because a CP may previously have negotiated a confidentiality or non-disclosure agreement with a dealer counterparty that would not otherwise permit such reporting, Section 2.5 provides a consent intended to override any such agreement. While this agreement overrides previous agreements, its scope is limited to information that the dealer counterparty is obligated to report under the Commodity Exchange Act. The last sentence of this Section is merely to clarify that the consent given is a consent for purposes of all applicable law. The Section also contains an acknowledgment that an SDR may use the services of a "global trade repository" such as DTCC to facilitate reporting, which is not regulated by the CFTC.

party further agrees to obtain the individual consents of its personnel should such consent be required by applicable law.[30]

2.7. As of each Swap Transaction Event with respect to a Commodity Trade Option to which CP is the offeree, CP represents to its counterparty that it is: (i) a producer, processor, commercial user of, or a merchant handling, the commodity that is the subject of the Commodity Trade Option, or the products or byproducts thereof, and (ii) entering into the Commodity Trade Option solely for purposes related to its business as such.[31]

2.8. As of each Swap Transaction Event with respect to a Commodity Trade Option, each party represents to the other party that the Commodity Trade Option, if exercised, contains a binding obligation that results in the sale of an Exempt Commodity or an Agricultural Commodity for immediate or deferred shipment or delivery.[32]

Part II. Agreements of a Non-Reporting Counterparty.

2.9. Each party agrees that if it is the Non-Reporting Counterparty with respect to a Swap under the Agreement that is an "international swap" (as that term is defined in CFTC Regulation 45.1), it shall notify the Reporting Counterparty to such international swap, as soon as practicable and in accordance with the Notice Procedures, of the (i) identity of each non-U.S. trade repository not registered with the CFTC to which the Non-Reporting Counterparty or its agent has reported the Swap, and (ii) swap identifier used by such non-U.S. trade repository to identify the swap.[33]

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[30] CFTC Regulation 23.202. CFTC rules regarding books and records require the creation of records permitting the recreation of a complete "audit trail" involving negotiations that lead to the execution of a swap. Accordingly, this Section is designed to enable the dealer counterparty to record phone lines to establish adequate records. Parties should be aware, however, that this Section 2.6 may not be sufficient for the purposes of complying with the voice recording laws of certain U.S. states and non-U.S. jurisdictions. For example, in certain jurisdictions, the consent of the actual individual whose voice is being recorded may be required and a warning beep may or may not be sufficient to establish knowledge and consent to recording. CPs are required to agree to obtain consents from the employees as needed to satisfy local law for this reason.

[31] CFTC Regulation 32.3(a)(2). Under CFTC rules, only certain types of persons are eligible to purchase long options on tangible commodities that are intended to be physically settled. Sections 2.7 and 2.8 provide assurances as to a counterparty's eligibility.

[32] CFTC Regulation 32.3(a)(3).

[33] CFTC Regulation 45.3(h). The CFTC monitors swap data on a market-wide basis. In order to avoid "double counting" of swaps in its statistics, the CFTC requires the dealer counterparty to report whether a swap is reported to a non-U.S. data repository that may be consolidating information with the CFTC. For this reason, when the dealer counterparty reports a swap to an SDR, it needs to know whether the CP will be reporting the swap to a non-U.S. data repository. Section 2.6 requires the CP to notify the dealer counterparty in such instances. Note that Section 2.6 only requires the CP to notify the dealer counterparty if the CP or its agent reports the swap to a non-U.S. data repository and does not impose other obligations. Therefore, this DF Supplement does not address what is an "international swap" or specify the circumstances under which such reporting may be required. It is up to the CP to determine its own reporting obligations and to let the dealer counterparty know when it is reporting in another jurisdiction.

2.10. Each party agrees that if it is the Non-Reporting Counterparty with respect to a Swap under the Agreement, upon the occurrence of any "life cycle event" (as that term is defined in CFTC Regulation 45.1) relating to a corporate event in respect of such Non-Reporting Counterparty and such Swap, it will, as soon as practicable, but in no event later than 10 a.m. on the second "business day" (as that term is defined in CFTC Regulation 45.1) following the day on which such life cycle event occurs, notify the Reporting Counterparty to the Swap of the occurrence of such life cycle event, with sufficient detail regarding such life cycle event to allow such other party to comply with any reporting requirements imposed by the DF Supplement Rules.[34]

Part III. Representations and Agreements of a Counterparty that is <u>not</u> a Swap Dealer.

If CP is not a Swap Dealer, it represents and agrees as follows:

2.11. CP has received, reviewed, and understood the Notifications in Part VII of DF Schedule 2 that are applicable to CP.[35]

2.12. CP agrees that SD may effect delivery to CP of any notifications and informational disclosures required by the DF Supplement Rules, including standardized notifications and disclosures applicable to multiple Swaps, through any of the following means, each of which CP agrees is reliable: (i) means specified for the delivery of notices in the Notice Procedures or (ii) by posting on a web page at, or accessible through, a URL designated in a written notice given to CP pursuant to the Notice Procedures and notifying CP of such posting in a written notice given pursuant to the Notice Procedures, *provided that* SD need not provide written notice of posting on such web page with respect to the provision of daily marks pursuant to CFTC Regulation 23.431(d). CP further agrees that, if it has so specified in writing to SD, SD may provide oral disclosures of any (i) pre-trade mid-market marks required pursuant to CFTC Regulation 23.431(a)(3)(i) and (ii) basic material economic terms, including price, notional amount and termination date, pursuant to CFTC Regulation 23.431(a)(2), *provided* such disclosures are confirmed by SD in a written notice (which confirmation may be provided post-trade) by a means specified in the preceding sentence.[36]

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[34] CFTC Regulation 45.4(c). In certain limited circumstances (*e.g.*, a self-referencing swap), the parties may enter into a swap under which a corporate event with respect to the counterparty triggers a change to the swap that would be considered a "life cycle event" under CFTC reporting rules. In such cases, the SD is obligated to report the life-cycle event within two business days of the event. In order to satisfy this requirement in circumstances where the relevant event is not public or otherwise known to the SD, Section 2.6 requires the CP to report the event to the SD prior to noon on the second business day.

[35] CFTC Regulations 23.402(f) and 23.431(d)(3)(ii). This Section merely acknowledges that the CP has read and understood the notices provided in Part VII. It does not require the CP to agree to the adequacy of those notices or waive any rights to receive further notices.

[36] The EBCR provide that an SD may provide notices and disclosures in any "reliable means agreed to in writing by the counterparty." Disclosures and notices applicable to multiples swaps can be provided in counterparty

2.13. Subject to any conditions on the disclosure of Material Confidential Information to governmental authorities, regulatory authorities or self-regulatory organizations previously agreed by the parties, CP agrees that SD is authorized to disclose Material Confidential Information provided to SD by (or on behalf of) CP to comply with a request of any regulatory authority or self-regulatory organization with jurisdiction over SD or of which SD is a member or as otherwise required by applicable law (whether by statute, law, rule, regulation, court order, subpoena, deposition, civil investigative demand or otherwise).[37]

2.14. If, on or prior to the date on which this DF Schedule 2 is incorporated into the Agreement, CP and SD have entered into a written agreement relating to the non-disclosure of information regarding CP or its activities, CP and SD agree that all information that is subject to that agreement that constitutes Material Confidential Information and is provided by (or on behalf of) CP to SD may be used or disclosed by SD in any manner that is not prohibited by the terms of such agreement, irrespective of any limitations set forth in CFTC Regulation 23.410(c)(1).[38]

2.15. If any Material Confidential Information provided by (or on behalf of) CP to SD is not subject to an agreement of the type described in Section 2.14 above, CP

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relationship documentation provided they meet this standard. Section 2.12 provides an agreement as to the means of delivery of various disclosures and notices and includes a counterparty agreement that such means are reliable. *See* also Section 6(c)(iv) of the Protocol Agreement regarding the use of e-mail for delivery.

Note that Section 2.12 provides that the SD may provide notices and disclosures by placing the relevant information on the SD's website but must notify the CP by another means (such as email) that it has done so. The Questionnaire provides an opportunity for the CP to provide an email address for such purposes. *See* Questionnaire Part II, Section 10 and annotations thereto. Daily post-trade regulatory marks to market required under CFTC Regulation 23.431(d) may be posted on a website without daily emails. Note also that if the CP has agreed, pre-trade marks-to-market and other pre-trade transaction information can be provided orally so long as oral notice is followed by a subsequent written confirmation. *See* Questionnaire Part II, Section 11 and annotations thereto.

[37] CFTC Regulation 23.410(c)(2). This Section is required to overcome what is likely an unintended consequence of CFTC Regulations. CFTC confidentiality requirements prohibit swap dealers from disclosing any "material confidential information" about a CP or its trades except as agreed with the CP or as permitted by a regulatory safe-harbor. While the EBCR include a safe harbor for reporting to the CFTC, the DOJ, SROs that report to the CFTC and bank regulators, the EBCR safe harbor does not include other regulators (*e.g.*, the SEC). This provision is included to allow SDs to satisfy information requests made by any of their applicable governmental authorities and regulators. Note that Section 2.13 only permits reporting subject to the conditions of any existing non-disclosure agreement between the parties.

[38] For a CP who has an existing non-disclosure agreement with the SD, Section 2.14 provides that information within the scope of that agreement remains subject to the same rules that applied when that agreement was negotiated notwithstanding new confidentiality obligations imposed under the EBCR. The purpose is to preserve the balance that was struck when such agreement was originally negotiated, as the parties have already structured their relationship by contract in those circumstances and the new rules could upset the balance that was intended.

Note that the scope of Section 2.14 is limited to information that is within the scope of an existing agreement between the parties. Where the parties have an agreement that only covers limited types of counterparty information, information that is outside of the scope of that agreement is subject to the CFTC's new confidentiality requirements and Section 2.15.

agrees that SD is authorized to use or disclose such Material Confidential Information to (i) any of its affiliates, third-party service providers (*provided* such affiliates and third-party service providers are subject to limitations on use or disclosure that are no less restrictive than the limitations applicable to SD under the DF Supplement Rules, as agreed by the parties in this DF Supplement) and (ii) Associated Persons, solely for purposes of complying with the internal legal risk, compliance, accounting, operational risk, market risk, liquidity risk or credit risk policies of SD or its affiliates (in each case, consistently applied) or as otherwise permitted by the DF Supplement Rules. Notwithstanding the foregoing, no such Material Confidential Information will be disclosed to any person acting in a structuring, sales or trading capacity for SD or any affiliate of SD except as permitted by CFTC Regulation 23.410(c)(2); *provided that* for purposes of the foregoing, CP and SD agree that:

a. "the effective execution of any swap for or with counterparty," as such language is used in CFTC Regulation 23.410(c)(2)(i), may require, without limitation, the delivery of Material Confidential Information to persons acting in a structuring, sales or trading capacity for SD or any affiliate of SD for the purpose of structuring a Swap or for the purpose of, but solely to the extent necessary for, establishing the price of a Swap or proposed Swap or adjusting the terms of an existing Swap; and

b. the disclosure or use of Material Confidential Information to "hedge or mitigate any exposure," as such language is used in CFTC Rule 23.410(c)(2)(ii), includes, without limitation, its disclosure or use, for the purpose of, but solely to the extent necessary for, establishing or adjusting one or more anticipatory hedges or other positions intended to hedge against the market risk, liquidity risk or counterparty credit exposure to CP that is generated by a Swap or proposed Swap.[39]

2.16. CP agrees that the following information is not Material Confidential Information: information that, at or prior to the time of its use or disclosure by SD, is generally available publicly other than as a result of (i) a breach by SD of its obligations to CP under Applicable U.S. Law or a written agreement relating to the non-disclosure of information regarding CP or its activities or (ii) a breach by (a) any of SD's affiliates or third-party service providers that receive such information

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[39] The EBCR prohibits swap dealers from using counterparty material confidential information in a manner that "would tend to be materially adverse to the interests of the counterparty" and from disclosing any such information absent (i) authorization from the CP or (ii) a safe harbor. The EBCR provides safe harbors for "effective execution" of a swap for or with the relevant CP and to hedge or mitigate exposure created by the relevant swap. To help apply .interpret the language of the EBCR safe harbors, Section 2.15 represents an agreement of the parties on practical guidelines for use of counterparty material confidential information with regard to, among other things, anticipatory hedging and market making activities.

In particular, 2.15(a) is designed to ensure that conversations with structurers are permitted and that information can be shared between swap dealer personnel and desks to the extent needed to establish a price for a swap. Because the extent of disclosure that is required for structuring may be uncertain, 2.15(a) permits disclosure "for the purpose of" such structuring, but "solely to the extent necessary" to price a swap or effect a hedge.

from SD or (b) any of SD's affiliates that receive such information in connection with the trading relationship between SD and CP, in either case, of corresponding restrictions on the use or disclosure of such information that are applicable to it.[40]

Part IV. Agreements and Acknowledgements of a Counterparty that is not a Regulated Swap Entity.

If CP is not a Regulated Swap Entity, it agrees and acknowledges as follows:

2.17. CP agrees that, with respect to each cleared Swap originally executed between CP and SD, CP will obtain any daily marks it wishes to receive for such cleared Swap from the FCM through which CP clears such cleared Swap or the relevant DCO or another third party.[41]

2.18. CP agrees that, unless otherwise agreed with SD in writing, with respect to each uncleared Swap between CP and SD, any daily marks required to be provided by SD to CP pursuant to CFTC Regulation 23.431(d) will be calculated by SD as of the close of business on the prior Business Day in the locality specified by SD in its notice of such daily mark to CP, such locality to be consistently specified with regard to a class or type of Swaps.[42]

2.19. CP acknowledges that, with respect to each Swap between CP and SD that is not "available for trading" (as that phrase is used in the CFTC Regulations), unless CP makes a request of SD prior to a Swap Transaction Event for a specific scenario analysis to which it is entitled pursuant to DF Supplement Rules or other Applicable U.S. Law (which request, if made orally, will be confirmed in writing), CP shall not be entitled to any scenario analysis unless SD otherwise agrees.[43]

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[40] CFTC Regulation 23.410(c). The EBCR do not define the term "material confidential information" but permits the parties to agree to the treatment of such information. Section 2.16 creates a basic agreement as to when information will be deemed public that is generally consistent with market practice.

[41] CFTC Regulation 23.431(d). The EBCR require SDs to disclose to CPs that they have the right to receive daily marks to market with respect to cleared swaps from the relevant DCO. The relevant rules leave some ambiguity as to whether an SD might be required to forward those marks to CPs who clear their swaps at a different FCM if requested by the CP to do so. Because the SD would not have contractual privity or obligations to the CP once the CP clears the transactions at an FCM, the CP agrees in Section 2.17 that it will get marks from its FCM or DCO and not from the SD in such circumstances.

[42] CFTC Regulation 23.431(d). The EBCR provide that daily "mid-market" marks must be provided as of the close of business or such other time as the parties agree, but does not provide further guidance. Section 2.18 provides a clear baseline rule by establishing that "close of business" means close of business on the previous business day in the SD's jurisdiction (as notified to the CP). The provision allows the parties to agree otherwise in writing.

[43] CFTC Regulation 23.431(b). The EBCR provides CPs with the right to obtain scenario analyses with respect to swaps that are not traded on a DCM or SEF prior to entering into those swaps. Section 2.19 is intended to clarify that this is a pre-trade right only and that CP must specifically ask for a scenario analysis to avoid confusion. This provision applies only to the pre-trade scenario analysis to which the CP is entitled under applicable law. It does not affect any other scenario analysis that the SD provides, or agrees to provide, to the CP.

Part V. Representation of a Hedging Entity ECP.

2.20. If CP is a Hedging Entity ECP, CP represents to SD (which representation is deemed repeated as of the time of each Swap Transaction Event) that for so long as CP remains a Hedging Entity ECP, each Swap entered into by it under the Agreement will be entered into in connection with the conduct of CP's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by CP in the conduct of CP's business.[44]

Part VI. Representation of a Hedging Individual ECP.

2.21. If CP is a Hedging Individual ECP, CP represents to SD (which representation is deemed repeated as of the time of each Swap Transaction Event) that for so long as CP remains a Hedging Individual ECP, each Swap entered into by it under the Agreement, will be entered into in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by CP.[45]

Part VII. Notifications by a Swap Dealer.

If applicable, SD hereby notifies CP that:

2.22. Scenario Analysis

a. If CP is not a Regulated Swap Entity, prior to any Swap Transaction Event with respect to any Swap that is not "available for trading" (as such term is defined in the CFTC Regulations) on a DCM or SEF, CP can request, and consult on the design of, a scenario analysis to allow CP to assess its potential exposure in connection with such Swap.[46]

2.23. Daily Mark

a. If CP is <u>not</u> a Regulated Swap Entity, CP has the right to receive the daily mark for cleared Swaps originally executed by CP with SD from the relevant DCO.[47]

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[44] *See* Commodity Exchange Act Section 1a(18)(A)(v)(III) and related CFTC Regulations. For a CP that qualifies as an ECP solely as a Hedging Entity ECP, this representation establishes that each swap it enters into with the SD satisfies the conditions of its limited ECP status. *See* further explanation in the definition of "Hedging Entity ECP."

[45] *See* Commodity Exchange Act Section 1a(18)(A)(xi)(II) and related CFTC Regulations. For a natural person who qualifies as an ECP solely as a Hedging Individual ECP, this representation establishes that each swap he/she enters into with the SD satisfies the conditions of his/her limited ECP status. *See* further explanation in the definition of "Hedging Individual ECP."

[46] CFTC Regulation 23.431(b). This is a required notification under CFTC Regulation 23.431(b)(1)-(2).

[47] CFTC Regulation 23.431(d)(1). This is a required notification under CFTC Regulation 23.431(d)(1).

b. If CP is not a Regulated Swap Entity, SD hereby discloses to CP, in respect of a daily mark for any uncleared Swap provided to CP by SD pursuant to CFTC Regulation 23.431(d)(3)(ii), that:

1. the daily mark may not necessarily be a price at which either CP or SD would agree to replace or terminate the Swap;

2. unless otherwise expressly agreed by the parties, calls for margin may be based on considerations other than the daily mark provided to CP; and

3. the daily mark may not necessarily be the value of the Swap that is marked on the books of SD. [48]

2.24. Clearing

a. If CP is a not a Regulated Swap Entity, with respect to any Swap entered into between CP and SD under the Agreement that is subject to the mandatory clearing requirements under Section 2(h) of the Commodity Exchange Act, CP has the sole right to select the DCO at which the Swap will be cleared.[49]

b. If CP is not a Regulated Swap Entity, with respect to any Swap entered into between CP and SD under the Agreement that is not subject to the mandatory clearing requirements under Section 2(h) of the Commodity Exchange Act, CP may elect to clear such Swap and has the sole right to select the DCO at which the Swap will be cleared.[50]

2.25. Special Entities

a. If CP is an employee benefit plan defined in Section 3 of ERISA that is not subject to Title I of ERISA, SD hereby notifies CP of its right to elect to be treated as a special entity pursuant to CFTC Regulation 23.430(c).[51]

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[48] CFTC Regulation 23.431(d)(3). The EBCR require the SDs to provide a daily "mid-market" mark that satisfies certain regulatory requirements. While the EBCR acknowledge that this mark may be different than the mark the SD uses for other purposes (including internal valuations and margin purposes), it requires the SD to notify CPs of that fact. This notice is meant to satisfy that regulatory duty.

[49] CFTC Regulation 23.432(a). This is a required notification under CFTC Regulation 23.432(a).

[50] CFTC Regulation 23.432(b). This is a required notification under CFTC Regulation 23.432(b).

[51] CFTC Regulation 23.430(c). This is a required notification under CFTC Regulation 23.430(c).

Schedule 3
Institutional Suitability Safe Harbors for Non-Special Entities[52]

This DF Schedule 3 may be incorporated into an agreement between a Swap Dealer and any other party that is not a Regulated Swap Entity or a Special Entity.

If the parties to an agreement have specified that this DF Schedule 3 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this DF Schedule 3 shall be deemed to be a part of such agreement to the same extent as if this DF Schedule 3 were restated therein in its entirety. If the party that is not a Regulated Swap Entity or Special Entity has one or more Designated Evaluation Agents, this DF Schedule 3 will only be incorporated into an agreement if such party and each such Designated Evaluation Agent have agreed to make the representations and agreements in this DF Schedule 3 that are applicable to it.[53]

Part I. Representations and Agreements Applicable if Counterparty Has One or More Designated Evaluation Agents.[54]

3.1. If (i) CP has designated one or more agents as Designated Evaluation Agents and (ii) each such Designated Evaluation Agent has agreed in writing to make the representations and agreements in Sections 3.1(b) and 3.1(c):

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[52] Under the EBCR, certain so-called "suitability" obligations are triggered when an SD makes a "recommendation" regarding a swap or a trading strategy or an offer to enter into a swap. Such obligations may be satisfied through safe harbors available under the EBCR. DF Schedule 3 provides the representations and agreements necessary to satisfy the safe harbor available for CPs who are not "special entities." DF Schedule 3 is not relevant to an agreement between an SD and another SD or a major swap participant, because SDs are not subject to suitability requirements when transacting with such counterparties.

In the absence of a safe harbor, a dealer would need to conduct extensive due diligence in order to meet its regulatory obligations to understand the CP's investment profile, trading objectives, ability to absorb potential losses, etc. These enhanced diligence and compliance obligations for the SD could cause the parties to incur increased time and costs prior to trading..

[53] For a pair of counterparties who have adhered to the August 2012 DF Protocol and exchanged Questionnaires, this DF Schedule 3 will be incorporated into the agreements that are covered by the Protocol *if* both parties have elected to do so and are eligible to do so (*i.e.*, this DF Schedule is optional under the Protocol).

[54] A CP that has one or more investment managers that have discretion to trade for the CP's account may satisfy the safe harbor by (i) representing that the CP has complied with policies and procedures designed to ensure that each investment manager is capable of evaluating swaps, and (ii) having the investment manager represent that it will exercise independent judgment in evaluation any swaps recommended by the SD. These representations are provided in Part I of this DF Schedule 3. A CP accomplishes this by simply representing to the SD that each investment manager is a "Designated Evaluation Agent" (which may be accomplished through the Protocol in the Questionnaire). To satisfy the safe harbor, this DF Schedule then provides that each Designated Evaluation Agent must make the representations and agreements set forth in this Part I.

Please note that CP is <u>not</u> required to designate a "Designated Evaluation Agent" to enter into Schedule 3, provided that CP can make the representations about itself in Part II of DF Schedule 3. In addition, please note that the term "Designated Evaluation Agent" is defined to exclude an employee of the CP.

a. CP represents to SD (which representation is deemed repeated by CP as of the occurrence of each Swap Communication Event) that CP has complied in good faith with written policies and procedures that are reasonably designed to ensure that each of its Designated Evaluation Agents is capable of evaluating Swap Recommendations (if any) of SD and making trading decisions on behalf of CP;[55]

b. Each Designated Evaluation Agent represents to SD (which representation is deemed repeated by such Designated Evaluation Agent as of the occurrence of each Swap Communication Event involving such Designated Evaluation Agent) that such Designated Evaluation Agent is exercising independent judgment in evaluating all Swap Recommendations (if any) of SD that are presented to it;[56] and

c. Each Designated Evaluation Agent agrees to promptly notify SD in writing in accordance with the Notice Procedures if any representations made by such Designated Evaluation Agent in this DF Supplement become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the Designated Evaluation Agent shall timely amend such representation by giving notice of such amendment to SD in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 3.1(c) shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.[57]

d. CP represents (which representations are deemed repeated by CP as of the occurrence of each Swap Communication Event) that it will exercise independent judgment in consultation with a Designated Evaluation Agent, in evaluating all Swap Recommendations (if any) of SD that are presented to CP with respect to Swaps to be executed by CP on its own behalf.

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[55] CFTC Regulation 23.434(c)(1).

[56] CFTC Regulation 23.434(b)(2). Note that Designated Evaluation Agents are only asked to represent that they evaluate swap recommendations presented to them and not to other persons or the underlying account. This is to accommodate counterparties who may have multiple Designated Evaluation Agents who would not want to make representations relating to swaps for which they are not responsible.

[57] CFTC Regulation 23.402(d). This provision matches the language in Section 2.3 and is necessary to ensure that the SD may continue to "reasonably" rely upon the representations of the Designated Evaluation Agent for each new trade.

Part II. **Representations Applicable if Counterparty Does Not Have a Designated Evaluation Agent.**[58]

3.2. If CP has not designated a Designated Evaluation Agent, CP represents to SD (which representations are deemed repeated by CP as of the occurrence of each Swap Communication Event) that:

a. CP has complied in good faith with written policies and procedures that are reasonably designed to ensure that the persons responsible for evaluating all Swap Recommendations (if any) regarding a Swap and making trading decisions on behalf of CP are capable of doing so; and[59]

b. CP is exercising independent judgment in evaluating all Swap Recommendations (if any).[60]

Part III. **Disclosures of a Swap Dealer.**

3.3. SD hereby discloses to CP (which disclosure is deemed repeated by SD as of the occurrence of each Swap Communication Event) that SD is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any Swap or trading strategy involving a Swap for CP.[61]

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[58] This Part II is primarily for use by CPs who will be making trading decisions in-house or who do not wish to designate their investment managers as "Designated Evaluation Agents." This option has the benefit of permitting the SD to discuss swaps directly with the CP.

[59] CFTC Regulation 23.434(c)(1).

[60] CFTC Regulation 23.434(b)(2).

[61] CFTC Regulation 23.434(b)(3).

Schedule 4
Safe Harbors for Non-ERISA Special Entities[62]

This DF Schedule 4 may be incorporated into an agreement between a Swap Dealer and any Special Entity that is not an ERISA Special Entity; provided that the Special Entity has one or more Designated QIRs, each of whom agrees to the provisions of Part III of this DF Schedule 4 that are applicable to it.

If the parties to an agreement have specified that this DF Schedule 4 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this DF Schedule 4 shall be deemed to be a part of such agreement to the same extent as if this DF Schedule 4 were restated therein in its entirety. This DF Schedule 4 will only be incorporated into an agreement if the Special Entity and each Designated QIR have agreed to make the representations and agreements in this DF Schedule 4 that are applicable to it.[63]

Part I. Representations of a Counterparty.

4.1. CP represents to SD (which representations are deemed repeated by CP as of the occurrence of each Swap Communication Event) that:

a. CP will not rely on Swap Recommendations (if any) provided by SD;[64]

b. CP will rely on advice from a Designated QIR;[65]

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[62] Under the EBCR, certain so-called "suitability" obligations are triggered when an SD makes a "recommendation" regarding a swap or a trading strategy or an offer to enter into a swap. Such obligations may be satisfied through safe harbors available under the EBCR. DF Schedule 4 provides the representations and agreements necessary to satisfy the safe harbor available for CPs who are "Non-ERISA special entities" (*i.e.*, special entities that are not subject to ERISA, such as federal agencies; states; municipalities; agencies, instrumentalities and corporations of a state or municipality; government benefit plans, endowments and other employment benefit plans that are not subject to ERISA).

In the absence of a safe harbor, a dealer would need to conduct extensive due diligence in order to meet its regulatory obligations to understand the CP's investment profile, trading objectives, ability to absorb potential losses, etc. These enhanced diligence and compliance obligations for the SD could cause the parties to incur increased time and costs prior to trading. Under CFTC Regulation 23.450, an SD is obligated to make a reasonable determination that a non-ERISA special entity has a "qualified independent representative" or "QIR" meeting specified standards before trading with that counterparty. This DF Schedule provides representations and agreements on which the SD may rely to satisfy that obligation.

It should be noted that a recommendation to a special entity that involves a bespoke swap (*i.e.*, one that has been structured or "tailored" for the special entity) imposes upon the SD the duty to act "in the best interest" of the special entity. This DF Schedule provides representations that create a safe harbor from those duties, *provided* that the dealer counterparty and its personnel do not express an "opinion" about the advisability of entering into the bespoke swap.

[63] For a pair of counterparties who have adhered to the August 2012 DF Protocol and exchanged Questionnaires, this DF Schedule 4 will be incorporated into the agreements that are covered by the Protocol *if* both parties have elected to do so and are eligible to do so (*i.e.*, this DF Schedule is optional under the Protocol), and each Designated QIR has agreed to make the representations and agreements applicable to it.

[64] CFTC Regulation 23.440(b)(2)(ii)(A).

[65] CFTC Regulation 23.440(b)(2)(ii)(B).

c. CP has complied in good faith with written policies and procedures reasonably designed to ensure that each Designated QIR selected by CP satisfies the applicable requirements of CFTC Regulation 23.450(b)(1), and that such policies and procedures provide for ongoing monitoring of the performance of such representative consistent with the requirements of CFTC Regulation 23.450(b)(1);[66] and

d. CP will exercise independent judgment in consultation with a Designated QIR, in evaluating all Swap Recommendations (if any) of SD that are presented to CP with respect to Swaps to be executed by CP on its own behalf.

Part II. Disclosures of a Swap Dealer.

4.2. SD discloses to CP (which disclosures are deemed repeated by SD as of the occurrence of each Swap Communication Event) that:

a. SD is not undertaking to act in the best interests of CP;[67] and

b. SD is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any Swap or trading strategy involving a Swap for CP.[68]

Part III. Representations and Agreements of a Designated QIR.[69]

4.3. Each Designated QIR represents to SD and CP (which representations are deemed repeated by such Designated QIR as of the occurrence of each Swap Communication Event involving such Designated QIR) that:

a. Such Designated QIR has written policies and procedures reasonably designed to ensure that the Designated QIR satisfies the applicable requirements of CFTC Regulation 23.450(b)(1);[70]

b. Such Designated QIR is exercising independent judgment in evaluating all Swap Recommendations (if any) of SD that are presented to it;[71]

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66 CFTC Regulation 23.450(d)(1)(i); 23.434(c)(ii).

67 CFTC Regulation 23.440(b)(2)(iii).

68 CFTC Regulation 23.434(b)(3).

69 Note that this Schedule permits the special entity to designate multiple QIRs.

70 CFTC Regulation 23.450(d)(1)(ii)(A).

71 CFTC Regulation 23.434(b)(2).

c. Unless such Designated QIR otherwise notifies SD in writing in accordance with the Notice Procedures, which notification shall become effective on the Notice Effective Date:[72]

1. Such Designated QIR is not and, within one year of representing CP in connection with the Swap has not been, an "associated person," as such term is defined in Section 1a(4) of the Commodity Exchange Act, of SD;[73]

2. There is no "principal relationship" (as that term is defined in CFTC Regulation 23.450(a)(1)) between the Designated QIR and SD;[74]

3. Such Designated QIR (i) provides timely and effective disclosures to CP of all material conflicts of interest that could reasonably affect the judgment or decision making of such Designated QIR with respect to its obligations to CP and (ii) complies with policies and procedures reasonably designed to manage and mitigate such material conflicts of interest;[75]

4. Such Designated QIR is not directly or indirectly, through one or more persons, controlled by, in control of, or under common control with SD;[76] and

5. To the best of such Designated QIR's knowledge, SD did not refer, recommend, or introduce such Designated QIR to CP within one year of such Designated QIR's representation of CP in connection with the Swap; and [77]

d. Such Designated QIR is legally obligated to comply with the applicable requirements of CFTC Regulation 23.450(b)(1) by agreement, condition of employment, law, rule, regulation, or other enforceable duty.[78]

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[72] CFTC Regulation 23.450(c). The following representations are intended to establish that the special entity's representative satisfies independence standards necessary to qualify as a QIR.

[73] CFTC Regulation 23.450(c)(1).

[74] CFTC Regulation 23.450(c)(2). Regulation 23.450(a)(1) provides that a "principal relationship" means "where a swap dealer . . . is a principal of the representative of a Special Entity or the representative of a Special Entity is a principal of the swap dealer." Under CFTC Regulation 3.1, a "principal" generally means executive officers, persons in charge of business units, board members, and persons/entities with ownership relationships to the relevant entity.

[75] CFTC Regulation 23.450(c)(3).

[76] CFTC Regulation 23.450(c)(4).

[77] CFTC Regulation 23.450(c)(5). Note that, to facilitate a QIR making these representations, clause (5) has been qualified by a "knowledge" standard, even though the regulatory standard is not so qualified.

[78] CFTC Regulation 23.450(d)(1)(ii)(C).

4.4. Each Designated QIR agrees to promptly notify SD in writing in accordance with the Notice Procedures if any representations made by such Designated QIR in this DF Supplement become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the Designated QIR shall timely amend such representation by giving notice of such amendment to SD in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 4.4 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.[79]

[79] CFTC Regulation 23.402(d). This provision matches the language in Section 2.3 and is necessary to ensure that the SD may continue to "reasonably" rely upon the representations of the Designated QIR for each new trade.

Schedule 5
Safe Harbors for ERISA Special Entities (Option 1)[80]

This DF Schedule 5 may be incorporated into an agreement between a Swap Dealer and an ERISA Special Entity; provided that the ERISA Special Entity has one or more Designated Fiduciaries, each of whom agrees to the provisions of Part III of this DF Schedule 5 that are applicable to it. If the relevant Swap Dealer and ERISA Special Entity so agree, both DF Schedule 5 and DF Schedule 6 may be incorporated into an agreement.

If the parties to an agreement have specified that this DF Schedule 5 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this DF Schedule 5 shall be deemed to be a part of such agreement to the same extent as if this DF Schedule 5 were restated therein in its entirety. This DF Schedule 5 will only be incorporated into an agreement if the ERISA Special Entity and each Designated Fiduciary have agreed to make the representations and agreements in this DF Schedule 5 that are applicable to it.[81]

Part I. Representations of a Counterparty.

5.1. CP represents to SD (which representations are deemed repeated by CP as of the occurrence of each Swap Communication Event) that:

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[80] Under the EBCR, certain so-called "suitability" obligations are triggered when an SD makes a "recommendation" regarding a swap or a trading strategy or an offer to enter into a swap. Such obligations may be satisfied through safe harbors available under the EBCR. DF Schedule 5 provides the representations and agreements necessary to satisfy the safe harbor available for counterparties who are "special entities" that are subject to ERISA. DF Schedule 6 provides an alternative set of representations and agreements for such counterparties.

It should be noted that under CFTC Regulation 23.440, a recommendation to a special entity that involves a bespoke swap (*i.e.*, one that has been structured or "tailored" for the special entity) imposes upon the SD the duty to act "in the best interests" of the special entity. The EBCR provide two safe harbors for special entities subject to ERISA. DF Schedule 6 provides representations that satisfy the conditions of the safe harbor that is available so long as the SD and its personnel do not express an "opinion" about the advisability of entering into the bespoke swap. This DF Schedule 5, on the other hand, provides representations that satisfy the conditions of the safe harbor that does not prohibit the expression of an opinion.

In the absence of a safe harbor, a dealer would need to conduct extensive due diligence in order to meet its regulatory obligations to understand the CP's investment profile, trading objectives, ability to absorb potential losses, etc. The obligations on the SD are further heightened in the case of recommendations of bespoke swaps. These enhanced diligence and compliance obligations for the SD could cause the parties to incur increased time and costs prior to trading.

Under CFTC Regulation 23.450, an SD is obligated to make a reasonable determination that an ERISA special entity has an ERISA fiduciary before trading with that counterparty. This DF Schedule provides representations and agreements on which the swap dealer may rely to satisfy that obligation.

[81] For a pair of counterparties who have adhered to the August 2012 DF Protocol and exchanged Questionnaires, this DF Schedule 5 will be incorporated into the agreements that are covered by the Protocol *if* both parties have elected to do so and are eligible to do so (*i.e.*, this DF Schedule is optional under the Protocol), and each Designated Fiduciary has agreed to make the representations and agreements applicable to it.

a. Each of its Designated Fiduciaries is a "fiduciary" as defined in Section 3 of ERISA and a Designated Fiduciary is responsible for representing CP in connection with each Swap or trading strategy involving a Swap;[82]

b. Either:[83]

1. CP will comply in good faith with written policies and procedures reasonably designed to ensure that any recommendation CP receives from SD materially affecting a Swap transaction is evaluated by a Designated Fiduciary before the transaction occurs; or[84]

2. Any recommendation CP receives from SD materially affecting a Swap transaction will be evaluated by a Designated Fiduciary before the transaction occurs; and[85]

c. CP will exercise independent judgment in consultation with a Designated Fiduciary, in evaluating all Swap Recommendations (if any) of SD that are presented to CP with respect to Swaps to be executed by CP on its own behalf.[86]

Part II. Disclosures of a Swap Dealer.

5.2. SD discloses to CP (which disclosures are deemed repeated by SD as of the occurrence of each Swap Communication Event) that:

a. SD is not undertaking to act in the best interests of CP;[87] and

b. SD is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any Swap or trading strategy involving a Swap for CP.[88]

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[82] CFTC Regulations 23.440(b)(1)(i) and 23.450(d)(2). Note that this Schedule permits the special entity to designate multiple fiduciaries.

[83] This provision, which comes directly from CFTC Regulation 23.440(b)(1)(iii), gives ERISA special entities the option to satisfy the safe harbor requirements without having written policies and procedures.

[84] CFTC Regulation 23.440(b)(1)(iii)(A).

[85] CFTC Regulation 23.440(b)(1)(iii)(B).

[86] This representation is not explicitly required in the safe harbor, but is included to cover situations in which the SD may be communicating about potential trades directly with a special entity rather than its fiduciary.

[87] CFTC Regulation 23.440(b)(2)(iii).

[88] CFTC Regulation 23.434(b)(3).

Part III. Representations and Agreements of a Designated Fiduciary.

5.3. Each Designated Fiduciary represents to SD and CP (which representations are deemed repeated by such Designated Fiduciary as of the occurrence of each Swap Communication Event involving such Designated Fiduciary) that:

a. Such Designated Fiduciary is not relying on Swap Recommendations (if any) provided by SD; and[89]

b. Such Designated Fiduciary is exercising independent judgment in evaluating all Swap Recommendations (if any) of SD that are presented to it.[90]

5.4. Each Designated Fiduciary agrees to promptly notify SD in writing in accordance with the Notice Procedures if any representations made by such Designated Fiduciary in this DF Supplement become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the Designated Fiduciary shall timely amend such representation by giving notice of such amendment to SD in accordance with the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 5.4 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.[91]

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[89] CFTC Regulation 23.440(b)(1)(ii). Note that the safe harbor for ERISA special entities expressly requires that this representation must come from the fiduciary rather than the special entity.

[90] CFTC Regulation 23.434(b)(2).

[91] CFTC Regulation 23.402(d). This provision matches the language in Section 2.3 and is necessary to ensure that the dealer counterparty may continue to "reasonably" rely upon the representations of the Designated Fiduciary for each new trade.

Schedule 6
Safe Harbors for ERISA Special Entities (Option 2)[92]

This DF Schedule 6 may be incorporated into an agreement between a Swap Dealer and an ERISA Special Entity; provided that the ERISA Special Entity has one or more Designated Fiduciaries, each of whom agrees to the provisions of Part III of this DF Schedule 6 that are applicable to it. If the relevant Swap Dealer and ERISA Special Entity so agree, both DF Schedule 5 and DF Schedule 6 may be incorporated into an agreement.

If the parties to an agreement have specified that this DF Schedule 6 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this DF Schedule 6 shall be deemed to be a part of such agreement to the same extent as if this DF Schedule 6 were restated therein in its entirety. This DF Schedule 6 will only be incorporated into an agreement if the ERISA Special Entity and each Designated Fiduciary have agreed to make the representations and agreements in this DF Schedule 6 that are applicable to it.[93]

Part I. Representations of a Counterparty.

6.1. CP represents to SD (which representations are deemed repeated by CP as of the occurrence of each Swap Communication Event) that:

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[92] Under the EBCR, certain so-called "suitability" obligations are triggered when an SD makes a "recommendation" regarding a swap or a trading strategy or an offer to enter into a swap. Such obligations may be satisfied through safe harbors available under the EBCR. DF Schedule 6 provides the representations and agreements necessary to satisfy the safe harbor available for counterparties who are "special entities" that are subject to ERISA. DF Schedule 5 provides an alternative set of representations and agreements for such counterparties. It should be noted that under CFTC Regulation 23.440, a recommendation to a special entity that involves a bespoke swap (*i.e.*, one that has been structured or "tailored" for the special entity) imposes upon the SD the duty to act "in the best interests" of the special entity. The EBCR provide two safe harbors for special entities subject to ERISA. This DF Schedule 6 provides representations that satisfy the conditions of the safe harbor that is available so long as the SD and its personnel do not express an "opinion" about the advisability of entering into the bespoke swap. DF Schedule 5, on the other hand, provides representations that satisfy the conditions of the safe harbor that does not prohibit the expression of an opinion.

In the absence of a safe harbor, a dealer would need to conduct extensive due diligence in order to meet its regulatory obligations to understand the CP's investment profile, trading objectives, ability to absorb potential losses, etc. The obligations on the SD are further heightened in the case of recommendations of bespoke swaps. These enhanced diligence and compliance obligations for the SD could cause the parties to incur increased time and costs prior to trading.

Under CFTC Regulation 23.450, an SD is obligated to make a reasonable determination that an ERISA special entity has an ERISA fiduciary before trading with that counterparty. This DF Schedule provides representations and agreements on which the swap dealer may rely to satisfy that obligation.

[93] For a pair of counterparties who have adhered to the August 2012 DF Protocol and exchanged Questionnaires, this DF Schedule 6 will be incorporated into the agreements that are covered by the Protocol *if* both parties have elected to do so and are eligible to do so (*i.e.*, this DF Schedule is optional under the Protocol), and each Designated Fiduciary has agreed to make the representations and agreements applicable to it.

a. Each of its Designated Fiduciaries is a "fiduciary" as defined in Section 3 of ERISA;[94]

b. CP will not rely on recommendations (if any) provided by SD;[95]

c. CP will rely on advice from a Designated Fiduciary; and[96]

d. CP will exercise independent judgment in consultation with a Designated Fiduciary, in evaluating all Swap Recommendations (if any) of SD that are presented to CP with respect to Swaps to be executed by CP on its own behalf.

Part II. Disclosures of a Swap Dealer.

6.2. SD discloses to CP (which disclosures are deemed repeated by SD as of the occurrence of each Swap Communication Event) that:

a. SD is not undertaking to act in the best interests of CP; and [97]

b. SD is acting in its capacity as a counterparty and is not undertaking to assess the suitability of any Swap or trading strategy involving a Swap for CP. [98]

Part III. Representations and Agreements of a Designated Fiduciary.

6.3. Each Designated Fiduciary represents to SD and CP (which representations are deemed repeated by such Designated Fiduciary as of the occurrence of each Swap Communication Event involving such Designated Fiduciary) that such Designated Fiduciary is exercising independent judgment in evaluating all Swap Recommendations (if any) of SD presented to it.[99]

6.4. Each Designated Fiduciary agrees to promptly notify SD in writing in accordance with the Notice Procedures if any representations made by such Designated Fiduciary in this DF Supplement have become incorrect or misleading in any material respect. For any representation that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the Designated Fiduciary shall timely amend such representation by giving notice of such amendment to SD in accordance with

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[94] CFTC Regulation 23.450(d)(2). Note that this Schedule permits the special entity to designate multiple fiduciaries.

[95] CFTC Regulation 23.440(b)(2)(ii)(A).

[96] CFTC Regulation 23.440(b)(2)(ii)(B).

[97] CFTC Regulation 23.440(b)(2)(iii).

[98] CFTC Regulation 23.434(b)(3).

[99] CFTC Regulation 23.434(b)(2).

the Notice Procedures. Notwithstanding anything in the Agreement to the contrary, a notification pursuant to this Section 6.4 shall be effective on the Notice Effective Date and the relevant information or representation will be deemed amended as of such Notice Effective Date.[100]

[100] CFTC Regulation 23.402(d). This provision matches the language in Section 2.3 and is necessary to ensure that the SD may continue to "reasonably" rely upon the representations of the Designated Fiduciary for each new trade.

ISDA Safe, Efficient Markets

International Swaps and Derivatives Association, Inc.

ISDA AUGUST 2012 DF TERMS AGREEMENT[1]

dated as of.....

Annotated in Red as of April 11, 2013

THE ANNOTATIONS AND INSTRUCTIONS IN THIS DOCUMENT DO NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES IN CONNECTION WITH YOUR CONSIDERATION OF THE ISDA AUGUST 2012 DF PROTOCOL OR THE RELATED DOCUMENTS. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISERS THEY DEEM APPROPRIATE AS PART OF THEIR CONSIDERATION OF THE PROTOCOL PRIOR TO ADHERING TO THE PROTOCOL. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

..... and .....[2]

wish to apply certain provisions of the ISDA August 2012 DF Supplement published on August 13, 2012 by the International Swaps and Derivatives Association, Inc. (the "**DF Supplement**") to their trading relationship in respect of Swaps (as defined in the DF Supplement) that are not otherwise governed by such provisions and that are between the parties hereto and/or third parties for whom they execute such Swaps, as further described below.

Accordingly, the parties agree as follows:—

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[1] Parties may enter into the DF Terms Agreement, and select the provisions of the DF Supplement they wish to incorporate therein, by participating in the ISDA August 2012 DF Protocol or by entering into this agreement on a "bilateral" basis. A party wishing to use the DF Protocol to enter into the DF Terms Agreement may do so in the same manner that it uses the DF Protocol to supplement its existing written agreements, *i.e.*, by exchanging Questionnaires with another protocol participant who wishes to enter into a DF Terms Agreement. For further detail on the mechanics of entering into a DF Terms Agreement, *see* Question 10 of Part III of the Questionnaire and the annotations thereto and the Protocol Agreement at Sections 1(b) and 4 and the annotations thereto.

[2] Insert name of each Executing Party (including "as agent for [*name of DF Terms Principal*]" if applicable).

1. Use and Scope of this Agreement[3]

(a) Each party executing this ISDA August 2012 DF Terms Agreement, including any Annex hereto, (the "**Agreement**") is doing so on behalf of itself or on behalf of a third party, in either case with respect to Covered Swaps (as defined below). Each party executing this Agreement is referred to herein as an "**Executing Party**." The party on behalf of whom the Executing Party is executing this Agreement is referred to herein as a "**DF Terms Principal.**" For the avoidance of doubt, (i) a party that executes this Agreement as agent on behalf of a third-party DF Terms Principal will be understood to be the Executing Party for that DF Terms Principal and (ii) a party that executes this Agreement on its own behalf will be understood to be both a DF Terms Principal and the Executing Party for itself as DF Terms Principal.[4]

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[3] This DF Terms Agreement serves the limited purpose of allowing parties to apply selected provisions of the DF Supplement to their trading relationship in respect of swaps, irrespective of whether or not such relationship is governed by an existing written agreement. Like the DF Supplement, the DF Terms Agreement is designed to be used by any pair of parties, provided that at least one of the parties is a swap dealer.

This DF Terms Agreement is a "bare-bones" agreement that (i) sets forth its intended scope, (ii) provides that the parties thereto automatically agree to incorporate DF Schedules 1 and 2 into such agreement, (iii) allows the parties thereto to elect to incorporate DF Schedules 3 through 6, and (iv) includes basic representations, governing law, address for notices and other basic contract provisions.

Parties should consider entering into a DF Terms Agreement if at least one of them is a swap dealer and either of the following circumstances apply:

(a) the parties may execute swaps that are not governed by an existing ISDA Master Agreement, an execution agreement (such as the FIA Swaps Execution Agreement) or other written agreement between the parties, including swaps that are executed by a party to be cleared or swaps that are executed to be "given up" to a third-party derivatives dealer or "prime broker," or

(b) the parties may not have yet entered into an ISDA Master Agreement or other written agreement, but would like to begin offering or entering into swaps, including swaps to be documented on "long-form confirmations."

Also, in parts of the foreign exchange market it is common for trades to not be documented under master agreements. In these cases and others, the DF Terms Agreement would allow for the swaps to be covered by the relevant provisions of the DF Supplement.

Parties should be aware that the DF Terms Agreement, on its own, would not satisfy the requirements of CFTC Regulation 23.504, which requires "swap trading relationship documentation" between the parties to a Swap. In the ISDA March 2013 DF Protocol, parties can elect to enter into a deemed ISDA Master Agreement that would serve to satisfy the requirements of Regulation 23.504 for swaps not otherwise governed by master agreements. Regulation 23.504 is scheduled to go into effect on July 1, 2013.

[4] Like the other components of the DF Protocol, the DF Terms Agreement differentiates between the parties that make the representations and agreements provided in the DF Supplement (such parties are called "DF Terms Principals" in this DF Terms Agreement), and parties that may execute the DF Terms Agreement as agents for those parties. The DF Terms Agreement is drafted according to the principle that the party who executes the DF Terms Agreement (whether through the DF Protocol or on a bilateral basis) is the party that may execute swaps covered by its terms. To address situations where an investment manager or other third party agent will execute swaps on behalf of a client, the relevant agent should execute the DF Terms Agreement as agent for the relevant party. This may be done via the Protocol by such agent delivering a Questionnaire as "PCA Agent." To address situations where a party will execute swaps on its own behalf, that party should execute the DF Terms Agreement. This may be done via the Protocol by such party delivering a Questionnaire as "PCA Principal."

(b) This Agreement will apply to the trading relationship between DF Terms Principals in respect of all Covered Swaps executed, or proposed to be executed, by the Executing Parties on behalf of those DF Terms Principals. "**Covered Swap**" means any Swap that is (i) executed, or is proposed to be executed, by the Executing Parties on behalf of their respective DF Terms Principals, (ii) either (A) a Swap between the DF Terms Principals, or (B) a Swap between a DF Terms Principal (the "**Remaining Principal**") and a third party derivatives dealer (the "**Prime Broker**") entered into pursuant to an arrangement between the Remaining Principal and the Prime Broker permitting the Remaining Principal and the Executing Party for the other DF Terms Principal to negotiate and/or execute Swaps between the Remaining Principal and the Prime Broker (any such swap, a "**Prime Covered Swap**"), and (iii) not governed by an existing written agreement executed by the Executing Parties on behalf of their respective DF Terms Principals that incorporates provisions of the DF Supplement.

2. Incorporation of the DF Supplement

(a) ***Automatic Incorporation.*** Subject to Section 3 of this Agreement, Schedules 1 and 2 of the DF Supplement are incorporated to the same extent as if each such schedule were restated herein in its entirety.

(b) ***Elective Incorporation.*** The DF Terms Principals may also agree to incorporate Schedules 3, 4, 5 and/or 6 of the DF Supplement herein by specifying in an Annex hereto that any one or more of such Schedules of the DF Supplement will be incorporated herein. Subject to Section 3 of this Agreement, each such Schedule of the DF Supplement that the parties elect to incorporate herein will be incorporated to the same extent as if each such Schedule were restated herein in its entirety.

3. Modification and Interpretation of the DF Supplement

(a) The DF Terms Principals agree that the DF Supplement will be deemed amended for the purposes of any transactions in Prime Covered Swaps, as follows:

(i) ***Swap Transaction Event.*** The definition of "Swap Transaction Event" is hereby amended by replacing the term "Swap" each time it appears therein with the term "Prime Covered Swap."

(ii) ***Agreement to Provide Information.*** Section 2.4 of the DF Supplement is hereby amended by replacing the term "Swap" therein with the term "Prime Covered Swap."

(iii) ***Material Confidential Information.*** Subsection b. of Section 2.15 of the DF Supplement is hereby amended by adding "or Prime Broker" immediately following the term "CP" therein.

(iv) ***Daily Marks.*** Section 2.18 of the DF Supplement is hereby amended by adding "or Prime Broker" immediately following the term "CP" in the second line thereof.

(v) ***Suitability.*** Section 3.3, subsection b. of Section 4.2, subsection b. of Section 5.2 and subsection b. of Section 6.2 are each hereby amended by replacing the term "Swap" each time it appears therein with the term "Prime Covered Swap."

(b) The DF Terms Principals agree that for the purposes of applying any provision of the DF Supplement to a transaction in Covered Swaps, the provisions of the DF Supplement will be construed so that such provisions will apply to such parties to the same extent, and will have the same effect, for all Covered Swaps, including Prime Covered Swaps, notwithstanding the fact that a Prime Covered Swap will not be a Swap between such parties. The DF Terms Principals also agree that for the purposes of this Agreement any reference in the DF Supplement to a Swap under the Agreement (as defined in the DF Supplement) will be construed to be a reference to a Covered Swap.

4. Representations

(a) ***DF Terms Principal Representations.*** Each DF Terms Principal makes the following representations (which representations will be deemed to be repeated by each DF Terms Principal on each date on which a Covered Swap is executed):

(i) ***Status.*** It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing;

(ii) ***Powers.*** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance;

(iii) ***No Violation or Conflict.*** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) ***Consents.*** All governmental and other consents that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) ***Obligations Binding.*** Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) ***Executing Party Representations.*** Each Executing Party executing this Agreement as agent on behalf of a third-party DF Terms Principal, if any, makes the following representations (which representations will be deemed to be repeated by each Executing Party on each date on which a Covered Swap is executed):

(i) ***Status.*** It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing;

(ii) ***Powers.*** It has the power to execute this Agreement and any other documentation relating to this Agreement on behalf of the DF Terms Principal in respect of whom it has executed this Agreement, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorize such execution, delivery and performance, in each case, on behalf of the DF Terms Principal in respect of whom it has executed this Agreement;

(iii) ***No Violation or Conflict.*** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) ***Consents.*** All governmental and other consents that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) ***Obligations Binding.*** Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and

subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

5. Agreements

Each DF Terms Principal and each Executing Party executing this Agreement as agent on behalf of a third-party DF Terms Principal, if any, agrees that, so long as either party has or may have any obligation under this Agreement:—

(a) ***Maintain Authorizations.*** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement and will use all reasonable efforts to obtain any that may become necessary in the future.

(b) ***Comply with Laws.*** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement.

6. Miscellaneous

(a) ***Inconsistency.*** In the event of any inconsistency between the provisions of the Annex and the provisions of this Agreement, the Annex will prevail.

(b) ***Entire Agreement.*** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter. Each of the parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a party for fraud.

(c) ***Amendments.*** An amendment, modification or waiver in respect of this Agreement will only be effective if in writing (including a writing evidenced by a facsimile transmission or by any other means acceptable to the parties) and executed by each of the parties or confirmed by an exchange of telexes, by an exchange of electronic messages on an electronic messaging system or by any other means acceptable to the parties.

(d) ***Counterparts.*** This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission, by electronic messaging system or by any other means acceptable to the parties), each of which will be deemed an original.

(e) ***No Waiver of Rights.*** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and 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.

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

7. Notices

(a) ***Effectiveness.*** Any notice or other communication in respect of this Agreement may be given in any manner described below, or in any other manner agreed by the parties, to the address or number or in accordance with the electronic messaging system or e-mail or other details provided (in an Annex or otherwise) and will be deemed effective as indicated:—

(i) if in writing and delivered in person or by courier, on the date it is delivered;

(ii) if sent by facsimile transmission, on the date it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iii) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered or its delivery is attempted;

(iv) if sent by electronic messaging system, on the date it is received;

(v) if sent by e-mail, on the date it is delivered; or

(vi) if sent by any other means agreed by the parties, on the date determined in accordance with the relevant agreement of the parties;

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication will be deemed given and effective on the first following day that is a Local Business Day.

(b) ***Change of Details.*** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system, e-mail or other notice details at which notices or other communications are to be given to it.

8. Governing Law and Jurisdiction

(a) ***Governing Law.*** This Agreement will be governed by and construed in accordance with the laws of the State of New York (without reference to choice of law doctrine).

(b) ***Jurisdiction.*** With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Agreement ("**Proceedings**"), each party:

(i) irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City;

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party; and

(iii) agrees, to the extent permitted by applicable law, that the bringing of Proceedings in any one or more jurisdictions will not preclude the bringing of Proceedings in any other jurisdiction.

9. Definitions

As used in this Agreement:—

"***Agreement***" has the meaning specified in Section 1.

"***Annex***" means any annex or other agreement in writing between the parties that supplements or amends this Agreement.

"***Covered Swap***" has the meaning specified in Section 1.

"***DF Supplement***" has the meaning specified in the preamble.

"***DF Terms Principal***" has the meaning specified in Section 1.

"***electronic messages***" does not include e-mails but does include documents expressed in markup languages, and "***electronic messaging system***" will be construed accordingly.

"***Executing Party***" has the meaning specified in Section 1.

"***law***" includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority), and "unlawful" will be construed accordingly.

"***Local Business Day***" means a day on which commercial banks are open for general business (including dealings in foreign exchange and foreign currency deposits) in the place specified in the address for notice provided by the recipient.

"***Prime Broker***" has the meaning specified in Section 1.

"***Prime Covered Swap***" has the meaning specified in Section 1.

"***Proceedings***" has the meaning specified in Section 8.

"***Remaining Principal***" has the meaning specified in Section 1.

IN WITNESS WHEREOF the parties have executed this Agreement with effect from the date specified on the first page of this Agreement.

.....	.....[5]
By:.....	By:.....
Name:	Name:
Title:	Title:

If Executing Party is executing this Agreement as agent on behalf of a third-party DF Terms Principal, it must execute this Agreement below to make the representations and agreements applicable to it as Executing Party in Sections 4(b) and 5 of this Agreement:

.....	.....
(Name of Executing Party)	(Name of Executing Party)
By:.....	By:.....
Name:	Name:
Title:	Title:

[5] Insert name of each Executing Party (including "as agent for [*name of DF Terms Principal*]" if applicable).

ISDA®

International Swaps and Derivatives Association, Inc.

ANNEX
to the
ISDA AUGUST 2012 DF TERMS AGREEMENT

dated as of .....

between ..... and .....[6]
("Party A") ("Party B")

Part 1. Incorporation of the DF Supplement.

[Schedule[s] [3][4][5] and/or [6] of the DF Supplement [is][are] incorporated into the Agreement.][7] [No additional Schedule of the DF Supplement is incorporated into this Agreement.]

Part 2. Address for Notices.

For the purpose of Section 7 of this Agreement:—

Address for notices or communications to Party A:—

Address: .....

Attention: .....

Facsimile No.: ..... Telephone No.: .....

E-mail: .....

Electronic Messaging System Details: .....

Specific Instructions: .....

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6 Insert name of each Executing Party (including "as agent for [*name of DF Terms Principal*]" if applicable).

7 If the parties agree to incorporate Schedule 3 and the non-swap dealer party hereto has identified one or more Designated Evaluation Agents, the non-swap dealer party hereto must cause each of its Designated Evaluation Agent to execute this Annex. If the parties agree to incorporate Schedule 4, the non-swap dealer party hereto must cause each of its Designated QIRs to execute this Annex. If the parties agree to incorporate Schedule 5 and/or 6, the non-swap dealer party hereto must cause each of its Designated Fiduciaries to execute this Annex.

Address for notices or communications to Party B:—

Address: .....

Attention: .....

Facsimile No.: ..... Telephone No.: .....

E-mail: .....

Electronic Messaging System Details: .....

Specific Instructions: .....

IN WITNESS WHEREOF the parties have executed this document with effect from the date specified on the first page of this document.

....[8]

By:..... By:.....
Name: Name:
Title: Title:

By executing this Annex on the relevant signature block below, the signatory agrees to make the representations and agreements applicable to it in the relevant Schedule of the DF Supplement:

[INSERT FULL LEGAL NAME OF DESIGNATED EVALUATION AGENT],[9] solely as [Party B]'s[10] Designated Evaluation Agent and solely to make the representations and agreements applicable to it as Designated Evaluation Agent in Schedule 3 of the DF Supplement.

By: _____
Name:
Title:

[INSERT FULL LEGAL NAME OF DESIGNATED QIR],[11] solely as [Party B]'s[12] Designated QIR and solely with respect to the representations and agreements applicable to it as Designated QIR in Schedule 4 of the DF Supplement.

By: _____
Name:
Title:

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8 Insert name of each Executing Party (including "as agent for [*name of DF Terms Principal*]" if applicable).

9 Append additional signature blocks or add signature pages as necessary if the non-swap dealer party to this Agreement has multiple Designated Evaluation Agents.

10 This should be a reference to the non-swap dealer party to this Agreement.

11 Append additional signature blocks or add signature pages as necessary if the non-swap dealer party to this Agreement has multiple Designated QIRs.

12 This should be a reference to the non-swap dealer party to this Agreement.

[INSERT FULL LEGAL NAME OF FIDUCIARY],[13] solely as [Party B]'s[14] Designated Fiduciary and solely with respect the representations and agreements applicable to it as Designated Fiduciary in Schedule 5 and/or 6, as applicable, of the DF Supplement.

By: _____
Name:
Title:

[13] Append additional signature blocks or add signature pages as necessary if the non-swap dealer party to this Agreement has multiple Designated Fiduciaries.

[14] This should be a reference to the non-swap dealer party to this Agreement.

ISDA Safe, Efficient Markets

International Swaps and Derivatives Association, Inc.

ADDENDUM II[1]
TO
ISDA AUGUST 2012 DF PROTOCOL QUESTIONNAIRE

published on February 22, 2013
by the International Swaps and Derivatives Association, Inc.
Annotated in Red as of April 11, 2013

THE ANNOTATIONS AND INSTRUCTIONS IN THIS DOCUMENT DO NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES IN CONNECTION WITH YOUR CONSIDERATION OF THE ISDA AUGUST 2012 DF PROTOCOL OR THE RELATED DOCUMENTS. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISERS THEY DEEM APPROPRIATE AS PART OF THEIR CONSIDERATION OF THE PROTOCOL PRIOR TO ADHERING TO THE PROTOCOL. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

Instructions: *This Addendum II provides information needed by Swap Dealers to satisfy additional regulatory provisions under the Commodity Exchange Act and CFTC Regulations. As further described below, this Addendum II is intended to be used to supplement information and*

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[1] This Addendum is intended to address certain provisions of the following final rules:

CFTC, Final Rule, *Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties*, 77 Fed. Reg. 9734 (Feb. 17, 2012).

CFTC, Final Rule, *Clearing Requirement Determination Under Section 2(h) of the CEA*, 77 Fed. Reg. 74284 (Dec. 13, 2012).

CFTC, Final Order, *Final Exemptive Order Regarding Compliance with Certain Swaps Regulations*, 78 Fed. Reg. 858 (Jan. 7, 2013).

CFTC, Final Rule, *Further Definition of "Swap Dealer," "Security-Based Swap Dealer," "Major Swap Participant," "Major Security-Based Swap Participant" and "Eligible Contract Participant,"* 77 Fed. Reg. 30596 (May 23, 2012).

CFTC, Final Rule, *Swap Transaction Compliance and Implementation Schedule: Clearing Requirement Under Section 2(h) of the CEA*, 77 Fed. Reg. 44441 (July 30, 2012).

representations provided in respect of a PCA Principal in the ISDA August 2012 DF Protocol Questionnaire (the "Questionnaire") and the Amended and Restated Addendum I to the Questionnaire. For the avoidance of doubt, the delivery of, or the failure to deliver, this Addendum II will not affect the status of (i) any two PCA Principals as Matched PCA Parties, or (ii) such parties' (a) Questionnaires as Matched Questionnaires or (b) Protocol Covered Agreements as Matched PCAs.

Section 1. Definitions: References in this Addendum II to the following terms shall have the following meanings.

"***Additional Pre-Trade Mark Transaction***" means a transaction (other than a Covered Forex Transaction or Covered Derivative Transaction) for which the CFTC provides no-action or other relief from CFTC Regulation 23.431(a)(3) that is based, in whole or in part, upon the agreement of a party that a Swap Dealer counterparty need not disclose pre-trade mid-market marks.

"***BIS 13 Currencies***" refer to one of the following currencies: US dollar, Euro, Japanese yen, Pound sterling, Australian dollar, Swiss franc, Canadian dollar, Hong Kong dollar, Swedish krona, New Zealand dollar, Singapore dollar, Norwegian krone and Mexican peso.[2]

"***Category 2 Entity***" means a "Category 2 Entity" as defined in CFTC Regulation 50.25(a).[3]

"***CFTC Interim Order U.S. Person***" means a person who is any of the following:

(i) A natural person who is a resident of the United States;

(ii) A corporation, partnership, limited liability company, business or other trust, association, joint-stock company, fund or any form of enterprise similar to any of the foregoing, in each case that is (A) organized or incorporated under the laws of a state or other jurisdiction in the United States or (B) effective as of April 1, 2013 for all such entities other than funds or collective investment vehicles, having its principal place of business in the United States;

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2 CFTC Letter No. 12-42, at text accompanying n. 4 (citing Bank for International Settlements, 2010 BIS Triennial Central Bank Survey, Report on global foreign exchange market activity in 2010 12 (Dec. 2010), *available at* http://www.bis.org/publ/rpfxf10t.pdf).

3 CFTC Regulation 50.25 defines a Category 2 Entity as a Commodity Pool; a private fund as defined in section 202(a) of the Investment Advisers Act of 1940 other than an Active Fund; or a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in section 4(k) of the Bank Holding Company Act of 1956, provided that, in each case, the entity is not a third-party subaccount. *See* 77 Fed. Reg. 44441, 44445-46 & 44456 (July 30, 2012).

(iii) A pension plan for the employees, officers or principals of a legal entity described in (ii) above, unless the pension plan is primarily for foreign employees of such entity;

(iv) An estate of a decedent who was a resident of the United States at the time of death, or a trust governed by the laws of a state or other jurisdiction in the United States if a court within the United States is able to exercise primary supervision over the administration of the trust; or

(v) An individual account or joint account (discretionary or not) where the beneficial owner (or one of the beneficial owners in the case of a joint account) is a person described in (i) through (iv) above.[4]

"***Covered Derivative Transaction***" means a transaction for which real-time tradeable bid and offer prices are available electronically, in the marketplace, to PCA Principal (if such transaction is executed prior to the issuance of final CFTC Regulations governing the registration of swap execution facilities, subject to any compliance implementation period contained therein) or for which real-time executable bid and offer prices are available on a designated contract market or swap execution facility (if such transaction is executed subsequent to the issuance of final CFTC Regulations governing the registration of swap execution facilities, subject to any compliance implementation period therein), and that is: (i) an untranched credit default swap referencing the on-the-run and most recent off-the-run series of the following indices: CDX.NA.IG 5Y, CDX.NA.HY 5Y, iTraxx Europe 5Y and iTraxx Europe Crossover 5yr; or (ii) an interest rate swap (A) in the "fixed-for-floating swap class" (as such term is used in CFTC Regulation 50.4(a)) denominated in USD or EUR, (B) for which the remaining term to the scheduled termination date is no more than 30 years, and (C) that has specifications set out in CFTC Regulation 50.4.[5]

"***Covered Forex Transaction***" means a transaction for which real-time tradeable bid and offer prices are available electronically, in the marketplace, to PCA Principal, and that is: (i) a "foreign exchange forward" or "foreign exchange swap," as defined in Sections 1a(24) and 1a(25) of the Commodity Exchange Act, respectively, that, by its terms, is physically settled, where each currency is one included among the BIS 13 Currencies, and where the transaction has a stated maturity of one year or less; or (ii) a vanilla foreign exchange option that, by its terms, is physically settled, where each currency is one included among the BIS 13 Currencies, and where the option has a stated maturity of six months or less.[6]

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4 78 Fed. Reg. 858, 879 (Jan. 7, 2013).
5 CFTC Letter No. 12-58.
6 CFTC Letter No. 12-42.

"Covered Swaps" means the certain interest rate and credit default swaps in respect of which the CFTC issued a mandatory clearing determination on December 13, 2012.[7]

Capitalized terms used but not otherwise defined in this Addendum II shall have the meanings assigned to such terms in the Questionnaire and Addendum I thereto.

[7] 77 Fed. Reg. 74284 (Dec. 13, 2012).

Section 2. Elections Not to Receive Disclosure of Pre-Trade Mid-Market Marks.[8]

CFTC Regulation 23.431(a)(3) requires a Swap Dealer to disclose pre-trade mid-market marks to a counterparty. As of the date of this Addendum II, the CFTC has issued conditional relief from such requirement for Covered Forex Transactions and Covered Derivatives Transactions. The CFTC may issue conditional relief in the future for other types of transactions.

CFTC Letter No. 12-42 and CFTC Letter No. 12-58 provide that Swap Dealers will not be required to disclose pre-trade mid-market marks in connection with any Covered Forex Transactions or Covered Derivatives Transactions, respectively, provided that PCA Principal agrees in advance, in writing, that the Swap Dealer need not disclose a pre-trade mid-market mark. Protocol Participants may elect to satisfy the conditions set forth in these no-action letters for PCA Principals by responding "Yes" to questions (a) and (b) below.

Protocol Participants may answer "Yes" to the question in paragraph (c) of this Section 2 to agree in advance that Swap Dealers will not be required to disclose pre-trade mid-market marks in connection with any Additional Pre-Trade Mark Transaction.

To answer the following question, complete column 31 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:

(a) Does PCA Principal agree that its Swap Dealer counterparty need not disclose pre-trade mid-market marks in respect of any Covered Forex Transaction?

To answer the following question, complete column 32 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:

(b) Does PCA Principal agree that its Swap Dealer counterparty need not disclose pre-trade mid-market marks in respect of any Covered Derivative Transaction?

To answer the following question, complete column 33 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:

(c) Does PCA Principal agree that its Swap Dealer counterparty need not disclose pre-trade mid-market marks in respect of any Additional Pre-Trade Mark Transaction?

Section 3. Additional PCA Principal Status Representations and Elections: U.S. Person.

Protocol Participants are asked to provide the following information to assist Swap Dealers in determining compliance with certain CFTC regulations in light of the CFTC's Exemptive Order dated December 21, 2012, defining the term "U.S. Person" on an interim basis.[9]

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[8] CFTC Regulation 23.431(a)(3). In certain fast-moving markets, the requirement to provide a pre-trade mid-market mark could limit the ability of the SD to execute a CP's trade on a timely basis. Agreeing to waive the disclosure requirement in the circumstances covered by the CFTC no-action letters (*i.e.*, where the various conditions regarding pricing availability and other factors are addressed) could alleviate some concerns regarding the timing of trading.

The CFTC's definition of "U.S. person" set forth in such order is reproduced in this Addendum as the definition of CFTC Interim Order U.S. person. Please note that clause (ii)(B) thereof is effective as of April 1, 2013. Accordingly, in addition to the answers "Yes" or "No" to this question, prior to April 1, 2013 a PCA Principal may wish to choose the answer "No until April 1, 2013 and Yes thereafter" if it expects to qualify as of April 1, 2013 based upon the effective date of clause (ii)(B). (Alternatively, such PCA Principal may change its "No" answer to "Yes" at a later time.)

To answer the following question, complete column 34 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes," "No," or "No until April 1, 2013 and Yes thereafter," as appropriate:

Is PCA Principal a CFTC Interim Order U.S. Person?

Section 4. Additional PCA Principal Status Representations and Elections: Category 2 Entity.

All Protocol Participants are asked to provide the following information to assist Swap Dealers in determining compliance dates for CFTC Regulation 50.4 relating to the requirement to clear certain swaps. Under Regulation 50.4, Category 2 Entities must comply with the clearing requirement by June 10, 2013, for Covered Swaps.[10]

To answer the following question, complete column 35 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:

Is PCA Principal a Category 2 Entity?[11]

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9 78 Fed. Reg. 858 (Jan. 7, 2013). This question is intended to address the fact that, under the CFTC's cross-border guidance, certain obligations of swap dealers (including, but not limited to due diligence obligations with respect to a counterparty) may hinge on whether the counterparty is a "U.S. person." In the absence of a voluntary representation from a counterparty on this question, a swap dealer may be required to perform additional due diligence on a counterparty in order to determine the counterparty's status under the law.

10 77 Fed. Reg. 74284, 74290 & n. 52 (Dec. 13, 2012).

11 Section 2(h) of the Commodity Exchange Act makes it unlawful, subject to certain exceptions, for any person to engage in a swap that is subject to a mandatory clearing determination unless such swap is submitted for clearing to a registered or exempt derivatives clearing organization. In December 2012, the CFTC issued its first mandatory clearing determination, for certain interest rate and credit default swaps ("Covered Swaps"). *See* Clearing Requirement Determination Under Section 2(h) of the CEA, 77 Fed. Reg. 74284 (Dec. 13, 2012).

Pursuant to CFTC Regulation 50.25, mandatory clearing will be implemented on a phased basis. The second phase of implementation is scheduled to begin on June 10, 2013. Once this second phase begins, Covered Swaps between, among others, Swap Dealers and Category 2 Entities must be submitted for clearing, absent an exemption. PCA Principals should note that Swap Dealers may require this information from a PCA Principal prior to June 10, 2013 to be able to continue transacting in Covered Swaps with such PCA Principal without disruption.

Note: Under the ISDA March 2013 DF Supplement, *see* Part III of Schedule 2 thereto, if a party has not notified a swap dealer whether it is a Category 2 Entity, it may be deemed to make certain representations in connection with a swap that is subject to mandatory clearing if the swap will not be cleared. This would address the fact

that both parties to a Swap are subject to the mandatory clearing requirement of Section 2(h) of the CEA and that the status of a party under the clearing implementation rules may not be easily determined by one party in the absence of a representation from the other.

By executing this Addendum II, the signatory agrees as PCA Principal or PCA Agent for specified PCA Principals that the information and representations provided herein shall be "DF Supplement Information"[12] relating to PCA Principal and may be relied upon by each counterparty to whom this Addendum II is delivered.

[INSERT FULL LEGAL NAME OF PCA PRINCIPAL OR PCA AGENT][13]

By: _____
Name:
Title:
Date:

[12] Under Sections 2.1 and 2.3 of the DF Supplement, PCA Principals make certain representations about information that the parties agree is "DF Supplement Information," and agree to update such representations.

[13] If you are a PCA Agent acting on behalf of one or more PCA Principals insert the following in the signature block: ", acting on behalf of the clients, investors, funds, accounts and/or other principals listed in column 1 of the PCA Principal Answer Sheet."

ISDA Safe, Efficient Markets

International Swaps and Derivatives Association, Inc.

ISDA AUGUST 2012 DF PROTOCOL QUESTIONNAIRE[1]

published on August 13, 2012,[2]
by the International Swaps and Derivatives Association, Inc.
Annotated in Red as of April 11, 2013

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[1] This Questionnaire is intended to address requirements of the following final rules:

(1) CFTC, Final Rule, *Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties*, 77 Fed. Reg. 9734 (Feb. 17, 2012);

(2) CFTC, Final Rule, *Large Trader Reporting for Physical Commodity Swaps*, 76 Fed. Reg. 43851 (July 22, 2011);

(3) CFTC, Final Rule, *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71626 (Nov. 18, 2011);

(4) CFTC, Final Rule, *Real-Time Public Reporting of Swap Transaction Data*, 77 Fed. Reg. 1182 (Jan. 9, 2012);

(5) CFTC, Final Rule, *Swap Data Recordkeeping and Reporting Requirements*, 77 Fed. Reg. 2136 (Jan. 13, 2012);

(6) CFTC, Final Rule, *Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants*, 77 Fed. Reg. 20128 (Apr. 3, 2012); and

(7) CFTC, Final Rule, *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*, 77 Fed. Reg. 35200 (June 12, 2012).

See Amended and Restated Addendum I and Addendum II for additional final rules addressed thereby.

[2] On December 13, 2012, ISDA published the Amended and Restated Addendum I and on February 22, 2013, ISDA published Addendum II. The addenda are intended to provide information needed by Swap Dealers to satisfy additional regulatory provisions under the Commodity Exchange Act and CFTC Regulations. As further described in each addendum, Amended and Restated Addendum I and Addendum II are intended to be used to supplement and/or modify information and representations provided in respect of a PCA Principal in this Questionnaire. (If a party has already submitted a completed Questionnaire, it may complete and deliver Amended and Restated Addendum I and Addendum II to update information and representations previously provided, as necessary.) All PCA Principals and PCA Agents should review and complete relevant portions of Amended and Restated Addendum I and Addendum II. For the avoidance of doubt, the delivery of, or the failure to deliver, one or both of Addendum I or Addendum II will not affect the status of (i) any two PCA Principals as Matched PCA Parties, or (ii) such parties' (a) Questionnaires as Matched Questionnaires or (b) Protocol Covered Agreements as Matched PCAs. (For convenience, Amended and Restated Addendum I and Addendum II are attached at the end of this Questionnaire)

THE ANNOTATIONS AND INSTRUCTIONS IN THIS DOCUMENT DO NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES IN CONNECTION WITH YOUR CONSIDERATION OF THE ISDA AUGUST 2012 DF PROTOCOL OR THE RELATED DOCUMENTS. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISERS THEY DEEM APPROPRIATE AS PART OF THEIR CONSIDERATION OF THE PROTOCOL PRIOR TO ADHERING TO THE PROTOCOL. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

ISDA®

International Swaps and Derivatives Association, Inc.

ISDA August 2012 DF Protocol Questionnaire

dated as of August 13, 2012[3]

Instructions: *A PCA Principal or PCA Agent that has adhered to the Protocol Agreement in the manner specified therein may complete and execute this Questionnaire and deliver it by a means specified in the Protocol Agreement in order to supplement existing Protocol Covered Agreements and/or enter into new Protocol Covered Agreements in the form of the DF Terms Agreement.*

This Questionnaire may be executed and delivered by a PCA Principal on its own behalf or by a PCA Agent on behalf of one or more PCA Principals. By delivering this Questionnaire to another PCA Principal or PCA Agent in a manner specified in the Protocol Agreement, the deliverer may agree to enter into and/or supplement Protocol Covered Agreements with such other PCA Principal or PCA Agent. Where an existing Protocol Covered Agreement was originally executed by a PCA Agent on behalf of one or more PCA Principals, only the relevant PCA Agent (and not a PCA Principal) may use this Questionnaire and the Protocol Agreement to supplement such Protocol Covered Agreement.

In the case of a PCA Principal executing and delivering this Questionnaire on its own behalf, (i) such party must identify itself as the PCA Principal in column 1 of the PCA Principal Answer Sheet, and (ii) this Questionnaire will only be effective to supplement existing Protocol Covered Agreements executed by such party on its own behalf and/or to enter into DF Terms Agreements on its own behalf. In the case of a PCA Agent executing and delivering this Questionnaire on behalf of one or more PCA Principals, (i) the PCA Agent must list the names of each such PCA Principal in column 1 of the PCA Principal Answer Sheet, and (ii) this Questionnaire will only be effective to enter into DF Terms Agreements on behalf of listed PCA Principals and/or supplement Protocol Covered Agreements executed by the PCA Agent on behalf of the listed PCA Principals. For the avoidance of doubt, if this Questionnaire is being completed by a PCA Agent on behalf of multiple PCA Principals, this Questionnaire shall be treated as if it were a separate Questionnaire with respect to each separate PCA Principal listed in column 1 of the PCA Principal Answer Sheet.

In addition, if one or more Designated Evaluation Agents, Designated QIRs or Designated Fiduciaries is identified in this Questionnaire, each such Designated Evaluation Agent,

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[3] *See supra* note 2.

Designated QIR or Designated Fiduciary, as the case may be, must countersign this Questionnaire where indicated.

The responses to Part II (except as otherwise indicated below) and Part III, Sections 2(b)(xxii) and 10(b) of this Questionnaire may be set forth directly on this Questionnaire, or if there is insufficient space, on a separate schedule. The responses to the other sections of Part II and Part III of this Questionnaire must be set forth on the PCA Principal Answer Sheet.

Part I: Definitions

References in this Questionnaire to the following terms shall have the following meanings:

"***Commodity Exchange Act***" means the Commodity Exchange Act, as amended.

"***CFTC***" means the U.S. Commodity Futures Trading Commission.

"***DF Schedule***" means a schedule to the DF Supplement.

"***DF Supplement***" means the ISDA August 2012 DF Supplement published on August 13, 2012 by the International Swaps and Derivatives Association, Inc.

"***DF Supplement Rules***" means the CFTC Regulations adopted in the following Federal Register citations, as amended and supplemented from time to time: (1) *Business Conduct Standards for Swap Dealers and Major Swap Participants With Counterparties*, 77 Fed. Reg. 9734 (Feb. 17, 2012); (2) *Large Trader Reporting for Physical Commodity Swaps*, 76 Fed. Reg. 43851 (July 22, 2011); (3) *Position Limits for Futures and Swaps*, 76 Fed. Reg. 71626 (Nov. 18, 2011); (4) *Real-Time Public Reporting of Swap Transaction Data*, 77 Fed. Reg. 1182 (Jan. 9, 2012); (5) *Swap Data Recordkeeping and Reporting Requirements*, 77 Fed. Reg. 2136 (Jan. 13, 2012); (6) *Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants*, 77 Fed. Reg. 20138 (Apr. 3, 2012); (7) *Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps*, 77 Fed. Reg. 35200 (June 12, 2012); and (8) any comparable non-U.S. regulations with which SD is permitted by the CFTC to comply in lieu of any of the foregoing CFTC Regulations.

"***DF Terms Agreement***" means the ISDA August 2012 DF Terms Agreement published by ISDA on August 13, 2012.

"***ERISA***" means the Employee Retirement Income Security Act of 1974, as amended.

"***ERISA Special Entity***" means an employee benefit plan subject to Title I of ERISA.

"***LEI/CICI***" means a "legal entity identifier" satisfying the requirements of CFTC Regulation 45.6 or such other entity identifier as shall be provided by the CFTC pending the availability of such legal entity identifiers.

"***Major Security-Based Swap Participant***" means a person registered with the SEC as a "major security-based swap participant" as defined in Section 3a(67) of the Securities Exchange Act and Rule 3a67-1 thereunder.

"***Major Swap Participant***" means a person registered (fully or provisionally) with the CFTC as a "major swap participant" as defined in Section 1a(33) of the Commodity Exchange Act and CFTC Regulation 1.3(hhh) thereunder.

"***PCA Agent***" means a party who has executed a Protocol Covered Agreement on behalf of one or more PCA Principals.

"***PCA Principal***" means a person who is or may become a principal to one or more Swaps under a Protocol Covered Agreement and who is identified as such in column 1 of the PCA Principal Answer Sheet.

"***PCA Principal Answer Sheet***" means a spreadsheet substantially in the form of Annex A to this Questionnaire.

"***Protocol Agreement***" means the ISDA August 2012 DF Protocol Agreement published on August 13, 2012 by the International Swaps and Derivatives Association, Inc.

"***Protocol Covered Agreement***" means a DF Terms Agreement or an existing written agreement between two parties that governs the terms and conditions of one or more transactions in Swaps that each such party has or may enter into as principal.

"***Regulated Swap Entity***" means a person that is a Swap Dealer, Security-Based Swap Dealer, Major Swap Participant or Major Security-Based Swap Participant.

"***SEC***" means the U.S. Securities and Exchange Commission.

"***Securities Exchange Act***" means the Securities Exchange Act of 1934, as amended.

"***Security-Based Swap Dealer***" means a person registered with the SEC as a "security-based swap dealer" as defined in Section 3(a)(71) of the Securities Exchange Act and Rule 3a71-1 thereunder.

"***Special Entity***" means a "special entity" as defined in Section 4s(h)(2)(C) of the Commodity Exchange Act and CFTC Regulation 23.401(c) thereunder.

"***Swap***" means a "swap" as defined in the Section 1a(47) of the Commodity Exchange Act and CFTC Regulation 1.3(xxx). The term "Swap" also includes any foreign exchange swaps and foreign exchange forwards that may be exempted from regulation as "swaps" by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the Commodity Exchange Act.

"***Swap Dealer***" means a person registered (fully or provisionally) with the CFTC as a "swap dealer" as defined in Section 1a(49) of the Commodity Exchange Act and CFTC Regulation 1.3(ggg).

"***Swap Recommendation***" means a "recommendation" (as such term is used in CFTC Regulations 23.434 and 23.440) with respect to a Swap or a trading strategy involving a Swap that is governed by or proposed to be governed by a Matched PCA.

Capitalized terms used but not otherwise defined in this Questionnaire shall have the meanings assigned to such terms in the Protocol Agreement.

Part II: PCA Principal Information

Part II of this Questionnaire specifies information regarding a PCA Principal that may be provided by or on behalf of such PCA Principal. Provision of the information requested in Sections 2 through 5 of this Part II is not required if the specified information has already been provided to each counterparty receiving this Questionnaire.[4] *With respect to the information requested in any question in Sections 2 through 5 of this Part II, this Questionnaire provides that unless such information appears in the publicly available portion of an LEI/CICI database or is provided herein, the relevant PCA Principal represents to each counterparty receiving this Questionnaire that the specified information has already been provided to such counterparty in writing, and that it is true, correct and complete as of the date of delivery of this Questionnaire to such counterparty.*

If you require additional space to answer any of the questions below (e.g., to provide information for multiple PCA Principals), you may attach a separate schedule to provide the PCA Principal information specified in this Part II.

1. **LEI/CICI**[5]

To answer this question, complete column 2 of the relevant row of the PCA Principal Answer Sheet by inserting the PCA Principal's LEI/CICI; provided that, if LEI/CICIs are not generally available or if PCA Principal is not eligible to receive an LEI/CICI from available providers, PCA Principal may answer this question by completing column 2 of the relevant row of the PCA Principal Answer Sheet by inserting "None."

What is PCA Principal's LEI/CICI?

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[4] As a matter of convenience, certain information that is required by the Questionnaire and that a party has previously provided to a dealer or submitted in the publicly-available portion of the LEI/CICI database may be omitted from the Questionnaire, although such information will be subject to the same representations and obligations to update as information contained in the Questionnaire. However, for operational and systems reasons, parties may prefer that all such information be set forth in a complete Questionnaire.

[5] CFTC Regulation 45.6.

2. **True Name and Address**[6]

The true name and address of PCA Principal is as follows:

Name: _____

Address: _____

_____

Phone: _____

Fax: _____

E-mail: _____

3. **Principal Occupation or Business**[7]

The principal occupation or business of PCA Principal is as follows:

_____

_____

_____

4. **Guarantor Information**[8]

(a) *To answer this question, complete column 3 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

Is any person guarantying the performance of PCA Principal?

(b) If any person is guarantying the performance of PCA Principal, the true name and address of each person providing such guaranty is as follows:

Name: _____

Address: _____

_____

Phone: _____

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6 CFTC Regulation 23.402(c).

7 CFTC Regulation 23.402(c).

8 CFTC Regulation 23.402(c).

Fax: _____

E-mail: _____

5. **Third Party Control Person Information**

(a) *To answer this question, complete column 4 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

Is any person (other than an employee of PCA Principal) exercising any control with respect to the Swap positions under Protocol Covered Agreements in respect of which this Questionnaire is being executed and delivered (such person, a "**Third Party Control Person**")?

(b) If PCA Principal has one or more Third Party Control Person(s), the true name(s) and address(es) of such person(s) is/are as follows *(PCA Agents filling out this Questionnaire for PCA Principals should enter their own name and address if they will act as a Third Party Control Person for their PCA Principals with respect to trades under the Protocol Covered Agreements)*:[9]

Name: _____

Address: _____

_____

Phone: _____

Fax: _____

E-mail: _____

6. **Designated Evaluation Agent Information**

The following information must be provided for PCA Principals that are not Regulated Swap Entities or Special Entities and that wish to incorporate DF Schedule 3 (Institutional Suitability Safe Harbor for Non-Special Entities) into Matched PCAs.

(a) *To answer this question, complete column 5 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

For purposes of DF Schedule 3 (Institutional Suitability Safe Harbor for Non-Special Entities), does PCA Principal have one or more agents (other than an employee of PCA Principal) that it wishes to designate as "**Designated**

[9] CFTC Regulation 23.402(c).

Evaluation Agents"[10] and that are responsible for (i) evaluating investment risks with regard to Swaps and trading strategies involving Swaps as well as any Swap Recommendations provided to PCA Principal and (ii) making trading decisions with respect to Swaps on behalf of PCA Principal? *(Please note that it is permissible for a PCA Principal to enter into DF Schedule 3 without designating an agent as its Designated Evaluation Agent provided that the PCA Principal can make the representations provided in Part II of DF Schedule 3.)*

(b) Please provide the true name and address of each agent that PCA Principal wishes to designate as a "Designated Evaluation Agent" for purposes of DF Schedule 3 *(if the PCA Principal has only a single Designated Evaluation Agent that is the same as its single Third Party Control Person, you may write "Same as Third Party Control Person")*:[11]

Name: _____

Address: _____

_____

Phone: _____

Fax: _____

E-mail: _____

7. Designated QIR Information

The following information must be provided for PCA Principals that are Special Entities other than ERISA Special Entities, and that wish to incorporate DF Schedule 4 (Safe Harbors for Non-ERISA Special Entities) into Matched PCAs.

Please provide the true name and address of each of PCA Principal's representatives selected as a "**Designated QIR**"[12] for purposes of the DF Supplement *(if the PCA Principal has only a single Designated QIR that is the same as its single Third Party Control Person, you may write "Same as Third Party Control Person")*:[13]

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[10] See the annotations to Schedule 3 of the DF Supplement. Note that the term "Designated Evaluation Agent" is defined to exclude an employee of the CP.

[11] CFTC Regulation 23.434(b)(1).

[12] In contrast to a DEA, a CP that enters into Schedule 4 must have a Designated QIR and such Designated QIR may (but need not) be an employee of the CP. Such Designated QIR must make the representations applicable to it in DF Schedule 4. See the annotations to Schedule 4 of the DF Supplement.

Name: _____

Address: _____

_____

Phone: _____

Fax: _____

E-mail: _____

8. **Designated Fiduciary Information**

The following information must be provided for PCA Principals that are ERISA Special Entities, and that wish to incorporate DF Schedule 5 (Safe Harbors for ERISA Special Entities (Option 1)) and/or DF Schedule 6 (Safe Harbors for ERISA Special Entities (Option 2)) into Matched PCAs.

Please provide the true name and address of each of PCA Principal's "fiduciaries," as that term is defined in Section 3 of ERISA, selected as a "**Designated Fiduciary**"[14] for purposes of the DF Supplement *(if the PCA Principal has only a single Designated Fiduciary that is the same as its single Third Party Control Person, you may write "Same as Third Party Control Person")*:[15]

Name: _____

Address: _____

_____

Phone: _____

Fax: _____

E-mail: _____

9. **Address for Complaints**

If PCA Principal is a Swap Dealer or Major Swap Participant, it may, but is not required to, set forth here the physical address, email or other widely available

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[14] As with a Designated QIR, a CP that enters into Schedules 5 or 6 must have a Designated Fiduciary and such Designated Fiduciary may (but need not) be an employee of the CP. Such Designated Fiduciary must make the representations applicable to it in DF Schedule 5 and/or 6. See the annotations to Schedules 5 and 6 of the DF Supplement.

[15] CFTC Regulation 23.450(d)(2).

electronic address, and telephone number of the department to which any complaints may be directed:[16]

Address: _____

_____

Phone: _____

Fax: _____

E-mail: _____

10. **E-mail Address for Delivery of Required Notifications and Disclosures**

The following information may be provided by, or on behalf of, PCA Principals that are not Swap Dealers.

PCA Principal may provide an e-mail address that may be used for the delivery of notifications and any informational disclosures given pursuant to the DF Supplement Rules:

E-mail: _____[17]

11. **Election to Receive Oral Disclosure of Pre-Trade Mid-Market Marks and Basic Material Economic Terms**

To answer this question, complete column 6 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate. If PCA Principal answers this question "Yes," then it may receive oral disclosures of any pre-trade mid-market marks and basic material economic terms pursuant to CFTC Regulation 23.431(a)(2) and (3)(i).[18]

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16 CFTC Regulation 23.201(b)(3)(ii).

17 The CFTC external business conduct rules require swap dealers to deliver certain notifications and informational disclosures to their counterparties (other than swap dealers and major swap participants). These notifications and informational disclosures may be voluminous. This question provides counterparties with the opportunity to provide an email address to be used by a swap dealer for the delivery of such notifications and informational disclosures. If not provided, the address to which hard copies of such notifications and disclosures are sent may not be readily available and/or appropriate for that type of communication. Each counterparty must determine for itself whether it wishes to provide an email address.

18 The CFTC external business conduct rules require swap dealers to provide certain pre-trade "mid-market" marks and disclosures about the basic material terms of a swap before entering into that swap with certain counterparties. Generally, such disclosures are expected to be in writing. However, in certain fast-moving markets, a requirement to provide such disclosures in writing could interfere with the ability to execute trades on a timely basis. For this reason, this question provides the counterparty with the opportunity to indicate that it

Does PCA Principal agree to receive oral disclosure (with written confirmation to follow post-trade) of any (i) pre-trade mid-market marks pursuant to CFTC Regulation 23.431(a)(3)(i) and (ii) basic material economic terms, including price, notional amount and termination date, pursuant to CFTC Regulation 23.431(a)(2)?

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will accept oral disclosure from a swap dealer of pre-trade marks and basic swap terms, provided that written confirmations of all such information are subsequently provided. *See* 77 Fed. Reg. 9734, 9749 (Feb. 17, 2012).

Part III: PCA Principal Status Representations and Elections

Part III of this Questionnaire consists of questions that must be answered by, or on behalf of, each PCA Principal except as otherwise indicated. Answers to the questions should be provided in the PCA Principal Answer Sheet except as otherwise indicated.

1. Commodity Pool

The purpose of this question is to permit a PCA Principal who is able to specify whether it is a "commodity pool" (as further defined below) to inform its counterparty of such status. The answer to this question will assist in identifying PCA Principals who may need to make additional representations regarding their status as an "eligible contract participant" when additional CFTC regulations regarding this status go into effect on December 31, 2012.

If PCA Principal does not wish to make any representation at this time as to whether it is a "commodity pool" it may insert "No Answer." If a PCA Principal inserts "No Answer," a Swap Dealer receiving this Questionnaire may be required to inquire further and obtain additional representations prior to December 31, 2012.

To answer this question, complete column 7 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes," "No," or "No Answer," as appropriate:[19]

Is PCA Principal a "commodity pool," as that term is defined in Section 1(a)(10) of the Commodity Exchange Act and applicable regulations thereunder (a "**Commodity Pool**")?

2. Eligible Contract Participant[20]

(a) *To answer this question, complete column 8 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

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[19] A PCA Principal who answers this question by selecting "Yes" or "No Answer" may (a) no longer qualify as an "eligible contract participant" under sections (ix) or (x) below and (b) need to make additional representations regarding its status as an "eligible contract participant" pursuant to CFTC Regulation 1.3(m)(6). Additional conditions regarding its status as an eligible contract participant may apply if PCA Principal enters into "Specified FX Transactions." "**Specified FX Transactions**" are transactions described in section 2(c)(2)(B)(i)(I) or 2(c)(2)(C)(i)(I)(bb) (other than transactions described in section 2(c)(2)(C)(i)(II)) of the Commodity Exchange Act. For a further discussion regarding Specified FX Transactions, see Sections 3 and 4 of the Amended and Restated Addendum I.

[20] CFTC Regulation 23.430(a). Prior to answering this question, please review Section 4 of the Amended and Restated Addendum I with respect to Specified FX Transactions.

Other than for purposes of any agreement, contract or transaction described in Sections 2(c)(2)(B)(vi) or 2(c)(2)(C)(vii) of the Commodity Exchange Act,[21] is PCA Principal an "eligible contract participant," as that term is defined in Section 1a(18) of the Commodity Exchange Act and applicable regulations thereunder (an "**Eligible Contract Participant**")?

(b) *To respond to this instruction, complete column 9 of the relevant row of the PCA Principal Answer Sheet by inserting at least one of the subsection numbers below in column 9:*

If PCA Principal has identified itself as an Eligible Contract Participant, please indicate at least one of the following subsections that is applicable to PCA Principal (respondents may, but are not required to, indicate more than one subsection if applicable):[22]

(i) PCA Principal is a "swap dealer," as defined in Section 1a(49) of the Commodity Exchange Act and CFTC Regulation 1.3(ggg).[23]

(ii) PCA Principal is a "security-based swap dealer," as defined in Section 3(a)(71) of the Securities Exchange Act and Rule 3a71-1 thereunder.[24]

(iii) PCA Principal is a "major swap participant," as defined in Section 1a(33) of the Commodity Exchange Act and CFTC Regulation 1.3(hhh).[25]

(iv) PCA Principal is a "major security-based swap participant," as defined in Section 3(a)(67) of the Securities Exchange Act and Rule 3a67-1 thereunder.[26]

(v) PCA Principal is a "financial institution" as defined in Section 1a(21) of the Commodity Exchange Act (a "**Financial Institution**").[27]

(vi) PCA Principal is an insurance company that is regulated by a State, or that is regulated by a foreign government and is subject to comparable regulation as determined by the CFTC, including a

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[21] *See supra* note 19.

[22] CFTC Regulation 23.430(a). *See* 77 Fed. Reg. 9734, 9757 (Feb. 17, 2012).

[23] CFTC Regulation 1.3(m)(2).

[24] CFTC Regulation 1.3(m)(4).

[25] CFTC Regulation 1.3(m)(1).

[26] CFTC Regulation 1.3(m)(3).

[27] Commodity Exchange Act § 1a(18)(A)(i).

regulated subsidiary or affiliate of such an insurance company (an "**Eligible Insurance Company**").[28]

(vii) PCA Principal is an investment company subject to regulation under the Investment Company Act of 1940, as amended, or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an Eligible Contract Participant) (an "**Eligible Investment Company**").[29]

(viii) PCA Principal is a Commodity Pool that (1) has total assets exceeding $5,000,000 and (2) was formed and is operated by a person subject to regulation under the Commodity Exchange Act or a foreign person performing a similar role or function subject as such to foreign regulation (an "**Eligible Commodity Pool**").[30]

(ix) PCA Principal is a corporation, partnership, proprietorship, organization, trust, or other entity (1) that has total assets exceeding $10,000,000 or (2) the obligations of which under each Protocol Covered Agreement to which it is a party are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by a corporation, partnership, proprietorship, organization, trust, or other entity that has total assets exceeding $10,000,000, a Financial Institution, an Eligible Insurance Company, an Eligible Investment Company, an Eligible Commodity Pool, an Eligible Government Entity, or an Other Eligible Person (as defined in paragraph (xxii) below) (a "**Large Entity**").[31]

(x) PCA Principal is a corporation, partnership, proprietorship, organization, trust, or other entity that has a net worth exceeding

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[28] Commodity Exchange Act § 1a(18)(A)(ii).

[29] Commodity Exchange Act § 1a(18)(A)(iii).

[30] Commodity Exchange Act § 1a(18)(A)(iv). The CFTC has interpreted the language "subject to regulation under the Commodity Exchange Act," for purposes of CFTC Regulation 1.3(m)(6) (effective Dec. 31, 2012) and Commodity Exchange Act § 1a(18)(A)(iv) as requiring lawful operation of the Commodity Pool by a person excluded from the definition of "commodity pool operator," a registered commodity pool operator or a person properly exempt from registration as a commodity pool operator. *See* 77 Fed. Reg. 30596, 30654-55 (May 23, 2012).

[31] Commodity Exchange Act § 1a(18)(A)(v)(I)-(II). As of the ECP Modification Effective Date (defined below), a PCA Principal that answers the Commodity Pool question of the Questionnaire by selecting "Yes" or "No Answer" may no longer rely solely on this subsection and/or subsection x (Hedging Entity ECP) to establish that it is an "eligible contract participant" under Section 1a(18) of the Commodity Exchange Act. In order to remain eligible to transact in Swaps on and after the ECP Modification Effective Date, such a PCA Principal should select another subsection that is applicable to it, including the representation added by Section 3 of Amended and Restated Addendum I. "**ECP Modification Effective Date**" means December 31, 2012 or such later date as the CFTC provides for the effectiveness of CFTC Regulation 1.3(m)(5) or (m)(6), as applicable, or any successor regulation.

$1,000,000 and enters into Swaps in connection with the conduct of the entity's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business (a "**Hedging Entity ECP**").[32]

(xi) PCA Principal is an employee benefit plan subject to ERISA, a governmental employee benefit plan, or a foreign person performing a similar role or function subject as such to foreign regulation (1) that has total assets exceeding $5,000,000; or (2) the investment decisions of which are made by (A) an investment adviser or commodity trading advisor subject to regulation under the Investment Advisers Act of 1940, as amended, or the Commodity Exchange Act; (B) a foreign person performing a similar role or function subject as such to foreign regulation; (C) a Financial Institution; or (D) an Eligible Insurance Company, or a regulated subsidiary or affiliate of such Eligible Insurance Company.[33]

(xii) PCA Principal is (1) a governmental entity (including the United States, a State, or a foreign government), or political subdivision of a governmental entity, (2) a multinational or supranational government entity, or (3) an instrumentality, agency, or department of an entity described in clause (1) or (2), and if PCA Principal is an entity described in clause (1) or (3), PCA Principal owns and invests on a discretionary basis $50,000,000 or more in investments, or otherwise satisfies the requirements of Section 1a(18)(A)(vii)(III)(aa) or (cc) of the Commodity Exchange Act.[34]

(xiii) PCA Principal is a broker or dealer (other than a natural person or proprietorship) subject to regulation under the Securities Exchange Act, or a foreign person (other than a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation.[35]

(xiv) PCA Principal is (1) a broker or dealer (and is a natural person or proprietorship) subject to regulation under the Securities Exchange

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[32] Commodity Exchange Act § 1a(18)(A)(v)(III). As of the ECP Modification Effective Date, a PCA Principal that answers the Commodity Pool question of the Questionnaire by selecting "Yes" or "No Answer" may no longer rely solely on this subsection and/or subsection ix (Large Entity) to establish that it is an "eligible contract participant" under Section 1a(18) of the Commodity Exchange Act. In order to remain eligible to transact in Swaps on and after the ECP Modification Effective Date, such a PCA Principal should select another subsection that is applicable to it, including the representation added by Section 3 of Amended and Restated Addendum I.

[33] Commodity Exchange Act § 1a(18)(A)(vi).

[34] Commodity Exchange Act § 1a(18)(A)(vii).

[35] Commodity Exchange Act § 1a(18)(A)(viii).

Act or a foreign person (that is a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation and (2) qualifies as a Large Entity or Eligible Individual.[36]

(xv) PCA Principal is an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered broker or dealer makes and keeps records under Section 15C(b) or 17(h) of the Securities Exchange Act.[37]

(xvi) PCA Principal is an investment bank holding company (as defined in Section 17(i) of the Securities Exchange Act).[38]

(xvii) PCA Principal is a futures commission merchant subject to regulation under the Commodity Exchange Act (other than a natural person or proprietorship) or a foreign person (other than a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation.[39]

(xviii) PCA Principal (1) is a futures commission merchant subject to regulation under the Commodity Exchange Act (and is a natural person or proprietorship) or a foreign person (that is a natural person or proprietorship) performing a similar role or function subject as such to foreign regulation and (2) qualifies as a Large Entity or Eligible Individual.[40]

(xix) PCA Principal is a floor broker or floor trader subject to regulation under the Commodity Exchange Act in connection with any transaction that takes place on or through the facilities of a registered entity (other than an electronic trading facility with respect to a significant price discovery contract) or an exempt board of trade, or any affiliate thereof, on which such person regularly trades.[41]

(xx) PCA Principal is an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of $10,000,000 (an "**Eligible Individual**").[42]

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[36] *Id.*

[37] Commodity Exchange Act § 1a(18)(A)(viii)(II).

[38] Commodity Exchange Act § 1a(18)(A)(viii)(III).

[39] Commodity Exchange Act § 1a(18)(A)(ix).

[40] *Id.*

[41] Commodity Exchange Act § 1a(18)(A)(x).

[42] Commodity Exchange Act § 1a(18)(A)(xi)(I).

(xxi) PCA Principal is an individual who has amounts invested on a discretionary basis, the aggregate of which is in excess of $5,000,000 and who enters into Swaps in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual (a "**Hedging Individual ECP**").[43]

(xxii) PCA Principal is a person that the CFTC has determined to be eligible in light of the financial or other qualifications of the person (an "**Other Eligible Person**").[44] *If PCA Principal inserts subsection (xxii) in column 9 of the PCA Principal Answer Sheet, PCA Principal must provide an explanation in the space below and include additional pages as necessary*:[45]

_____

_____

_____

_____

3. **Swap Dealers**[46]

(a) *To answer this question, complete column 10 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

Is PCA Principal a Swap Dealer?

(b) If PCA Principal is a Swap Dealer:

(i) *To answer this question, complete column 11 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No." as appropriate:*

With respect to a Matched PCA in respect of which this Questionnaire has been executed and delivered, if PCA Principal's counterparty to such Matched PCA is a party other than a Regulated Swap Entity or a Special Entity, does PCA Principal agree to

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[43] Commodity Exchange Act § 1a(18)(A)(xi)(II).

[44] Commodity Exchange Act § 1a(18)(C).

[45] Please note that this clause (xxii) corresponds to statutory authority granted to the CFTC to determine that other persons *not specifically covered by statute* are to be ECPs. Commodity Exchange Act § 1a(18)(C). Parties should select this clause (xxii) *only* if they can provide evidence that the CFTC has made such a determination with respect to them or a class to which they belong.

[46] CFTC Regulation 23.401(d).

supplement the terms of such Matched PCA by incorporating therein DF Schedule 3 (Institutional Suitability Safe Harbor for Non-Special Entities)?

(ii) *To answer this question, complete column 12 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

With respect to a Matched PCA in respect of which this Questionnaire has been executed and delivered, if PCA Principal's counterparty to such Matched PCA is a Special Entity that is not an ERISA Special Entity, does PCA Principal agree to supplement the terms of such Matched PCA by incorporating therein DF Schedule 4 (Safe Harbors for Non-ERISA Special Entities)?

(iii) *To answer this question, complete column 13 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

With respect to a Matched PCA in respect of which this Questionnaire has been executed and delivered, if PCA Principal's counterparty to such Matched PCA is an ERISA Special Entity, does PCA Principal agree to supplement the terms of such Matched PCA by incorporating therein DF Schedule 5 (Safe Harbors for ERISA Special Entities (Option 1))?

(iv) *To answer this question, complete column 14 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

With respect to a Matched PCA in respect of which this Questionnaire has been executed and delivered, if PCA Principal's counterparty to such Matched PCA is an ERISA Special Entity, does PCA Principal agree to supplement the terms of such Matched PCA by incorporating therein DF Schedule 6 (Safe Harbors for ERISA Special Entities (Option 2))?

(c) *To answer this question, complete column 15 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

Is PCA Principal a Security-Based Swap Dealer?

4. Major Swap Participants[47]

This Part III, Section 4 must be completed by, or on behalf of, all PCA Principals other than (i) for Section 4(a), Swap Dealers and (ii) for Section 4(b), Security-Based Swap Dealers.

(a) *To answer this question, complete column 16 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

Is PCA Principal a Major Swap Participant?

(b) *To answer this question, complete column 17 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:*

Is PCA Principal a Major Security-Based Swap Participant?

5. Financial Entity[48]

This Part III, Section 5 must be completed by, or on behalf of, any PCA Principal that is not a Regulated Swap Entity. The purpose of this question is to permit a PCA Principal who is able to specify whether or not it is a "financial entity," as such term is defined by statute, to inform its counterparty of such status.

If PCA Principal does not wish to make any representation at this time as to whether it is a "financial entity," it may insert "No Answer." If PCA Principal responds with "No Answer," a Swap Dealer receiving this Questionnaire may be required to (i) inquire further prior to entering into Swaps with PCA Principal in order to satisfy trade reporting requirements and/or (ii) assume, for the purposes of relevant statutory and regulatory exclusions and safe harbors, that PCA Principal may be a "financial entity," until PCA Principal provides sufficient evidence demonstrating that it is not a "financial entity."

To answer this question, complete column 18 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes," "No" or "No Answer," as

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47 CFTC Regulation 23.401(d).

48 Commodity Exchange Act § 2(h)(7)(C). The term "financial entity" is used for various purposes throughout the CEA and CFTC Regulations, including, among others, for purposes of determining who must enter into "swap trading relationship documentation" satisfying various requirements and the deadlines for execution of confirmations under CFTC Regulation 23.501. Financial entity status must also be reported as part of Swap transaction reporting under Part 45 of the CFTC Regulations. At the time of publication of this Questionnaire, compliance with such regulations was not required, so respondents were permitted to give "No Answer." However, to facilitate compliance with such regulations, the ISDA March 2013 DF Protocol Questionnaire requires respondents to answer "Yes" or "No" to the following question: *"To the best of its knowledge, is PCA Principal a Financial Entity?"* In light of the compliance dates that became effective after the date of this August Questionnaire, a response of "No Answer" in this August Questionnaire is no longer sufficient to facilitate full compliance with the CFTC Regulations.

appropriate. Is PCA Principal a "financial entity," as such term is defined in Section 2(h)(7)(C)(i) of the Commodity Exchange Act and the CFTC Regulations?

6. **Special Entity**

This Part III, Section 6 must be completed by, or on behalf of, all PCA Principals other than Swap Dealers and Security-Based Swap Dealers.

(a) *To answer this question, complete column 19 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate. If PCA Principal fails to answer this question, it will be deemed to represent that it is not a Special Entity for the purposes of relevant statutory and regulatory requirements, until PCA Principal affirmatively represents to the contrary in writing.*

Is PCA Principal a Special Entity?

(b) *To answer this question, complete column 20 of the relevant row of the PCA Principal Answer Sheet by inserting the applicable subsection number below:*

If PCA Principal has identified itself as a Special Entity, which one of the following subsections is applicable to PCA Principal?[49]

(i) PCA Principal is a Federal agency.[50]

(ii) PCA Principal is a State, State agency, city, county, municipality, other political subdivision of a State, or any instrumentality, department, or corporation of or established by a State or political subdivision of a State.[51]

(iii) PCA Principal is an ERISA Special Entity.[52]

(iv) PCA Principal is a governmental plan, as defined in Section 3 of ERISA.[53]

(v) PCA Principal is an endowment. (For purposes of this question, an "endowment" includes an endowment that is an organization

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[49] CFTC Regulation 23.430(a); *see* 77 Fed. Reg. 9734, 9757 (Feb. 17, 2012).

[50] CFTC Regulation 23.401(c)(1).

[51] CFTC Regulation 23.401(c)(2).

[52] CFTC Regulation 23.401(c)(3).

[53] CFTC Regulation 23.401(c)(4).

described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 501(c)(3).)[54]

(vi) PCA Principal is an employee benefit plan defined in Section 3 of ERISA, not otherwise defined as a Special Entity (an "**Exempt Plan**") that elects to be a Special Entity pursuant to CFTC Regulation 23.401(c)(6).[55]

7. **Non-ERISA Special Entity Elections**[56]

This Part III, Section 7 must be completed by, or on behalf of, all Special Entities other than ERISA Special Entities.

To answer this question, complete column 21 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate. If PCA Principal answers this question "Yes," then each of its Designated QIRs must countersign this Questionnaire in the location indicated on the signature page to agree to make the representations and perform the agreements applicable to it in DF Schedule 4.[57]

Does PCA Principal agree to supplement the terms of each Matched PCA in respect of which this Questionnaire has been executed and delivered by incorporating therein DF Schedule 4 (Safe Harbors for Non-ERISA Special Entities)?[58]

8. **ERISA Special Entity Elections**

This Part III, Section 8 must be completed by, or on behalf of, all ERISA Special Entities.

(a) *To answer this question, complete column 22 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate. If PCA Principal answers this question "Yes," then each of its Designated Fiduciaries must countersign this Questionnaire in the location indicated on the signature*

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54 CFTC Regulation 23.401(c)(5).

55 CFTC Regulation 23.401(c)(6).

56 *Note to all non-SDs*: The CFTC external business conduct rules impose upon swap dealers a duty to reasonably determine the suitability of any swap "recommended" to a counterparty. The rules also impose heightened suitability or "best interest" duties when a swap dealer recommends a tailored swap to a "special entity." In order to comply with such rules, a swap dealer will likely be required to perform comprehensive due diligence on its counterparties prior to trading unless the applicable safe harbors to such rules are satisfied. The elections in this Part III, Questions 7-9 are where adherents may elect to enter into the safe harbor provisions (found in DF Schedules 3-6) that are applicable to them. For further detail on the relevant safe harbor provisions, see DF Schedules 3-6 and the annotations thereto.

57 A swap dealer and counterparty can satisfy the applicable safe harbor by electing to incorporate the applicable DF Schedule. The DF Schedule 4 safe harbor is for use by swap dealers and counterparties that are "special entities" other than certain employee benefit plans. *See* DF Schedule 4 and the annotations thereto.

58 CFTC Regulation 23.430(d).

page to agree to make the representations and perform the agreements applicable to it in DF Schedule 5.[59]

Does PCA Principal agree to supplement the terms of each Matched PCA in respect of which this Questionnaire has been executed and delivered by incorporating therein DF Schedule 5 (Safe Harbors for ERISA Special Entities (Option 1))?[60]

(b) *To answer this question, complete column 23 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate. If PCA Principal answers this question "Yes," then each of its Designated Fiduciaries must countersign this Questionnaire on the location indicated on the signature page to agree to make the representations and perform the agreements applicable to it in DF Schedule 6.*[61]

Does PCA Principal agree to supplement the terms of each Matched PCA in respect of which this Questionnaire has been executed and delivered by incorporating therein DF Schedule 6 (Safe Harbors for ERISA Special Entities (Option 2))?[62]

9. **Institutional Suitability Elections**

This Part III, Section 9 must be completed by, or on behalf of, all PCA Principals other than Regulated Swap Entities and Special Entities.

To answer this question, complete column 24 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate. If PCA Principal answers this question "Yes," then each of its Designated Evaluation Agents (if any) must countersign this Questionnaire in the location indicated on the signature page to agree to make the representations and perform the agreements applicable to it in DF Schedule 3.

Does PCA Principal agree to supplement the terms of each Matched PCA in respect of which this Questionnaire has been executed and delivered by

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[59] A swap dealer and counterparty can satisfy the applicable safe harbor by electing to incorporate the applicable DF Schedule. In the case of special entities that are employee benefit plans subject to Title I of ERISA, two alternative safe harbors (DF Schedules 5 and 6) are available. ERISA special entities may elect one or both safe harbors. *See* DF Schedules 5 and 6, and the annotations thereto.

[60] CFTC Regulation 23.430(d).

[61] A swap dealer and counterparty can satisfy the applicable safe harbor by electing to incorporate the applicable DF Schedule. In the case of special entities that are employee benefit plans subject to Title I of ERISA, two alternative safe harbors (DF Schedules 5 and 6) are available. ERISA special entities may elect one or both safe harbors. *See* DF Schedules 5 and 6, and the annotations thereto.

[62] CFTC Regulation 23.430(d).

incorporating therein DF Schedule 3 (Institutional Suitability Safe Harbor for Non-Special Entities)?[63]

10. **DF Terms Agreement Elections and Information**

(a) *To answer this question, complete column 25 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate.*

Does PCA Principal agree to enter into a DF Terms Agreement with each counterparty to whom this Questionnaire has been delivered?[64]

(b) If PCA Principal has agreed to enter into a DF Terms Agreement with each counterparty to whom this Questionnaire has been delivered, the notice information of such PCA Principal for the purposes of each such DF Terms Agreement is as follows:

Name: _____

Address: _____

_____

Phone: _____

Fax: _____

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[63] A swap dealer and counterparty can satisfy the applicable safe harbor by electing to incorporate the applicable DF Schedule. The general safe harbor for institutional suitability (DF Schedule 3) is available to all counterparties that are not swap dealers or major swap participants, other than special entities. *See* DF Schedule 3 and the annotations thereto.

[64] By answering "Yes" to this question, a Protocol Participant is electing to enter into a DF Terms Agreement with a swap dealer who has also elected to enter into a DF Terms Agreement. A DF Terms Agreement between the parties is considered to be a Protocol Covered Agreement that incorporates the provisions of the DF Supplement.

Even if a party has incorporated the provisions of the DF Supplement into its existing written agreements (*i.e.*, by adhering to the Protocol and matching Questionnaires), it should consider entering into the DF Terms Agreement so that the provisions of the DF Supplement that it has elected to incorporate into such existing written agreements would also be applicable in the following circumstances, among others:

(a) the parties may execute swaps that are not governed by an existing ISDA Master Agreement, an execution agreement (such as the FIA Swaps Execution Agreement) or other written agreement between the parties, including swaps that are executed by a party to be cleared or swaps that are executed to be "given up" to a third-party derivatives dealer or "prime broker," or

(b) the parties may not have yet entered into an ISDA Master Agreement or other written agreement, but would like to begin offering or entering into swaps, including swaps to be documented on "long-form confirmations."

For further detail on what is covered by the DF Terms Agreement, *see* the annotated version of that agreement.

E-mail: _____

Electronic Messaging System Details: _____

Specific Instructions: _____

By executing this Questionnaire, the signatory represents as PCA Principal or PCA Agent for specified PCA Principals that (a) all information provided by it in this Questionnaire is true, accurate and complete in every material respect as of the date hereof, and may be relied upon by each counterparty to whom this Questionnaire is delivered, (b) any information that is requested and not provided in Part II, Sections 2 through 5 of this Questionnaire, and that does not appear in the publicly available portion of an LEI/CICI database, has previously been provided in writing by the relevant PCA Principals, and all such previously provided information is true, accurate and complete in every material respect as of the date hereof, and may be relied upon by each counterparty to whom this Questionnaire is delivered, (c) if Part III, Section 6(a) has not been filled out with respect to a specified PCA Principal, such PCA Principal is not a Special Entity, and (d) it has agreed to enter into the DF Schedules indicated in the Questionnaire. For purposes of the foregoing, information appearing in the publicly available portion of the LEI/CICI database with respect to a specified PCA Principal is deemed provided to the counterparty.

[INSERT FULL LEGAL NAME OF PCA PRINCIPAL OR PCA AGENT][65]

By: _____
Name:
Title:
Date:

By executing this Questionnaire on the relevant signature block below, the signatory agrees to make the representations and agreements applicable to it in the relevant DF Schedule of the DF Supplement.

[INSERT FULL LEGAL NAME OF DESIGNATED EVALUATION AGENT],[66] solely as PCA Principal's Designated Evaluation Agent and solely to make the representations and agreements applicable to it as Designated Evaluation Agent in DF Schedule 3.

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[65] If you are a PCA Agent acting on behalf of one or more PCA Principals insert the following in the signature block: ", acting on behalf of the clients, investors, funds, accounts and/or other principals listed in the column 1 of the PCA Principal Answer Sheet."

[66] Append additional signature blocks or add signature pages as necessary if PCA Principal has multiple Designated Evaluation Agents.

By: _____
Name:
Title:
Date:

[INSERT FULL LEGAL NAME OF DESIGNATED QIR],[67]
solely as PCA Principal's Designated QIR and solely to make the representations and agreements applicable to it as Designated QIR in DF Schedule 4.

By: _____
Name:
Title:
Date:

[INSERT FULL LEGAL NAME OF DESIGNATED FIDUCIARY/FIDUCIARIES],[68] solely as PCA Principal's Designated Fiduciary and solely to make the representations and agreements applicable to it in DF Schedule 5 and/or 6, as applicable.

By: _____
Name:
Title:
Date:

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[67] Append additional signature blocks or add signature pages as necessary if PCA Principal has multiple Designated QIRs.

[68] Append additional signature blocks or add signature pages as necessary if PCA Principal has multiple Designated Fiduciaries.

AMENDMENT ADOPTING, INCORPORATING AND AMENDING THE ISDA AUGUST 2012 DF SUPPLEMENT

This Amendment Adopting, Incorporating and Amending the ISDA August 2012 DF Supplement (this "Amendment") is made as of December 18, 2017 (the "Effective Date") by and between Morgan Stanley Capital Group Inc. ("Swap Dealer" or "SD") and South Kentucky Rural Electric Cooperative Corporation ("Counterparty" or "CP").

WHEREAS, reference is made to the ISDA August 2012 DF Supplement published by the International Swaps and Derivatives Association, Inc. ("ISDA®") on August 13, 2012 (the "ISDA August 2012 DF Supplement"); and

WHEREAS, the parties desire to amend the terms of the ISDA August 2012 DF Supplement and apply it to any oral or written agreement between the parties that governs the terms and conditions of one or more transactions in Swaps that each such party has or may enter into as principal (the "Covered Agreement");

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties do hereby agree as follows:

Article 1:
Adoption and Incorporation of the ISDA August 2012 DF Supplement

1.1 ***Adherence to Protocol Agreement.***

SELECT ONE:

☐ Option One: In lieu of using the procedures set forth in the Protocol Agreement, the parties desire to implement the terms of the ISDA August 2012 DF Supplement

between them by incorporating it by reference and completing Exhibit A. The ISDA August 2012 DF Supplement, as amended hereby, is incorporated by reference into the Covered Agreement as though fully set forth therein and shall govern all Swap transactions, if any, under the Covered Agreement. The parties adopt between them the ISDA August 2012 DF Supplement into the Covered Agreement by execution of this Amendment, rather than pursuant to the procedure set forth in the ISDA August 2012 DF Protocol Agreement (the "Protocol Agreement") or the Adherence Letter (as defined in the Protocol Agreement), the ISDA August 2012 DF Supplement or the ISDA August 2012 DF Questionnaire and its Addendum I (the "Questionnaire"). The phrase "this DF Supplement" as used in the ISDA August 2012 DF Supplement, as so adopted and incorporated hereby, means "this Amendment," and the term "Covered Agreement" means "Covered Agreement" as defined in this Amendment. Exhibit A hereto shall be used in lieu of the Questionnaire contemplated by the Protocol Agreement for the Covered Agreement. "DF Supplement Information" is any information set forth in Exhibit A together with any other information that the parties agree shall be "DF Supplement Information." The information contained in Exhibit A as well as any other information required to be delivered under the Agreement shall be automatically updated or provided and deemed delivered to SD by (a) any filings submitted by CP, from time to time, to the SEC as and when publicly posted on *http://www.sec.gov/edgar.shtml* (or any successor SEC webpage) and (b) any other written notices provided to SD under the Covered Agreement.

☒ Option Two: The parties agree to use the procedures set forth in the Protocol Agreement and agree to implement and amend between them the terms of the ISDA August 2012 DF Supplement by adhering to the Protocol Agreement and exchanging the Questionnaire and entering into this Amendment. The Protocol Agreement, Questionnaire, DF Terms Agreement (if applicable) and ISDA August 2012 DF Supplement shall govern all Swap transactions, if any, under the Covered Agreement, provided that the ISDA August 2012 DF Supplement and Questionnaire shall govern as amended by this Amendment. The phrase "this DF Supplement" as used in the ISDA August 2012 DF Supplement, means the ISDA August 2012 DF Supplement as amended by this Amendment, and the term "Covered Agreement" means "Covered Agreement" as defined in this Amendment. "DF Supplement Information" is any information set forth in the Questionnaire together with any other information that the parties agree shall be "DF Supplement Information." The information contained in the Questionnaire as well as any other information required to be delivered under the Agreement shall be automatically updated or provided and deemed delivered to SD by (a) any filings submitted by CP, from time to time, to the SEC as and when publicly posted on *http://www.sec.gov/edgar.shtml* (or any successor SEC webpage) and (b) any other written notices provided to SD under the Covered Agreement.

1.2 ***Resolving Conflict of Terms.*** Capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the ISDA August 2012 DF Supplement. However, in the event of any inconsistency between (a) a term defined in the Covered Agreement or in a Swap transaction confirmation and (b) a term defined in the ISDA August 2012 DF Supplement, then (i) the term defined in the ISDA August 2012 DF Supplement will control for purposes of interpreting this Amendment, and (ii) the term defined in the Covered Agreement or Swap transaction confirmation (with any inconsistency between the two documents determined in accordance with the Covered Agreement) will control for purposes of interpreting the Covered Agreement or Swap transaction confirmation.

Article 2:
Amendments to the ISDA August 2012 DF Supplement

2.1 ***Amendments to Schedule 2 of the ISDA August 2012 DF Supplement; Agreements between a Swap Dealer and any other party.***

(a) **Scope.**

(i) Section 2.2 is amended by (1) adding "grounds to vitiate, cancel or otherwise terminate a Swap," following the words "termination event," and (2) adding the following at the end of the Section: "Provisions in the Agreement that in any manner limit the liability of one party to the other party are not amended or affected hereby."

(ii) Section 2.6 is amended by adding the following prior to the period at the end of the Section: ", as determined necessary by the party employing or responsible for such personnel".

(iii) The following new Section is added at the end of Section 2.8:

"2.8.1 SD acknowledges that, unless specifically stated herein, CP does not waive any of its rights against SD, or excuse SD from any of its duties to CP, provided for in the DF Supplement Rules." CP acknowledges that, unless specifically stated herein, SD does not waive any of its rights against CP, or excuse CP from any of its duties to SD, provided for in the DF Supplement Rules."

(b) **Confidentiality.**

(i) Section 2.13 is amended by adding the following prior to the period at the end of the Section: "with respect to DF Supplement Rules; *provided however*, that SD will, to the extent feasible and if legally permitted to do so, notify CP of such request as soon as practicable after receipt thereof and shall not disclose such Material Confidential Information until the earlier of (a) CP notifying SD that it will not contest such disclosure or (b) five (5) Business Days (or shorter if such shorter period is requested by the regulator and SD has notified CP of such requirement, if in SD's determination such notice is permitted by law and is consistent with the request of the regulatory authority) have passed following CP's receipt of such notice without CP notifying SD that CP shall contest the disclosure of such Material Confidential Information to the requesting regulatory or self-regulatory organization, unless such notice to CP or such restriction on disclosure is otherwise not permitted by applicable law or by the requesting regulating authority or self-regulatory organization; *provided further*, that the foregoing proviso shall not be applicable to routine filings by SD".

(ii) Section 2.14 is amended by (1) deleting ", on or prior to the date on which this DF Schedule 2 is incorporated into the Agreement,"; (2) adding the words "or enter" between "have entered" and "into a written agreement" in the second line; and (3) adding the following prior to the period at the end of the Section: "; *provided however*, CP does not waive any of its rights or excuse SD from any of its duties to CP under such written agreement relating to the non-disclosure of information".

(iii) Section 2.15 is amended by (1) adding "on a need-to-know basis" in the fourth line after "Material Confidential Information" and prior to "to (i) any"; (2) adding the following to the end of the first sentence "; *provided however*, the persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential"; (3) replacing the second sentence in Section 2.15 up to the colon with the following: "Subject to the foregoing, Material Confidential Information may be disclosed to any person acting in a structuring, sales or trading capacity for SD or any affiliate of SD as permitted by CFTC Regulation 23.410(c)(2); *provided that* nothing in the foregoing shall waive any violation of CFTC Regulation 23.410(a); and *provided further that* for purposes of the foregoing, CP and SD agree that:".

(c) **Information Updating.**

(i) Section 2.1 is amended by (1) deleting "and (iii) all DF Supplement Information that is financial information furnished by or on behalf of it to the other party has been prepared in accordance with applicable accounting standards, consistently applied."; (2) adding an "and" before "(ii)"; and (3) adding a period after "in any material respect".

(ii) Section 2.3 is amended by adding the following prior to the period at the end of the Section: "and shall be deemed made when provided or given so that no misrepresentation by CP is deemed to occur due to the one day delay built into the definition of "Notice Effective Date"."

(iii) Section 2.9 is deleted and replaced with the following: "The parties agree that if the Non-Reporting Counterparty has reported a Swap under the Agreement as an "international swap" to a non-U.S. trade repository it shall notify the Reporting Counterparty as soon as practicable and in accordance with the Notice Procedures, of the (i) identity of each non-U.S. trade repository not registered with the CFTC to which the Non-Reporting Counterparty or its agent has reported the Swap; and (ii) swap identifier used by such non-U.S. trade repository to identify the Swap."

(iv) Section 2.10 is deleted and replaced with the following:

"2.10 Each party agrees that if it is the Non-Reporting Counterparty with respect to a Swap under the Agreement, then upon the occurrence of any corporate event (the meaning of "corporate event" as used in CFTC Regulation 45.4(c) to be reasonably determined by the Non-Reporting Counterparty unless and until the CFTC issues a specific definition of such term) with respect to the Non-Reporting Counterparty that is also a "life cycle event" (as that term is defined in CFTC Regulation 45.1) in respect of that Swap, it will, as soon as practicable, but in no event later than 10 a.m. on the second "business day" (as that term is defined in CFTC Regulation 45.1) following the day on which such life cycle event occurs, notify the Reporting Counterparty with respect to the Swap of the occurrence of such life cycle event, with sufficient detail regarding such life cycle event to allow the Reporting Counterparty to comply with any reporting requirements imposed by the DF

Supplement Rules relevant to such other party's compliance with the DF Supplement Rules reporting requirements (*see* CFTC Regulation 45.4(c))."

(d) **CP Acknowledgements.**

(i) Section 2.19 is amended by adding ", which may include an electronic communication" after the words "will be confirmed in writing".

(ii) Section 2.20 is amended by adding the following to the end of the Section: "If a party has represented to the other party that it is an "eligible contract participant" as defined in Section 1a(18) of the Commodity Exchange Act, then such party is not a Hedging Entity ECP and therefore does not make the representation in this Section 2.20."

(iii) Section 2.22(a) is amended by replacing the words "to allow CP to assess its potential exposure in connection with such Swap" with "in accordance with the requirements of the DF Supplement Rules (CFTC Regulation 23.431(b)(1) – (4))".

Article 3:
Representations and Warranties

3.1 ***Mutual Representations.*** Each party represents to the other (which representations will be deemed to be repeated by each party as of the time of each Swap Transaction Event) that:

(a) It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing; and

(b) It has the power to execute this Amendment.

3.2 ***Representation of Swap Dealer.*** SD represents to CP (which representation will be deemed to be repeated by SD as of the time of each Swap Transaction Event) that it has determined it is a "swap dealer" as defined in Section 1a(49) of the Commodity Exchange Act and CFTC Regulation 1.3(ggg) and is registered or intends to register accordingly.

Article 4:
Miscellaneous

4.1 ***No Other Agreement.*** Except as amended hereby, the Covered Agreement remains in full force and effect.

4.2 ***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.

4.3 ***Governing Law.*** This Amendment, as between the parties and in respect of each Swap transaction between them, will be governed by and construed in accordance with the law specified to govern that Swap transaction in the Covered Agreement and otherwise in accordance with applicable choice of law doctrine.

4.4 ***Counterparts.*** This Amendment (and each amendment, modification and waiver in respect thereof) may be executed and delivered in any number of counterparts (including by facsimile transmission or PDF files) and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

Morgan Stanley Capital Group Inc.

By:
Name:
Title:

South Kentucky Rural Electric Cooperative Corporation

Dennis Holt

By:
Name: DENNIS HOLT
Title: INTERIM CEO

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

Morgan Stanley Capital Group Inc.

By: Charmaine Fearon
Name: Authorized Signatory
Title:

South Kentucky Rural Electric Cooperative Corporation

By:
Name:
Title:

EXHIBIT A

(THIS EXHIBIT A IS ONLY FOR THOSE PARTIES WHO HAVE CHOSEN OPTION ONE IN SECTION 1.1. IF OPTION TWO IS SELECTED PARTIES DO NOT NEED TO FILL OUT THIS EXHIBIT A, BUT INSTEAD EXCHANGE THE ISDA QUESTIONNAIRE.)

Party Information

Morgan Stanley Capital Group Inc. ("SD")	**South Kentucky Rural Electric Cooperative Corporation ("CP")**
CP CICI/Legal Entity Identifier: [redacted]	CP CICI/Legal Entity Identifier: [redacted]
1585 Broadway NY, NY 10036	Principal Address: 200 Electric Avenue, Somerset, KY 42502
Phone: 212.761.4000	Phone: (606) 451-4337
Fax:	Fax: (606) 451-4103
Email: msdoddfrankdeliveryemail@ms.com	Email: PPAAdmin@skrecc.com
Notices: dftermagreement@ms.com	**Notices:**
Address: 1585 Broadway NY, NY 10036	Address: 200 Electric Avenue, Somerset, KY 42502
Phone: 212.761.4000	Phone: (606) 451-4337
Fax:	Fax: (606) 451-4103
Email: **dftermagreement@ms.com**	Email: PPAAdmin@skrecc.com
Special Instructions:	Special Instructions:
SD Principal Occupation or Business: Morgan Stanley is a global financial services company that, through its subsidiaries and affiliates, provides its products and services to a range of clients and customers, including corporations, governments, financial institutions and individuals. Morgan Stanley is a financial holding company. Morgan Stanley operates in three segments: Institutional Securities, Global Wealth Management Group and Asset Management (see NYSE stock listing for complete description).	CP Principal Occupation or Business: South Kentucky is a rural electric cooperative corporation that serves retail electric load in Southern Kentucky.
SD's Guarantor: N/A	**CP's Guarantor: N/A**
	Address:
Phone:	Phone:
Fax:	Fax:
Email:	Email:

	CP Third Party Control Person (if applicable):
	Address:
	Phone:
	Fax:
	Email:
Description of Swap activity: Swap dealer	**Description of Swap activity:** End user who hedges energy purchases

Oral Disclosure of Pre-Trade Mark Election – Does CP agree to receive oral disclosure (with written confirmation to follow post-trade) of (i) pre-trade marks pursuant to CFTC Regulation 23.431(a)(3)(i) and (ii) basic material economic terms, including price, notional amount and termination date, pursuant to CFTC Regulation 23.431(a)(2)?

X Yes	☐ No

Commodity Pool Disclosure – Is CP a "commodity pool," as that term is defined in Section 1(a)(10) of the Commodity Exchange Act and the CFTC Regulations?

☐ Yes	☐ No Answer	X No

Financial Entity Disclosure – Is CP a "financial entity," as such term is defined in Section 2(h)(7)(C)(i) of the Commodity Exchange Act and the CFTC Regulations?

☐ Yes	☐ No Answer	X No

Eligible Contract Participant – CP is an "eligible contract participant," as that term is defined in Section 1a(18) of the Commodity Exchange Act and applicable regulations thereunder, and the following applies:

X **Large Entity:** It is a corporation, partnership, proprietorship, organization, trust, or other entity (1) that has total assets exceeding $10,000,000 or (2) the obligations of which under the Swap transactions are guaranteed or otherwise supported by a letter of credit, or keepwell, support or other agreement by a corporation, partnership, proprietorship, organization, trust, or other entity that has total assets exceeding $10,000,000, a Financial Institution, an Eligible Insurance Company, an Eligible Investment Company, an Eligible Commodity Pool, or an Eligible Government Entity.

☐ **Other (please specify):** _____

Schedules of the ISDA August 2012 DF Supplement – The parties agree Schedules 1 and 2 of the ISDA 2012 DF Supplement shall apply and be incorporated as agreed herein. Schedules 3 and 4 will be incorporated as agreed herein, if elected:

✓ Schedule 3	☐ Schedule 4

If Schedule 3 is incorporated and the CP has Designated Evaluation Agent(s) provide CP's Designated Evaluation Agent information: Name: N/A Address: Phone: Fax: Email:	If Schedule 4 is incorporated, provide CP's Designated QIR information: Name: Address: Phone: Fax: Email:
If CP is a "Special Entity," select the applicable subsection: ☐ CP is a Federal Agency. ☐ CP is a State, State agency, city, county, municipality, other political subdivision of a State, or any instrumentality, department, or corporation of or established by a State or political subdivision of a State.	

ISDA Safe, Efficient Markets

International Swaps and Derivatives Association, Inc.

ISDA MARCH 2013 DF PROTOCOL AGREEMENT

published on March 22, 2013,
by the International Swaps and Derivatives Association, Inc.
Annotated in red as of June 3, 2013

THE ANNOTATIONS AND INSTRUCTIONS IN THIS DOCUMENT DO NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES IN CONNECTION WITH YOUR CONSIDERATION OF THE ISDA MARCH 2013 DF PROTOCOL OR THE RELATED DOCUMENTS. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISERS THEY DEEM APPROPRIATE AS PART OF THEIR CONSIDERATION OF THE PROTOCOL PRIOR TO ADHERING TO THE PROTOCOL. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

The International Swaps and Derivatives Association, Inc. ("**ISDA**") has published this ISDA March 2013 DF Protocol Agreement (this "**Protocol Agreement**") to enable parties to enter into ISDA March 2013 DF Protocol Master Agreements (as defined below) and/or supplement the terms of Protocol Covered Agreements (as defined below) by incorporating therein selected portions of the ISDA March 2013 DF Supplement published on March 22, 2013 by ISDA (the "**March 2013 DF Supplement**").

1. Use of Protocol

(a) A person who adheres to this Protocol Agreement (a "**Protocol Participant**") in the manner set forth in paragraph 2 may use the terms of this Protocol Agreement to supplement one or more existing Protocol Covered Agreements by exchanging questionnaires substantially in the form of Exhibit 2 to this Protocol Agreement or in the form provided on ISDA Amend (in either form, a "**Questionnaire**"), in respect of such Protocol Covered Agreements in the manner set forth in paragraph 3. This Protocol Agreement may also be used by a Protocol Participant to enter into new Protocol Covered Agreements in the form of a 2002 ISDA Master Agreement with a Schedule as specified below (an "**ISDA March 2013 DF Protocol Master Agreement**") by exchanging Questionnaires with another Protocol Participant in the manner specified in paragraph 3. As described below, the Protocol Participant may be either a principal or an agent in respect of a Protocol Covered Agreement.

(b) "**Protocol Covered Agreement**" means (i) an ISDA March 2013 DF Protocol Master Agreement or (ii) any other written agreement between two parties, with at least one of such parties being a CFTC Swap Entity, that (A) is in existence on the Implementation Date applicable to such parties, and (B) governs the terms and conditions of one or more transactions in Swaps that each such party has or may enter into as principal.[1] "**PCA Principal**" means a party who is or may become a principal to one or more Swaps under a Protocol Covered Agreement. "**PCA Agent**" means a party who has executed a Protocol Covered Agreement as agent on behalf of one or more PCA Principals.

(c) A Protocol Covered Agreement may have been executed directly by a PCA Principal or by a PCA Agent. In the case of a Protocol Covered Agreement executed by a PCA Principal, only such PCA Principal may supplement such Protocol Covered Agreement pursuant to this Protocol Agreement. In the case of a Protocol Covered Agreement executed by a PCA Agent on behalf of a PCA Principal, only

[1] Note that the Protocol is not limited to ISDA Master Agreements, and may be used to amend all agreements between a pair of parties that govern the terms and conditions of one or more transactions in Swaps.

such PCA Agent may supplement such Protocol Covered Agreement on behalf of a PCA Principal pursuant to this Protocol Agreement (even if such PCA Principal is also a Protocol Participant in respect of one or more other Protocol Covered Agreements).[2]

(d) An ISDA March 2013 DF Protocol Master Agreement may be entered into pursuant to this Protocol Agreement by a PCA Principal or a PCA Agent. The capacity in which a Protocol Participant enters into an ISDA March 2013 DF Protocol Master Agreement pursuant to this Protocol Agreement is the same as the capacity in which it completes a Matched Questionnaire (as defined below).

2. Adherence Letters

(a) Adherence to this Protocol Agreement will be evidenced by the execution and online delivery, in accordance with this paragraph 2, by a Protocol Participant to ISDA, as agent, of a letter substantially in the form of Exhibit 1 (an "**Adherence Letter**").[3] A person wishing to participate in this Protocol Agreement, whether as PCA Principal or PCA Agent, or both, shall submit, using an online form, a single Adherence Letter to ISDA pursuant to this paragraph 2. ISDA will have the right, in its sole and absolute discretion, upon thirty calendar days' notice on the "ISDA March 2013 DF Protocol" section of its website at www.isda.org (or by other suitable means) to designate a closing date of the adherence period for this Protocol (such closing date, the "**Adherence Cut-off Date**"). After the Adherence Cut-off Date, ISDA will not accept any further Adherence Letters with respect to this Protocol Agreement.

(b) Each Protocol Participant executing an Adherence Letter will access the "Protocol Management" section of the ISDA website at www.isda.org to enter information online that is required to generate its form of Adherence Letter and will submit payment of any applicable fee. Either by directly downloading the populated Adherence Letter from the Protocol Management system or upon receipt via e-mail of the populated Adherence Letter, each Protocol Participant will print, sign and upload the signed Adherence Letter as a PDF (portable document format) attachment into the Protocol Management system. Once the signed Adherence Letter has been approved and accepted by ISDA, the Protocol Participant will receive an e-mail confirmation of the Protocol Participant's adherence to this Protocol Agreement.

(c) ISDA will publish, so that it may be viewed by all Protocol Participants, a conformed copy of each Adherence Letter containing, in place of each signature, the printed or typewritten name of each signatory.

(d) Each Protocol Participant executing and submitting an Adherence Letter agrees that, for evidentiary purposes, a conformed copy of an Adherence Letter certified by the General Counsel (or other appropriate officer) of ISDA will be deemed to be an original.

(e) Each Protocol Participant agrees that the determination of the date and time of acceptance of any Adherence Letter will be determined by ISDA in its absolute discretion.

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[2] A swap counterparty who has entered into an agreement governing swaps (such as an ISDA Master Agreement) directly with a CFTC Swap Entity is referred to in the Protocol as the "PCA Principal." If that same party enters into swaps through an agent (such as an investment manager) under an agreement entered into by that agent, the agent is referred to as the "PCA Agent." Often, a PCA Agent will enter into an "umbrella agreement" with a CFTC Swap Entity under which the PCA Agent may enter into swaps on behalf of one or more PCA Principals. The Protocol differentiates between PCA Principals and PCA Agents to enable a CFTC Swap Entity to identify the agreements that are modified via the Protocol (e.g., only a PCA Agent may use the Protocol to modify an "umbrella agreement").

[3] Please note that in order to incorporate provisions of the DF Supplement into agreements between a CFTC Swap Entity and a counterparty, the Protocol requires the exchange of Questionnaires as described below. Information made public on ISDA's website allows a Protocol Participant to identify other parties with whom it may wish to exchange Questionnaires as well as the method by which such other parties will accept delivery of Questionnaires. The exchange may also be effected via ISDA Amend.

3. Questionnaires

(a) A Questionnaire in respect of Protocol Covered Agreements will only be deemed to be executed and submitted by a Protocol Participant who has executed and submitted an Adherence Letter. A Protocol Participant who wishes to enter into or supplement Protocol Covered Agreements with multiple counterparties may (but is not required to) execute multiple Questionnaires in order to deliver different Questionnaires to different counterparties pursuant to this paragraph 3; *provided* that a Protocol Participant who is a PCA Principal may not deliver more than one Questionnaire to the same Protocol Participant and a Protocol Participant who is a PCA Agent may not deliver more than one Questionnaire to the same Protocol Participant on behalf of a single PCA Principal.

(b) A Protocol Participant may extend an offer to enter into and/or supplement Protocol Covered Agreements by executing a Questionnaire and delivering such Questionnaire to another Protocol Participant in the manner set forth in this paragraph 3. If and when a Protocol Participant receiving a Questionnaire also delivers an executed Questionnaire to the offering Protocol Participant, the receiving Protocol Participant will be deemed to have accepted the offer to enter into an ISDA March 2013 DF Protocol Master Agreement and supplement such agreement and their existing Protocol Covered Agreements, in each case if and to the extent set forth in paragraphs 4 and 5, as applicable. For purposes of this Protocol Agreement, each such Protocol Covered Agreement is referred to as a "**Matched PCA**," both PCA Principals thereto are referred to together as "**Matched PCA Parties**," and the Questionnaires delivered by or on behalf of the Matched PCA Parties in respect of the Matched PCA are referred to together as "**Matched Questionnaires**." For the avoidance of doubt, if a PCA Agent has not delivered a Questionnaire on behalf of a particular PCA Principal, such PCA Agent will not have entered into or supplemented any Protocol Covered Agreement on behalf of such PCA Principal pursuant to this Protocol Agreement even if the PCA Agent has delivered a Questionnaire in respect of other PCA Principals.[4]

(c) For purposes of this Protocol Agreement, when a Protocol Participant delivers a Questionnaire to another Protocol Participant, each PCA Principal on whose behalf such Questionnaire is delivered is referred to as a "**Delivering PCA Principal**." Delivery of a Questionnaire by a PCA Agent in the manner set forth in this paragraph 3 will be deemed to be delivery by each Delivering PCA Principal identified by the PCA Agent in such Questionnaire. Delivery of a Questionnaire to a PCA Agent in the manner set forth in this paragraph 3 will be deemed to be delivery by a relevant Delivering PCA Principal (i) to each PCA Principal on whose behalf the PCA Agent has entered into an existing Protocol Covered Agreement with such Delivering PCA Principal or (ii) if there is no existing Protocol Covered Agreement with respect to a Delivering PCA Principal, to each PCA Principal identified in the reciprocal Questionnaire delivered by the PCA Agent to such Delivering PCA Principal.

(d) Delivery of a Questionnaire must be made in the manner described in this paragraph 3(d) not later than the 30th calendar day following the Adherence Cut-off Date (the "**Matching Cut-off Date**"). Delivery of a Questionnaire to a Protocol Participant shall be effective if delivered in a manner specified by such Protocol Participant in its Adherence Letter. In addition, without regard to the election that a Protocol Participant has made in its Adherence Letter, if such Protocol Participant has taken all steps necessary to establish the ability to receive a Questionnaire via ISDA Amend, delivery of a Questionnaire to such Protocol Participant via ISDA Amend shall be effective.

(e) In using this Protocol Agreement to enter into and/or supplement Matched PCAs, a Protocol Participant may not specify additional provisions, conditions or limitations in its Questionnaire, except as expressly provided therein.

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[4] *See supra* note 2.

4. ISDA March 2013 DF Protocol Master Agreement[5]

Every pair of Matched PCA Parties that have elected in their Matched Questionnaires[6] to enter into an ISDA March 2013 DF Protocol Master Agreement will be deemed to have entered into such agreement as of the later of (i) the date on which at least one Matched PCA Party is registered (fully or provisionally) with the Commodity Futures Trading Commission ("**CFTC**") as a (1) "swap dealer," as defined in Section 1a(49) of the Commodity Exchange Act, as amended ("**CEA**"), and CFTC Regulation 1.3(ggg) thereunder, or (2) "major swap participant" as defined in Section 1a(33) of the CEA and CFTC Regulation 1.3(hhh) thereunder, as applicable, and (ii) the STRD Compliance Date. Matched PCA Parties will also be deemed to have agreed that the following constitutes the Schedule (as such term is used in the ISDA March 2013 DF Protocol Master Agreement) to such agreement:

(a) ***Scope***. This Master Agreement will govern any Swap between the parties that is entered into on or after the date hereof that is (i) not governed by an Existing Swap Agreement, and (ii) not intended by the parties to be cleared on a clearing organization. An "**Existing Swap Agreement**" means, in respect of a Swap, a written agreement that (i) exists at the time of execution of such Swap, (ii) provides for, among other things, terms governing the payment obligations of the parties, and (iii) the parties have established (by written agreement, oral agreement, course of conduct or otherwise) will govern such Swap. This Master Agreement will not govern any Swap that is (i) governed by an Existing Swap Agreement, or (ii) intended by the parties to be cleared on a clearing organization.[7]

(b) ***Swaps***. For purposes of this Master Agreement, the term "**Swap**" means a "swap" as defined in Section 1a(47) of the Commodity Exchange Act, as amended ("**CEA**"), and regulations thereunder; *provided that* a commodity option entered into pursuant to Commodity Futures Trading Commission Regulation 32.3(a) is not a Swap for purposes hereof. The term "Swap" also includes any foreign exchange swaps and foreign exchange forwards that are exempted from regulation as "swaps" by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the CEA. For the avoidance of doubt, the term "Swap" does not include a swap that has been cleared by a derivatives clearing organization.

(c) ***Governing Law***. This Master Agreement will be governed by and construed in accordance with the laws of the State of New York (without reference to choice of law doctrine), unless otherwise agreed by the parties.

(d) ***Netting of Payments***. Except as otherwise agreed by the parties in writing, "Multiple Transaction Payment Netting" (1) will apply with respect to each Transaction that is an "FX Transaction" or "Currency Option Transaction" as defined in the ISDA 1998 FX and Currency Option Definitions (as published by ISDA, the Emerging Markets Traders Association and the Foreign Exchange Committee), as supplemented from time to time, and (2) will not apply with respect to other Transactions, in each case for the purposes of Section 2(c) of this Master Agreement.[8]

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[5] The ISDA March 2013 DF Protocol Master Agreement is an ISDA Master Agreement that will govern uncleared Swaps that are not otherwise governed by a written agreement. Its purpose is ~~It is purposes is~~ to provide swap trading relationship documentation intended to be compliant with CFTC Regulation 23.504 in situations in which the parties have not otherwise provided for such documentation, such as where the parties have historically relied on the use of post-execution "long-form" confirmations or have not required pre-execution "relationship" documentation for relatively simple or short-dated trades (*e.g.*, certain FX transactions). The Schedule provided herein is intentionally minimalistic in order to provide an agreement that would be suitable for a wide variety of transaction types. Parties may supplement the Schedule on a bilateral basis if desired to suit their particular business needs.

[6] A party may make such an election in Part III, Q 5(a) of the Questionnaire.

[7] The purpose of this scope provision is to ensure that the DF Protocol Master Agreement applies to trades only when it is needed to fill the gap when other "swap trading relationship documentation" is not available. When such other documentation is available, virtually any means of establishing that such other documentation governs a transaction is sufficient to establish that the DF Protocol Master Agreement will not apply. In addition, this provision establishes that the DF Protocol Master Agreement does not govern transactions that the parties intend to clear, as an ISDA Master Agreement may not be necessary or desired by the parties in such circumstances.

[8] Multiple Transaction Payment Netting was made applicable to FX Transactions consistent with standard industry practice to net such transactions. Since it is not clear that other types of transactions that might be governed by this DF Protocol Master

(e) ***ISDA August 2012 DF Protocol.*** If both parties hereto have adhered to the ISDA August 2012 DF Protocol Agreement, as published on August 13, 2012, by ISDA (the "**August Protocol Agreement**") and have delivered "Matched Questionnaires" (as defined in the August Protocol Agreement), then this Master Agreement shall be supplemented to the same extent as if it were a "Matched PCA" under the August Protocol Agreement.

5. Incorporation of the ISDA March 2013 DF Supplement into Matched PCAs

(a) Incorporation of DF Schedules. Subject to Section 5(c) hereof, every pair of Matched PCA Parties will be deemed to have supplemented each Matched PCA as of the Implementation Date by incorporating therein DF Schedules 1 and 2 and any other applicable DF Schedules, as follows:

(i) such Matched PCA Parties will be deemed to have supplemented their Matched PCAs by incorporating DF Schedule 3 if (A) each Matched PCA Party is a CFTC Swap Entity or has indicated in its Matched Questionnaire that it is, to the best of its knowledge, a Financial Entity (or both) or (B) the Matched PCA Party that is not a CFTC Swap Entity has elected in its Matched Questionnaire[9] to supplement its Matched PCAs by incorporating DF Schedule 3 or has failed to respond to the question, "Does PCA Principal agree to DF Schedule 3"; and

(ii) such Matched PCA Parties will be deemed to have supplemented their Matched PCAs by incorporating DF Schedule 4 unless one Matched PCA Party is a Non-CFTC Swap Entity who has elected in its Matched Questionnaire[10] not to supplement its Matched PCAs by incorporating DF Schedule 4.

(b) Terms of Data Reconciliation. With respect to a pair of Matched PCA Parties that have elected to supplement Matched PCAs by incorporating DF Schedule 4, data reconciliation shall be conducted as follows:

(i) *Two CFTC Swap Entities.* If both Matched PCA Parties are CFTC Swap Entities, then the Matched PCA Parties will be deemed to have agreed that Data Reconciliations will be conducted by the delivery of Portfolio Data by each Matched PCA Party pursuant to Part III of DF Schedule 4;

(ii) *Review.* If one Matched PCA Party is a Non-CFTC Swap Entity who has elected in its Matched Questionnaire[11] to engage in portfolio reconciliation in accordance with Part II of DF Schedule 4, then the Matched PCA Parties will be deemed to have agreed that Data Reconciliations will be conducted by the delivery of Portfolio Data by the CFTC Swap Entity and the review of such data by the Non-CFTC Swap Entity pursuant to Part II of DF Schedule 4;

(iii) *Exchange.* If one Matched PCA Party is a Non-CFTC Swap Entity who has elected in its Matched Questionnaire[12] to engage in portfolio reconciliation in accordance with Part III of DF Schedule 4, then the Matched PCA Parties will be deemed to have agreed that Data Reconciliations will be conducted by the delivery of Portfolio Data by each Matched PCA Party pursuant to Part III of DF Schedule 4; and

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Agreement would necessarily be subject to such a practice, it is left to the parties to bilaterally agree as to whether Multiple Transaction Payment Netting should be applied.

9 A party may make such an election in Part III, Q 2 of the Questionnaire.

10 A party may make such an election in Part III, Q 3(a) of the Questionnaire.

11 A party may make such an election in Part III, Q 3(b) of the Questionnaire.

12 A party may make such an election in Part III, Q 3(b) of the Questionnaire.

(iv) *SDR Data*. If both Matched PCA Parties have elected in their Matched Questionnaires[13] to reconcile relevant terms of Swaps in accordance with Part V of DF Schedule 4, then Part V of DF Schedule 4 shall apply.

(c) Conditions on Obligations. Each pair of Matched PCA Parties agrees that performance of the obligations of the Matched PCA Parties under any provision of the March 2013 DF Supplement that has been incorporated into their Matched PCAs shall be subject to the following conditions precedent:

(i) at least one Matched PCA Party is registered (fully or provisionally) with the CFTC as a (1) "swap dealer," as defined in Section 1a(49) of the CEA, and CFTC Regulation 1.3(ggg) thereunder, or (2) "major swap participant," as defined in Section 1a(33) of the CEA and CFTC Regulation 1.3(hhh) thereunder, as applicable; and

(ii)

(1) with respect to DF Schedule 3, the occurrence of the STRD Compliance Date that is applicable to the Matched PCA Parties; and

(2) with respect to DF Schedule 4, the occurrence of the PR Compliance Date that is applicable to the Matched PCA Parties.

6. Effectiveness

(a) The agreement to enter into and/or supplement a Matched PCA on the terms and conditions set forth in this Protocol Agreement, the Matched Questionnaires and the March 2013 DF Supplement, will, as between any Matched PCA Parties, be effective as of the date on which the later of two Matched PCA Parties delivered its executed Questionnaire in accordance with paragraph 3 (such date, the "**Implementation Date**").

(b) This Protocol Agreement is intended for use without negotiation, but without prejudice to any amendment, modification or waiver in respect of a Protocol Covered Agreement that the parties may otherwise effect in accordance with the terms of that Protocol Covered Agreement or as otherwise provided by applicable law.

(i) In adhering to this Protocol Agreement, a party may not specify additional provisions, conditions or limitations in its Adherence Letter; and

(ii) Any purported adherence that ISDA, as agent, determines in good faith is not in compliance with this Protocol Agreement will be void and ISDA will inform the relevant parties of such fact as soon as reasonably possible after making such determination and will remove the party's Adherence Letter from the ISDA website.

7. Representations and Agreements

(a) Representations by a PCA Principal. In the case of a Protocol Participant who is a PCA Principal in respect of a Matched Questionnaire and Matched PCA, the PCA Principal represents to the other PCA Principal that is party to such Matched PCA that, as of the Implementation Date:

(i) ***Status***. It is, if relevant, duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing or, if it otherwise represents its status in or pursuant to a Matched PCA, has such status;

(ii) ***Powers***. It has the power to execute and deliver the Adherence Letter and the Matched Questionnaire and to perform its obligations under the Adherence Letter, this Protocol Agreement, the Matched Questionnaire, and each Matched PCA (as supplemented by this Protocol

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[13] A party may make such an election in Part III, Q 3(c) of the Questionnaire.

Agreement), and has taken all necessary action to authorize such execution, delivery and performance;

(iii) ***No Violation or Conflict.*** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) ***Credit Support.*** Such execution, delivery and performance will not, in and of itself, adversely affect any obligations owed, whether by it or by any third party, under any Credit Support Document in respect of its obligations relating to any Matched PCA;

(v) ***Consents.*** All governmental and other consents that are required to have been obtained by it with respect to the Adherence Letter, this Protocol Agreement, the Matched Questionnaire, and each Matched PCA (as supplemented by this Protocol Agreement) have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(vi) ***Obligations Binding.*** Its obligations under the Adherence Letter, this Protocol Agreement, the Matched Questionnaire, and each Matched PCA (as supplemented by this Protocol Agreement) constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) Representations by a PCA Agent. In the case of a Protocol Participant who is a PCA Agent acting on behalf of a Delivering PCA Principal in respect of a Matched Questionnaire and Matched PCA, the PCA Agent represents to the other PCA Principal that is party to such Matched PCA that, as of the Implementation Date:

(i) ***Status.*** Each of the Delivering PCA Principal and the PCA Agent is, if relevant, duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing or, if it otherwise represents its status in or pursuant to a Matched PCA, has such status;

(ii) ***Powers.*** The Delivering PCA Principal has the power to execute and deliver each Matched PCA (as supplemented by this Protocol Agreement) and to perform its obligations thereunder, and has taken all necessary action to authorize such execution, delivery and performance. The PCA Agent has the power to execute and deliver the Adherence Letter and the Matched Questionnaire and to perform its obligations under the Adherence Letter, this Protocol Agreement, the Matched Questionnaire, and each Matched PCA (as supplemented by this Protocol Agreement), and has taken all necessary action to authorize such execution, delivery and performance. The PCA Agent has all necessary authority to enter into the Adherence Letter, this Protocol Agreement, and the Matched Questionnaire on behalf of the Delivering PCA Principal and has in its files a written agreement or power of attorney authorizing it to act on the Delivering PCA Principal's behalf in respect thereof;

(iii) ***No Violation or Conflict.*** Such execution, delivery and performance by the Delivering PCA Principal and the PCA Agent, respectively, do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) ***Credit Support.*** Such execution, delivery and performance will not, in and of itself, adversely affect any obligations owed, whether by the Delivering PCA Principal or by any third party, under any Credit Support Document in respect of its obligations relating to any Matched PCA;

(v) ***Consents***. All governmental and other consents that are required to have been obtained by the Delivering PCA Principal or the PCA Agent with respect to the Adherence Letter, this Protocol Agreement, the Matched Questionnaire, and each Matched PCA (as supplemented by this Protocol Agreement) have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(vi) ***Obligations Binding***. The respective obligations of the Delivering PCA Principal and the PCA Agent under the Adherence Letter, this Protocol Agreement, the Matched Questionnaire, and each Matched PCA (as supplemented by this Protocol Agreement) constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(c) Agreements by Matched PCA Parties. Each Matched PCA Party agrees with the other Matched PCA Party that:

(i) such other Matched PCA Party shall be a "CFTC Swap Entity" for purposes of the March 2013 DF Supplement if such other Matched PCA Party has elected to be a "CFTC Swap Entity" in its Matched Questionnaire;

(ii) any Credit Support Document between Matched PCA Parties that relates to a Matched PCA will be deemed to be supplemented to the extent necessary such that the operation thereof is not affected by the adherence by such Matched PCA Parties or any supplements contemplated by this Protocol Agreement and the relevant Matched Questionnaires;

(iii) all information and representations provided by it or by its PCA Agent on its behalf in the Matched Questionnaire shall be "**March 2013 DF Supplement Information**" for purposes of the March 2013 DF Supplement;[14]

(iv) solely for purposes of delivering notices of the type specified in Section 2.3 of the March 2013 DF Supplement in respect of information or representations set forth in the Matched Questionnaire of the other Matched PCA Party, the other Matched PCA Party may provide such notices in any manner by which delivery of a Questionnaire to such Matched PCA Party would be effective under paragraph 3(d) hereof or to any substitute address provided by such Matched PCA Party under Section 2.3 of the March 2013 DF Supplement;[15]

(v) solely for purposes of delivering notices in connection with the March 2013 DF Supplement (except in respect of information described in paragraphs (vi) or (vii) below), the "Notice Procedures" applicable to a Matched PCA Party include written notice by e-mail delivered to an address specified in such Matched PCA Party's Questionnaire for delivery of such notices[16] or to any substitute e-mail address provided under Section 2.3 of the DF Supplement.[17] Such written notice shall be deemed delivered when sent to the specified address;

(vi) solely for purposes of delivering Risk Valuations (as such term is defined in the March 2013 DF Supplement) pursuant to DF Schedule 3, the "Notice Procedures" applicable to a Matched PCA Party include written notice by e-mail delivered to an address specified in such Matched PCA

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[14] Under the DF Supplement, a party makes various representations about its DF Supplement Information and agrees to update such information and representations.

[15] Under Section 2.3 of the DF Supplement, a counterparty agrees to provide written notice of any updated information and representations.

[16] A party may provide its e-mail address for delivery of such notices in Part II, Q 6 of the Questionnaire.

[17] *See supra* note 15.

Party's Questionnaire for delivery of Risk Valuations[18] or to any substitute e-mail address provided under Section 2.3 of the DF Supplement.[19] Such written notice shall be deemed delivered when sent to the specified address; and

(vii) solely for purposes of delivering Portfolio Data (as such term is defined in the March 2013 DF Supplement) pursuant to DF Schedule 4, the "Notice Procedures" applicable to a Matched PCA Party include written notice by e-mail delivered to an address specified in such Matched PCA Party's Questionnaire for delivery of Portfolio Data[20] or to any substitute e-mail address provided under Section 2.3 of the DF Supplement.[21] Such written notice shall be deemed delivered when sent to the specified address.

8. Miscellaneous

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

(i) This Protocol Agreement constitutes the entire agreement and understanding of the Protocol Participants with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto. Each Protocol Participant acknowledges that, in adhering to this Protocol Agreement, it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to elsewhere in this Protocol Agreement, an Adherence Letter, or in a Questionnaire) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Protocol Agreement will limit or exclude any liability of a Protocol Participant for fraud.

(ii) Except for any supplement deemed to be made pursuant to this Protocol Agreement in respect of any Protocol Covered Agreement, all terms and conditions of each Protocol Covered Agreement will continue in full force and effect in accordance with its provisions as in effect immediately prior to the Implementation Date. Except as explicitly stated in this Protocol Agreement, nothing herein will constitute a waiver or release of any rights of any party under any Protocol Covered Agreement.

(b) ***Amendments.*** An amendment, modification or waiver in respect of the matters contemplated by this Protocol Agreement will only be effective in respect of a Matched PCA if made in accordance with the terms of such Matched PCA.

(c) ***Headings and Footnotes.*** The headings and footnotes used in this Protocol Agreement, any Questionnaire, and any Adherence Letter are for informational purposes and convenience of reference only, and are not to affect the construction of or to be taken into consideration in interpreting this Protocol Agreement, any Questionnaire, or any Adherence Letter.

(d) ***Governing Law.*** This Protocol Agreement and each Adherence Letter will, as between Matched PCA Parties, be governed by and construed in accordance with the laws of the State of New York, without reference to choice-of-law doctrine, *provided* that supplements to each Matched PCA effected by this Protocol Agreement shall be governed by and construed in accordance with the law governing such Matched PCA.

9. Definitions

As used in this Protocol Agreement, the following terms will have the following meanings:

"**CFTC Swap Entity**" means a party that elects in its Questionnaire to be a CFTC Swap Entity.

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[18] A party may provide its e-mail address for delivery of Risk Valuations in Part II, Q 7 of the Questionnaire.

[19] *See supra* note 15.

[20] A party may provide its e-mail address for delivery of Portfolio Data in Part II, Q 8 of the Questionnaire.

[21] *See supra* note 15.

"**Commodity Trade Option**" means a commodity option entered into pursuant to CFTC Regulation 32.3(a).

"**Credit Support Document**" means, with respect to a Matched PCA Party, a document, which, by its terms, secures, guarantees or otherwise supports the obligations of one or both of the Matched PCA Parties under a Matched PCA, whether or not such document is specified as a "Credit Support Document" in such Matched PCA.

"**Data Reconciliation**" shall have the meaning provided in the March 2013 DF Supplement.

"**DF Schedule**" means a schedule to the March 2013 DF Supplement.

"**ISDA Amend**" means the web-based platform that has been developed by ISDA and Markit Group Limited and is available at http://www.markit.com/en/products/distribution/document-exchange/registration.page or such other web address specified by ISDA and Markit Group Limited.

"**Non-CFTC Swap Entity**" means a party that **has not** elected in its Questionnaire to be a CFTC Swap Entity.

"**Portfolio Data**" shall have the meaning provided in the March 2013 DF Supplement.

"**PR Compliance Date**" means, with respect to any Matched PCA, the later of July 1, 2013 (unless the compliance date under CFTC Regulation 23.502 is delayed, in which case such later date) or the Implementation Date.

"**Protocol**" means the process for amending Protocol Covered Agreements under this ISDA March 2013 DF Protocol Agreement and related documents.

"**STRD Compliance Date**" means, with respect to any Matched PCA, the later of July 1, 2013 (unless the compliance date under CFTC Regulation 23.504 is delayed, in which case such later date) or the Implementation Date.

"**Swap**" means a "swap" as defined in Section 1a(47) of the CEA and the regulations thereunder; *provided that* a Commodity Trade Option is not a Swap for purposes hereof. The term "Swap" also includes any foreign exchange swaps and foreign exchange forwards that are exempted from regulation as "swaps" by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the CEA. For the avoidance of doubt, the term "Swap" does not include a swap that has been cleared by a DCO.

EXHIBIT 1
to ISDA March 2013 DF Protocol Agreement

Form of Adherence Letter

[Letterhead of Protocol Participant]

[Date]

Dear Sirs:

Re: ISDA March 2013 DF Protocol – Adherence

The purpose of this letter is to confirm our adherence as a "**Protocol Participant**" to the ISDA March 2013 DF Protocol Agreement as published by the International Swaps and Derivatives Association, Inc. on March 22, 2013 (the "**Protocol Agreement**").[22] This letter constitutes an Adherence Letter as referred to in the Protocol Agreement. The definitions and provisions contained in the Protocol Agreement are incorporated into this Adherence Letter.

We agree to pay a one-time fee of $500 to ISDA at or before the submission of this Adherence Letter.

1. Specific Terms

   We hereby represent that this is the only Adherence Letter submitted by us to ISDA in respect of the Protocol Agreement.

2. Appointment as Agent and Release

   We hereby appoint ISDA as our agent for the limited purposes of the Protocol Agreement and accordingly we waive, and hereby release ISDA from, any rights, claims, actions or causes of action whatsoever (whether in contract, tort or otherwise) arising out of or in any way relating to this Adherence Letter or our adherence to the Protocol Agreement or any actions contemplated as being required by ISDA.

3. Contact Details

   Our contact information, solely for purposes of this Adherence Letter (and unrelated to the Questionnaire delivery options in the subsequent section) is:

   Name:
   Address:
   Telephone:
   Fax:
   E-mail:

4. Delivery of Questionnaire

Delivery of a Questionnaire by another Protocol Participant may be made to us pursuant to paragraph 3 of the Protocol Agreement as follows, where the relevant box has been checked:

☐ if submitted via ISDA Amend in accordance with the terms thereof.

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[22] The version of the Adherence Letter published on March 22, 2013 incorrectly listed the date of the DF Protocol Agreement as March 20, 2013.

☐ if in writing and delivered in person or by courier, or by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested) to:

[Address]
[Address]
[Address]
[Attention]

☐ if sent by facsimile transmission, to:

[Fax Number]
[Attention]

☐ if sent by e-mail or other electronic messaging system, to:

[Address]

☐ 5. We understand that the Protocol is designed to allow "matching" of Questionnaires between a CFTC Swap Entity and other counterparties (including other CFTC Swap Entities). Accordingly, to assist in the administration of the Protocol, we have checked this box to indicate that (a) we intend to participate in the Protocol as a CFTC Swap Entity or (b) we are submitting this letter to participate in the Protocol on behalf of a PCA Principal who we intend to designate as a CFTC Swap Entity and whose legal name is: _____

We consent to the publication of a conformed copy of this letter by ISDA and to the disclosure by ISDA of the contents of this letter.

Yours faithfully,

[PROTOCOL PARTICIPANT]

Signature: _____
Name: _____
Title: _____

ISDA Safe, Efficient Markets

International Swaps and Derivatives Association, Inc.

ISDA MARCH 2013 DF SUPPLEMENT[1]

published on March 22, 2013,
by the International Swaps and Derivatives Association, Inc.
Annotated in red as of June 3, 2013

THE ANNOTATIONS AND INSTRUCTIONS IN THIS DOCUMENT DO NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES IN CONNECTION WITH YOUR CONSIDERATION OF THE ISDA MARCH 2013 DF PROTOCOL OR THE RELATED DOCUMENTS. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISERS THEY DEEM APPROPRIATE AS PART OF THEIR CONSIDERATION OF THE PROTOCOL PRIOR TO ADHERING TO THE PROTOCOL. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

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[1] This March 2013 DF Supplement is intended to address requirements of the following final rules:

(1) CFTC, Final Rule, *Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants*, 77 Fed. Reg. 55904 (Sept. 11, 2012);

(2) CFTC, Final Rule, *End-User Exception to the Clearing Requirement for Swaps*, 77 Fed. Reg. 42559 (July 19, 2012); and

(3) CFTC, Final Rule, *Clearing Requirement Determination Under Section 2(h) of the CEA*, 77 Fed. Reg. 74284 (Dec. 13, 2012).

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ISDA Safe, Efficient Markets

International Swaps and Derivatives Association, Inc.

ISDA March 2013 DF Supplement

(published on March 22, 2013)

Any of the following schedules of this ISDA March 2013 DF Supplement (as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**")) (this "**March 2013 DF Supplement**") may be incorporated into an agreement (such agreement, a "**Covered Agreement**") by written agreement of the relevant parties indicating which schedules of this March 2013 DF Supplement (each such schedule, a "**March 2013 DF Schedule**") shall be incorporated into such Covered Agreement.[2] Each March 2013 DF Schedule so incorporated in a Covered Agreement will be applicable to such Covered Agreement unless otherwise provided in such Covered Agreement. The headings and footnotes used in this March 2013 DF Supplement are for informational purposes and convenience of reference only, and are not to affect the construction of or to be taken into consideration in interpreting this March 2013 DF Supplement.

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[2] The "written agreement of the relevant parties" may include any written agreement by which the parties agree to incorporate the provisions of this March 2013 DF Supplement. Such an agreement will be established if both parties have adhered to the March 2013 DF Protocol and exchanged Questionnaires in accordance with the terms of the ISDA March 2013 DF Protocol Agreement. Parties may also incorporate such provisions through any other bilateral agreement. In either case, the relevant provisions of this Supplement would be incorporated into "Covered Agreements."

March 2013 DF Schedule 1
Defined Terms

The following terms shall have the following meanings when used in this March 2013 DF Supplement. In the event of any inconsistency between a definition provided in this March 2013 DF Supplement and a definition provided in a Covered Agreement, the definitions provided in this March 2013 DF Supplement shall govern for purposes of interpreting terms provided in any March 2013 DF Schedule that is incorporated by reference into such Covered Agreement and the definitions provided in the Covered Agreement shall govern for purposes of interpreting other terms in the Covered Agreement unless such Covered Agreement specifically provides otherwise.

"**Active Fund**" means a "private fund," as defined in Section 202(a) of the Investment Advisers Act of 1940, that (i) is not a Third-Party Subaccount and (ii) has executed 200 or more swaps per month on average over the 12 months preceding November 1, 2012. For purposes of clause (ii) of this definition, "swaps" shall mean swaps as defined by the CFTC for purposes of implementation schedules under parts 23 and 50 of CFTC regulations and shall exclude, without limitation, foreign exchange swaps and foreign exchange forwards exempted from regulation as "swaps" by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the CEA.[3]

"**Agreement**," as used in a provision of this March 2013 DF Supplement that is incorporated into a Covered Agreement or any defined term used in such provision, means such Covered Agreement, as amended or supplemented from time to time.[4]

"**Annually**" means once each calendar year.

"**Applicable Portfolio Reconciliation Compliance Date**" means the date on which CFTC Swap Entity compliance is required with respect to Counterparty under CFTC Regulation 23.502 and applicable law regarding the scope of application of CFTC Regulation 23.502, including applicable CFTC interpretations and other CFTC Regulations. For the avoidance of doubt, if both Parties are CFTC Swap Entities, the Applicable Portfolio Reconciliation Compliance Date shall occur on the first date on which compliance is required by either CFTC Swap Entity with respect to the other Party.[5]

"**Applicable STRD Compliance Date**" means the date on which CFTC Swap Entity compliance is required with respect to Counterparty under CFTC Regulation 23.504 and applicable law

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[3] See the definitions of "Category 1 Entity" and "Category 2 Entity."

[4] Because "Covered Agreement" means any agreement that the parties may amend or supplement with the terms provided in this DF Supplement, the term "Agreement" is used to identify the specific agreement that is supplemented when these terms are incorporated into that agreement. An "Agreement" can be a master agreement governing the terms and conditions of swaps or any other agreement between the relevant parties.

[5] *See* Section 4.1. Note that this date is defined in respect of the date on which compliance is required under applicable law with respect to swaps that are between the two specific parties, rather than the general compliance date for CFTC Regulation 23.502. This is to carve-out situations where the general compliance date for the regulation has occurred but it does not apply to the parties, *e.g.* for jurisdictional reasons.

regarding the scope of application of CFTC Regulation 23.504, including applicable CFTC interpretations and other CFTC Regulations. For the avoidance of doubt, if both Parties are CFTC Swap Entities, the Applicable STRD Compliance Date shall occur on the first date on which compliance is required by either CFTC Swap Entity in respect of the other Party.[6]

"**Category 1 Entity**" means (i) a Swap Dealer, (ii) a Major Swap Participant, (iii) a Security-Based Swap Dealer, (iv) a Major Security-Based Swap Participant, or (v) an Active Fund.[7]

"**Category 2 Entity**" means (i) a commodity pool as defined in Section 1a(10) of the CEA and CFTC Regulations thereunder, (ii) a "private fund," as defined in Section 202(a) of the Investment Advisers Act of 1940, other than an Active Fund, or (iii) a person predominantly engaged in activities that are in the business of banking, or in activities that are "financial in nature," as defined in Section 4(k) of the Bank Holding Company Act of 1956, *provided that*, in each case, the entity is not a Third-Party Subaccount.[8]

"**CEA**" means the Commodity Exchange Act, as amended.

"**CFTC**" means the U.S. Commodity Futures Trading Commission.

"**CFTC Regulations**" means the rules, regulations, orders and interpretations published or issued by the CFTC, as amended.

"**CFTC Swap Entity**" means a Party that (i) the Parties have agreed in writing will be a "CFTC Swap Entity" for purposes of the March 2013 DF Supplement, regardless of whether that Party is registered (fully or provisionally) as a "swap dealer" or "major swap participant" with the CFTC at the time of such agreement, or (ii) is or becomes registered (fully or provisionally) as a "swap dealer" or "major swap participant" with the CFTC and has notified the other Party of such registration in accordance with the Notice Procedures.[9]

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[6] *See* Sections 2.12 and 3.1. Note that this date is defined in respect of the date on which compliance is required under applicable law with respect to swaps that are between the two specific parties, rather than the general compliance date for CFTC Regulation 23.504. This is to carve-out situations where the general compliance date for the regulation has occurred but it does not apply to the parties, *e.g.* for jurisdictional reasons.

[7] CFTC Regulation 50.25. *See* Sections 2.6-2.8 for the use of the terms "Category 1 Entity" and "Category 2 Entity."

[8] CFTC Regulation 50.25. *See* Sections 2.6-2.8 for the use of the terms "Category 1 Entity" and "Category 2 Entity."

[9] The function of this term is to identify the party or parties who will receive and provide representations, warranties and covenants appropriate to a swap dealer or major swap participant. This DF Supplement provides parties with flexibility in incorporating its provisions into their agreements by allowing them to choose whether one or both parties will be a "CFTC Swap Entity" without such party having to represent that it is a swap dealer or a major swap participant. Thus, a party that anticipates being a swap dealer or major swap participant can enter into this agreement as a CFTC Swap Entity in anticipation of registration. Additionally, a party can participate as a non-CFTC Swap Entity and then become a CFTC Swap Entity at a later time by registering as a swap dealer or major swap participant and notifying its counterparty of its registration as such. The relevant provisions of this DF Supplement do not take effect until two conditions have been satisfied: (1) the relevant compliance date has occurred under applicable law and (2) at least one party has become registered as a swap dealer or major swap participant. *See* Section 5(c) of the Protocol Agreement.

"**Close-Out Provision**" means (i) in respect of a Swap for which the Parties **have** agreed in writing (whether as part of the Agreement or otherwise) to a process for determining the payments to be made upon early termination of such Swap, the provisions specifying such process, and (ii) in respect of a Swap for which the Parties **have not** agreed in writing (whether as part of the Agreement or otherwise) to a process for determining the payments to be made upon early termination of such Swap, Section 6(e)(ii)(1) of the 2002 ISDA Master Agreement as if such Swap were governed thereby.[10]

"**Commodity Trade Option**" means a commodity option entered into pursuant to CFTC Regulation 32.3(a).[11]

"**Counterparty**" or "**CP**" means a Party to the Agreement that is a counterparty to a CFTC Swap Entity. For the avoidance of doubt, if two CFTC Swap Entities are party to the Agreement, each CFTC Swap Entity is also a Counterparty or CP for purposes of this March 2013 DF Supplement.

"**Covered Financial Company**" means a "covered financial company," as defined in Section 201(a)(8) of the Dodd-Frank Act, 12 U.S.C. § 5381(a)(8).[12]

"**Credit Support Agreement**" means a written agreement, if any, between the Parties (whether part of the Agreement or otherwise) that governs the posting or transferring of collateral or other credit support related to one or more Swaps.[13]

"**Credit Support Call**" means a request or demand for the posting or transferring of collateral or other credit support related to one or more Swaps made pursuant to the terms of a Credit Support Agreement.

"**CSA Valuation**" means, in respect of a Swap and a Risk Valuation Date and subject to the terms of Part II of Schedule 3 of this March 2013 DF Supplement in the case of a dispute, the value of such Swap determined in accordance with the CSA Valuation Process, if any, expressed as a positive number if such Swap has positive value for the Risk Valuation Agent, and as a negative number if such Swap has negative value for the Risk Valuation Agent.[14]

"**CSA Valuation Process**" means the process, if any, agreed by the Parties in writing (whether as part of the Agreement or otherwise) for determining the value of one or more transactions that

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Parties incorporating these provisions through the protocol process, can agree to designate the CFTC Swap Entity in the ISDA March 2103 Protocol Questionnaire ("**Questionnaire**") *See* Questionnaire Part II, Q 2.

[10] *See* the definitions of "Risk Exposure" and "Risk Valuation."

[11] For purposes of this DF Supplement, Commodity Trade Options are carved out of the definition of "Swap." *See* CFTC Regulation 32.3, which exempts Commodity Trade Options from various CFTC Regulations, including the March 2012 DF Supplement Rules.

[12] *See* Section 2.13.

[13] *See* definition of "Risk Valuation Agent" and the annotations thereto. While "Credit Support Agreement" includes an ISDA Credit Support Annex ("CSA"), the definition is not limited to CSAs and would include other agreements that address collateral or other credit support.

[14] *See* definition of "Risk Valuation" and DF Schedule 3.

may include a Swap or portfolio of Swaps for the purpose of posting or transferring collateral or other credit support. For the avoidance of doubt, such writing may be in the form of an ISDA Credit Support Annex or any other written agreement.[15]

"**Daily**" means once each Joint Business Day.

"**Data Delivery Date**" means a date determined pursuant to Section 4.2 or 4.3 of this March 2013 DF Supplement, as applicable, that is a Joint Business Day.

"**Data Reconciliation**" means a comparison of Portfolio Data and, to the extent applicable, SDR Data received or obtained by a Party against such Party's own books and records of Swaps between the Parties and, in respect of any Discrepancy, a process for identifying and resolving such Discrepancy. A Data Reconciliation may include (but shall not be required to include or be 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.[16]

"**DCO**" means a "derivatives clearing organization," as such term is defined in Section 1a(15) of the CEA and CFTC Regulations.

"**Discrepancy**" means, (i) in respect of the Portfolio Data received with respect to a Swap and any SDR Data obtained for such Swap, a difference between a Material Term in such Portfolio Data or SDR Data and a party's own records of the corresponding Material Term and (ii) in respect of the Portfolio Data received with respect to a Swap, a difference between a Valuation reported in such Portfolio Data and such party's own Valuation of such Swap (calculated as of the same Joint Business Day in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result) that is greater than the Discrepancy Threshold Amount.[17]

"**Discrepancy Threshold Amount**" means, in respect of a Swap, an amount equal to ten percent (10%) of the higher of the two absolute values of the respective Valuations assigned to such Swap by the Parties.[18]

"**Dodd-Frank Act**" means the Dodd-Frank Wall Street Reform and Consumer Protection Act, as amended.

"**FDIA**" means the Federal Deposit Insurance Act of 1950, as amended.

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[15] *See* definitions of "CSA Valuation" and "Risk Valuation" and the annotations thereto.

[16] *See* March 2013 DF Schedule 4.

[17] *See* March 2013 DF Schedule 4. This term, along with "Discrepancy Threshold Amount" and "Material Terms," establishes the scope of the requirement under Schedule 4 to consult in order to reconcile differences in portfolio data.

[18] *See* CFTC Regulation 23.502(a)(5) and (b)(4) and discussion at 77 Fed. Reg. 55904, 55930-31 (Sept. 11, 2012). Under Regulation 23.502, a difference in the parties' valuations of a swap that is less than 10% need not be deemed a discrepancy that must be reconciled as part of a portfolio reconciliation. This term is used to establish that such valuation differences are not treated as "Discrepancies" that must be reconciled under DF Schedule 4.

"**FDIC**" means the Federal Deposit Insurance Corporation.

"**Financial Company**" means a "financial company," as defined in Section 201(a)(11) of the Dodd-Frank Act, 12 U.S.C. § 5381(a)(11).[19]

"**Initial Mandatory Clearing Determination**" means the CFTC determination initially published in the Federal Register on December 12, 2012, pursuant to rulemaking under Section 2(h) of the CEA providing that certain classes of interest rate swaps and credit default swaps shall be subject to mandatory submission for clearing to a DCO eligible to clear such swaps under CFTC Regulation 39.5, as amended.[20]

"**Insured Depository Institution**" means an "insured depository institution," as defined in 12 U.S.C. § 1813.[21]

"**Joint Business Day**" means a day that is a Local Business Day in respect of each Party.

"**Local Business Day**" means, as used in a provision of this March 2013 DF Supplement, with respect to a Party, a day on which commercial banks are open for general business (including for dealings in foreign exchange and foreign currency deposits) in the city or cities specified by such Party in the March 2013 DF Supplement Information.[22] If a Party does not specify a city in the March 2013 DF Supplement Information, such Party will be deemed to have specified the city specified by the other Party in the March 2013 DF Supplement Information. If neither Party specifies a city in the March 2013 DF Supplement Information, both Parties will be deemed to have specified the City of New York.

"**Major Security-Based Swap Participant**" means a "major security-based swap participant," as defined in Section 3(a)(67) of the SEA and Rule 3a67-1 thereunder.

"**Major Swap Participant**" means a "major swap participant," as defined in Section 1a(33) of the CEA and CFTC Regulation 1.3(hhh) thereunder.

"**March 2013 DF Schedule**" shall have the meaning given to such term in the introductory paragraph of this March 2013 DF Supplement.

"**March 2013 DF Supplement Information**" means any information or representation agreed in writing by the Parties to be March 2013 DF Supplement Information, as amended or

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[19] *See* Questionnaire Part II, Q 4, which requires a party to specify whether it is a Financial Company, and the annotations thereto. Section 2.1 of the March 2013 DF Schedule 2 contains a representation, which is deemed repeated as of each Transaction Event, that such specification is true accurate and complete in every material respect.

[20] 77 Fed. Reg. 74284 (Dec. 13, 2012).

[21] *See* Questionnaire Part II, Q 5, which requires a party to specify whether it is an Insured Depository Institution, and the annotations thereto. Section 2.1 of the March 2013 DF Schedule 2 contains a representation, which is deemed repeated as of each Transaction Event, that such specification is true, accurate and complete in every material respect.

[22] *See* Questionnaire Part III, Q 1 and Protocol Agreement Section 7(c)(iii).

supplemented from time to time in accordance with Section 2.3 of this March 2013 DF Supplement or in another manner agreed by the Parties.[23]

"**March 2013 DF Supplement Rules**" means CFTC Regulations 23.500 through 23.505, CFTC Regulation 50.50, and CFTC Regulation 50.4 adopted in the following Federal Register publications, as amended and supplemented from time to time: (i) CFTC, Final Rule, *Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants*, 77 Fed. Reg. 55904 (Sept. 11, 2012); (ii) CFTC, Final Rule, *End-User Exception to the Clearing Requirement for Swaps*, 77 Fed. Reg. 42559 (July 19, 2012) and (iii) CFTC, Final Rule, *Clearing Requirement Determination Under Section 2(h) of the CEA*, 77 Fed. Reg. 74284 (Dec. 13, 2012).

"**Material Terms**" has the meaning ascribed by the CFTC to such term for purposes of CFTC Regulation 23.502.[24]

"**Monthly**" means once each calendar month.

"**Notice Procedures**" means (i) the procedures specified in the Agreement regarding delivery of notices or information to a Party, (ii) such other procedures as may be agreed in writing between the Parties from time to time, and (iii) with respect to a Party and a particular category of information or notice, if the other Party has specified other permissible procedures in writing, such procedures.[25]

"**Party**" means, in respect of a Covered Agreement, a party thereto.

"**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 the terms of all outstanding Swaps between the Parties in a form and standard that is capable of being reconciled, with a scope and level of detail that is reasonably acceptable to each Party and that describes and includes, without limitation, current Valuations attributed by that Party to each such Swap. The information comprising the Portfolio Data to be provided by a Party on a Data Delivery Date shall be prepared (i) as at the time or times that such Party computes its end of day valuations for Swaps (as specified by that Party for this purpose in

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[23] "March 2013 DF Supplement Information" includes information and representations provided in a counterparty's Questionnaire or equivalent bilateral documentation, as well as updates of that information and other information provided to the dealer counterparty so that it can satisfy regulatory requirements under the March 2013 DF Supplement Rules. *See* Protocol Agreement Section 7(c)(iii). Section 2.1 of the March 2013 DF Schedule 2 contains a representation, which is deemed repeated as of each Transaction Event, that March 2013 DF Supplement Information is true, accurate and complete in every material respect.

[24] Under CFTC Regulation 23.502, portfolio reconciliations are intended to resolve discrepancies in "material terms" as well as valuations. CFTC Regulation 23.500 defines "material terms" as terms required to be reported to an SDR under Part 45 of the CFTC regulations. However, the term has been defined here more flexibly to have the meaning provided by the CFTC for purposes of Regulation 23.502 in order to accommodate the possibility of further guidance from the CFTC in light of evolving practice.

[25] Parties agree to additional Notice Procedures in the Protocol Agreement. *See* Protocol Agreement Section 7(c)(iv)-(vii), which provides, among other things, that parties may specify email addresses for various notices in their Questionnaires.

writing) on the immediately preceding Joint Business Day, as applicable, and (ii) in the case of Valuations, in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result.[26]

"**Quarterly**" means once each calendar quarter.

"**Recalculation Date**" means the Risk Valuation Date on which a Risk Valuation that gives rise to the relevant dispute is calculated; *provided*, *however*, that if one or more subsequent Risk Valuation Dates occurs prior to the resolution of such dispute, then the "Recalculation Date" in respect of such dispute means the last such Risk Valuation Date.[27]

"**Reference Market-makers**" means four leading dealers in the relevant market selected by the Risk Valuation Agent in good faith (i) from among dealers of the highest credit standing which satisfy all the criteria that the Risk Valuation Agent applies generally at the time in deciding whether to offer or to make an extension of credit and (ii) to the extent practicable, from among such dealers having an office in the same city.[28]

"**Risk Exposure**" means, in respect of a Swap and a Risk Valuation Date and subject to the terms of Part II of Schedule 3 of this March 2013 DF Supplement in the case of a dispute, the amount, if any, that would be payable to the Risk Valuation Agent by CP (expressed as a positive number) or by the Risk Valuation Agent to CP (expressed as a negative number) pursuant to the Close-Out Provision as of the Risk Valuation Time as if such Swap (and not any other Swap) was being terminated as of such Risk Valuation Date; *provided that* (i) if the Agreement provides for different calculations depending on whether one of the Parties is an affected or defaulting Party, such calculation will be determined using estimates at mid-market of the amounts that would be paid for a replacement transaction; and (ii) such calculation will not include the amount of any legal fees and out-of-pocket expenses.[29]

"**Risk Valuation**" means, in respect of a Swap and a Risk Valuation Date for which (i) there is a CSA Valuation determined by the Risk Valuation Agent or its agent, such CSA Valuation, and (ii) there is no CSA Valuation determined by the Risk Valuation Agent or its agent, the Risk Exposure determined by the Risk Valuation Agent or its agent for such Swap and Risk Valuation Date, unless, pursuant to Section 3.1 of this March 2013 DF Supplement, the Risk Valuation Agent has elected to use the CSA Valuation provided by CP for such Swap and Risk Valuation Date, in which case, such CSA Valuation provided by CP.[30]

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[26] *See supra* note 24 and March 2013 DF Schedule 4. Portfolio Data is defined to include Valuations, so that valuations for each Swap (including those entered into prior to July 1, 2013) are always delivered under Schedule 4. However, the definition does not specify particular swap terms data that must be included in a reconciliation, and the scope and details of terms data to be reconciled is left to the further agreement of the parties.

[27] *See* Section 3.7(b).

[28] *See* Section 3.7(b).

[29] *See* the definition of "Risk Valuation" and the annotations thereto.

[30] Risk Valuation is the core definition for Schedule 3 of this March 2013 DF Supplement, which provides agreements for the daily production of such valuations. Schedule 3 is intended to address the provisions of CFTC Regulation 23.504(b)(4)(i) and (ii), which require swap dealers and major swap participants to have

"**Risk Valuation Agent**" means, in respect of any Risk Valuation Date and any Swap: (i) if only one Party is a CFTC Swap Entity, such Party, (ii) if both Parties are CFTC Swap Entities and such Parties **have not** entered into a Credit Support Agreement relating to such Swap, the Party whom both Parties have agreed in writing will be the Risk Valuation Agent for such date (unless such date is only a Local Business Day for one of the Parties, in which case such Party shall be the Risk Valuation Agent for such date), and (iii) if both Parties are CFTC Swap Entities and such Parties **have** entered into one or more Credit Support Agreements relating to such Swap, the Party entitled to make a Credit Support Call under such Credit Support Agreements on such date; *provided that*, (a) on any such date on which both CFTC Swap Entities are entitled to make such a Credit Support Call, the Risk Valuation Agent shall be the Party entitled to make a Credit Support Call under such Credit Support Agreements on the most recent Risk Valuation Date on which only one CFTC Swap Entity was entitled to make such a call, and (b) on any such date on which neither CFTC Swap Entity is entitled to make such a Credit Support Call, if such date is only a Local Business Day for one of the Parties, such Party shall be the Risk Valuation Agent and otherwise the Risk Valuation Agent shall be the Party entitled to make a Credit Support Call under such Credit Support Agreement on the most recent preceding Risk Valuation Date on which only one CFTC Swap Entity was entitled to make such a call.[31]

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written documentation with certain categories of counterparties on a process for determining the value of each swap for purposes of complying with daily internal risk management requirements of swap dealers and major swap participants under Section 4s(j) of the CEA. The compliance date for such requirements is July 1, 2013. These CFTC Regulations also require that the valuations produced through this agreed process be used for purposes of regulatory margin requirements under section 4s(e) of the CEA. However, such margin requirements have not been promulgated by the CFTC or prudential regulators at the time of this March 2013 DF Supplement. Accordingly, Schedule 3 addresses internal risk management valuations only. Indeed, Section 3.10 includes language intended to make clear that Risk Valuations produced under Schedule 3 do not affect any other agreement of the parties regarding the calculation of valuations or any dispute regarding valuations for any other purposes.

In order to avoid unnecessary production of additional valuations, Risk Valuation is defined to conform to existing valuations whenever possible in light of regulatory requirements. Where the parties have previously agreed upon a process for a CFTC Swap Entity to determine the value of a swap for purposes of transferring collateral (referred to in this DF Supplement as the "CSA Valuation"). This definition provides that the "Risk Valuation" is the CSA Valuation on any day on which such a CSA Valuation is produced. Where the parties have not agreed to such a process, the Risk Valuation is generally the CFTC Swap Entity's good faith estimate of the amount that would be produced according to the close-out valuation provisions to which the parties have agreed (referred to in this DF Supplement as "Risk Exposure") or if they have not agreed to such close-out valuation provisions, according to Section 6(e)(ii)(1) of the 2002 ISDA Master Agreement (see the definition of "Close-Out Provision"). Schedule 3 provides a further agreement for efficiency: on any day on which the counterparty produces a CSA Valuation, the CFTC Swap Entity may accept such CSA Valuation as the Risk Valuation if it determines in good faith that it may do so in compliance with CFTC Regulation 23.504(b).

[31] "Risk Valuation Agent" is defined to provide that (i) when only one party is a CFTC Swap Entity, that party is always the Risk Valuation Agent (since "Risk Valuations" are produced exclusively for purposes of meeting the internal risk management requirements of a swap dealer or major swap participant), and (ii) when both parties are CFTC Swap Entities, the party that is entitled to make a Credit Support Call on any given day is the Risk Valuation Agent on such day (to avoid unnecessary duplication). In this latter situation, this definition also provides rules to determine who will be the Risk Valuation Agent on any day when neither CFTC Swap Entity is entitled to make a Credit Support Call or both CFTC Swap Entities are entitled to make a Credit Support Call.

"**Risk Valuation Date**" means, with respect to a Swap, each Local Business Day for either Party that is a CFTC Swap Entity.[32]

"**Risk Valuation Time**" means, with respect to a Swap and any day, the close of business on the prior Local Business Day in the locality specified by the Risk Valuation Agent in its notice of the Risk Valuation to CP.[33]

"**SDR**" means a "swap data repository," as defined in Section 1a(48) of the CEA and the CFTC Regulations.

"**SDR Data**" means Material Terms data that is available from an SDR.[34]

"**SEA**" means the Securities Exchange Act of 1934, as amended.

"**SEC**" means the U.S. Securities and Exchange Commission.

"**Security-Based Swap Dealer**" means a "security-based swap dealer," as defined in Section 3(a)(71) of the SEA and Rule 3a71-1 thereunder.

"**Swap**" means a "swap" as defined in Section 1a(47) of the CEA and regulations thereunder that is, or is to be, governed by the Agreement; *provided that* a Commodity Trade Option is not a Swap for purposes of this March 2013 DF Supplement. The term "Swap" also includes any foreign exchange swaps and foreign exchange forwards that are, or are to be, governed by the Agreement and that are exempted from regulation as "swaps" by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the CEA.[35] For the avoidance of doubt, the term "Swap" does not include a swap that has been cleared by a DCO.

"**Swap Dealer**" means a "swap dealer," as defined in Section 1a(49) of the CEA and CFTC Regulation 1.3(ggg) thereunder.

"**Third-Party Subaccount**" means an account that is managed by an investment manager who is (1) independent of and unaffiliated with the account's beneficial owner or sponsor and (2) responsible for the documentation necessary for the account's beneficial owner to clear swaps.[36]

"**Transaction Event**" means any event that results in a new Swap between Parties or in a change to the terms of a Swap between Parties, including execution, termination, assignment, novation,

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[32] Parties specify Local Business Days in their respective Questionnaires. This definition is used to provide that a Risk Valuation is produced on any day that is a Local Business Day for a CFTC Swap Entity.

[33] *See* the definition of "Risk Exposure."

[34] *See* March 2013 DF Schedule 4, Part V.

[35] While the Secretary of the U.S. Treasury Department has the authority to exempt certain types of FX transactions from the definition of "swap" under CEA (which authority has been exercised, *see* 77 Fed. Reg. 69694 (Nov. 20, 2012)), CFTC staff has informally indicated that the rules addressed by the ISDA March 2013 DF Supplement continue to apply to Treasury-exempted FX transactions. CEA Section 1a(47)(E); 77 Fed. Reg. 69694, 69699 & n. 51 (Nov. 20, 2012).

[36] *See* definitions of "Active Fund" and "Category 2 Entity."

exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a Swap.[37]

"**Valuation**" has the meaning ascribed to such term in CFTC Regulation 23.500.

"**Weekly**" means once each calendar week.

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[37] This term is used to establish the timing of certain representations. It is also used to establish the scope of Schedule 3, which applies to new swaps and other swaps for which a Transaction Event occurs after the compliance date for CFTC Regulation 23.504. *See* Sections 2.1 and 3.1.

March 2013 DF Schedule 2
General Terms

This March 2013 DF Schedule 2 may be incorporated into an agreement between a CFTC Swap Entity and any other Party, including another CFTC Swap Entity.[38]

If the Parties to an agreement have specified that this March 2013 DF Schedule 2 shall be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this March 2013 DF Schedule 2 shall be deemed to be a part of such agreement to the same extent as if this March 2013 DF Schedule 2 were restated therein in its entirety.

Part I. General Representations and Agreements

2.1. Each Party represents to the other Party (which representation is deemed repeated as of the time of each Transaction Event) that, as of the date of each Transaction Event, (i) all March 2013 DF Supplement Information (excluding representations) furnished by or on behalf of it to the other Party is true, accurate and complete in every material respect, and (ii) no representation provided in the March 2013 DF Supplement Information or in this March 2013 DF Supplement is incorrect or misleading in any material respect. The March 2013 DF Supplement Information is incorporated herein by reference.[39]

2.2. Each Party acknowledges that the other Party has agreed to incorporate one or more March 2013 DF Schedules into the Agreement, and, if the Parties enter into any Swaps on or after the date of such incorporation, the other Party will do so in reliance upon the March 2013 DF Supplement Information and the representations provided by such Party or its agent in the March 2013 DF Supplement Information and this March 2013 DF Supplement. Notwithstanding the foregoing, each Party agrees that an event of default, termination event, or other similar event that gives a Party grounds to cancel or otherwise terminate a Swap shall not occur under the Agreement or any other contract between the Parties solely on the basis of (i) a representation provided solely in the March 2013 DF Supplement Information or in this March 2013 DF Supplement being incorrect or misleading in any material respect, or (ii) a breach of any covenant or agreement set forth solely in this March 2013 DF Supplement; *provided, however*, that nothing in this Section 2.2 shall prejudice any other right or remedy of a Party at law or under the Agreement or any other contract in respect of any

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[38] If the parties have adhered to the Protocol and exchanged Questionnaires in accordance with its terms, this Schedule 2 will be automatically incorporated into the agreements between the parties that are covered by the March 2013 DF Protocol. The use of the word "may" here recognizes the fact that parties can also bilaterally agree to incorporate this Schedule 2 into an agreement outside of the Protocol.

[39] CFTC Regulations 23.402(d) and 23.504(b)(5). This provision is identical to Section 2.1 of the ISDA August 2012 DF Supplement, *except* that it does not refer to "financial information." The purpose of this Section 2.1 is to provide representations from the counterparty in support of the information and representations it has provided. *See also* Section 2.3 below regarding the updating of such representations and information.

misrepresentation or breach hereunder or thereunder. For the avoidance of doubt, this Section 2.2 shall not alter a Party's rights or remedies, if any, applicable to a breach of any representation, warranty, covenant, or agreement that is not provided or set forth solely in March 2013 DF Supplement Information or in this March 2013 DF Supplement, including any such breach relating to any event or condition that could also cause or constitute an event specified in (i) or (ii) above.[40]

2.3. Each Party agrees to promptly notify the other Party in writing in accordance with the Notice Procedures (i) of any material change to March 2013 DF Supplement Information (other than representations) previously provided by such Party or on behalf of such Party and (ii) if any representations made in March 2013 DF Supplement Information or this March 2013 DF Supplement by or on behalf of such Party become incorrect or misleading in any material respect. For any representation made in one or more of the March 2013 DF Schedules that would be incorrect or misleading in any material respect if repeated on any date following the date on which the representation was last repeated, the notifying Party shall timely amend such representation by giving notice of such amendment to the other Party in accordance with the Notice Procedures.[41]

Part II. **Confirmations**

2.4. Unless the Parties have agreed otherwise in writing, each Party agrees that a confirmation of a Swap or another type of transaction under this Agreement may be created by delivery of written terms by each party; *provided that* (i) the terms delivered by each party match the terms delivered by the other party and (ii) the terms are either delivered by each party to the other party in a manner that permits each Party to review such terms or delivered by each party to a third-party agent or service provider that confirms the matching of such terms to the Parties (in each case by telex, electronic messaging system, email or otherwise). In each case, such a confirmation will be sufficient for all purposes to evidence a binding supplement to this Agreement. The foregoing shall not limit other agreed methods of creating binding confirmations and shall not be construed as an

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[40] This provision is, subject to conforming changes, the same as Section 2.2 of the ISDA August 2012 DF Supplement. Parties may use the March 2013 DF Protocol as an efficient means of incorporating the Supplement into existing agreements. Because the March 2013 DF Protocol does not afford parties the opportunity to modify the terms of the Supplement, Section 2.2 provides that an event of default or similar event will not occur due to a misrepresentation or breach arising solely from the provisions of the Supplement incorporated into their agreement and will not be a cross-default under other agreements between the parties. On the other hand, if (for example) a CP provides a representation in both the Questionnaire and in an underlying ISDA agreement, Section 2.2 does not alter any remedies the dealer counterparty may have under that ISDA agreement as a result of the inaccuracy of the representation in the ISDA agreement, even though a breach of that representation would also likely be a breach of a representation made in the Questionnaire and incorporated into that same ISDA agreement.

[41] CFTC Regulations 23.402(d) and 23.504(b)(5). This provision is substantially similar to Section 2.3 of the ISDA August 2012 DF Supplement. This Section works in conjunction with Section 2.1 (which updates CP representations as of each trade date).

agreement to use a method provided in this paragraph to confirm any Transaction.[42]

Part III. **Clearing**

2.5. Each Party is hereby notified that, upon acceptance of a Swap by a DCO:

a. the original Swap between CFTC Swap Entity and CP is extinguished;

b. the original Swap between CFTC Swap Entity and CP is replaced by equal and opposite Swaps with the DCO; and

c. all terms of the Swap shall conform to the product specifications of the cleared Swap established under the DCO's rules.[43]

2.6. Subject to Section 2.8, in the event that (i) the Parties have entered into a Swap that is of a type that the CFTC has included within the Initial Mandatory Clearing Determination and (ii) the execution of such Swap has occurred during the period where clearing is mandatory for such type of Swap between two Category 1 Entities, but not for such type of Swap between a Category 1 Entity and a counterparty that is not a Category 1 Entity, then, upon execution of such Swap, CP shall be deemed to have represented that CP is **not** a Category 1 Entity.[44]

2.7. Subject to Section 2.8, in the event that (i) the Parties have entered into a Swap that is of a type that the CFTC has included within the Initial Mandatory Clearing Determination and (ii) the execution of such Swap has occurred during a period where clearing is mandatory for such type of Swap between two Category 1 Entities, or between a Category 1 Entity and a Category 2 Entity, but not between a Category 1 Entity and a counterparty that is neither a Category 1 Entity nor a Category 2 Entity, then, upon execution of such Swap, CP shall be deemed to have represented that CP is **not** a Category 1 Entity or a Category 2 Entity. [45]

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[42] CFTC Regulation 23.501. This provision is intended to clarify that the exchange of matching terms through an electronic messaging platform or otherwise may serve as one means for effecting confirmations within the time periods required under CFTC Regulation 23.501. The requirements of CFTC Regulation 23.501 are not otherwise addressed in this March 2013 DF Supplement.

[43] CFTC Regulation 23.504(b)(6). The notifications in Section 2.5 are required under CFTC Regulation 23.504(b)(6).

[44] Sections 2.6 through 2.8 are intended to address the clearing implementation schedule of CFTC Regulation 50.25 (and related CFTC interpretations and regulations). These sections provide that where a party enters into a swap subject to mandatory clearing on an uncleared basis, it will be deemed to make representations that it is permitted to do so either because clearing is not yet mandatory for such counterparty (based on the implementation phase at the time of the transaction) or because an exemption or exclusion is available. Note that these representations are limited to swaps that were made subject to mandatory clearing under the CFTC's initial mandatory clearing determination in December 2012. *See* 77 Fed. Reg. 74284.

[45] *Id.*

2.8. CP will not be deemed to have made a representation pursuant to Sections 2.6 or 2.7 hereof as to its status as a Category 1 Entity or a Category 2 Entity, in connection with the execution of a Swap, if (i) it is a CFTC Swap Entity, (ii) prior to execution of such Swap (a) CP has notified CFTC Swap Entity in writing in accordance with the Notice Procedures that it is a Category 1 Entity or (in the case of Section 2.7 only) a Category 2 Entity or (b) CP has instructed CFTC Swap Entity to clear such Swap with a DCO, or (iii) at the time of such execution, the Swap would not be subject to mandatory clearing pursuant to an exemption provided under Section 2(h)(7) of the CEA and CFTC Regulation 50.50 or in accordance with written CFTC guidance (by rulemaking or otherwise) that applies notwithstanding that CP may be a Category 1 Entity or (in the case of Section 2.7 only) a Category 2 Entity. [46]

Part IV. **End-User Exception** [47]

2.9. If CP elects not to clear any Swap that is subject to a mandatory clearing determination under Section 2(h) of the CEA pursuant to an exception from mandatory clearing provided under Section 2(h)(7) of the CEA and CFTC Regulation 50.50, CP shall notify CFTC Swap Entity of such election in writing prior to execution of such Swap, which notice may be provided as a standing notice for multiple swaps (in March 2013 DF Supplement Information or otherwise) or on a trade-by-trade basis.[48] By providing such notice and executing any such Swap, CP shall be deemed to represent that (i) it is eligible for an exception from mandatory clearing with respect to such Swap under Section 2(h)(7) of the CEA and CFTC Regulation 50.50 and (ii) either:

a. it has reported the information listed in CFTC Regulation 50.50(b)(1)(iii) in an annual filing made pursuant to CFTC Regulation 50.50(b)(2) no more than 365 days prior to entering into such Swap, such information has been amended as necessary to reflect any material changes thereto; such annual filing covers the particular Swap for which such exception is being claimed; and such information in such filing is true, accurate, and complete in all material respects; or

b. it:

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46 *Id.*

47 This Part provides representations that are made by an end-user at the time that it enters into a swap that is generally subject to mandatory clearing if it elects to use the end-user clearing exception. The Questionnaire provides an end-user with an opportunity to notify a CFTC Swap Entity that it is making a one-time election to use the end-user clearing exception for all mandatory clearing swaps, and also to provide the CFTC Swap Entity with information that is required to be reported in connection with such an election (or to notify the CFTC Swap Entity that it will provide such information to the CFTC itself through an annual filing). For the elections and instructions on the use of the end-user exception, *see* Questionnaire Part III, Q 4.

48 CFTC Regulation 23.505(a)(2). A standing notice may be provided in in Part III, Q 4(a) of the Questionnaire.

(1) has notified CFTC Swap Entity in writing in accordance with the Notice Procedures prior to entering into such Swap that it has not reported the information listed in CFTC Regulation 50.50(b)(1)(iii) in an annual filing described in clause 2.9(a) above;[49]

(2) has provided to CFTC Swap Entity all information listed in CFTC Regulation 50.50(b)(1)(iii) and such information is true, accurate and complete in every material respect and covers the particular Swap for which such exception is being claimed;[50]

(3) (A) is not a "financial entity," as defined in Section 2(h)(7)(C)(i) of the CEA, without regard to any exemptions or exclusions provided under Sections 2(h)(7)(C)(ii), 2(h)(7)(C)(iii), or 2(h)(7)(D) or related CFTC regulations, (B) qualifies for the small bank exclusion from the definition of "financial entity" in Section 2(h)(7)(C)(ii) of the CEA and CFTC Regulation 50.50(d), (C) is excluded from the definition of "financial entity" in accordance with Section 2(h)(7)(C)(iii) of the CEA, or (D) qualifies for an exception from mandatory clearing in accordance with Section 2(h)(7)(D) of the CEA;

(4) is using such Swap to hedge or mitigate commercial risk as provided in CFTC Regulation 50.50(c); and

(5) generally meets its financial obligations associated with entering into non-cleared Swaps.[51]

2.10. If (i) CFTC Swap Entity and CP enter into a Swap subject to a mandatory clearing determination under Section 2(h) of the CEA that CP has elected not to clear pursuant to an exception from mandatory clearing provided under Section 2(h)(7) of the CEA and CFTC Regulation 50.50 and (ii) CP has satisfied the conditions specified in Sections 2.9(b)(1) and (2) above, then, if the Swap is subject to mandatory reporting to the CFTC or an SDR and CFTC Swap Entity is the "reporting counterparty," as defined in CFTC Regulation 45.8, CFTC Swap Entity shall report the information listed in CFTC Regulation 50.50(b)(1)(iii) to the relevant SDR.[52]

2.11. Notwithstanding anything to the contrary in the Agreement or in any non-disclosure, confidentiality or similar agreement between the Parties, if CP elects the exception from the Swap clearing requirement under Section (2)(h)(7)(A) of the CEA and CFTC Regulation 50.50 with respect to a particular Swap, each Party hereby consents to the disclosure of information related to such election to

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[49] Such notification may be made in Part III, Q 4(b) of the Questionnaire.

[50] Such information may be provided in Part III, Q 4(c) of the Questionnaire.

[51] CFTC Regulations 50.50 and 23.505(a).

[52] CFTC Regulation 50.50.

the extent required by the March 2013 DF Supplement Rules. Each Party acknowledges that disclosures made pursuant to this Section 2.11 may include, without limitation, the disclosure of trade information, including a Party's identity (by name, identifier or otherwise) to an SDR and relevant regulators. Each Party further acknowledges that, for purposes of complying with regulatory reporting obligations, an SDR may engage the services of a global trade repository regulated by one or more governmental regulators, *provided that* such regulated global trade repository is subject to comparable confidentiality provisions as is an SDR registered with the CFTC. For the avoidance of doubt, to the extent that applicable non-disclosure, confidentiality, bank secrecy or other law imposes non-disclosure requirements on the Swap and similar information required to be disclosed pursuant to the March 2013 DF Supplement Rules but permits a Party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by each Party for purposes of such other applicable law.[53]

Part V. **Orderly Liquidation Authority**[54]

2.12. Effective on and after the Applicable STRD Compliance Date, each Party agrees to provide notice to the other Party, in accordance with the Notice Procedures, if it becomes, or ceases to be, an Insured Depository Institution or a Financial Company.[55]

2.13. Each Party is hereby notified that in the event that a Party is (i) a Covered Financial Company or (ii) an Insured Depository Institution for which the FDIC has been appointed as a receiver (the "**covered party**"):

a. certain limitations under Title II of the Dodd-Frank Act or the FDIA may apply to the rights of the non-covered party to terminate, liquidate, or net any Swap by reason of the appointment of the FDIC as receiver, notwithstanding the agreement of the Parties; and

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[53] Because a counterparty may previously have negotiated a confidentiality or non-disclosure agreement with a CFTC Swap Entity that would not otherwise permit the CFTC Swap Entity to make the reporting described in Part IV of this DF Schedule 2, Section 2.11 provides a consent intended to override any such agreement. While this agreement overrides previous agreements, its scope is limited to information required to be reported under the March 2013 DF Supplement Rules. The last sentence of this Section is merely to clarify that the consent given is a consent for purposes of all applicable law. The Section also contains an acknowledgment that an SDR may use the services of a "global trade repository" which is not regulated by the CFTC (such as DTCC) to facilitate reporting.

[54] This Part provides standardized statements about Orderly Liquidation Authority required under CFTC Regulation 23.504(b)(5). In addition, CFTC Regulation 23.504(b)(5) requires a statement as to whether either party is a "financial company" or "insured depository institution." *See* Questionnaire Part II, Q 4 and Q 5 (requiring a party to specify whether it is a Financial Company or an Insured Depository Institution).

[55] CFTC Regulation 23.504(b)(5)(iv).

b. the FDIC may have certain rights to transfer Swaps of the covered party under Section 210(c)(9)(A) of the Dodd-Frank Act, 12 U.S.C. § 5390(c)(9)(A), or 12 U.S.C. § 1821(e)(9)(A).[56]

[56] CFTC Regulation 23.504(b)(5)(iii).

March 2013 DF Schedule 3
Calculation of Risk Valuations and Dispute Resolution

This March 2013 DF Schedule 3 may be incorporated into an agreement between a CFTC Swap Entity and any other Party, including another CFTC Swap Entity.[57]

If the Parties to an agreement have specified that this March 2013 DF Schedule 3 will be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this March 2013 DF Schedule 3 will be deemed to be a part of such agreement to the same extent as if this March 2013 DF Schedule 3 were restated therein in its entirety.

Part I. Calculation of Risk Valuations for Purposes of Section 4s(j) of the CEA[58]

Each Party agrees that:

3.1. On each Risk Valuation Date, the Risk Valuation Agent in respect of each Swap for which a Transaction Event has occurred after the Applicable STRD Compliance Date (or its agent) will calculate the Risk Valuation of such Swap, *provided that* if CP has provided the Risk Valuation Agent with a CSA Valuation for such Swap and such Risk Valuation Date pursuant to a CSA Valuation Process that the Risk Valuation Agent has determined in good faith will allow the Risk Valuation Agent to satisfy the requirements of CFTC Regulation 23.504(b) as they relate to Section 4s(j) of the CEA, the Risk Valuation Agent may elect to treat such CSA Valuation as the Risk Valuation for such Swap.[59]

3.2. Upon written request by CP delivered to the Risk Valuation Agent in accordance with the Notice Procedures on or prior to the Joint Business Day following a Risk Valuation Date, the Risk Valuation Agent (or its agent) will notify the CP of the Risk Valuations determined by it for such Risk Valuation Date pursuant to Section 3.1 of this March 2013 DF Schedule 3. Unless otherwise agreed by the

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[57] If the parties have adhered to the Protocol and exchanged Questionnaires in accordance with its terms and each of the parties is either a CFTC Swap Entity or a Financial Entity (or both), this Schedule 3 will be automatically incorporated into the agreements between the parties that are covered by the March 2013 DF Protocol Agreement. If one of the parties is not a CFTC Swap Entity or a Financial Entity, this Schedule 3 will only be incorporated into the agreements between the parties that are covered by the March 2013 DF Protocol Agreement if the non-CFTC Swap Entity/Financial Entity elects to incorporate this Schedule 3 in Part III, Q 2 of its Questionnaire. *See* Protocol Agreement Section 5(a)(i). The use of the term "may" here also recognizes the fact that parties can also bilaterally agree to incorporate this Schedule 3 into an agreement outside of the Protocol.

[58] CFTC Regulations 23.504(b)(4)(i) and (ii). *See* the definition of "Risk Valuation" and related annotations.

[59] As noted in the annotation to the definition of "Risk Valuation," this Schedule provides for the daily production of Risk Valuations for purposes of CFTC Regulation 23.504(b)(4). This paragraph specifies that such valuations are produced for all swaps for which a "Transaction Event" has occurred after the compliance date for the rule. This paragraph allows the Risk Valuation Agent to use a valuation that was provided by the counterparty for purposes of the parties' collateral obligations as the Risk Valuation if the Risk Valuation Agent determines that it may do so in compliance with CFTC Regulations.

Parties, the Risk Valuation Agent shall not be obligated to disclose to CP any confidential, proprietary information about any model the Risk Valuation Agent may use to value a Swap.[60]

3.3. Notification of a Risk Valuation may be provided through any of the following means, each of which is agreed by the parties to be reliable: (i) written notice delivered by the Risk Valuation Agent to the CP in accordance with the Notice Procedures, (ii) any means agreed by the Parties for the delivery of CSA Valuations or (iii) posting on a secure web page at, or accessible through, a URL designated in a written notice given to CP pursuant to the Notice Procedures.[61]

3.4. Each Risk Valuation will be determined by the Risk Valuation Agent (or its agent) acting in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result.

Part II. **Dispute Resolution for Risk Valuations for Purposes of Section 4s(j) of the CEA**[62]

Each Party agrees that:

3.5. If CP wishes to dispute the Risk Valuation Agent's calculation of a Risk Valuation, CP shall notify the Risk Valuation Agent in writing in accordance with the Notice Procedures on or prior to the close of business on the Joint Business Day following the date on which CP was notified of such Risk Valuation. Such notice shall include CP's calculation of the Risk Valuations for all Swaps as of the relevant date for which the Risk Valuation Agent has provided Risk Valuations to CP, which must be calculated by CP acting in good faith and using commercially reasonable procedures in order to produce a commercially reasonable result.

3.6. If CP disputes the Risk Valuation Agent's calculation of a Risk Valuation and the Parties **have** agreed in writing (whether as part of the Agreement or otherwise) to a valuation dispute resolution process by which CSA Valuations are to be determined, then such process will be applied to resolve the dispute of such Risk Valuation (as if such dispute of a Risk Valuation were a dispute of a CSA

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[60] This paragraph provides for disclosure of individualized swap valuations on request, and is responsive to the requirement in CFTC Regulation 23.504(b)(4) for an agreed process for determining the value of "each swap" between the parties.

[61] Section 3.3 provides that the CFTC Swap Entity may provide notification of Risk Valuations by placing the relevant information on the CFTC Swap Entity's website but must notify the counterparty by another means (such as email) that it has done so. The Questionnaire provides an opportunity for the counterparty to provide an email address to which Risk Valuations may be delivered. *See* Questionnaire Part II, Q 7 and Protocol Agreement Section 7(c)(vi)..

[62] CFTC Regulation 23.504(b)(4)(ii). Regulation 23.504(b)(4)(ii) requires swap trading relationship documentation relating to an agreed valuation process to include either (i) "alternative methods for determining the value of a swap for the purposes of complying with this paragraph in the event of the unavailability or failure of any input required to value the swap for such purposes" or (ii) a valuation dispute resolution process. The March 2013 DF Supplement takes the second approach.

Valuation, each Swap that is the subject of the dispute were the only Swap for which a CSA Valuation was being disputed, and CP was the disputing party).

3.7. If CP disputes the Risk Valuation Agent's calculation of a Risk Valuation and the Parties **have not** agreed in writing (whether as part of the Agreement or otherwise) to a valuation dispute resolution process by which CSA Valuations are to be determined, then the following process will apply in respect of the dispute of such Risk Valuation:

a. the Parties will consult with each other in an attempt to resolve the dispute; and

b. if they fail to resolve the dispute in a timely fashion, then the Risk Valuation Agent will recalculate the Risk Valuation as of the Recalculation Date by seeking four actual quotations at mid-market from Reference Market-makers and taking the arithmetic average of those obtained; *provided that* if four quotations are not available, then fewer than four quotations may be used; and, if no quotations are available, then the Risk Valuation Agent's original Risk Valuation calculation will be used.

3.8. Following a recalculation pursuant to Section 3.7 of this March 2013 DF Schedule 3, the Risk Valuation Agent will notify CP not later than the close of business on the Local Business Day of the Risk Valuation Agent following the date of such recalculation, and such recalculation shall be the Risk Valuation for the applicable Risk Valuation Date.

Part III. **Relationship to Other Valuations**[63]

3.9. The Parties agree and acknowledge that the process provided herein for the production and dispute of Risk Valuations is exclusively for determining the value of each relevant Swap for the purpose of compliance by CFTC Swap Entity (or if each Party is a CFTC Swap Entity, compliance by each Party) with risk management requirements under Section 4s(j) of the CEA. Failure by CP to dispute a Risk Valuation calculated by the Risk Valuation Agent does not constitute acceptance by CP of the accuracy of the Risk Valuation for any other purpose.

3.10. Resolution of any disputed Risk Valuation using a procedure specified in Part II of this March 2013 DF Schedule 3 is not binding on either Party for any purpose other than the CFTC Swap Entity's compliance with risk management requirements under Section 4s(j) of the CEA. Each Party agrees that nothing in this March 2013 DF Supplement providing for the calculation of Risk Valuations or for any right to dispute valuations in connection with such Risk Valuations shall affect any agreement of the Parties regarding the calculation of CSA

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[63] *See* annotation to the definition of "Risk Valuation."

Valuations or disputes regarding CSA Valuations or constitute a waiver of any right to dispute a CSA Valuation. Any resolutions of disputes regarding CSA Valuations may be different from the resolutions of disputes regarding Risk Valuations. The Parties acknowledge that the adoption of margin regulations under Section 4s(e) of the CEA may require additional agreements between the Parties regarding the calculation of Swap valuations for purposes of such regulations and CFTC Swap Entity's compliance with risk management requirements under Section 4s(j) of the CEA, and the Parties' agreement to incorporate this March 2013 DF Schedule 3 in no way constitutes agreement to adopt the procedures provided herein with respect to the calculation of, or resolution of disputes regarding, margin valuations.

3.11. Notwithstanding anything to the contrary in this March 2013 DF Supplement, the Parties may in good faith agree to any other procedure for (i) the calculation of Risk Valuations and/or (ii) the resolution of any dispute between them, in either case, whether in addition to or in substitution of the procedures set out in this March 2013 DF Supplement.[64]

[64] Section 3.11 makes explicit that the parties may further agree to terms governing the production of Risk Valuations.

March 2013 DF Schedule 4
Portfolio Reconciliation[65]

This March 2013 DF Schedule 4 may be incorporated into an agreement between a CFTC Swap Entity and any other Party, including another CFTC Swap Entity.[66]

If the Parties to an agreement have specified that this March 2013 DF Schedule 4 will be incorporated into such agreement and any conditions to such incorporation set forth in such agreement have been satisfied, this March 2013 DF Schedule 4 will be deemed to be a part of such agreement to the same extent as if this March 2013 DF Schedule 4 were restated therein in its entirety.

Part I. Required Reconciliation Dates

4.1. From time to time after the Applicable Portfolio Reconciliation Compliance Date, a CFTC Swap Entity may give to CP a notice (a "**Required Reconciliation Date Notice**") in which such CFTC Swap Entity represents that it is (in such CFTC Swap Entity's good faith belief) necessary for the Parties to perform a Data Reconciliation in order for such CFTC Swap Entity to comply with the March 2013 DF Supplement Rules regarding the frequency with which portfolio reconciliations are to be performed. A Required Reconciliation Date Notice will specify (i) the frequency with which such portfolio reconciliations are believed by the CFTC Swap Entity to be required, which may be "Daily," "Weekly," "Quarterly," "Annually" or another frequency required by the March 2013 DF Supplement Rules and (ii) if Section 4.2 is applicable, one or more Data Delivery Dates.[67]

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[65] CFTC Regulation 23.502(b).

[66] If the Parties have adhered to the Protocol and exchanged Questionnaires in accordance with its terms and both parties have been designated as CFTC Swap Entities, this Schedule 4 will be automatically incorporated into the agreements between the parties that are covered by the March 2013 DF Protocol Agreement. If one of the parties has not been designated as a CFTC Swap Entity, this Schedule 4 will only be incorporated into the agreements between the parties that are covered by the March 2013 DF Protocol Agreement if the non-CFTC Swap Entity elects to incorporate this Schedule 4 in Part III, Q 3 of its Questionnaire. *See* Protocol Agreement Section 5(a)(ii). The use of the term "may" here also recognizes the fact that parties can also bilaterally agree to incorporate this Schedule 4 into an agreement outside of the Protocol.

[67] CFTC Regulations 23.502(a)(3) and (b)(3) provide rules with respect to the frequency of portfolio reconciliations based on the total number of swaps that are outstanding between the parties at any time. For trading relationships between a swap dealer or major swap participant and a counterparty that is not a swap dealer or major swap participant, the required frequencies are quarterly for portfolios in excess of 100 swaps and otherwise annually. More frequent reconciliations are required between swap dealers and major swap participants. Section 4.1 allows a CFTC Swap Entity to specify the frequency for portfolio reconciliations based on the CFTC requirements, but leaves flexibility for the parties to specify the precise dates on which data will be delivered in order to perform reconciliations. Where a CFTC Swap Entity delivers data to be reviewed by the CP (without reciprocal delivery by the CP) pursuant to Part II of this Schedule, Sections 4.1 and 4.2 provide that the CFTC Swap Entity will propose one or more dates (*i.e.*, a single date for the first reconciliation or a schedule of dates for reconciliations during successive reconciliation periods). The CP can accept these

Part II. **One-way Delivery of Portfolio Data**[68]

4.2. Subject to Section 4.5, if (i) one of the Parties is not a CFTC Swap Entity and (ii) the Parties have agreed in writing that on each Data Delivery Date CFTC Swap Entity will deliver Portfolio Data to CP and CP will review such data, then the following shall apply:

a. The Required Reconciliation Date Notice will specify one or more Data Delivery Dates, *provided* that the first such date will be a day no earlier than the second Joint Business Day following the date on which such notice is given to CP, and *provided further*, that if, prior to the first such date, CP requests one or more different Data Delivery Dates, the relevant Data Delivery Dates will be as agreed by the Parties.[69]

b. On each Data Delivery Date, CFTC Swap Entity (or its agent) will provide Portfolio Data to CP (or its agent) for verification by CP. For purposes of this Section 4.2, Portfolio Data will be considered to have been provided to CP (and CP will be considered to have received such Portfolio Data) if it has been provided (i) in accordance with the Notice Procedures, or (ii) to a third-party service provider agreed to between the CFTC Swap Entity and CP for this purpose.[70]

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dates or request alternative dates. Where both parties will deliver data pursuant to Part III, the delivery dates must be further agreed. *See* Section 4.3(a).

[68] Parts II and III of Schedule 4 provide alternative methods for conducting portfolio reconciliations. When parties "match" Questionnaires through the Protocol and agree to Schedule 4, they agree to the terms of either Part II or Part III (but not both). Part II applies when (i) one of the parties has not been designated as a CFTC Swap Entity in its Questionnaire and (ii) the non-CFTC Swap Entity has elected to "Review" Portfolio Data in Part III, Q 3(b) of its Questionnaire.

Under Part II, the CFTC Swap Entity is obligated to deliver Portfolio Data on each Data Delivery Date and the non-CFTC Swap Entity is required to review the data. This option may be preferable for parties that are not swap dealers or major swap participants and that wish to avoid the burden of transmitting portfolio data to their counterparties or a third-party service provider. Note, however, that a non-CFTC Swap Entity that enters into Part II agrees to review the Portfolio Data that it receives from a CFTC Swap Entity, and to notify the sender in all cases as to whether it affirms the data or has identified a Discrepancy in all cases. This is consistent with guidance provided by the CFTC that one way delivery is acceptable provided that the receiving party either affirms or objects to the data received. *See* 77 Fed. Reg. 55928. If the non-CFTC Swap Entity intends to employ a third-party service provider to perform reconciliations, Part III may be more appropriate.

[69] *See* annotation to Section 4.1.

[70] In many cases, the parties may wish to employ a third-party service provider that provides tools for management and reconciliation of Portfolio Data. While bilateral delivery of data under Part III may be more appropriate for such situations, Section 4.2(b) also accommodates the agreement of the parties that the CFTC Swap Entity will deliver data to a third-party service provider assisting the non-CFTC Swap Entity. Note that in the event that the parties do not agree to have data delivered in this fashion, the non-CFTC Swap Entity may still use a third-party service provider to assist the non-CFTC Swap Entity in performing its obligations under Part II.

Since Covered Agreements are unlikely to include agreements related to the delivery of this type of data, the parties may wish to further agree to the terms for delivery of Portfolio Data. Parties are afforded the opportunity to provide an email address to which Portfolio Data may be delivered in their Questionnaire. *See*

c. On or as soon as reasonably practicable after each Data Delivery Date, and in any event not later than the close of business on the second Local Business Day of CP following the Data Delivery Date, CP will review the Portfolio Data delivered by CFTC Swap Entity with respect to each relevant Swap against its own books and records and Valuation for such Swap and notify CFTC Swap Entity whether it affirms the relevant Portfolio Data or has identified any Discrepancy. CP shall notify CFTC Swap Entity of all Discrepancies identified with respect to the Portfolio Data provided.[71]

d. If CP has notified CFTC Swap Entity of any Discrepancies in Portfolio Data in respect of any Material Terms or Valuations, then each Party agrees to consult with the other in an attempt to resolve all such Discrepancies in a timely fashion.[72]

Part III. **Exchange of Portfolio Data**[73]

4.3. Subject to Section 4.5, if (i) both Parties are CFTC Swap Entities or (ii) the Parties have agreed in writing that on each Data Delivery Date CFTC Swap Entity and CP will deliver Portfolio Data to each other, then, in either case, the following shall apply:

a. The Parties will negotiate in good faith to agree on one or more Data Delivery Dates that will comply with the Portfolio Reconciliation frequency specified in the Required Reconciliation Date Notice, *provided* that if the Required Reconciliation Date Notice specified that

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Questionnaire Part II, Q 8 and Protocol Agreement Section 7(c)(vii). In the absence of alternative agreements, Section 4.2(b) provides that Portfolio Data can be delivered to a notice address provided by the non-CFTC Swap Entity in the relevant agreement. Further, as defined in the Supplement, "Notice Procedures" include any procedures for the delivery of a specified category of information or notices that a receiving party has authorized in writing to the sending party.

[71] The timing of Section 4.2(c) is designed to comply with CFTC Regulation 23.502(b)(4), which requires that swap dealers and major swap participants have policies and procedures for the resolution of any discrepancies "in a timely fashion." It is also intended to provide adequate time for consultation before reporting of valuation disputes to the CFTC is required under CFTC Regulation 23.502(c). Note that all valuation "Discrepancies" (*i.e.*, swap valuation differences above or equal to 10%) must be identified to the CFTC Swap Entity, but differences below 10% are not required to be reported or resolved under Schedule 4. At the same time, Schedule 4 does not limit other contractual rights that the parties may have with regard to discrepancies below the Discrepancy Threshold. *See also* Part IV of Schedule 4.

[72] Good faith consultation is the sole process required under Schedule 4 with respect to Discrepancies. Schedule 4 does not provide for mandatory use of a third-party poll or a similar mechanism to resolve differences. It is left to the discretion of the Parties whether to employ such a mechanism.

[73] Part III applies to parties that have agreed to Schedule 4 when (i) both parties have been designed as CFTC Swap Entities or (ii) the party that has not been designated as a CFTC Swap Entity elects to "Exchange" Portfolio Data in Part III, Q 3(b) of its Questionnaire. Under Part III, each party is obligated to deliver Portfolio Data to the other party or to an agreed third-party service provider. Either party (or a third-party service provider mutually agreed between the parties) may then conduct a reconciliation and provide notice of any Discrepancies that it discovers.

reconciliations are required Daily, each Joint Business Day shall be a Data Delivery Date.

b. On each Data Delivery Date, each Party (or its agent) will provide Portfolio Data to the other Party. For the purposes of this Section 4.3, Portfolio Data will be considered to have been provided to the other Party (and the other Party will be considered to have received such Portfolio Data) if it has been provided (i) in accordance with the Notice Procedures, or (ii) to a third-party service provider agreed to between CFTC Swap Entity and CP for this purpose.[74]

c. On or as soon as reasonably practicable after each Data Delivery Date on which Portfolio Data is provided by each Party, either Party may perform a Data Reconciliation in respect of such Portfolio Data.[75]

d. If (i) one of the Parties is not a CFTC Swap Entity and (ii) either Party notifies the other Party of a Discrepancy in Portfolio Data in respect of either the Material Terms of a Swap or its Valuation, then each Party agrees to consult with the other in an attempt to resolve the Discrepancy in a timely fashion.[76]

e. If (i) both Parties are CFTC Swap Entities and (ii) either Party notifies the other Party of a Discrepancy in Portfolio Data in respect of the Material Terms of a Swap, then each Party agrees to consult with the other in an attempt to resolve such Discrepancy immediately.[77]

f. If (i) both Parties are CFTC Swap Entities and (ii) either Party notifies the other Party of a Discrepancy in Portfolio Data in respect of Valuations, then each Party agrees to consult with the other in an attempt to resolve

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[74] In many cases, where the parties have agreed that each will deliver Portfolio Data, one or both of the parties may wish to use a third-party service provider to assist it in performing reconciliations, or the parties may agree to reconciliations performed by such a service provider. Section 4.3(b) accommodates the agreement of the parties to use such a third-party service provider.

Since Covered Agreements are unlikely to include agreements related to the delivery of this type of data, the parties may wish to further agree to the terms for delivery of Portfolio Data. Parties are afforded the opportunity to provide an email address to which Portfolio Data may be delivered in their Questionnaire. *See* Questionnaire Part II, Q 8 and Protocol Agreement Section 7(c)(vii). In the absence of alternative agreements, Section 4.3(b) provides that Portfolio Data can be delivered to a notice address provided by the non-CFTC Swap Entity in the relevant agreement. Further, as defined in the Supplement, "Notice Procedures" include any procedures for the delivery of a specified category of information or notices that a receiving party has authorized in writing to the sending party.

[75] Because both parties receive Portfolio Data under Part III and have the opportunity to reconcile that data against their own data in order to comply with regulatory requirements, neither party is required to perform a reconciliation.

[76] The timing of this Section is designed to comply with CFTC Regulation 23.502(b)(4). *See* annotation to Section 4.2(c).

[77] The timing standard in Section 4.3(e) conforms to the requirements in CFTC Regulation 23.502(a)(4).

such Valuation Discrepancy as soon as possible, but in any event within five Joint Business Days.[78]

Part IV. Valuation Differences Below the Discrepancy Threshold Amount

4.4. The Parties hereby agree that a difference in Valuations in respect of a Swap that is less than the Discrepancy Threshold Amount shall not be deemed a "discrepancy" for purposes of CFTC Regulation 23.502 and neither Party shall be required under this March 2013 DF Schedule 4 to notify the other Party of such a difference or consult with the other Party in an attempt to resolve such a difference.[79]

Part V. Reconciliation Against SDR Data[80]

4.5. If the Parties have agreed in writing to reconcile their books and records of Swaps between the Parties against SDR Data in order to facilitate satisfaction of the requirements of CFTC Regulation 23.502 then the following shall apply:

a. On or as soon as practicable following a Data Delivery Date,[81] each Party shall perform a Data Reconciliation against SDR Data to the extent that such SDR Data relates to Material Terms that would otherwise be delivered by the other Party as Portfolio Data. To the extent that either party does not have access to such SDR Data or determines that it is not technologically or operationally practical for such Party to obtain such data from the relevant SDR in a manner that permits the conduct of a timely Data Reconciliation in accordance with the applicable time periods specified in Section 4.2 or 4.3, such Party shall notify the other Party by or as soon as practicable after the relevant Data Delivery Date.[82]

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78 The timing standard in Section 4.3(f) conforms to the requirements in CFTC Regulation 23.502(a)(5).

79 Part IV applies to all reconciliations and follows the standard for valuation reconciliations provided in CFTC Regulations 23.502(a)(5) and (b)(4). Section 4.4 provides that valuation discrepancies below the Discrepancy Threshold are not required to be reconciled under the terms of this Schedule 4. Section 4.4 is not intended to override other contractual dispute rights that parties may have with respect to such discrepancies.

80 Part V includes agreements by each party to perform reconciliations against SDR data in lieu of reconciliations of data provided directly by a counterparty (to the extent that an SDR can provide "Material Terms" data with respect to Swaps between the parties that are within scope of the CFTC Regulation 23.502 portfolio reconciliation requirements and the relevant party can access such data). Part V applies to parties who have agreed to Schedule 4 only if both parties have agreed to reconcile against SDR Data. *See* Protocol Agreement Section 5(b)(iv); Questionnaire Part III, Q 3(c). SDR Data does not include Valuations included within Portfolio Data for purposes of Schedule 4. Therefore, direct reconciliation of Valuations data would still be required.

81 The version of this Supplement published on March 22, 2013 used the incorrect term "Data Exchange Date."

82 At the time of publication of this DF Supplement, the operational systems that may be available for reconciliation against SDR data (either by accessing data directly from an SDR or by delivery of SDR data to an agreed third-party service provider) were uncertain. Consequently, Part V has been drafted flexibly to provide an undertaking to reconcile against SDR data to the extent technologically or operationally practical. If such a

b. Notwithstanding Sections 4.2 and 4.3, neither Party shall be obligated to deliver Portfolio Data to the other Party on a Data Delivery Date to the extent that such Portfolio Data consists of Material Terms data reported to an SDR, *provided, however*, that if a Party has notified the other Party that it is not able to conduct a timely Data Reconciliation against corresponding SDR Data as provided in Section 4.5(a), the Parties shall provide for the delivery of the relevant Portfolio Data as provided in Section 4.2(b) or 4.3(b), as applicable, as soon as reasonably practicable.[83]

c. If either Party identifies a Discrepancy in SDR Data, such Party shall immediately notify the other Party of such Discrepancy. Each Party agrees to consult with the other in an attempt to resolve any such Discrepancy immediately (if both Parties are CFTC Swap Entities) or in a timely fashion (if one Party is not a CFTC Swap Entity).[84]

d. Each Party agrees to notify the other Party, upon reasonable request, of (i) the SDRs to which such Party has reported Material Terms data with respect to Swaps between the Parties and (ii) any changes as to the particular SDRs at which data may be accessed.[85]

e. A Party may terminate this Section 4.5 with the effect that this Section 4.5 shall have no further force and effect and the Parties will each be released and discharged from all further obligations under this Section 4.5 by delivering written notice in accordance with the Notice Procedures to the other Party that it is terminating this Section 4.5 as of the effective date of such notice. The Parties agree that the effective date of any such notice is the second Joint Business Day following the date on which such notice is delivered in accordance with the Notice Procedures.[86]

Part VI. **Other Portfolio Reconciliation Procedures**

4.6. In the event that the Parties have agreed to multiple Data Delivery Dates with a frequency specified in a Required Reconciliation Date Notice, the CFTC Swap Entity that delivered such notice shall notify Counterparty if, at any time during the period that such Data Delivery Dates are in effect, it is no longer required by

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reconciliation is not practical for either party, such party must notify the counterparty of such fact, in which case the agreements fall back to the reconciliation procedures provided in Part II or III as relevant. *See also id.*

[83] *See id.*

[84] The timing standard in Section 4.5(c) conforms to the requirements in CFTC Regulation 23.502(a)(4) and (b)(4).

[85] While the parties should generally know which SDRs have received data reports when swaps are initially executed, this agreement has been included to facilitate reconciliation against SDR data when there is uncertainty on the part of the non-reporting party.

[86] Optional termination of Part V was included given uncertainty regarding the practicality of reconciliation against SDR data at the time of publication. If a party terminates Part V, reconciliation procedures would fall back to Part II or III, as relevant.

the March 2013 DF Supplement Rules to conduct portfolio reconciliations with the specified frequency. Such notice shall specify (i) the new frequency with which portfolio reconciliations are believed by the CFTC Swap Entity to be required, which may be "Daily," "Weekly," "Quarterly," "Annually" or another frequency required by the March 2013 DF Supplement Rules and (ii) if Section 4.2 is applicable, one or more new Data Delivery Dates. Upon delivery of such a notice, the Parties' obligations to deliver Portfolio Data on the previously agreed Data Delivery Dates shall terminate, and such notice shall be a new Required Reconciliation Date Notice for purposes of Sections 4.2 and 4.3.[87]

4.7. Notwithstanding anything to the contrary in this March 2013 DF Supplement, the Parties may in good faith agree to any other procedure for (i) the exchange, delivery and/or reconciliation of Portfolio Data, and/or (ii) the resolution of any discrepancy between them, in either case, whether in addition to or in substitution of the procedures set out in this March 2013 DF Supplement. Nothing in this March 2013 DF Schedule 4 shall prejudice any right of dispute or right to require reconciliation that either Party may have under Applicable Law, any term of the Agreement other than in this March 2013 DF Schedule 4, or any other agreement.[88]

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[87] Section 4.6 provides for the amendment of an agreed schedule of recurring reconciliations when the required frequency for such reconciliations changes under CFTC Regulation 23.502 due to a change in the number of swap outstanding between the parties.

[88] Section 4.7 simply makes explicit that the parties may further agree to terms governing portfolio reconciliations.

ISDA Safe, Efficient Markets

International Swaps and Derivatives Association, Inc.

ISDA MARCH 2013 DF PROTOCOL QUESTIONNAIRE[1]

published on March 22, 2013,
by the International Swaps and Derivatives Association, Inc.
Annotated in red as of June 3, 2013

THE ANNOTATIONS AND INSTRUCTIONS IN THIS DOCUMENT DO NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES IN CONNECTION WITH YOUR CONSIDERATION OF THE ISDA MARCH 2013 DF PROTOCOL OR THE RELATED DOCUMENTS. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISERS THEY DEEM APPROPRIATE AS PART OF THEIR CONSIDERATION OF THE PROTOCOL PRIOR TO ADHERING TO THE PROTOCOL. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.

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[1] This March 2013 DF Questionnaire is intended to address requirements of the following final rules:

(1) CFTC, Final Rule, *Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants*, 77 Fed. Reg. 55904 (Sept. 11, 2012);

(2) CFTC, Final Rule, *End-User Exception to the Clearing Requirement for Swaps*, 77 Fed. Reg. 42559 (July 19, 2012); and

(3) CFTC, Final Rule, *Clearing Requirement Determination Under Section 2(h) of the CEA*, 77 Fed. Reg. 74284 (Dec. 13, 2012).

ISDA Safe, Efficient Markets

International Swaps and Derivatives Association, Inc.

ISDA March 2013 DF Protocol Questionnaire

dated as of March 22, 2013

Instructions: *A PCA Principal or PCA Agent that has adhered to the Protocol Agreement in the manner specified therein may complete and execute this Questionnaire and deliver it by a means specified in the Protocol Agreement in order to supplement existing Protocol Covered Agreements and/or enter into new Protocol Covered Agreements in the form of the ISDA March 2013 DF Protocol Master Agreement.*

This Questionnaire may be executed and delivered by a PCA Principal on its own behalf or by a PCA Agent on behalf of one or more PCA Principals. By delivering this Questionnaire to another PCA Principal or PCA Agent in a manner specified in the Protocol Agreement, the deliverer may agree to enter into and/or supplement Protocol Covered Agreements with such other PCA Principal or PCA Agent. Where an existing Protocol Covered Agreement was originally executed by a PCA Agent on behalf of one or more PCA Principals, only the relevant PCA Agent (and not a PCA Principal) may use this Questionnaire and the Protocol Agreement to supplement such Protocol Covered Agreement.

In the case of a PCA Principal executing and delivering this Questionnaire on its own behalf, (i) such party must identify itself as the PCA Principal in column 1 of the PCA Principal Answer Sheet, and (ii) this Questionnaire will only be effective to supplement existing Protocol Covered Agreements executed by such party on its own behalf and/or to enter into ISDA March 2013 DF Protocol Master Agreements on its own behalf. In the case of a PCA Agent executing and delivering this Questionnaire on behalf of one or more PCA Principals, (i) the PCA Agent must list the names of each such PCA Principal in column 1 of the PCA Principal Answer Sheet, and (ii) this Questionnaire will only be effective to enter into ISDA March 2013 DF Protocol Master Agreements on behalf of listed PCA Principals and/or supplement Protocol Covered Agreements executed by the PCA Agent on behalf of the listed PCA Principals. For the avoidance of doubt, if this Questionnaire is being completed by a PCA Agent on behalf of multiple PCA Principals, this Questionnaire shall be treated as if it were a separate Questionnaire with respect to each separate PCA Principal listed in column 1 of the PCA Principal Answer Sheet.

The responses to Part II, Sections 6 through 8 and Part III Section 5(b) of this Questionnaire may be set forth directly on this Questionnaire, or if there is insufficient space, on a separate schedule. The responses to all other sections of this Questionnaire must be set forth on the PCA Principal Answer Sheet.

Part I: Definitions

References in this Questionnaire to the following terms shall have the following meanings:

"***CEA***" means the Commodity Exchange Act, as amended.

"***CFTC***" means the U.S. Commodity Futures Trading Commission.

"***CFTC Regulations***" means the rules, regulations, orders and interpretations published or issued by the CFTC, as amended.

"***Commodity Trade Option***" means a commodity option entered into pursuant to CFTC Regulation 32.3(a).

"***DCO***" means a "derivatives clearing organization," as such term is defined in Section 1a(15) of the CEA and the CFTC Regulations.

"***DF Schedule***" means a schedule to the DF Supplement.

"***DF Supplement***" means the ISDA March 2013 DF Supplement published on March 22, 2013 by the International Swaps and Derivatives Association, Inc.

"***Existing Swap Agreement***" means, in respect of a Swap, a written agreement that (i) exists at the time of execution of such Swap, (ii) provides for, among other things, terms governing the payment obligations of the parties, and (iii) the parties have established, by written agreement, oral agreement, course of conduct or otherwise, will govern such Swap.

"***Financial Company***" has the meaning ascribed to such term in Section 201(a)(11) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5381(a)(11).[2]

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[2] This definition generally includes bank holding companies, bank affiliates and companies that are "predominantly engaged in activities that the Board of Governors has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956," though it excludes companies organized or incorporated outside of the United States. In a recent rulemaking, the Board of Governors of the Federal Reserve System (the "**Board**") adopted Appendix A to 12 C.F.R. Part 242 (the "**Appendix**"), which provides a list of activities that the Board considers, "financial in nature (as defined in Section 4(k) of the Bank Holding Company Act of 1956)." *See* 78 Fed. Reg. 20755.

This Appendix and the related discussion in the adopting release for the Board's rules may be useful resources, though readers should be mindful that the Appendix was adopted to interpret "financial in nature" for purposes of Title I of Dodd-Frank, rather than the definition of "financial company" in Title II of Dodd-Frank. In addition, readers should note that (i) the "financial company" definition in Section 201 of Dodd-Frank also includes activities "incidental thereto" which is not discussed in Title I or the recent Board rulemaking, and (ii) the standard for being "predominantly" engaged in financial activities is different for purposes of the financial company definition than for purposes of Title I of Dodd-Frank or the Board's recent rules, as Section 201(b) of Dodd-Frank provides that a company will not be deemed "predominantly" engaged in financial activities unless

"***Financial Entity***" means a person that is a "financial entity" as defined in Section 2(h)(7)(C)(i) of the CEA, without regard to an exemption or exclusion provided in Section 2(h)(7)(C)(ii) of the CEA and CFTC regulations thereunder or in Section 2(h)(7)(C)(iii) of the CEA.[3]

"***Insured Depository Institution***" has the meaning ascribed to such term in 12 U.S.C. § 1813.[4]

"***LEI/CICI***" means a "legal entity identifier" satisfying the requirements of CFTC Regulation 45.6 or such other entity identifier as shall be provided by the CFTC, pending the availability of such legal entity identifiers.

"***PCA Agent***" means a person who has executed a Protocol Covered Agreement on behalf of one or more PCA Principals.

"***PCA Principal***" means a person who is or may become a principal to one or more Swaps under a Protocol Covered Agreement and who is identified as such in column 1 of the PCA Principal Answer Sheet.

"***PCA Principal Answer Sheet***" means a spreadsheet substantially in the form of Annex A to this Questionnaire.

"***Portfolio Data***" has the meaning ascribed to such term in the DF Supplement.

"***Protocol Agreement***" means the ISDA March 2013 DF Protocol Agreement published on March 22, 2013 by the International Swaps and Derivatives Association, Inc.

"***Protocol Covered Agreement***" means (i) an ISDA March 2013 DF Protocol Master Agreement or (ii) any other written agreement between two parties, with at least one of such parties being a CFTC Swap Entity, that (A) is in existence on the Implementation Date applicable to such parties and (B) governs the terms and conditions of one or more Swaps that each such party has or may enter into as principal.

"***Risk Valuations***" has the meaning ascribed to such term in the DF Supplement.

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revenues from such activities constitute at least 85% of consolidated revenues as the FDIC shall establish by regulation.

[3] Section 2(h)(7)(C)(i) of the CEA defines a "financial entity" for purposes of mandatory clearing as (i) a swap dealer, (ii) a security-based swap dealer, (iii) a major swap participant, (iv) a major security-based swap participant, (v) a commodity pool, (vi) a private fund as defined in Section 202(a) of the Investment Advisors Act of 1940, (vii) an employee benefit plan as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income and Security Act of 1974, and (viii) a person predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature as defined in Section 4(k) of the Bank Holding Company Act of 1956. As noted above, the Board's recently adopted Appendix A to 12 C.F.R. Part 242, provides a list of activities that the Board considers "financial activities" for purposes of Title I of Dodd-Frank. Title I in turn refers to "financial activities" as activities that are "financial in nature (as defined in section 4(k) of the Bank Holding Company Act of 1956)." *See* Section 102(a)(6) of Dodd-Frank.

[4] 12 U.S.C. § 1813 defines insured depositary institutions as banks and savings associations the deposits of which are insured by the FDIC pursuant to the Federal Deposit Insurance Act.

"***SDR***" means a "swap data repository," as defined in Section 1a(48) of the CEA and the CFTC Regulations.

"***Swap***" means a "swap" as defined in Section 1a(47) of the CEA and regulations thereunder; *provided that* a Commodity Trade Option is not a Swap for purposes hereof. The term "Swap" also includes any foreign exchange swaps and foreign exchange forwards that are exempted from regulation as "swaps" by the Secretary of the Treasury pursuant to authority granted by Section 1a(47)(E) of the CEA. For the avoidance of doubt, the term "Swap" does not include a swap that has been cleared by a DCO.

Capitalized terms used but not otherwise defined in this Questionnaire shall have the meanings assigned to such terms in the Protocol Agreement.

Part II: PCA Principal Information and Status Representations

Part II of this Questionnaire consists of questions that must be answered by, or on behalf of, each PCA Principal. Answers to the questions should be provided in the PCA Principal Answer Sheet except as otherwise indicated.

1. **LEI/CICI**[5]

To answer this question, complete column 2 of the relevant row of the PCA Principal Answer Sheet by inserting the PCA Principal's LEI/CICI:

What is PCA Principal's LEI/CICI?

2. **CFTC Swap Entity**

The term "CFTC Swap Entity" is used in the Protocol Agreement to signify PCA Principals that are, or expect shortly to be, registered as a swap dealer or major swap participant with the CFTC. In the DF Supplement, the agreements that apply to a "CFTC Swap Entity" are only appropriate for a registered swap dealer or major swap participant and the agreements applicable to "Counterparty" or "CP" are only appropriate for parties who are counterparties to a registered swap dealer or major swap participant. The Protocol Agreement provides that the obligations of matched PCA Principals under the DF Supplement are conditioned upon at least one of the matched PCA Principals actually being registered with the CFTC as a swap dealer or major swap participant, so that PCA Principals may be designated as CFTC Swap Entities prior to registration and have relevant obligations take effect once registration is complete.

Each party executing a Questionnaire must indicate whether the relevant PCA Principal will be a CFTC Swap Entity for purposes of DF Supplement terms incorporated in Protocol Covered Agreements. Designation as a CFTC Swap

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[5] CFTC Regulation 45.6.

Entity in this Questionnaire is not a representation by the PCA Principal that it is a "swap dealer" or a "major swap participant," as such terms are defined in the CEA and applicable CFTC regulations, or that it is registered as such. ***However, parties who do not in good faith believe they will register as a swap dealer or major swap participant should not be designated as a CFTC Swap Entity for purposes of DF Supplement terms incorporated in Protocol Covered Agreements.*** *Under the DF Supplement, a matched party that is not initially a CFTC Swap Entity may subsequently change its status to CFTC Swap Entity by providing written notice to its counterparty that it has become registered with the CFTC as a swap dealer or major swap participant.*

A "Yes" response to this question will be an election for PCA Principal to be a CFTC Swap Entity for purposes of DF Supplement terms incorporated in Protocol Covered Agreements.

To answer this question, complete column 3 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:

Is PCA Principal a CFTC Swap Entity?

3. **Financial Entity**[6]

The term "financial entity" is used for various purposes throughout the CEA and CFTC Regulations, including, among others, for purposes of determining who must enter into "swap trading relationship documentation" satisfying various requirements and the deadlines for execution of confirmations under CFTC Regulation 23.501. Each party executing a Questionnaire must therefore indicate whether the relevant PCA Principal is a Financial Entity to the best of its knowledge.

To answer this question, complete column 4 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate. Respondents should note that participants in the ISDA August 2012 DF Protocol were also asked in the related "Questionnaire" to indicate whether they are "financial entities" as defined in Section 2(h)(7)(C)(i) of the CEA and the CFTC Regulations. Information provided herein will be deemed an update to information provided in the prior Questionnaire, if any.

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[6] *See, e.g.*, CFTC Regulation 23.501 and 23.504(b)(4). The definition of "Financial Entity" used in this Question 3 is set forth above in Part I (Definitions). Note that while the Dodd-Frank Act and a number of CFTC Regulations thereunder use the term "financial entity," the term has slightly different meanings under different CFTC Regulations. In the first instance, this derives from the statute, where CEA Section 2(h)(7)(C)(i) provides a general definition of the term "financial entity," but CEA Sections 2(h)(7)(C)(ii) and (iii) and CEA Section 2(h)(7)(D) provide exclusions and exemptions to the general definition. For some purposes the general definition is used, while for other purposes (*e.g.*, for reporting purposes) "financial entity" is used to mean an entity that satisfies the general definition and is not excluded through one of the carve-outs. In addition, CFTC Regulation 23.500 sets forth a slightly different definition of financial entity, which is taken from the general statutory definition, but excludes swap dealers and major swap participants. For purposes of the Questionnaire, the general definition provided in CEA Section 2(h)(7)(C)(i) is used consistent with its function.

To the best of its knowledge, is PCA Principal a Financial Entity?

4. **Financial Company**[7]

Pursuant to CFTC Regulation 23.504(b)(5)(i)-(ii), swap trading relationship documentation must include a statement for each party indicating whether it is a Financial Company. Such a statement will be incorporated into Matched PCAs for PCA Principal as "March 2013 DF Supplement Information" by answering this question.

To answer this question, complete column 5 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:

Is PCA Principal a Financial Company?

5. **Insured Depository Institution**[8]

Pursuant to CFTC Regulation 23.504(b)(5)(i)-(ii), swap trading relationship documentation must include a statement for each party indicating whether it is an Insured Depository Institution. Such a statement will be incorporated into Matched PCAs for PCA Principal as "March 2013 DF Supplement Information" by answering this question.

To answer this question, complete column 6 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:

Is PCA Principal an Insured Depository Institution?

6. **E-mail Address for Delivery of Notices**[9]

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[7] CFTC Regulation 23.504(b)(5)(i)-(ii). The definition of "Financial Company" used in this Question 4 is set forth above in Part I (Definitions). *See* DF Supplement Sections 2.12-2.13 for the notifications associated with a party's status as a Financial Company.

[8] CFTC Regulation 23.504(b)(5)(i)-(ii). The definition of "Insured Depository Institution" used in this Question 4 is set forth above in Part I (Definitions). *See* DF Supplement Sections 2.12-2.13 for the notifications associated with a party's status as an Insured Depository Institution.

[9] *See* Protocol Agreement Section 7(c)(v) where the parties agree that delivery of notices (other than Risk Valuations and Portfolio Data) to the e-mail address specified here will be in accordance with the Notice Procedures. Note that a party may provide the same e-mail address here as it did for notices under the August Protocol Questionnaire. A party may also provide a different e-mail address here from the one provided under the August Protocol Questionnaire and such an answer would not amend the address provided under the August Protocol Questionnaire. **ISDA Amend Note**: The version of this Questionnaire that is available via ISDA Amend requires that all PCA Principals provide a response to this question. If a PCA Principal is completing its Questionnaire on ISDA Amend and does not wish to provide an e-mail address for the delivery of notices, other than notices related to Risk Valuations or Portfolio Data, it may specify "None" in the relevant space provided on ISDA Amend.

A PCA Principal may specify here an e-mail address for the delivery of notices pursuant to the DF Supplement, other than notices related to Risk Valuations or Portfolio Data:

E-mail: _____

7. **E-mail Address for Delivery of Risk Valuations**[10]

A PCA Principal may specify here an e-mail address for the delivery of Risk Valuations given pursuant to DF Schedule 3:

E-mail: _____

8. **E-mail Address for Delivery of Portfolio Data**[11]

A PCA Principal may specify here an e-mail address for the delivery of Portfolio Data delivered pursuant to DF Schedule 4:

E-mail: _____

Part III: PCA Principal Elections

Part III of this Questionnaire consists of questions that must be answered by, or on behalf of, each PCA Principal except as otherwise indicated. Answers to the questions should be provided in the PCA Principal Answer Sheet except as otherwise indicated.

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[10] *See* Protocol Agreement Section 7(c)(vi) where the parties agree that delivery of Risk Valuations to the e-mail address specified here will be in accordance with the Notice Procedures. The specification of an e-mail address here does not constitute a request to receive Risk Valuations under Section 3.2 of the DF Supplement. **ISDA Amend Note**: The version of this Questionnaire that is available via ISDA Amend requires that all PCA Principals provide a response to this question. If a PCA Principal is completing its Questionnaire on ISDA Amend and does not wish to provide an e-mail address for the delivery of notices related to Risk Valuations it may specify "None" in the relevant space provided on ISDA Amend.

[11] *See* Protocol Agreement Section 7(c)(vii) where the parties agree that delivery of Portfolio Data to the e-mail address specified here will be in accordance with the Notice Procedures. **ISDA Amend Note**: The version of this Questionnaire that is available via ISDA Amend requires that all PCA Principals provide a response to this question. If a PCA Principal is completing its Questionnaire on ISDA Amend and does not wish to provide an e-mail address for the delivery of notices related to Portfolio Data it may specify "None" in the relevant space provided on ISDA Amend.

1. **Local Business Day**[12]

For the purposes of the March 2013 DF Supplement, what constitutes a "Local Business Day" in respect of any party is determined based upon the city (or cities) specified by such party herein or in other documentation agreed by the parties to be "March 2013 DF Supplement Information." A city (or cities) may be specified for a PCA Principal by answering this question.

To answer this question, complete column 7 of the relevant row of the PCA Principal Answer Sheet by inserting the name(s) of the relevant city (or cities):

Local Business Day city or cities?

2. **DF Schedule 3 Election for Non-Financial Entities**[13]

The following election whether to enter into DF Schedule 3 (Calculation of Risk Valuations and Dispute Resolution) must be completed by, or on behalf of, all PCA Principals that are neither (i) being designated as CFTC Swap Entities nor (ii) Financial Entities. If PCA Principal is being designated as a CFTC Swap Entity or has been identified as a Financial Entity in this Questionnaire, it is automatically deemed to elect DF Schedule 3 (Calculation of Risk Valuations and Dispute Resolution) pursuant to the Protocol Agreement.

DF Schedule 3 provides a set of agreements intended to address the documentation requirements of CFTC Regulation 23.504(b)(4). CFTC Regulation 23.504(b)(4) provides that these requirements apply to all swap trading relationship documentation between swap dealers, major swap participants and Financial Entities, but are not mandatory for swap trading relationship documentation with market participants that are not Financial Entities.

Either a "Yes" response or a non-response to this question will be an election to supplement the terms of Matched PCAs by incorporating DF Schedule 3 (Calculation of Risk Valuations and Dispute Resolution). A "No" response to this question will be an election ***not*** *to incorporate DF Schedule 3. Protocol Participants should verify that the relevant PCA Principal is not a Financial Entity before responding "No" to this question.*

To answer this question, complete column 8 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:

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[12] *See* definition of "Local Business Day" in Schedule 1 of the DF Supplement. This term is used to establish the days that will be considered business days for purposes of daily risk valuations and portfolio reconciliations under Schedules 3 and 4 of the DF Supplement. To avoid confusion, please write out the full name(s) of the relevant city (or cities). For example, to specify New York as the relevant city, write out "New York" not "NY."

[13] CFTC Regulation 23.504(b)(4).

Does PCA Principal agree to DF Schedule 3?[14]

3. **DF Schedule 4 Elections**[15]

(a) *The following election whether to enter into DF Schedule 4 (Portfolio Reconciliation) must be completed by, or on behalf of, all PCA Principals that are not being designated as CFTC Swap Entities. If PCA Principal is being designated as a CFTC Swap Entity in this Questionnaire, it is automatically deemed to elect DF Schedule 4 (Portfolio Reconciliation) pursuant to the Protocol Agreement.*

A "Yes" response or a non-response to this question will be an election to supplement the terms of Matched PCAs by incorporating DF Schedule 4 (Portfolio Reconciliation). A "No" response to this question will be an election ***not*** *to incorporate DF Schedule 4 (Portfolio Reconciliation).*

To answer this question, complete column 9 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:

Does PCA Principal agree to Schedule 4?[16]

(b) *The following election whether to engage in portfolio reconciliation in accordance with Part II of DF Schedule 4 (One-way Delivery of Portfolio Data) or Part III of DF Schedule 4 (Exchange of Portfolio Data) must be completed by, or on behalf of, all PCA Principals that (i) are not designated as CFTC Swap Entities in this Questionnaire, and (ii) have elected DF Schedule 4 in this Questionnaire. If PCA Principal is being designated as a CFTC Swap Entity and is matched with another PCA Principal designated as a CFTC Swap Entity, Part III of DF Schedule 4 is automatically deemed elected pursuant to the Protocol Agreement.*

Pursuant to CFTC guidance, a party that is not a swap dealer or major swap participant may engage in portfolio reconciliation by either reviewing and confirming portfolio data received from a swap dealer or major swap participant or by exchanging portfolio data with a swap dealer or major swap participant.

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[14] As noted in the instructions, DF Schedule 3 is not mandatory for parties that are not Financial Entities. A non-Financial Entity's response to this question will be its election whether to enter into Schedule 3 with a matched counterparty under Section 5(a)(i) of the Protocol Agreement. *See also supra* note 6.

[15] CFTC Regulation 23.502

[16] DF Schedule 4 has been made elective for non-CFTC Swap Entities in this protocol in light of the fact that the CFTC's portfolio reconciliation rules do not apply to market participants that are not swap dealers or major swap participants. However, CFTC Regulation 23.502 states that swap dealers and major swap participants must have policies and procedures "reasonably designed to ensure" that they engage in portfolio reconciliations with such counterparties as proscribed in the regulation (which further requires a written agreement establishing the terms of such reconciliations). A non-CFTC Swap Entity's response to this question will be its election under Section 5(a)(ii) of the Protocol Agreement.

A "Review" response or a non-response to this question will be an election to engage in portfolio reconciliation in accordance with Part II of DF Schedule 4 (One-way Delivery of Portfolio Data). An "Exchange" response to this question will be an election to engage in portfolio reconciliation in accordance with Part III of DF Schedule 4 (Exchange of Portfolio Data).

To answer this question, complete column 10 of the relevant row of the PCA Principal Answer Sheet by inserting a "Review" or "Exchange," as appropriate:

Does PCA Principal agree to review or exchange Portfolio Data?[17]

(c) The following election whether to reconcile certain terms of Swaps in accordance with Part V of DF Schedule 4 *(Reconciliation Against SDR Data)*[18] must be completed by, or on behalf of, all PCA Principals that (i) are designated as CFTC Swap Entities in this Questionnaire, or (ii) have elected DF Schedule 4 in this Questionnaire.

PCA Principals that engage in portfolio reconciliations may choose to reconcile relevant terms of Swaps against the data reported by a party to an SDR rather than requiring the direct delivery of the relevant information by the other party or its agent.

A "Yes" response to this question will be an election to reconcile relevant terms of Swaps in accordance with Part V of DF Schedule 4 (Reconciliation Against SDR Data).[19] *A "No" response or a non-response to this question will be an election* ***not*** *to agree to the terms of Part V of DF Schedule 4.*

To answer this question, complete column 11 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:

Does PCA Principal agree to reconcile against SDR Data?[20]

4. **Use of End-User Exception**[21]

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[17] In this question, respondents who are agreeing to DF Schedule 4 are asked to choose between the data delivery and reconciliation procedures specified in Part II of the Schedule (by answering "Review") or Part III of the Schedule (by answering "Exchange"). Parts II and III of DF Schedule 4 are mutually exclusive. A non-CFTC Swap Entity's response to this question will be its election under Sections 5(b)(ii)-(iii) of the Protocol Agreement. For further detail on the differences between "Review" and "Exchange," see Parts II and III of DF Schedule 4 and the annotations thereto.

[18] The name of Part V in parenthesis has been corrected. The version of the Questionnaire published on March 22, 2013 read "Part V of DF Schedule 4 *(Other Portfolio Reconciliation Procedures)*."

[19] *See id.*

[20] Parties that have agreed to DF Schedule 4 may elect to reconcile against non-valuation portfolio data provided by an SDR regardless of whether they have elected to review data under Part II of the schedule or exchange data under Part III of the schedule. A party's response to this question will be its election under Section 5(b)(iv) of the Protocol Agreement. *See* Schedule 4, Part V of the Supplement and annotations thereto for further detail on reconciliation against SDR Data.

(a) *The following question may be completed by, or on behalf of, all PCA Principals that are eligible to use the End-User Exception (as defined below).*[22]

*Section 2(h)(1) of the CEA makes it unlawful, subject to certain exceptions, for any person to engage in a swap that is subject to a mandatory clearing determination unless such swap is submitted for clearing to a registered or exempt derivatives clearing organization. Section 2(h)(7) of the CEA and CFTC Regulation 50.50 provide an exception, available to certain parties, to the mandatory clearing requirement set forth in Section 2(h)(1) of the CEA (the "**End-User Exception**"). In order to use the End-User Exception, a party must, among other things, make an election to do so. This question may be used to notify a counterparty that PCA Principal is making a one-time election to always use the End-User Exception for swaps subject to mandatory clearing unless PCA Principal subsequently notifies its counterparty to the contrary (either with respect to a particular Swap or generally). For the avoidance of doubt, a party's answer to this question will in no way prejudice its rights to elect to, or not to, use the End-User Exception in respect of any particular Swap.*

*A "Yes" response to this question provides a notice to a recipient of this Questionnaire that PCA Principal is electing (such election, the "**Standing End-User Exception Election**") the End-User Exception for each Swap entered into by the PCA Principal under a Matched PCA that is subject to a mandatory clearing determination under Section 2(h) of the CEA, unless PCA Principal has notified the counterparty otherwise in writing prior to the execution of such Swap. A "No" response or a non-response to this question will be an election not to provide such a notice (and has no other effect).*

To answer this question, complete column 12 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:

Standing End-User Exception Election?[23]

(b) *The following question may be completed by, or on behalf of, all PCA Principals that are eligible to use the End-User Exception.*[24]

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21 CFTC Regulation 50.50. *See* DF Supplement Sections 2.9-2.11 for the agreements associated with the end-user exception.

22 Such parties include parties that are not Financial Entities, and parties that are eligible for the Finance Affiliate Exception, the Hedging Affiliate Exception, or the Small Bank Exception. The definition of "Financial Entity" is set forth above in Part I (Definitions), while the definitions and statutory sources for "Finance Affiliate Exception" "Hedging Affiliate Exception" and "Small Bank Exception" are set out below in sections (c)(i), (ii), and (iii) of this Question. **ISDA Amend Note**: The version of this Questionnaire that is available via ISDA Amend requires that all PCA Principals, not only those that are eligible to use the End-User Exception, provide a response to this question. PCA Principals who are not eligible should answer "No."

23 A party may use this question to satisfy the notice requirement regarding such party's election to use the End-User Exception in Section 2.9 of the DF Supplement.

24 **ISDA Amend Note**: The version of this Questionnaire that is available via ISDA Amend requires that all PCA Principals, not only those that are eligible to use the End-User Exception, provide a response to this question. A

*CFTC Regulation 50.50 provides that when a party to a Swap elects to use the End-User Exception (such party an "**Electing Party**"), one of the parties must provide, or cause to be provided, the information listed in CFTC Regulation 50.50 to a registered SDR or, if no registered SDR is available to receive such information, the CFTC. An Electing Party may provide this information directly to a registered SDR or the CFTC through an annual filing pursuant to CFTC Regulation 50.50(b)(2) (an "**Annual Filing**"), or may cause this data to be reported on a trade-by-trade basis (a "**Trade Filing**").*[25]

*The ISDA March 2013 DF Supplement provides that an Electing Party is deemed to represent at the time of execution of the relevant Swap that it has either made an Annual Filing or has notified its counterparty that it has not made such an Annual Filing and has provided the counterparty with the information required to make a Trade Filing. The following question may be used by a PCA Principal to notify its counterparty that it will not make an Annual Filing for any swap subject to mandatory clearing (such notification, the "**Standing Opt-Out of Annual Filing**") unless PCA Principal subsequently notifies its counterparty to the contrary (either with respect to a particular Swap or generally).*

To answer this question, complete column 13 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:

Standing Opt-Out of Annual Filing?[26]

(c) *The following questions may be completed by, or on behalf of, all PCA Principals that are eligible to use the End-User Exception.*

The ISDA March 2013 DF Supplement provides that an Electing Party that has notified its counterparty that it has not made an Annual Filing represents that it has provided the counterparty with the information required to make a Trade Filing. The following questions may be used by a PCA Principal to provide such information.

(i) *If the Electing Party is a Financial Entity, CFTC Regulation 50.50 requires that a Trade Filing specify whether the Electing Party is electing the exception in accordance with Section (2)(h)(7)(C)(iii) of the CEA (the "**Finance Affiliate Exception**")*[27]

PCA Principal's answer to this question will have no effect or meaning unless PCA Principal is an Electing Party.

[25] In order to provide all of the information required to make a Trade Filing, an Electing Party must complete the questions in Part III, Q 4(c).

[26] A party may use this question to satisfy the notice requirement regarding Annual Filings in Section 2.9(b)(1) of the DF Supplement.

[27] *See* Section 2(h)(7)(C)(iii) of the CEA. The Finance Affiliate Exception is available exclusively to certain companies whose primary business is to finance the purchase or lease of products manufactured by an affiliate.

To answer this question, complete column 14 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:

Is PCA Principal electing the Finance Affiliate Exception?

(ii) *If the Electing Party is a Financial Entity, CFTC Regulation 50.50 requires that a Trade Filing specify whether the Electing Party is electing the exception in accordance with Section (2)(h)(7)(D) of the CEA (the "**Hedging Affiliate Exception**").*[28]

To answer this question, complete column 15 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:

Is PCA Principal electing the Hedging Affiliate Exception?

(iii) *If the Electing Party is a Financial Entity, CFTC Regulation 50.50 requires that a Trade Filing specify whether the Electing Party is an entity that has been exempted from the statutory definition of "financial entity" for purposes of the End User Exception under Section 2(h)(7)(C)(ii) of the CEA and CFTC Regulation 50.50(d) (the "**Small Bank Exemption**").*[29]

To answer this question, complete column 16 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:

Is PCA Principal exempt under the Small Bank Exemption?

(iv) *CFTC Regulation 50.50 requires that a Trade Filing specify how an Electing Party generally meets its financial obligations associated with entering into non-cleared swaps.*

To answer this question, complete column 17 of the relevant row of the PCA Principal Answer Sheet by inserting one or more of the subsection letters below, as appropriate:

How does PCA Principal generally meet its financial obligations associated with entering into non-cleared swaps?

(A) a written credit support agreement;

(B) pledged or segregated assets (including posting or receiving margin pursuant to a credit support arrangement or otherwise);

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[28] See Section 2(h)(7)(C)(D) of the CEA. The Hedging Affiliate Exception is available exclusively to parties who are affiliates of another entity that is eligible to use the End User Exception and who use swaps to hedge or mitigate commercial risk of the eligible affiliate.

[29] See Section 2(h)(7)(C)(ii) of the CEA and CFTC Regulation 50.50(d). The Small Bank Exemption is available exclusively to banks and similar institutions who meet the criteria specified in CFTC Regulation 50.50.

(C) a written third-party guarantee;

(D) its available financial resources; or

(E) means other than those described in the foregoing subsections (A) through (D).

(v) *CFTC Regulation 50.50 requires that a Trade Filing specify whether an Electing Party is an issuer of securities registered under Section 12 of, or is required to file reports under Section 15(d) of, the Securities Exchange Act of 1934 (an "**SEC Issuer/Filer**")*

To answer this question, complete column 18 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:

Is PCA Principal an SEC Issuer/Filer?[30]

(vi) *If the Electing Party is an SEC Issuer/Filer, CFTC Regulation 50.50 requires that a Trade Filing specify the Electing Party's SEC Central Index Key number.*

To answer this question, complete column 19 of the relevant row of the PCA Principal Answer Sheet by inserting the PCA Principal's SEC Central Index Key number:

What is PCA Principal's SEC Central Index Key number?[31]

(vii) *If the Electing Party is an SEC Issuer/Filer, CFTC Regulation 50.50 requires that a Trade Filing specify whether an appropriate committee of Electing Party's board of directors (or equivalent body) reviewed and approved the decision to enter into swaps that are exempt from the requirements of Sections 2(h)(1) and 2(h)(8) of the CEA (an "**Election Approval**").*

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[30] **ISDA Amend Note**: In the version of this Questionnaire that is available via ISDA Amend this question is located on a PCA Principal's ISDA Information page.

The CFTC has interpreted the meaning of "issuer of securities" in this context in the same manner as the SEC did in its proposal for implementing the end-user exception to mandatory clearing of security-based swaps, and so the phrase has been interpreted to cover entities that are "controlled" by issuers of securities. *See* 77 Fed. Reg. 42560, 42570 (July 19, 2012) (citing 75 Fed. Reg. 79992, 79996 & n. 34 (Dec. 21, 2010)) ("[A] counterparty invoking the end-user clearing exception is considered by the [SEC] to be an issuer of securities registered under Exchange Act Section 12 or required to file reports pursuant to Exchange Act Section 15(d) **if it is controlled by a person that is an issuer of securities** registered under Exchange Act Section 12 or required to file reports pursuant to Exchange Act Section 15(d).") (emphasis added).

[31] **ISDA Amend Note**: In the version of this Questionnaire that is available via ISDA Amend this question is located on a PCA Principal's ISDA Information page.

To answer this question, complete column 20 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate:

Did PCA Principal receive Election Approval?[32]

5. ISDA March 2013 DF Protocol Master Agreement Elections and Information[33]

(a) *CFTC Regulation 23.504 requires a CFTC Swap Entity to have in place written policies and procedures to ensure that it executes "swap trading relationship documentation" prior to or contemporaneously with entering into a Swap with any counterparty. In order to help ensure that parties have such documentation in place for each Swap, Section 4 of the Protocol Agreement allows each PCA Principal to elect to enter into an "ISDA March 2013 DF Protocol Master Agreement." Pursuant to the Schedule to the ISDA March 2013 DF Protocol Master Agreement, such agreement would govern Swaps that are (i) not governed by an Existing Swap Agreement and (ii) not intended by the parties to be cleared on a derivatives clearing organization.*

*A "Yes" response to this question is an agreement by PCA Principal to enter into the ISDA March 2013 DF Protocol Master Agreement with each counterparty to whom this Questionnaire has been delivered. A "No" response or a non-response will **not** be an agreement to enter into the ISDA March 2013 DF Protocol Master Agreement with each counterparty to whom this Questionnaire has been delivered.*

To answer this question, complete column 21 of the relevant row of the PCA Principal Answer Sheet by inserting a "Yes" or a "No," as appropriate.

Does PCA Principal agree to enter into an ISDA March 2013 DF Protocol Master Agreement?[34]

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[32] **ISDA Amend Note**: In the version of this Questionnaire that is available via ISDA Amend this question is located on a PCA Principal's ISDA Information page.

[33] The ISDA March 2013 DF Protocol Master Agreement is an agreement in the form of the 2002 ISDA Master Agreement with a special scope provision and a very minimalistic Schedule. The purpose of the agreement is to provide written terms for non-cleared swaps that are not otherwise executed under full swap trading relationship documentation. *See* Protocol Agreement Section 4.

[34] For further detail on the use and purpose of the ISDA March 2013 DF Protocol Master Agreement ("**Protocol Master**") please see Section 4 of the Protocol Agreement and the annotations thereto. It is stressed that if a party has an existing written agreement under which Swaps are traded, entering into the Protocol Master **will not affect such existing agreement or result in Swaps that would otherwise be subject to such existing agreement becoming subject to the Protocol Master**. The Protocol Master will only govern a Swap between two adhering parties who elect the Protocol Master if it is not otherwise subject to an existing written swap agreement that provides terms governing the payment obligations of the parties.

(b) If PCA Principal has responded "Yes" to the previous question, the notice information of such PCA Principal for the purposes of each ISDA March 2013 DF Protocol Master Agreement is as follows:

Name: _____

Address: _____

_____

Phone: _____

Fax: _____

E-mail: _____

Electronic Messaging System Details: _____

Specific Instructions: _____

By executing this Questionnaire, the signatory represents as PCA Principal or PCA Agent for specified PCA Principals that (a) all information provided by it in this Questionnaire is true, accurate and complete in every material respect as of the date hereof, and may be relied upon by each counterparty to whom this Questionnaire is delivered, (b) it has elected to supplement its Matched PCAs with the DF Schedules as indicated in this Questionnaire, and (c) if it has answered "Yes" to the question in Part III Section 5(a) of this Questionnaire, it has agreed to enter into the ISDA March 2013 DF Protocol Master Agreement.[35]

[INSERT FULL LEGAL NAME OF PCA PRINCIPAL OR PCA AGENT][36]

By: _____
Name:
Title:
Date:

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[35] The Parties agree, *see* Section 7(c)(iii) of the Protocol Agreement, that all of the information and representations provided herein is "March 2013 DF Supplement Information." Under the DF Supplement, a party makes various representations about its March 2013 DF Supplement Information, and agrees to update such information and representations. *See* Sections 2.1 and 2.3 of the DF Supplement.

[36] If you are a PCA Agent acting on behalf of one or more PCA Principals insert the following in the signature block: ", acting on behalf of the clients, investors, funds, accounts and/or other principals listed in the column 1 of the PCA Principal Answer Sheet."

AMENDMENT ADOPTING, INCORPORATING AND AMENDING THE ISDA MARCH 2013 DF SUPPLEMENT

This Amendment Adopting, Incorporating and Amending the ISDA March 2013 DF Supplement (this "Amendment") is made as of December 18, 2017 (the "Effective Date") by and between Morgan Stanley Capital Group Inc. ("Swap Dealer" or "SD") and South Kentucky Rural Electric Cooperative Corporation ("Counterparty" or "CP").

WHEREAS, reference is made to the ISDA March 2013 DF Supplement published by the International Swaps and Derivatives Association, Inc. ("ISDA®") on March 22, 2013 (the "ISDA March 2013 DF Supplement"; capitalized terms used and not otherwise defined herein are defined in the ISDA March 2013 DF Supplement and its Questionnaire); and

WHEREAS, the parties desire to amend the terms of the ISDA March 2013 DF Supplement and apply it to any oral or written agreement between the parties that governs the terms and conditions of one or more transactions in Swaps that each such party has or may enter into as principal (the "Covered Agreement");

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the parties do hereby agree as follows:

Article 1:
Adoption and Incorporation of the ISDA March 2013 DF Supplement

1.1 ***Adherence to Protocol Agreement.***

SELECT ONE:

☐ Option One: In lieu of using the procedures set forth in the Protocol Agreement, the ISDA March 2013 DF Supplement, as amended hereby, is incorporated by reference into the Covered Agreement as though fully set forth therein and governs all Swap transactions, if any, under the Covered Agreement. The parties adopt between them the ISDA March 2013 DF Supplement into the Covered Agreement by execution of this Amendment, rather than

pursuant to the procedure set forth in the ISDA March 2013 DF Protocol Agreement (the "Protocol Agreement") or the Adherence Letter (as defined in the Protocol Agreement), the ISDA March 2013 DF Supplement or the ISDA March 2013 DF Questionnaire (the "Questionnaire"). The phrase "this March 2013 DF Supplement" as used in the ISDA March 2013 DF Supplement, as so adopted and incorporated hereby, means "this Amendment," and the term "Covered Agreement" means "Covered Agreement" as defined in this Amendment. Exhibit A hereto shall be used in lieu of the Questionnaire contemplated by the Protocol Agreement. The information contained in Exhibit A as well as any other information required to be delivered under the Agreement shall be automatically updated or provided and deemed delivered to SD by any other written notices provided to SD under the Covered Agreement.

☒ Option Two: The parties agree to use the procedures set forth in the Protocol Agreement and agree to implement and amend between them the terms of the ISDA March 2013 DF Supplement by adhering to the Protocol Agreement and exchanging the Questionnaire and entering into this Amendment. The Protocol Agreement, Questionnaire and ISDA March 2013 DF Supplement govern all Swap transactions, if any, under the Covered Agreement, provided that the ISDA March 2013 DF Supplement and Questionnaire govern as amended by this Amendment. The phrase "this March 2013 DF Supplement" as used in the ISDA March 2013 DF Supplement, means the ISDA March 2013 DF Supplement as amended by this Amendment, and the term "Covered Agreement" means "Covered Agreement" as defined in this Amendment. The information contained in the Questionnaire as well as any other information required to be delivered under the Agreement shall be automatically updated or provided and deemed delivered to SD by any other written notices provided to SD under the Covered Agreement.

1.2 ***CFTC Swap Entity.*** SD shall be a "CFTC Swap Entity" for purposes of the ISDA March 2013 DF Supplement.

1.3 ***Notice Procedures.*** If Option One is selected and both CP and SD provide the applicable email addresses for delivery of notices in Exhibit A, then Notice Procedures for purposes of the ISDA March 2013 DF Supplement will include the additional procedures set forth in Sections 7(c)(v), (vi) and (vii) of the Protocol Agreement for the purposes specified in each respective Section provided that each reference to "such Matched PCA Party's Questionnaire" shall be deemed to be a reference to the information specified by the SD or CP, as applicable, in Exhibit A.

Article 2:
Amendments to the ISDA March 2013 DF Supplement

2.1 ***Amendment to March 2013 DF Schedule 1 of the ISDA March 2013 DF Supplement; Defined Terms.***

(i) "**March 2013 DF Supplement Information**" is amended by adding to the end of the Section: "The only March 2013 DF Supplement Information exchanged by the parties as of the date hereof is Exhibit A or the Questionnaire, as applicable, along with any other information that the parties have agreed in writing is March 2013 DF Supplement Information."

2.2 ***Amendments to March 2013 DF Schedule 2 of the ISDA March 2013 DF Supplement; General Terms.***

(i) Section 2.2 is amended by adding the following at the end of the Section: "Provisions in the Agreement that in any manner limit the liability of one party to the other party are not amended or affected hereby."

(ii) Section 2.5 is amended by replacing the word "Swaps" in 2.5(b) with the word "swaps" and each use of the word "Swap" in 2.5(c) with the word "swap."

(iii) Section 2.9 is amended by replacing "in writing prior to the execution of such Swap" with "in writing delivered in any form, including electronically, prior to or at the time of execution of such Swap."

2.3 ***Amendments to March 2013 DF Schedule 3 of the ISDA March 2013 DF Supplement; Calculation of Risk Valuations and Dispute Resolution.***

(i) Section 3.3(iii) is amended by inserting the words "viewable at no cost to CP" after the words "posting on a secure web page."

(ii) Section 3.5 is amended by (a) inserting the words ", subject to Section 3.6 below if applicable," between the words "Notice Procedures" and "on or prior" and (b) replacing the words "shall include CP's" with "shall include or be followed as soon as reasonably practicable with CP's."

(iii) Section 3.11 is amended by adding the following at the end of the Section: "In the event of any inconsistency between this Amendment and the Covered Agreement respecting calculation of termination payments, CSA Valuation, exposure or payment calculations, dispute resolution mechanisms, or other agreements of the parties set forth in the Covered Agreement, the Covered Agreement as unamended by this Amendment shall control."

2.4 ***Amendments to March 2013 DF Schedule 4 of the ISDA March 2013 DF Supplement; Portfolio Reconciliation.***

(i) Section 4.2(c) is amended by deleting ", and in any event not later than the close of business on the second Local Business Day of CP following the Data Delivery Date."

(ii) Section 4.7 is amended by adding the following at the end of the Section: "In the event of any inconsistency between this Amendment and the Covered Agreement respecting any agreement or other procedure for the exchange, delivery and/or reconciliation of Portfolio Data and/or the resolution of any discrepancy between them or other agreements of the parties set forth in the Covered Agreement, the Covered Agreement as unamended by this Amendment shall control."

Article 3:
Representations and Warranties

3.1 ***Mutual Representations.*** Each party represents to the other (which representations will be deemed to be repeated by each party as of the time of each Transaction Event) that:

(i) It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing; and

(ii) It has the power to execute this Amendment.

3.2 ***Representation of CP.*** All information and representations provided in Exhibit A are based on CP's understanding and interpretation of the CEA and CFTC Regulations as of the date hereof, after reasonable diligence and inquiry. In the event that factual information with respect to CP set forth in Exhibit A changes, CP agrees to correct such information no later than the next following Transaction Event.

Article 4:
Miscellaneous

4.1 ***No Other Agreement.*** Except as amended hereby, the Covered Agreement remains in full force and effect.

4.2 ***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.

4.3 ***Governing Law.*** This Amendment, as between the parties and in respect of each Swap transaction between them, will be governed by and construed in accordance with the law specified to govern that Swap transaction in the Covered Agreement and otherwise in accordance with applicable choice of law doctrine.

4.4 ***Counterparts.*** This Amendment (and each amendment, modification and waiver in respect thereof) may be executed and delivered in any number of counterparts (including by facsimile transmission or PDF files) and all of such counterparts taken together shall be deemed to constitute one and the same instrument.

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date.

Morgan Stanley Capital Group Inc.

By:
Name:
Title:

South Kentucky Rural Electric Cooperative Corporation

By: Dennis Holt
Name: DENNIS HOLT
Title: INTERIM CEO

EXHIBIT A

THIS EXHIBIT A IS ONLY FOR PARTIES WHO HAVE CHOSEN OPTION ONE IN SECTION 1.1. IF OPTION TWO IS SELECTED, PARTIES DO NOT FILL OUT THIS EXHIBIT A, BUT INSTEAD EXCHANGE THE ISDA QUESTIONNAIRE.

Parties to the IECA Amendment Adopting, Incorporating and Amending the ISDA August 2012 DF Protocol or the ISDA August 2012 DF Protocol were asked for some of the same information in the related Exhibit A or ISDA August 2012 DF Protocol Questionnaire, as applicable. Information provided herein will be deemed an update to information provided therein. Capitalized terms used herein not defined in the Supplement are defined in the Questionnaire.

SD INFORMATION:
MORGAN STANLEY CAPITAL GROUP INC. ("SD")
SD CICI/Legal Entity Identifier: [redacted]
Financial Company – Is SD a "financial company," as such term is defined in CFTC Regulation 23.504(b)(5)(i)-(ii)? ☒ Yes ☐ No
Insured Depository Institution – Is SD an "insured depository institution," as that term is defined in CFTC Regulation 23.504(b)(5)(i)-(ii)? ☐ Yes ☒ No
SD Email Address for Delivery of Notices Email: dftermagreement@ms.com

CP INFORMATION:
South Kentucky Rural Electric Cooperative Corporation ("CP")
CP CICI/Legal Entity Identifier: [redacted]
Financial Entity Disclosure – To the best of its knowledge, CP is a "financial entity," as such term is defined in Section 2(h)(7)(C)(i) of the Commodity Exchange Act and any applicable CFTC Regulations? ☐ Yes ☒ No
Financial Company – Is CP a "financial company," as such term is defined in CFTC Regulation 23.504(b)(5)(i)-(ii)? ☐ Yes ☒ No
Insured Depository Institution – Is CP an "insured depository institution," as that term is defined in CFTC Regulation 23.504(b)(5)(i)-(ii)? ☐ Yes ☒ No
CP Email Address for Delivery of Notices Email:

END USER ELECTION:
Standing End-User Exception Election - Does CP elect the End-User Exception for each Swap entered into hereunder that is subject to a mandatory clearing determination under Section 2(h) of the CEA? ☒ Yes ☐ No
Standing Opt-Out of Annual Filing – Does CP notify SD that it will not make an annual filing pursuant to CFTC Regulation 50.50(b)(2) for any swap subject to mandatory clearing? ☒ Yes ☐ No
TRADE FILING INFORMATION:
If CP answered "Yes" to the "financial entity" question above, does CP elect any of the following exceptions? ☐ Financial Affiliate Exception ☐ Hedging Affiliate Exception ☐ Small Bank Exception
How does CP generally meet its financial obligations associated with entering into non-cleared swaps? ☐ A written credit support agreement ☐ Pledged or segregated assets (including posting or receiving margin pursuant to a credit support arrangement or otherwise) ☐ A written third-party guarantee ☐ Its available financial resources ☐ Other:
Is CP a SEC Issuer/Filer? ☐ Yes – If yes, specify CP's SEC Central Index Key number: ☐ No
If CP is a SEC Issuer/Filer, did CP receive Election Approval? ☐ Yes ☐ No

PROTOCOL MASTER AGREEMENT:
Do the parties agree to enter into an ISDA March 2013 DF Protocol Master Agreement in the form of Section 4 of the ISDA March 2013 DF Protocol Agreement? ("No" shall apply unless noted otherwise.) ☐ Yes ☒ No
If the parties have agreed to enter into an ISDA March 2013 DF Protocol Master Agreement:
SD's notice information for such purpose is as follows: Address: Phone: Fax: Email: Electronic Messaging System Details: Specific Instructions:

CP's notice information for such purpose is as follows: Address: Phone: Fax: Email: Electronic Messaging System Details: Specific Instructions:

SCHEDULE 3 & 4 ELECTIONS:	
☐ **Check if DF Schedule 3 applies** If checked, provide the following:	☒ **Check if DF Schedule 4 applies** If checked, provide the following:
SD Email Address for Delivery of Risk Valuations: portrecny@morganstanley.com	SD Email Address for Delivery of Portfolio Data: portrecny@morganstanley.com
CP Email Address for Delivery of Risk Valuations:	CP Email Address for Delivery of Portfolio Data: PPAAdmin@skrecc.com
	Does CP agree to review or exchange Portfolio Data? (select one) ☒ Review ☐ Exchange
	Does CP agree to reconcile against SDR Data? ☒ Yes ☐ No
Local Business Day city or cities (if other than the City of New York):	
SD:	**CP:**

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION FOR APPROVAL OF MASTER POWER PURCHASE AND SALE AGREEMENT AND TRANSACTIONS THEREUNDER	) Case No. 2018-00_____

DIRECT TESTIMONY OF DENNIS HOLT
ON BEHALF OF
SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

Filed: January 31, 2018

Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.

A. My name is Dennis Holt and my business address is South Kentucky Rural Electric Cooperative Corporation ("South Kentucky"), 200 Electric Avenue, Somerset, Kentucky 42501. I serve as President and Chief Executive Officer at South Kentucky.

Q. PLEASE SUMMARIZE YOUR EDUCATION AND PROFESSIONAL EXPERIENCE.

A. I have thirty-nine (39) years of progressive engineering, operations and management experience with a comprehensive knowledge of South Kentucky including engineering, construction, right-of-way, mapping, warehousing, transportation, member services, public relations and dispatch. I have been involved in the long-term planning and implementation of South Kentucky's overall goals and objectives including planning and staffing for over ten (10) years. I am a 2001 graduate of the NRECA Robert I Kabat Management Internship Program and attended Somerset Community College with an emphasis on Business Administration and Electrical Engineering.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR DUTIES AT SOUTH KENTUCKY.

A. As President and CEO, I am responsible for the management and oversight of all the cooperative's business operations, its employees, and public and community relations. I work under the supervision and at the pleasure of a seven (7) member Board of Directors. My duties also include assisting the Board of Directors in developing a strategic plan, creating a mission and vision statement for the

organization, and ensuring that the organization moves forward as directed by the Board of Directors.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. The purpose of my testimony is first to generally describe the business of the cooperative and the service it provides within its retail electric service territory. I will discuss South Kentucky's role as an Owner-Member of East Kentucky Power Cooperative, Inc. ("EKPC"), the cooperative's past wholesale power procurement practices, and the agreements that govern those practices. Finally, I will explain South Kentucky's decision to explore new opportunities to satisfy a portion of its wholesale power needs, to engage an expert consultant and execute a request-for-proposals process, and to negotiate and ultimately close commercial agreements with Morgan Stanley Capital Group Inc. ("Morgan Stanley Capital Group") that are expected to significantly benefit South Kentucky's members through 2039.

Q. ARE YOU SPONSORING ANY EXHIBITS?

A. No, I am not sponsoring any exhibits as part of my testimony.

Q. PLEASE GENERALLY DESCRIBE THE BUSINESS OPERATIONS OF SOUTH KENTUCKY.

A. South Kentucky is engaged in the sale of electric power at retail rates to approximately 50,000 members (equating to approximately 67,500 accounts) in Pulaski, Wayne, McCreary, Cumberland, Lincoln, Rockcastle, Casey, Russell, Laurel, Clinton, and Adair counties in Kentucky and Pickett and Scott counties in Tennessee. South Kentucky utilizes approximately 6,863 miles of distribution line

for the delivery of power to its members and has 139 employees at present. South Kentucky is governed by a seven (7) member Board of Directors elected from its membership; its mission is to reliably provide electricity and related services to its members at a competitive price, and to improve the quality of life in its members' communities.

Q. EXPLAIN SOUTH KENTUCKY'S RELATIONSHIP TO EKPC.

A. EKPC, like South Kentucky, is a cooperative that is owned by the members it serves. South Kentucky is one (1) of the sixteen (16) Owner-Member distribution cooperatives that comprise the EKPC system. South Kentucky is among the system's largest in terms of geographic size, customer base, and demand served.

Q. DOES SOUTH KENTUCKY PURCHASE POWER AT WHOLESALE FROM EKPC?

A. Yes. South Kentucky and EKPC (as well as each other Owner-Member distribution cooperative and EKPC, respectively) have entered into a Wholesale Power Contract, dated October 1, 1964, as approved by the Rural Electrification Administration and as amended, which governs their commercial relationship with respect to the sale and purchase of power.

Q. IS THE WHOLESALE POWER CONTRACT AN ALL-REQUIREMENTS ARRANGEMENT, SUCH THAT EKPC IS SOUTH KENTUCKY'S EXCLUSIVE WHOLESALE POWER SUPPLIER?

A. Originally and historically, yes—from the time the Wholesale Power Contract became effective until 2003, South Kentucky was required to satisfy all of its electric power and energy requirements through purchases made from EKPC.

However, in late 2003, EKPC's Wholesale Power Contract with each of its Owner-Members was amended to grant the distribution cooperatives the ability to obtain power and energy from non-EKPC sources, subject to certain limitations and required procedures. This amendment was designated and is known as "Amendment No. 3." A copy of Amendment No. 3 to the Wholesale Power Contract between South Kentucky and EKPC is attached to South Kentucky's Application as Exhibit 1.

Q. DOES AMENDMENT NO. 3 LIMIT THE QUANTITY OF POWER EKPC'S OWNER-MEMBER'S MAY OBTAIN FROM A NON-EKPC SOURCE?

A. Yes. To ensure the continued strength and stability of EKPC's overall system, EKPC and its sixteen (16) Owner-Members agreed in Amendment No. 3 that only a certain percentage of EKPC's coincident peak demand, as well as only a certain percentage of each Owner-Member's coincident peak demand, should be capable of being "replaced" with power from a non-EKPC source. Specifically, Amendment No. 3 allows EKPC's Owner-Members "the option, from time to time, with notice to the Seller [EKPC], to receive electric power and energy, from persons other than the Seller, or from facilities owned or leased by the Member, provided that the aggregate amount of all members' elections (measured in megawatts in 15-minute intervals) so obtained under this paragraph shall not exceed five percent (5%) of the rolling average of Seller's coincident peak demand for the single calendar month with the highest peak demand occurring during each of the 3 twelve month periods immediately preceding any election by the Member from time to time, as provided herein and further provided that no Member shall receive more

than fifteen percent (15%) of the rolling average of its coincident peak demand for the single calendar month with the highest average peak demand occurring during each of the 3 twelve month periods immediately preceding any election by the Member from time to time, as provided herein."

Q. DID SOUTH KENTUCKY ELECT TO OBTAIN POWER FROM A NON-EKPC SOURCE IN THE YEARS IMMEDIATELY FOLLOWING THE EXECUTION OF AMENDMENT NO. 3?

A. No, and few of EKPC's distribution cooperatives did so either. Upon information and belief, four (4) of EKPC's Owner-Members have pursued projects involving alternatively-sourced power, and each was/is relatively small (ranging in scope from approximately 1.0 MW to 3.6 MW and, as of the date of South Kentucky's Alternate Source Notice to EKPC, totaling 11.2 MW of alternatively-sourced power).

Q. WAS AMENDMENT NO. 3 SUBSEQUENTLY CLARIFIED BY EKPC'S OWNER-MEMBERS TO PROVIDE A FRAMEWORK BY WHICH THEY MAY CONTRACT WITH "ALTERNATE SOURCES" TO SATISFY A PORTION OF THEIR FUTURE POWER NEEDS?

A. Yes. EKPC's Owner-Members and this Commission determined that Amendment No. 3, as drafted, lacked the clarity and detail necessary to provide a methodology for determining how rights to purchase non-EKPC power would be allocated among the Owner-Members. As a result of the investigation which the Commission conducted as part of Case No. 2012-00503, *In the Matter of: Petition and Complaint of Grayson Rural Electric Cooperative Corporation for an Order*

Authorizing Purchase of Electric Power at the Rate of Six Cents per Kilowatts of Power vs a Rate in Excess of Seven Cents per Kilowatt Hour Purchased from East Kentucky Power Cooperative under a Wholesale Power Contract as amended between Grayson Rural Electric Cooperative Corporation and East Kentucky Power Cooperative Inc. (filed November 19, 2012), EKPC and its Owner-Members fashioned an acceptable framework for effectuating the intent of Amendment No. 3 allowing the procurement of alternatively-sourced power in that certain Memorandum of Understanding and Agreement Regarding Alternate Power Sources ("MOU"), executed July 23, 2015, a copy of which is attached to South Kentucky's Application as Exhibit 2.

Q. DID THE COMMISSION APPROVE AND ACCEPT THE MOU IN ITS FINAL ORDER IN CASE NO. 2012-00503?

A. Yes. By Order entered December 18, 2015, the Commission found that the MOU was comprehensive in nature, did not violate any legal or regulatory principle, and resulted in a reasonable resolution of all issues to be investigated in the case. The Commission also commended the parties for their ability to collectively resolve all pending issues in a reasonable and efficient manner and directed EKPC to place the MOU within its published tariff.

Q. PLEASE DESCRIBE THE MOU.

A. The MOU clarifies and expounds upon the terms of Amendment No. 3. Among other things, it defines an "Alternate Source" of power supply as "any generating resource that is owned (directly or indirectly, in whole or in part) or controlled (directly or indirectly, in whole or in part) by an Owner Member, regardless of

whether the resource is connected to the Owner Member's distribution system, or any power purchase arrangement under which an Owner Member purchases capacity or energy (or both), if such generating resource or power purchase arrangement is used to serve any portion of the Owner Member's load." The MOU also provides additional detail and specification as to the amount of load an Owner Member may acquire from an Alternate Source(s), the length of term for which the Alternate Source power can be acquired (not to exceed twenty (20) years), and the advance notice that must be provided by an Owner-Member to EKPC before acquiring Alternate Source power (at least eighteen (18) months when the noticed demand reduction exceeds 5 MW).

Q. PURSUANT TO AMENDMENT NO. 3 AND THE MOU, WHAT QUANTITY OF ELECTRIC POWER AND ENERGY IS SOUTH KENTUCKY PERMITTED TO OBTAIN FROM AN ALTERNATE SOURCE?

A. As of the date South Kentucky provided formal notice to EKPC under Amendment No. 3 and the MOU, it could purchase up to 58.5 MW from an Alternate Source.

Q. WHEN DID SOUTH KENTUCKY BEGIN EXPLORING OPPORTUNITIES FOR ALTERNATE SOURCE POWER?

A. In the spring of 2017, South Kentucky (and, upon information and belief, a number of other distribution cooperatives within the EKPC system) was approached by an independent power producer, namely [redacted], to discuss a project it was considering to design, build, own, and operate a natural gas-fired generation resource in Kentucky. [redacted], familiar with rural electric

cooperatives and aware of the terms of Amendment No. 3 and the MOU, sought to sell a portion of its proposed generation facility's output to one or more Owner-Members of EKPC. South Kentucky and [redacted] representatives continued discussions into the fall of 2017.

Q. DID SOUTH KENTUCKY CONSIDER PURSUING A COMMERCIAL RELATIONSHIP WITH [redacted]?

A. Yes. South Kentucky and [redacted] representatives met on several occasions and due diligence was conducted. South Kentucky's internal analysis suggested that savings could be realized if the cooperative were to obtain a portion of its wholesale power supply from a non-EKPC source. As part of South Kentucky's due diligence, it decided in August of 2017 to seek the input and advice of a recognized expert in the field of power acquisition for cooperatives, namely EnerVision, Inc. ("EnerVision"), in order to fully examine the benefits, costs, and risks of a contractual agreement with [redacted].

Q. WHAT DID ENERVISION CONCLUDE FOLLOWING ITS ANALYSIS OF THE [redacted] PROPOSAL?

A. Though EnerVision initially confirmed South Kentucky's conclusion that financial savings could be realized if South Kentucky served a portion of its load with non-EKPC power, it believed the proposal by [redacted] did not represent the best option available. In particular, EnerVision recommended that South Kentucky consider arrangements with power marketers, not just power generators, and provided other guidance based on its extensive experience in the power acquisition arena.

Q. IN LIGHT OF ENERVISION'S ANALYSIS, WHAT WAS SOUTH KENTUCKY'S NEXT COURSE OF ACTION?

A. South Kentucky quickly decided that additional due diligence was necessary before it took any action with respect to its wholesale power supply. Based on this decision, South Kentucky directed EnerVision to conduct a request for proposals ("RFP") process and advise as to what additional opportunities may be available for Alternate Source power.

Q. WHAT QUANTITY OF POWER DID SOUTH KENTUCKY SEEK TO OBTAIN THROUGH THE RFP PROCESS?

A. The RFP asked respondents to submit proposals for the provision of 58 MW of electric energy and/or capacity for a term of at least five (5) years but no more than twenty (20) years. As previously described, 58.5 MW represents South Kentucky's allocation of the power under Amendment No. 3 and the MOU that may be served by a non-EKPC source.

Q. WERE MULTIPLE RESPONSES RECEIVED IN RESPONSE TO THE RFP?

A. Yes. Detail with respect to the RFP process and the responses received is contained in the testimony of Carter Babbit, Vice President of Power Supply for EnerVision, attached to South Kentucky's Application as Exhibit 18.

Q. DID SOUTH KENTUCKY CREATE A SHORT-LIST OF ALTERNATIVES AFTER ANALYSIS OF THE RFP RESPONSES?

A. Yes. Following extensive discussions between EnerVision and the several RFP respondents resulting in multiple refreshments of bids, proposals submitted by

[redacted] and Morgan Stanley Capital Group presented the best opportunities for savings for South Kentucky. South Kentucky instructed EnerVision to begin the process of refining and negotiating arrangements with these potential power providers in order to better determine the scale of potential savings to be realized. Following this process, it was determined that the 20-year fixed energy price bid from Morgan Stanley Capital Group provided the highest net present value for South Kentucky.

Q. PLEASE DESCRIBE THE BASIC TERMS OF THE PROPOSAL BY MORGAN STANLEY CAPITAL GROUP THAT WAS ULTIMATELY SELECTED BY SOUTH KENTUCKY.

A. South Kentucky has contracted with Morgan Stanley Capital Group for the 7x24x365 provision of 58 Megawatts ("MW") of firm energy for twenty (20) years, beginning June 1, 2019, at a fixed price of $[redacted] per Megawatt-hour ("MWh"), and for a financial capacity hedge of 68 MW (which includes a reserve requirement) for eighteen (18) years, beginning June 1, 2021, at a price of $[redacted] per Megawatt-day ("MW-day").

Q. WHY DID SOUTH KENTUCKY DECIDE TO CONTRACT FOR ENERGY AND CAPACITY FOR 20 YEARS, RATHER THAN FOR A SHORTER TERM?

A. South Kentucky and EnerVision agreed at the outset of the RFP process to request bid proposals for short, medium and long-term fixed price energy contracts. By proceeding in this fashion, South Kentucky could compare the net present value savings of the respective terms relative to the base case, which reflected the

projected costs of EKPC-wholesale power during the same period. In addition, the bids received were comprised of a diverse mix of both market-based and asset-based/self-generated power. Because natural gas prices remain at near historic lows, the longer-term, market-based bids ultimately provided the best value for South Kentucky and its members. Following extensive analysis, the 20-year fixed-price energy proposal submitted by Morgan Stanley Capital Group and accepted by South Kentucky provided the greatest net present value savings, and thus it was the preferred choice over other, shorter-term proposals.

Q. HOW WILL THE POWER SOUTH KENTUCKY PURCHASES FROM MORGAN STANLEY CAPITAL GROUP BE DELIVERED TO SOUTH KENTUCKY?

A. Under the terms of the subject agreement, Morgan Stanley Capital Group is responsible for delivering the power to EKPC's transmission system at the PJM delivery point designated as "EKPC Residual Aggregate (EKPC_Resid_AGG) PJM Pnode ID 1127872598". The cost for delivering the power to EKPC's border is already part of the fixed energy price which South Kentucky will pay Morgan Stanley Capital Group. EKPC will then deliver the power to South Kentucky's distribution system much as it does today but with South Kentucky paying EKPC for this transmission service at EKPC's Open Access Transmission Tariff rate approved by and on file with the Federal Energy Regulatory Commission.

Q. DOES THE ARRANGEMENT WITH MORGAN STANLEY CAPITAL GROUP NECESSITATE SOUTH KENTUCKY JOINING PJM INTERCONNECTION, LLC ("PJM")?

A. Yes, under this transaction South Kentucky will become a Market Participant in PJM and will be required to become a member of PJM. Becoming a PJM member is not especially complicated and EnerVision will assist South Kentucky in this process.

Q. PLEASE DESCRIBE EKPC'S ROLE IN THIS ARRANGEMENT.

A. Under the MOU, and particularly paragraph 5(E)(vii) thereof, EKPC will serve as South Kentucky's agent to accomplish various Market Participant activities within PJM. While there is an ongoing cost associated with this arrangement, South Kentucky will receive a substantial benefit because of EKPC's extensive experience managing its own activities within PJM. The details of this agency arrangement are still being refined by South Kentucky and EKPC.

Q. DID SOUTH KENTUCKY FORMALLY NOTIFY EKPC OF ITS INTENT TO PURCHASE POWER IN THE AMOUNT OF 58 MW FOR TWENTY (20) YEARS FROM AN ALTERNATE SOURCE?

A. Yes. By letter dated November 28, 2017, and in conformity with paragraph 4 of the MOU, South Kentucky provided formal written notice to EKPC of its intent to reduce and substitute 58 MW of its purchases from EKPC by using electric power and energy from an Alternate Source. A copy of the Alternate Source Notice from South Kentucky to EKPC is attached to South Kentucky's Application as Exhibit 4.

Q. WHY DID SOUTH KENTUCKY ULTIMATELY CHOOSE TO CONTRACT WITH MORGAN STANLEY CAPITAL GROUP?

A. South Kentucky and its expert consultant conservatively estimate the arrangement with Morgan Stanley Capital Group will result in wholesale power cost savings for the cooperative totaling between $[redacted] and $[redacted] (Net Present Value) over the next two (2) decades. In addition to these significant financial benefits, the arrangement with Morgan Stanley Capital Group also addresses both the energy and capacity needs of South Kentucky. Finally, South Kentucky is very comfortable with a counterparty having the experience and track record of Morgan Stanley Capital Group, particularly because its parent company, Morgan Stanley, agreed to provide an unconditional guarantee of all amounts owed South Kentucky under the agreement in the unlikely event of Morgan Stanley Capital Group's failure to perform.

Q. DID SOUTH KENTUCKY CONSIDER THE RISKS ATTENDANT TO ITS AGREEMENTS WITH MORGAN STANLEY CAPITAL GROUP?

A. Yes. There are certain risks inherent with any commercial transaction, and the present case is no exception. However, after considering the possible material risks associated with the transactions with Morgan Stanley Capital Group, South Kentucky is quite comfortable that the significant savings it expects to realize far outweigh the potential risks.

Q. DID SOUTH KENTUCKY'S BOARD OF DIRECTORS AUTHORIZE AND APPROVE THE FINAL TERMS OF THE AGREEMENT AND TRANSACTIONS WITH MORGAN STANLEY CAPITAL GROUP?

A. Yes. By Resolution adopted December 19, 2017, South Kentucky's Board of Directors determined to proceed with and close the commercial transactions that underlie this Application (subject to appropriate regulatory and lender approvals). A copy of the Board's Resolution is attached to South Kentucky's Application as Exhibit 3.

Q. WHY DOES SOUTH KENTUCKY BELIEVE THE COMMISSION SHOULD AUTHORIZE AND APPROVE THE FINAL TERMS OF THE AGREEMENT AND TRANSACTIONS WITH MORGAN STANLEY CAPITAL GROUP?

A. As explained, the wholesale power cost-savings South Kentucky expects to realize as a consequence of its decision to contract with Morgan Stanley Capital Group are substantial. South Kentucky believes these extensive benefits must be pursued, pursuant to Amendment No. 3 and the MOU, in furtherance of the cooperative's goal of providing safe, reliable, and cost-effective service to its members. Indeed, the power purchase arrangement that underlies this proceeding is for a lawful object within the corporate purposes of South Kentucky, is necessary or appropriate for or consistent with the proper performance by South Kentucky of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose. Thus, South Kentucky believes

Commission authorization and approval is appropriate and respectfully requests such an Order.

Q. DOES SOUTH KENTUCKY REQUEST THAT THE COMMISSION EXPEDITE ITS ANALYSIS AND DECISION IN THIS CASE?

A. Yes. One of the key Conditions Subsequent to the Agreement provides that South Kentucky must receive from the Commission "a final non-appealable order approving the Agreement" on or before May 31, 2018. The reason for this requirement is that South Kentucky successfully negotiated a commitment from Morgan Stanley Capital Group that both the energy and capacity prices contained in the Agreement would remain available during the pendency of the regulatory approval process, but in no event past the May 31, 2018 date. Typically, a marketer such as Morgan Stanley Capital Group will not agree to a set price until the date Confirmations are signed and obligations under the Agreement are fixed and finalized. South Kentucky insisted that pricing not be subject to change between contract execution and the beginning of performance under it so that the Commission's analysis of the Agreement could be completed using known prices and not ones that could change on any given day due to market fluctuations. In order to be assured of a final and non-appealable Order by May 31, 2018 (and allowing three (3) business days for delivery, review, and possible correction of inadvertent errors in the Final Order), South Kentucky respectfully requests that the Commission issue its decision in this case no later than April 25, 2018.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION FOR APPROVAL OF MASTER POWER PURCHASE AND SALE AGREEMENT AND TRANSACTIONS THEREUNDER	) Case No. 2018-00_____

VERIFICATION OF DENNIS HOLT

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF Pulaski)

Dennis Holt, President and Chief Executive Officer of South Kentucky Rural Electric Cooperative Corporation, being duly sworn, states that he has supervised the preparation of his direct testimony included with South Kentucky's Application in the above-styled matter, that he would respond in the same manner to the questions therein if so asked upon taking the stand, and that his testimony is true and accurate to the best of his knowledge, information, and belief formed after reasonable inquiry.

Dennis Holt

Dennis Holt

The foregoing Verification was signed, acknowledged and sworn to before me this 29th day of January, 2018, by Dennis Holt, President and Chief Executive Officer of South Kentucky Rural Electric Cooperative Corporation.

Brenda C. Keeton

NOTARY PUBLIC, Notary # 515365
Commission expiration: July 16, 2018

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION FOR APPROVAL OF MASTER POWER PURCHASE AND SALE AGREEMENT AND TRANSACTIONS THEREUNDER	) Case No. 2018-00_____

DIRECT TESTIMONY OF MICHELLE HERRMAN
ON BEHALF OF
SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

Filed: January 31, 2018

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND OCCUPATION.

A. My name is Michelle D. Herrman and my business address is South Kentucky Rural Electric Cooperative Corporation ("South Kentucky"), 200 Electric Avenue, Somerset, Kentucky 42501. I am Vice President of Finance at South Kentucky.

Q. PLEASE STATE YOUR EDUCATION AND PROFESSIONAL EXPERIENCE.

A. I hold a Bachelor's Degree from Syracuse University in Mathematics, as well as a Master's Degree in Business Administration from Phillips University. I also maintain the two following certifications: Certified Public Accountant (CPA) and Professional in Human Resources (PHR). I served on active duty in the United States Air Force, leaving the service as the rank of Captain. My field of specialty was Contracting at the base level. After leaving military service, I worked in public accounting for a small accounting firm specializing in auditing of government and not-for-profit entities. After eight years in public accounting, I moved to the private sector and served as the Chief Financial Officer for the Boys and Girls Clubs of Greater Cincinnati. In 2011, I was hired at Owen Electric Cooperative and served as its Controller until accepting my current position with SKRECC as Vice President of Finance in August, 2013.

Q. PLEASE PROVIDE A BRIEF DESCRIPTION OF YOUR DUTIES AT SOUTH KENTUCKY.

A. As Vice President of Finance, I am responsible for the oversight of the accounting, information technology, warehouse functions and the regulatory affairs

components of the cooperative. My overarching responsibility is the financial oversight of South Kentucky.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. The purpose of my testimony is first to describe the financial health of the cooperative and its key financial metrics. I will discuss South Kentucky's wholesale power expenses in particular, both historically and those that are anticipated to result from the proposed transactions between South Kentucky and Morgan Stanley Capital Group Inc. ("Morgan Stanley Capital Group"). Finally, I will explain the anticipated impact of the proposed transactions on the cooperative and its members.

Q. ARE YOU SPONSORING ANY EXHIBITS?

A. No, I am not sponsoring any exhibits as part of my testimony.

Q. PLEASE PROVIDE AN OVERVIEW OF SOUTH KENTUCKY'S KEY FINANCIAL METRICS.

A. South Kentucky measures its financial performance using key financial metrics as required by its primary lenders. These financial metrics provide indicators relating to cashflow, equity, ability to meet debt service requirements and ability to generate cash through operations. Specific lender metrics include Times Interest Earned Ratio ("TIER"), Operating Times Interest Earned Ratio ("OTIER"), Debt Service Coverage ("DSC"), Operating Debt Service Coverage ("ODSC") and Modified Debt Service Coverage ("MDSC"). Benchmarks and projected results for calendar

year 2017 using eleven (11) months of actual 2017 data and one (1) month of 2016 actual data are as follows:

Ratio	Benchmark Requirement (2 of 3 Year High Average)	Calculated Ratio for 2017 (Using 11 months 2017 actual and 1 month 2016 actual)
TIER	1.25	2.46
OTIER	1.10	1.00
DSC	1.25	1.86
ODSC	1.10	1.29
MDSC	1.35	1.29

Q. WHAT ARE SOUTH KENTUCKY'S MOST SIGNIFICANT EXPENSE CATEGORIES?

A. South Kentucky's single greatest expense category consists of the costs it incurs to obtain wholesale power from East Kentucky Power Cooperative, Inc. ("EKPC"). South Kentucky's total cost of electric service including power cost for the twelve (12) months ending November 30, 2017 as shown in the Statement of Operations (Exhibit 19 to the Application, at Attachment E) is $120,332,772. The power cost accounted for 72.5% of the total cost. Salaries, benefits and payroll taxes combined to 9.8% of the total cost. Depreciation and amortization expense aggregated to 6.8% of the total cost. Interest on long term debt expense contributed to 4.3% of the total cost. Contractor labor costs for right of way and maintenance assistance accounted for 2.4% of the total cost. Property tax expense amounted to 1.5% of the total cost.

Q. WHEN WAS SOUTH KENTUCKY'S MOST RECENT GENERAL RATE ADJUSTMENT?

A. South Kentucky's existing rates became effective March 30, 2012, following the Commission's approval of same in Case No. 2011-00096, *In the Matter of the Application of South Kentucky Rural Electric Cooperative Corporation for an Adjustment of Electric Rates* (Ky. P.S.C. March 30, 2012).

Q. HAS SOUTH KENTUCKY'S COST OF PROVIDING SERVICE CHANGED IN RECENT YEARS?

A. Yes. The Cooperative's last general rate increase went into effect in 2012 and was based on a test year that reflected expenses for the twelve-month period ending September 30, 2010. Over the past seven (7) years, the manner in which South Kentucky provides safe, reliable electric service has changed, and so has the cost of providing that service. For example, advancements in technologies have improved and multiplied the ways South Kentucky can communicate with its members regarding outages, billing, and usage information; vehicle tracking systems and mapping technologies have been embraced to allow for more efficient and timely responses to maintenance concerns; and the cooperative's Advanced Metering Infrastructure has been developed to provide real-time notification of billing and trouble-call information. Although these initiatives and others have improved South Kentucky's operations and directly benefited South Kentucky's members, they have also caused technology and other operational costs to rise. For instance, from 2010 to 2017 the expense for South Kentucky's primary software system increased 58.61% and, during that same time period, recognition of

depreciation expense rose 44.77% as the cooperative continued to improve its infrastructure and facilities. That said, while many expense categories have experienced increases, South Kentucky has worked hard to limit those increases and also take advantage of opportunities for expense decreases. South Kentucky's net customer service and information expense has decreased 104.35%, as the cooperative has helped its members take advantage of energy efficiency programs to reduce their usage. South Kentucky has worked diligently to attain a noticeable decrease in interest expense as well, declining 16.6% from 2010, despite additional borrowings to support necessary and beneficial capital projects. Overall, the total cost of operation and maintenance expense less power costs (as defined on the cooperative's RUS Form 7) has increased 5.2% from 2010 to 2017.

Q. HAS SOUTH KENTUCKY'S LOAD INCREASED IN RECENT YEARS?

A. Unfortunately no, South Kentucky has experienced *de minimis* growth in kWh sales since 2012. This is illustrated by the fact that the cooperative's MWh sales in 2012 were 1,191,512, while its final projection for 2017 is 1,197,891. This is due, in part, to moderation of weather patterns and a notable absence of strong economic growth in the cooperative's service territory.

Q. HAS SOUTH KENTUCKY'S WHOLESALE POWER EXPENSE INCREASED IN RECENT YEARS?

A. While MWh sales have remained flat since 2012, South Kentucky has experienced fluctuations in wholesale power expenses, most notably in the areas of environmental costs and demand costs. South Kentucky's wholesale power costs,

inclusive of fuel and environmental expenses and as reported on its annual RUS Form 7, have changed as follows:

Year	2010	2011	2012	2013	2014	2015	2016	2017
Cost per MWh Purchased ($)	64.8371	71.1797	72.4950	72.7371	73.0774	70.4302	68.3996	68.8240

Q. ASSUMING THE STATUS QUO IS MAINTAINED WITH RESPECT TO THE COOPERATIVE'S WHOLESALE POWER PURCHASE EXPENSE AND CURRENT LOAD GROWTH PATTERNS PERSIST, WHEN DOES SOUTH KENTUCKY ANTICIPATE IT WILL REQUIRE A GENERAL RATE ADJUSTMENT?

A. Current projections indicate that South Kentucky will require a rate adjustment during 2019.

Q. PLEASE DESCRIBE THE RELIEF SOUGHT BY SOUTH KENTUCKY IN THIS PROCEEDING.

A. South Kentucky seeks the Commission's approval of that certain Master Power Purchase and Sale Agreement (together with the Collateral Annex thereto, and each attachment, exhibit and schedule, the "Agreement") and related energy and capacity transactions entered into by and between South Kentucky and Morgan Stanley Capital Group on December 19, 2017. Pursuant to these documents, South Kentucky has contracted with Morgan Stanley Capital Group for the 7x24x365 provision of 58 MW of firm energy for twenty (20) years, beginning June 1, 2019, at a fixed price of $[redacted] per MWh, and for a financial capacity hedge of 68 MW (which includes a reserve requirement) for eighteen (18) years, beginning June 1, 2021, at a price of $[redacted] per MW-day. South Kentucky believes its proposed

course of action is for a lawful object within the corporate purposes of South Kentucky, is necessary or appropriate for or consistent with the proper performance by South Kentucky of its service to the public and will not impair its ability to perform that service, and are reasonably necessary and appropriate for such purpose, and thus the Commission's authorization to proceed is requested.

Q. HOW WILL THE PROPOSED TRANSACTIONS IMPACT SOUTH KENTUCKY'S WHOLESALE POWER PURCHASE EXPENSES?

A. South Kentucky will realize a reduction of its wholesale power purchase expenses if the proposed transactions are approved. Forecasts utilizing identical kWh sales and the cost analyses prepared by the cooperative's expert consultant, EnerVision, Inc. ("EnerVision"), indicate a decrease in wholesale power purchase expenses from [redacted] from 2019 to 2026. South Kentucky's historical cost per MWh from 2014 to 2016 ranged from $68.40 to $73.08; the blended cost per MWh, as calculated by EnerVision, when making power purchases from both EKPC and Morgan Stanley Capital Group is projected to be $[redacted] in the 2020 contract year. While this projection excludes the effect of EKPC's environmental surcharge and fuel adjustment costs, South Kentucky expects direct, substantial overall savings as a result of its arrangement with Morgan Stanley Capital Group.

Q. WHEN DOES SOUTH KENTUCKY ANTICIPATE IT WILL BEGIN REALIZING BENEFITS FROM THE PROPOSED TRANSACTIONS WITH MORGAN STANLEY CAPITAL GROUP?

A. South Kentucky anticipates it will begin realizing benefits from the proposed transactions with Morgan Stanley Capital Group immediately upon contract

commencement, June 1, 2019. This is a direct result of the reduction in expected wholesale power costs on a per MWh basis when compared to projected EKPC costs.

Q. ARE BOTH MORGAN STANLEY CAPITAL GROUP AND SOUTH KENTUCKY POTENTIALLY REQUIRED TO POST COLLATERAL AS PART OF THE PROPOSED TRANSACTIONS?

A. Yes. There is a collateral requirement applicable to both Morgan Stanley Capital Group and South Kentucky in the Agreement where each has the potential responsibility to provide collateral to its counterparty. The terms surrounding the collateral requirements are identified in the Collateral Annex, with further clarification found in Paragraph 10 thereof (*see* Exhibit 6 to the Application). The requirement to post collateral and, in such event, the amount of collateral potentially required relates to the following factors:

1. Credit Worthiness. For Morgan Stanley Capital Group, a component of its potential responsibility to post collateral due to credit-worthiness issues is tied to the maintenance of a healthy Standard and Poor's Credit Rating of its parent, Morgan Stanley, which serves as guarantor. For South Kentucky, adequate credit-worthiness is defined as its ability to maintain TIER above a high average of 1.25 using two (2) of the last three (3) calendar years and its ability to maintain DSC above a high average of 1.25 using two (2) of the last three (3) calendar years. These requirements are no more stringent than what South Kentucky's primary lenders already require as shown in the chart on page four (4) of my testimony.

2. Exposure Amount. The exposure amount can be calculated at any time upon request of either party and is based on the remaining term of the contract and the current Mark-to-Market Value of the outstanding transaction. Current Mark-to-Market value is defined in the contract as, "calculated in good faith and in a commercially reasonable manner, which a Party to the Agreement would pay to (a negative Current Mark-to-Market Value) or receive from (a positive Current Mark-to-Market Value) the other Party as the Settlement Amount (calculated at the mid-point between the bid price and the offer price) for such Transaction."

3. Collateral Threshold in effect at the time of the calculation date. The collateral threshold for South Kentucky is defined on Page 1 of Paragraph 10 to the Collateral Annex. The collateral threshold amount has been established by calendar year and its applicability to the relevant date of determination of the collateral requirement. However, the collateral threshold for South Kentucky shall be zero ($0) upon the occurrence and during the continuance of a credit event, as defined in item 1 above. The collateral threshold for Morgan Stanley Capital Group is defined on Page 4 of Paragraph 10 to the Collateral Annex. The collateral threshold amount has been established by Standard and Poor's Credit Rating and its applicability to the relevant date of determination of the collateral requirement.

4. Form of Collateral. Collateral must be supplied in the form of cash or letter of credit from a qualified institution.

Q. AS PART OF ITS POTENTIAL REQUIREMENT TO POST COLLATERAL, DOES SOUTH KENTUCKY ANTICIPATE NEEDING TO OBTAIN AN ADDITIONAL LINE OF CREDIT WITH ITS LENDERS?

A. As defined by the calculation of the exposure amount, although unlikely, there is the potential that collateral required to be posted may be significant. South Kentucky intends to fulfill any potential collateral requirements by providing a letter of credit to Morgan Stanley Capital Group, secured by one of our primary lenders. Research is continuing as to the best underlying source of the letter of credit. The conditions of the Collateral Annex require collateral to be posted by the pledging party on the next local or second local business day, depending on the time of notification of the need for additional collateral. (*See* Collateral Annex, Paragraph 4, Page 6.) This brief turn-around time necessitates the need for either a master letter of credit or a line of credit from which a subordinate letter of credit may be drawn and presented to Morgan Stanley Capital Group. The underlying master letter of credit or line of credit would be considered unsecured debt from South Kentucky's lenders. It is the cooperative's intention to maintain the master letter of credit or the line of credit for the duration of the twenty (20) year contract with Morgan Stanley Capital Group. The cost of maintaining the line of credit or the master letter of credit is still being investigated, but it is not expected to significantly diminish the total value of the deal to South Kentucky and is merely one of the costs associated with the proposed transactions.

Q. DO THE PROPOSED TRANSACTIONS REQUIRE THE APPROVAL OF SOUTH KENTUCKY'S LENDER(S)?

A. Yes. South Kentucky submitted an approval package to the Rural Utilities Service ("RUS") on January 5, 2018. In preliminary discussions, RUS has advised that it would require a sixty (60) day time frame to analyze the request and provide its approval. South Kentucky received subsequent communications from RUS requesting additional information on January 17, 2018, which South Kentucky provided on January 25, 2018. South Kentucky also notified its other lenders, CoBank and the National Rural Utilities Cooperative Finance Corporation, of the existence of the Agreement on January 10, 2018, though their approval is not required. South Kentucky intends to keep all parties, including the Commission, apprised as to the status of the RUS approval process going forward.

Q. DO THE TRANSACTIONS AT ISSUE INCLUDE ONGOING, FIXED TAKE/PAY OBLIGATIONS FOR SOUTH KENTUCKY?

A. Yes. Under the terms of the Agreement, South Kentucky is obligated to purchase from Morgan Stanley Capital Group the quantity of energy and capacity described in the relevant confirmations. A power purchase agreement such as that which underlies this proceeding is a long-term commitment that will require footnote disclosure in South Kentucky's annual financial statements. The expenditures under this power purchase agreement will be treated as expenses in the normal course of business as required for the delivery of electricity. The payments associated with the purchases under this agreement will be recorded as purchase

power costs on the cooperative's financial statements and recorded as the payments occur.

Q. WILL ANY SPECIAL ACCOUNTING BE REQUIRED WITH RESPECT THE PROPOSED TRANSACTIONS?

A. No. South Kentucky has consulted with its independent auditors and determined that there will be no special accounting treatment required to record the transactions.

Q. HOW DO THE PROPOSED TRANSACTIONS IMPACT SOUTH KENTUCKY'S ESTIMATION OF WHEN IT WILL REQUIRE ITS NEXT GENERAL RATE ADJUSTMENT?

A. South Kentucky estimates that the effect of the reduction in wholesale power expenses will delay a possible general rate adjustment until at least 2023.

Q. WILL THE PROPOSED TRANSACTIONS IMPACT THE COSTS SOUTH KENTUCKY PASSES THROUGH TO ITS CUSTOMERS UNDER THE FUEL ADJUSTMENT CLAUSE AND ENVIRONMENTAL SURCHARGE MECHANISM?

A. South Kentucky believes that the pass-through costs/(credits) for the fuel adjustment clause will be reduced. South Kentucky also believes that the environmental surcharge pass-through costs will be reduced. These reductions are anticipated because of the reduced quantity of energy that will be purchased from EKPC and subject to these costs. The exact savings are unknown at this time as EKPC's environmental costs vary from month to month and are impacted by the total kWh sold by EKPC.

Q. PLEASE GENERALLY DESCRIBE HOW THE INCREASED MARGINS THAT ARE EXPECTED TO RESULT FROM THE PROPOSED TRANSACTIONS WILL FINANCIALLY BENEFIT THE COOPERATIVE AND ITS MEMBERS.

A. The expected increase in margins will allow South Kentucky to delay a general rate adjustment under current predictions by at least four (4) years. This would extend the current rate structure that has been in place since 2013 to 2023, allowing it to stand for a full decade. The increase in margins would also allow infrastructure projects to be completed that have previously not been funded due to cost-cutting measures previously employed by the cooperative. These infrastructure projects would have lasting positive implications on South Kentucky's member services. Similarly, the increase in margins should result in the cooperative's ability to reduce future borrowing by using those margins to invest in infrastructure using general funds versus using borrowed funds. The reduction in borrowings would simultaneously increase the cooperative's equity position. Additionally, reduced borrowings can positively affect South Kentucky for many years to come by decreasing the level of needed revenues to meet future lender-imposed financial requirements such as TIER and DSC. Lastly, upon achievement of the Board of Directors' equity goals for South Kentucky by using some of these savings in the form of increased margins, those margins could be returned to members through a series of general retirements of capital credits.

Q. DO YOU BELIEVE THE PROPOSED TRANSACTIONS ARE NECESSARY AND APPROPRIATE TO IMPROVE THE FINANCIAL PERFORMANCE OF THE COOPERATIVE?

A. Yes. As I have described herein, the wholesale power cost-savings South Kentucky expects to realize as a consequence of its decision to contract with Morgan Stanley Capital Group are substantial. The Net Present Value of the transactions, though obviously dependent on energy market performance and capacity price fluctuations, has been projected by South Kentucky's expert consultant to exceed $[redacted]. South Kentucky believes that the financial benefits anticipated to result by diversifying its power supply portfolio far outweigh the risks and obligations attendant to the subject transactions, and thus the cooperative seeks the Commission's authorization to proceed as described in the Application.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION FOR APPROVAL OF MASTER POWER PURCHASE AND SALE AGREEMENT AND TRANSACTIONS THEREUNDER	) Case No. 2018-00_____

VERIFICATION OF MICHELLE HERRMAN

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF Pulaski)

Michelle Herrman, Vice President of Finance of South Kentucky Rural Electric Cooperative Corporation, being duly sworn, states that she has supervised the preparation of her direct testimony included with South Kentucky's Application in the above-styled matter, that she would respond in the same manner to the questions therein if so asked upon taking the stand, and that her testimony is true and accurate to the best of her knowledge, information, and belief formed after reasonable inquiry.

Michelle Herrman
Michelle Herrman

The foregoing Verification was signed, acknowledged and sworn to before me this 22nd day of January, 2018, by Michelle Herrman, Vice President of Finance of South Kentucky Rural Electric Cooperative Corporation.

Penny A. Acton
NOTARY PUBLIC, Notary # 515365
Commission expiration: July 16, 2018

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION FOR APPROVAL OF MASTER POWER PURCHASE AND SALE AGREEMENT AND TRANSACTIONS THEREUNDER	) Case No. 2018-00_____

DIRECT TESTIMONY OF CARTER BABBIT
ON BEHALF OF
SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

Filed: January 31, 2018

Q. PLEASE STATE YOUR NAME, POSITION, AND BUSINESS ADDRESS.

A. My name is Carter Babbit and I am Vice President of Power Supply with EnerVision, Inc. ("EnerVision"). My office is located at 4170 Ashford Dunwoody Road, Suite 550, Atlanta, Georgia 30319.

Q. PLEASE SUMMARIZE YOUR EDUCATION AND PROFESSIONAL EXPERIENCE.

A. I received a Bachelor's Degree in Management in 1999 from the Georgia Institute of Technology. Concluding my formal education, I joined EnerVision in 2000 as a Consultant, and subsequently was promoted until assuming my current role as Vice President of Power Supply in 2014.

As Vice President of Power Supply with EnerVision, I am responsible for leading the company's Power Supply Practice Area. Under my direction, the EnerVision staff performs a wide range of services that encompass everything within the power supply procurement process through contract administration and compliance. I have developed complex power supply strategies and managed every step of the power resource planning process, as well as led needs-analysis processes, designed and marketed requests for proposals, performed economic analyses, negotiated contracts, and developed comprehensive presentations to educate utilities and their leadership on all aspects of power supply and procurement. These efforts have generated over 100 contracts that are currently or were operating (term expired) to the benefit of the utility. I also have extensive experience in contract administration, including everything from receiving regulatory approvals, through implementation, to comprehensive reviews of

billing procedures. With clients in numerous areas of the country, I have performed power supply work in structured markets, such as PJM, and in non-structured markets as found in the Southeast.

Other areas of focus include all facets of market research, evaluating new technologies, and developing business planning tools. I have worked on numerous proposals for customer-choice clients and have extensive experience in the performance of cost/benefit analyses for distribution cooperative clients.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS PROCEEDING?

A. The purpose of my testimony is to describe EnerVision's engagement by South Kentucky Rural Electric Cooperative Corporation ("South Kentucky") to provide consultation and assistance with respect to identifying and, if warranted, pursuing possible opportunities to obtain economic wholesale power. I will describe the Request for Proposals ("RFP") process by which EnerVision solicited and refined proposals for the desired power, discuss the various proposals received, and provide the analysis EnerVision performed to determine the expected benefits and possible risks associated with all competitive RFP responses, and particularly the proposal ultimately selected by South Kentucky.

Q. ARE YOU SPONSORING ANY EXHIBITS?

A. Yes. I am sponsoring the following exhibits:

- Exhibit CB-1 – EnerVision's Background and Qualifications
- Exhibit CB-2 – Qualifications of Additional EnerVision Team Members
- Exhibit CB-3 – Initial Proposal Matrix

- Exhibit CB-4 – Original Proposals - All-in Economic Comparison to EKPC
- Exhibit CB-5 – Original Proposals – NPV Savings Comparison to EKPC
- Exhibit CB-6 – Original Shortlist and Rationale
- Exhibit CB-7 – Revised Proposal Matrix and Revised Shortlist
- Exhibit CB-8 – Scenario Analysis on Final Zone Price Risk for Morgan Stanley Capital Group
- Exhibit CB-9 – Revised Shortlist Annual Savings versus the EKPC Base Case
- Exhibit CB-10 – Final Shortlist Total NPV Savings versus EKPC Base Case

Each of the exhibits to my testimony were either prepared directly by me or by someone working under my supervision and direction, and I ask that each be incorporated into my testimony by reference.

Q. HAVE YOU PREVIOUSLY OFFERED TESTIMONY BEFORE THIS COMMISSION AND/OR UTILITY COMMISSIONS IN OTHER STATES?

A. No, I have not offered testimony before this Commission or other state commissions, principally because the cooperatives I have assisted in the past are not regulated in this area by the utility commissions in their respective states. However, I have extensive experience working with the Rural Utilities Service ("RUS") to obtain approvals of numerous power purchase agreements on behalf of my clients.

Q. PLEASE DESCRIBE ENERVISION'S EXPERIENCE IN THE FIELD OF POWER PROCUREMENT, PARTICULARLY FOR COOPERATIVE UTILITIES.

A. EnerVision is an independent consulting firm that provides business, management, marketing and technical consulting services for electric utilities and other clients. Our service offerings range from strategic visioning to program implementation for more than 150 clients in over thirty (30) states. Our strengths include power supply planning and analysis, Integrated Resource Plans, power supply solicitations, power supply option evaluations, power marketing negotiations, transmission services and interconnection agreements, DSM and energy efficiency program development and analysis, strategic planning, management consulting and facilitation, telecommunications, pricing, cost of service studies, pricing strategies and rate designs, distributed generation evaluation and program designs, and diversification services. EnerVision has direct experience helping our clients explore, plan, and successfully implement new business strategies, products, programs, and services.

With respect to cooperative utilities in particular, EnerVision has extensive experience in all aspects of the power supply procurement process. We have worked with distribution cooperatives in most states including Georgia, Texas, North Carolina, Virginia, Indiana, Michigan, Minnesota, New Mexico, Colorado, Kentucky and Illinois, just to name a few, and have a broad understanding of the opportunities and challenges faced by utilities operated under a cooperative

model. Additional detail concerning EnerVision's experience is provided in the attached Exhibit CB-1.

Q. PLEASE BRIEFLY DESCRIBE THE EXPERTISE AND CONTRIBUTIONS OF THE OTHER MEMBERS OF YOUR ENERVISION TEAM WHO PARTICIPATED IN THE RFP PROCESS AND SUBSEQUENT NEGOTIATIONS.

A. The team at EnerVision is comprised of individuals with over 200 years of collective experience in the energy and consulting industry. In addition to myself, the principal members of the EnerVision team who have worked with South Kentucky include Greg Shepler, Lynne Travis, and Asia Ellington. Mr. Shepler initially worked with South Kentucky on this project and developed the RFP and initiated the analysis and negotiations with respondents; Mr. Shepler left the employ of EnerVision in the course of this engagement, allowing me the opportunity to assume many of his responsibilities for this project. Ms. Travis and Ms. Ellington updated the analysis as bids were revised and assisted in the development of updates and discussion material for the South Kentucky Board of Directors. Additional detail with respect to the education and professional experience of the EnerVision team is provided in Exhibit CB-2.

Q. WHEN WAS ENERVISION FIRST CONTACTED BY SOUTH KENTUCKY WITH RESPECT TO THE COOPERATIVE'S POWER SUPPLY NEEDS?

A. EnerVision was first contacted by South Kentucky in August of 2017. South Kentucky had been approached by an independent power producer, namely [redacted]

[redacted], seeking to sell the output of a proposed generation facility to be located in Kentucky. South Kentucky engaged EnerVision to analyze [redacted] proposal and determine what savings might be achieved by obtaining a portion of its wholesale power from a source other than East Kentucky Power Cooperative, Inc. ("EKPC").

Q. ARE YOU FAMILIAR WITH THE AGREEMENTS THAT GOVERN EKPC'S PROVISION OF WHOLESALE POWER TO ITS OWNER-MEMBERS?

A. Yes. I have reviewed and am familiar with the parties' Wholesale Power Contract dated October 1, 1964, Amendment No. 3 thereto executed in 2003, and the Memorandum of Understanding and Agreement Regarding Alternate Power Sources ("MOU") executed July 23, 2015. Under these documents, South Kentucky may obtain a portion of its wholesale power supply needs from a non-EKPC source (*i.e.*, an "Alternate Source"), which South Kentucky initially believed may be [redacted].

Q. PLEASE GENERALLY DESCRIBE THE ANALYSIS UNDERTAKEN BY ENERVISION SUBSEQUENT TO ITS ENGAGEMENT BY SOUTH KENTUCKY.

A. EnerVision's first step was to develop a base case estimating the extent of South Kentucky's costs if it continued to satisfy all of its power supply requirements with purchases from EKPC. The base case was developed utilizing the current EKPC rate schedule "E-2," which is the portion of EKPC's tariff under which its Owner-Members take service, and applying the Schedule E-2 rates to South

Kentucky's historical load shape in 2016 (the last full year of data available). The resulting South Kentucky estimated power costs (exclusive of fuel and environmental surcharge costs) were held constant for four (4) years (until 2020) and then escalated by two percent (2%) annually. Based on EnerVision's familiarity with the industry and information provided by South Kentucky, it was determined that a 2% escalation factor represented a conservative estimate of EKPC's projected rates over a twenty (20) year term. The base case was then compared to the estimated costs of the [redacted] proposal, and the preliminary results demonstrated potential savings for South Kentucky.

Q. WHAT DID ENERVISION RECOMMEND TO SOUTH KENTUCKY FOLLOWING ITS ANALYSIS OF THE [redacted] PROPOSAL?

A. Though EnerVision confirmed South Kentucky's conclusion that financial savings would be realized if South Kentucky served a portion of its load with non-EKPC power, it believed the proposal by [redacted] did not represent the best option available based on EnerVision's extensive experience in the field and detailed knowledge of the current power supply market. In addition, after discussing the MOU further with South Kentucky, it was determined that South Kentucky could pursue a 100% load factor product for the 58 MW of power it was permitted to obtain from an Alternate Source under the MOU. For this reason, EnerVision recommended that South Kentucky consider opportunities in addition to that presented by [redacted].

Q. DID SOUTH KENTUCKY HEED ENERVISION'S ADVICE?

A. Yes. As a result of EnerVision's initial analysis of the [redacted] proposal and other guidance, South Kentucky instructed EnerVision to develop and market an RFP for 58 MW of power, select a shortlist comprised of the most favorable bids, and report on a recommended course of action. This was a collaborative effort in which EnerVision leveraged South Kentucky's staff, analytical resources, and data to ascertain what options may be available to the cooperative to obtain economic Alternate Source power.

Q. WHAT TYPES OF POWER SUPPLY OPTIONS WERE SOUTH KENTUCKY WILLING TO CONSIDER AND HOW WAS THE RFP ULTIMATELY STRUCTURED?

A. The RFP asked respondents to submit proposals for the provision of 58 MW of electric energy and/or capacity for a term commencing June 1, 2019. As described in the testimony of South Kentucky's President and Chief Executive Officer, Dennis Holt (*see* Exhibit 16 to the Application), 58.5 MW represents South Kentucky's allocation of the power under Amendment No. 3 and the MOU that may be served by a non-EKPC source; moreover, the terms of the relevant documents require at least eighteen (18) months' notice prior to delivery of any Alternate Source power. The RFP sought bids with terms between five (5) and twenty (20) years so that the relative values of short, medium, and long term transactions could be readily compared. Terms of less than five (5) years were not considered because arrangements of such a short duration would likely not provide the savings and security sought by South Kentucky, and terms of more

than twenty (20) years were not considered because they are not permissible under the MOU. The RFP also made clear that South Kentucky would consider proposals based on, among other things, pricing and economic risks (including all-in pricing estimates reflecting all components of power supply, fixed price versus variable power supply components, and length/duration for firm pricing components prior to extension periods where pricing was yet to be defined), as well as the creditworthiness of counterparties and terms providing for continuity of delivery/service even through unforeseen credit conditions. Each proposal was required to include, at a minimum, the quantity of product offered (annual capacity/energy and expected pattern of energy delivery), term (proposed start and tenor, including any potential extension period(s)), point of delivery, pricing (including demand and/or energy charges, indexes and/or price escalators upon which demand/fuel/other components may be based, any market-based or pass-through components of power supply), any unit contingencies or assets backing the sale of capacity and/or energy, and the credit requirements/expectations of both parties.

Q. HOW DID ENERVISION PROCEED TO MARKET THE RFP?

A. Based on EnerVision's extensive experience in the power markets, a total of seven (7) firms believed to be capable of meeting the RFP requirements were engaged directly. South Kentucky chose not to publish the RFP as open to all bidders but instead to concentrate on those firms meeting the above criteria, primarily due to its desire to proceed expeditiously in light of market conditions and constraints under the MOU.

Q. PLEASE SUMMARIZE THE RESPONSES RECEIVED TO THE RFP.

A. Initially the RFP produced bids for a portion of the products requested from six (6) of the seven (7) companies to which the RFP was sent. Exhibit CB-3 summarizes the ten (10) initial bids received by providing the names of the six (6) respondents providing those bids, the types of products (capacity only, energy only, capacity and energy, the delivery point of the capacity and energy) and the initial pricing for the products offered.

Q. DESCRIBE THE PROCESS ENERVISION EMPLOYED IN EVALUATING PROPOSALS FROM QUALIFIED BIDDERS RESPONDING TO THE RFP.

A. The first objective in evaluating the proposals was to make sure they were validly compared on a commensurable basis. Thus, much time and effort was spent communicating with each respondent to identify all of the costs associated with the proposals and whether those costs were included (or not included) as part of each bid received. To achieve an all-in cost comparison against the base case, efforts were undertaken to ensure that each proposal included appropriate cost estimates to the same delivery point. Estimated market costs for transmission and ancillary services rates were added to each bid for comparison to the EKPC base case and an eighteen percent (18%) reserve requirement was eventually assumed. For those proposals lacking capacity, the known PJM market capacity price was used for the first two years, then a known capacity offer was applied to the remaining years. The assumption employed was that South Kentucky could couple the known capacity offer with energy-only bids. Finally, for those

proposals priced at the AD Hub, an adjustment was made for basis difference to the EKPC Zone and new pricing into the EKPC Zone was requested. Later in the process, the cost of services provided by EKPC acting as agent were added to each proposal at a rate of $.80/MWh. Since this fee was applied to all proposals, it did not impact the comparison among proposals, only the Net Present Value ("NPV") of savings when compared to the base case.

Q. WHAT OTHER FACTORS DID YOU TAKE INTO ACCOUNT AS PART OF YOUR EVALUATION OF THE RESPONSES TO THE RFP?

A. The term of each proposal was very important due to South Kentucky's desire to best leverage market conditions and historically-low natural gas prices within the framework of the MOU, which allows a maximum term for an Alternate Source arrangement of twenty (20) years. While South Kentucky was willing to consider proposals of varying lengths and the economics of both shorter-term and longer-term bids were examined, South Kentucky favored arrangements that secured value and stability for an extended period. Other factors considered in addition to economics were fixed versus variable or indexed pricing, credit worthiness, terms and conditions of the potential contract, reliability of the counterparty, and experience in the market.

Q. AFTER EVALUATING EACH OF THE PROPOSALS RECEIVED, HOW DID YOU PROCEED?

A. Based on the results of the economic analysis of the original proposals, presented in Exhibits CB-4 and CB-5, EnerVision created a shortlist of bidders. The shortlist represented the most attractive proposals based on NPV and South

Kentucky's strategic objectives. Further discussions were held with each of the shortlist bidders to review, refine and clarify proposal terms. The results of the original shortlist and a rationale behind the original decision are contained in Exhibit CB-6.

Soon after the short list was announced, several of the bidders revised their proposals to include additional years to the term, additional products (a capacity component) and revised pricing. During this time, the EnerVision project team stayed in constant contact with South Kentucky management in order to strategize and obtain feedback, as well as provide detailed information and updates to South Kentucky's Board of Directors. At this juncture in the process, EnerVision requested the capacity quantity be increased from 58 MW to 68 MW to cover the eighteen percent (18%) reserve requirement. South Kentucky's management and Board of Directors decided that, due to the changes in the proposals to more favorable terms, the original shortlist should be modified. Exhibit CB-7 summarizes the modified proposals.

Q. AT THE CONCLUSION OF THIS PROCESS, DID YOU PRESENT YOUR ANALYSIS OF THE RFP RESPONSES TO SOUTH KENTUCKY?

A. Yes. EnerVision's analysis of the RFP responses was summarized and presented to South Kentucky's management to ensure all options were appropriately considered. This analysis demonstrated that certain opportunities clearly stood out as possibilities for achieving significant cost savings. South Kentucky then directed EnerVision to continue discussions with certain bidders, namely Morgan

Stanley Capital Group and [redacted], in order to further clarify and refine the terms of each proposal.

Q. WHAT WERE THE PRINCIPAL DIFFERENCES BETWEEN THE MORGAN STANLEY CAPITAL GROUP PROPOSAL AND [redacted] PROPOSAL?

A. The principal differences between the two proposals were price and term, as the delivery point for the energy and the procurement point of the capacity were the same for both proposals.

Q. AS NEGOTIATIONS CONTINUED, HOW DID THE PROPOSALS OF MORGAN STANLEY CAPITAL GROUP AND [redacted] DEVELOP OR CHANGE?

A. Morgan Stanley Capital Group revised their proposal terms several times throughout the process by adding longer term options for capacity and energy. In the end, Morgan Stanley Capital Group added an option for an 18-year financially-hedged capacity product at the RTO procurement point, which would be matched with a fixed 20-year energy price at the EKPC zone. The financial hedge for capacity is only eighteen (18) years because the PJM capacity auction has already set the capacity price for planning years 2019/2020 and 2020/2021. Thus the capacity hedge is only needed starting June 1, 2021 through the following eighteen (18) planning years. Morgan Stanley Capital Group updated pricing for each of the proposed products (including the twenty (20) year proposal) throughout the negotiations, at times reflecting movements in the

markets and at others competitive reductions. This continued until the day of execution of the twenty (20) year contract with Morgan Stanley Capital Group. [redacted] also expanded its initial offering by submitting capacity and energy pricing for a ten (10) year energy/eight (8) year capacity product and for a fifteen (15) year energy/thirteen (13) year capacity product. As with the Morgan Stanley Capital Group proposal, the difference in the energy and capacity terms in each proposal resulted from the fact that pricing for the first two (2) capacity planning years had already been determined in the PJM capacity market. [redacted] also set energy delivery for both options at the EKPC zone and capacity at the RTO procurement point. Almost weekly (and sometimes multiple times a week) during the negotiations, [redacted] updated its pricing for the ten (10) year and fifteen (15) year products. Once again, this re-pricing represented moves in the market and competitive reductions.

Q. PLEASE DETAIL THE TERMS OF THE FINAL PROPOSAL FROM MORGAN STANLEY CAPITAL GROUP THAT SOUTH KENTUCKY ULTIMATELY ACCEPTED.

A. For a term beginning June 1, 2019, Morgan Stanley Capital Group offered a fixed firm energy price for 58 MW, twenty-four (24) hours a day, seven (7) days a week for twenty (20) years at a price of $[redacted]/MWh delivered to the EKPC Zone in PJM. In addition, beginning June 1, 2021, Morgan Stanley Capital Group offered a financial capacity hedge for 68 MW (which includes the eighteen percent (18%) reserve requirement) for eighteen (18) years at a price of $[redacted]/MW-Day.

Q. PLEASE INFORM THE COMMISSION ABOUT MORGAN STANLEY CAPITAL GROUP, ITS FINANCIAL CONDITION, ITS COMMERCIAL REPUTATION AND ITS EXPERIENCE IN THE AREA OF ENERGY AND CAPACITY SUPPLY.

A. Morgan Stanley Capital Group provides global coverage of commodity markets by making markets in, and facilitating counterparty transactions across, a wide range of commodities sectors, and has an extensive track record in both purchasing and supplying firm energy.

Morgan Stanley Capital Group has a long history of working with corporations, utilities, municipalities and cooperatives to provide energy services that include sales of block energy, fixed hourly shape energy, and partial or full-requirements load-following. In aggregate, Morgan Stanley Capital Group supplies over 5 GW (peak-demand) of load in North America. Morgan Stanley Capital Group is an active market participant in all organized ISOs in North America, has been actively wheeling power across many bilateral markets since 1996 and has provided load supply services in MISO, PJM, SERC, ERCOT, and WECC. Morgan Stanley Capital Group currently provides full requirements service and acts as a scheduling agent for Walton EMC and GreyStone Power Corporation in Georgia; in the West, Morgan Stanley Capital Group also provides full requirements load following services to Deseret Power, an electric cooperative based in Utah. Morgan Stanley Capital Group also owns rights to physical transmission in PJM, MISO, Southeast and WECC, totaling over 1000 MW (700 MW+ in the West alone). Morgan Stanley Capital Group can supply long-term

power through 2035 in most major hub locations, and their experience makes them well suited to meet the needs of South Kentucky.

Morgan Stanley Capital Group is not independently rated, nor does it publish independent financial statements. However, Morgan Stanley Capital Group's parent, Morgan Stanley, has provided a guarantee of Morgan Stanley Capital Group's payment obligations under the firm energy product. Morgan Stanley currently is rated as A by Fitch ratings, A3 by Moody's Investors Service and BBB+ by Standard and Poor's.

Q. PLEASE EXPLAIN WHY SOUTH KENTUCKY DECIDED TO ACCEPT THE PROPOSAL OF MORGAN STANLEY CAPITAL GROUP OVER THE OTHER BIDDERS' PROPOSALS.

A. The South Kentucky Board of Directors accepted the proposal of Morgan Stanley Capital Group based on its desire to maximize the amount of savings available to its members. The MOU allows for up to a twenty (20) year term for the procurement of economic wholesale power under an Alternate Source arrangement. If structured correctly, longer-term deals can provide a much greater level of savings for the cooperative as compared to short-term transactions. The longer term of the Morgan Stanley Capital Group proposal, coupled with the fact that it offered a lower price versus other firms which proposed shorter periods, were the main factors that I believe supported the South Kentucky Board of Directors' selection of Morgan Stanley Capital Group as its ultimate counterparty. South Kentucky's Board of Directors did consider the risk attendant to the financial capacity hedge created by the inherent variability of the

PJM capacity market; however, this component only accounts for approximately twelve percent (12%) of the cost of the overall transaction. In addition, were this load to remain in EKPC it would be subject to similar capacity price variability due to EKPC's participation in the PJM capacity market. The Board's consideration of this risk is demonstrated in Exhibit CB-8. Ultimately, the Board determined the risk was acceptable in light of the significant potential benefits that are likely to result from the transaction. Given that both Morgan Stanley Capital Group and [redacted] have extensive experience, creditworthiness, and good reputations as counterparties, the decision came down to economics. The annual and total NPV savings comparison of the final pricing from Morgan Stanley Capital Group and [redacted] are contained in Exhibits CB-9 and CB-10, respectively, and clearly demonstrate the financial superiority of the Morgan Stanley Capital Group 20-year proposal.

Q. WILL SOUTH KENTUCKY NEED TO BECOME A MEMBER OF PJM INTERCONNECTION, LLC IN ORDER TO TAKE DELIVERY OF THE POWER IT PURCHASES FROM MORGAN STANLEY CAPITAL GROUP?

A. Based on discussions with EKPC and Morgan Stanley Capital Group, South Kentucky will become a Market Participant in PJM in order to best effectuate the proposed transaction. EnerVision will assist South Kentucky with this process, which is not particularly burdensome nor expensive.

Q. PLEASE SUMMARIZE THE PRINCIPAL REASONS WHY SOUTH KENTUCKY'S DECISION TO OBTAIN ALTERNATE SOURCE POWER FROM MORGAN STANLEY CAPITAL GROUP BENEFITS THE COOPERATIVE'S MEMBERS AND SHOULD BE APPROVED BY THE COMMISSION.

A. South Kentucky's decision to procure 58 MW of Alternate Source power from Morgan Stanley Capital Group allows it to pursue the greatest estimated savings for the Cooperative and its Members. The RFP process revealed that there are potential NPV savings substantially greater than $[redacted] over a twenty (20) year period, and the fixed energy price and capacity hedge that comprise the agreement with Morgan Stanley Capital Group provide South Kentucky a favorable level of security over an extended term. It is my opinion that South Kentucky's decision to contract with Morgan Stanley Capital Group as described in my testimony will result in substantial savings for the Cooperative as compared to the base case and the other proposals considered.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes.

EnerVision's Background and Qualifications

EnerVision, Inc.

EnerVision is an independent consulting firm located in Atlanta, Georgia that provides business, management, marketing and technical consulting services for electric utilities and other clients. EnerVision's core service is the power supply support we provide our clients, many of whom utilize us as their adjunct power supply staff.

EnerVision's mission is to provide tailored energy solutions to help its clients be successful in their markets. Because the cost of power they purchase to meet the needs of their customers is by far the biggest component of their expenses, our power supply work for clients is key to their ongoing success, as reflected in two of the many testimonials provided by clients for our website

Breadth of Services

EnerVision has associates with collective experience of over 200 years in the energy and consulting industry. Our service offerings range from strategic visioning to program implementation for more than 150 clients in over thirty (30) states. EnerVision has worked with national organizations, statewide organizations, as well as individual public and private utilities. Our strengths include power supply planning and analysis, Integrated Resource Plans, power supply solicitations, power supply option evaluations, power marketing negotiations, transmission services and interconnection agreements, DSM and energy efficiency program development and analysis, strategic planning, management consulting and facilitation, telecommunications, pricing, cost of service studies, pricing strategies and rate designs, distributed generation evaluation and program designs, and diversification services. EnerVision has direct experience helping our clients explore, plan, and successfully implement new business strategies, products, programs, and services.

EnerVision Qualifications

EnerVision's team of professionals brings more than 200 collective years of experiences in assisting utilities across the U.S. in

- Understanding their needs for electric capacity and energy;
- Evaluating the options for meeting those needs and understanding the implications of each option;
- Developing strategies for the procurement of that capacity and energy;
- Executing those strategies;
- Implementing and managing resource contracts, along with the fuel and transmission needed to complement the power supply, to ensure our clients get everything to which they are entitled under those contracts;

- Evaluating and managing the impacts of distributed generation, including solar, other renewables and traditional generation resources, on clients' systems; and,
- Tracking, analyzing, explaining and managing the environmental, regulatory, economic and other issues that impact the clients' ability to provide reliable and economic service to their customers.

Our process and the results we achieve are tailored to the needs of each client. Rather than a standard, fixed approach, we look at the needs of each client in the context of its business environment and strategic objects.

Specific Relevant Examples of Experience

Georgia

Since 2001, EnerVision has worked with a group of 11 (now 12) cooperatives whose relationship with their G&T turned into a partial requirements relationship, giving them the opportunity to seek supplemental resources (~50% of their total currently) from other sources. These EMCs function together as an alliance, without a contractual structure, for contract administration, negotiation, and cost sharing purposes.

Since 2001, EnerVision has conducted multiple RFPs for the group as a whole and individual cooperatives, negotiating, implementing, and administering contracts on the cooperatives' behalf. Our work includes addressing issues that arise under the PPAs, reviewing bills, preparing power cost projections, and evaluating new resource options for the EMCs.

Texas

As a result of work that began over 10 years ago assisting a group of cooperatives and municipal utilities in Texas evaluate the contractual relationship with their supplier, the Lower Colorado River Authority, a number of those utilities chose to exit that relationship and plan to meet their own needs. EnerVision represented the distribution utilities.A small group of those utilities chose to form their own G&T to work together in obtaining power supply resources. EnerVision worked with the group to form the G&T and conducted RFPs and negotiated contracts for resources to meet the power supply needs of the G&T members in the ERCOT RTO.

North Carolina

Since 2003, EnerVision has worked with a group of 4 (now 5) North Carolina distribution cooperatives who desired an alternative to their G&T supplier. We worked with the cooperatives to negotiate a new contract that changed their relationship with their G&T from full requirements to partial requirements, with the cooperatives now purchasing well over 50% of their capacity and energy needs from other suppliers.

We worked with each of the cooperatives to understand their needs and have gone through multiple RFP and negotiations processes to arrive at power supply arrangement to meet the needs of each. Initially we worked with them to form a joint action entity for a portion of their

contractual relationships and so they could negotiate resources for the group, but they have since formed alliances based on wholesale suppliers and transmission providers for contract administration, negotiation, and cost sharing purposes.

Virginia

EnerVision has assisted distribution cooperatives, members of a G&T, independently obtain supply from the market, using flexibility provided under their wholesale power contracts. We help them assess their opportunity, evaluate options, negotiate contracts, and implement their supplemental supply, taking into account the market opportunities, requirements, and operating conditions of PJM, their RTO.

Indiana/Michigan

EnerVision assisted a couple of Cooperatives in their exit from their G&T and conducted an RFP for replacement supply and then negotiating and implementing a contract for replacement supply, including coordination and integration with PJM and MISO.

Illinois

EnerVision assisted a Cooperative in evaluating a termination option it had under one of its wholesale power supply contracts, including seeking alternative supply options in the MISO market and then negotiating a contract for replacement supply and MISO integration of the new contract. As a result, the Cooperative is now a member of two G&Ts:

Qualifications of Additional EnerVision Team Members

Greg Shepler
Managing Principal

Mr. Shepler was a Managing Principal at EnerVision with 27 years of consulting experience in the utility industry. He has consulted with over 90 utilities – IOUs, cooperatives, and municipals – as well as with merchant generators and marketing organizations. He has developed a broad range of expertise that includes wholesale power supply (evaluation, strategy, and negotiations) in various markets/regions, financial forecasting/budgeting, merger and acquisition analysis and support, asset valuation, generation and T&D benchmarking, demand-side management/demand response/energy efficiency program development and evaluation, management reorganization design/implementation and process improvement.

Mr. Shepler has extensive experience in multiple U.S. power markets. He has assisted utility clients in developing power supply strategies, evaluating alternatives, and has negotiated and closed power transactions on behalf of clients in PJM, MISO, and ERCOT.

Mr. Shepler has been a key player in multiple utility/asset valuation and merger & acquisition engagements, in all phases from front-end evaluation to implementation and integration. He has designed and developed models to determine the financial impact of various operating scenarios on generating plant and utilities - modifying operating variables (system load growth, dispatch order, fuel escalation rates, generating additions, purchases/sales, etc.) to estimate market clearing prices and develop stand-alone and combined station/utility financial pro-formas. Mr. Shepler's efforts have supported the acquisition/divestiture of several generating stations, mergers among electric distribution cooperatives, and one of the largest utility mergers in the U.S.

Mr. Shepler has served many roles in management reorganizations for utilities and independent energy companies. He has specific experience assisting in organization design, defining position requirements within the new organization, developing and administering the employee selection process, performing adverse impact analyses, and quantifying results.

Mr. Shepler holds a Bachelor of Business Administration in finance from the University of Toledo and a Master of Business Administration, with distinction, from Wake Forest University.

Lynne S. Travis
Managing Principal

As a Managing Principal, Ms. Travis analyzes, recommends and negotiates wholesale power supply options, performs economic analyses, provides contract administration support and develops and analyzes rate design options for utility clients.

Ms. Travis has been instrumental in evaluating and negotiating power supply proposals for 5 electric cooperatives in North Carolina and 12 electric cooperatives in Georgia. Her areas of expertise include: determining power supply needs, identifying resource options, soliciting the market for proposals, and understanding and evaluating proposal economics.

Ms. Travis provides contract administration support for existing clients in the areas of monthly bill validation, auditing of power supply costs, annual budgeting, power cost projections and regulatory reporting (i.e. Rural Utility Service and State Commissions). She also works with clients to evaluate and develop retail rate design options that more accurately track their wholesale power cost.

Ms. Travis led the Integrated Resource Planning work for a G&T in Illinois and has assisted with EnerVision's Total Energy Planning (TEP) process with other clients. TEP is a decision-making process which helps utilities to define their energy resource strategies and goals by incorporating three core areas: Energy Innovation (energy efficiency, DSM, etc.), Renewable Energy, and Traditional Generation.

Ms. Travis led EnerVision's work with a large G&T to independently review, evaluate and recommend power supply options for baseload, peaking and distributed generation options that were obtained through a formal G&T RFP process. She worked closely with G&T staff to ensure the best power supply options were chosen to meet the needs of their members.

Previously, Ms. Travis worked at Oglethorpe Power Corporation (OPC) for 14 years and at Louisville Gas and Electric Company (LG&E). At OPC, Ms. Travis was a key member of the evaluation team for the wholesale power marketing deals with LG&E Energy Marketing, Morgan Stanley, Enron, and Duke-Louis Dreyfus. She participated in the Request for Proposals and development of evaluation criteria, analytical tools, and negotiation strategies that resulted in the final power purchase and sales agreements. In addition, Ms. Travis was a key team member in the development of new wholesale power contracts and power cost projections for OPC Member Systems under a pooling environment.

Ms. Travis holds a Bachelor of Electrical Engineering degree from the Georgia Institute of Technology and is a member of the Institute of Electrical and Electronics Engineers.

Asia Ellington
Senior Consultant

She has been assisting with rate analysis and cost of study projects and has recently used her proficiency in excel to aid in developing a cost of service model for TVPPA. She also provides analytical support in the areas of monthly bill validation and annual budgeting of existing power supply agreements.

She began her career as a co-op for the United Parcel Service, Inc. where she worked in the transportation solutions and network planning departments while a student at Georgia Tech. During her three-semester assignment, Ms. Ellington developed transportation and network solutions for multimillion dollar opportunities, implemented various solutions, modeled potential revenue, as well as created cost models and customer proposal documents for the sales and operations managers.

Ms. Ellington decided to pursue a career in serving the electric utility industry and elected to join the EnerVision team. Ms. Ellington uses her excellent technical, analytical and communication skills, along with her strong mathematical aptitude, to serve the needs of clients effectively and efficiently.

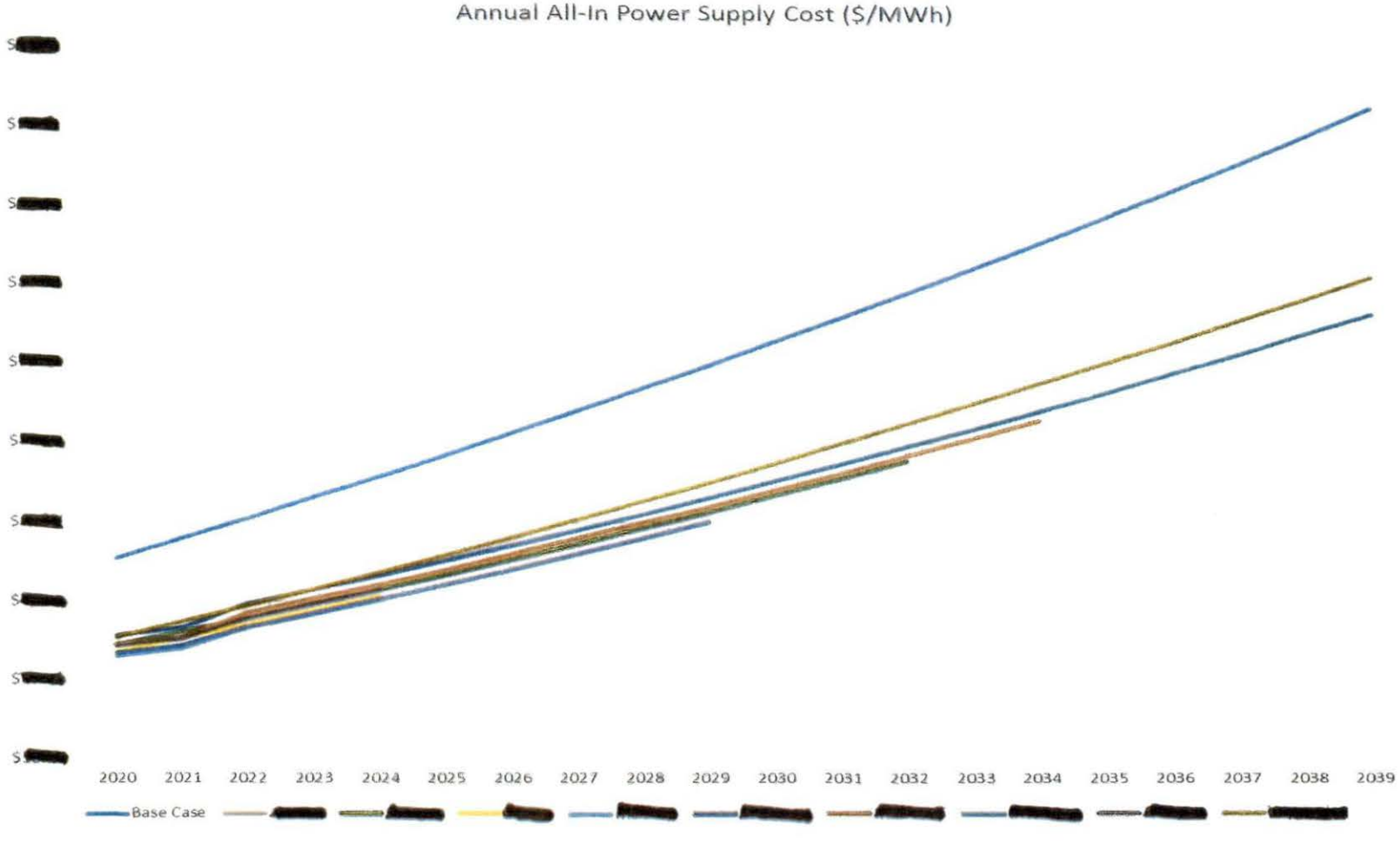
Ms. Ellington graduated from The Georgia Institute of Technology with a Bachelor of Science in Industrial and Systems Engineering.

Ms. Ellington joined EnerVision in June of 2014 as a Consultant after her graduation from Georgia Tech.

Initial Proposal Matrix

Respondent	Capacity	Energy	Element Pricing
[redacted]	Pass-through	5, 7, 9 yrs. 7x24; AD Hub 5 yrs. 7x24; EKPC Zone	$[redacted]-$[redacted]/MWh $[redacted]/MWh
[redacted]	5 yrs. RTO capacity 10 yrs. RTO capacity		$[redacted]/MW-day $[redacted]/MW-day
[redacted] / [redacted]	5 yrs.; 7x24; AD Hub; RTO capacity included 5 yrs.; 7x24; EKPC Zone; RTO capacity included		$[redacted]/MWh <$[redacted]/MWh
[redacted]	Pass-through	5, 7, 10, 15 yrs. 7x24; EKPC Zone	$[redacted]-$[redacted]/MWh
[redacted]	Pass-through	5 yrs. load following; EKPC Zone 5 yrs. 7x24; EKPC Zone	$[redacted]/MWh $[redacted]/MWh
[redacted]	20 yrs. based on new build		$[redacted]/MWh

Original Proposals* - All-in Economic Comparison to EKPC**



*

**At this point in time, the EKPC administration fee of $.80/MWh was not known or included in the All-In cost calculation.

Original Proposals* - NPV Savings Comparison to EKPC**

Respondent	Nature of Proposal(s)	Benefit vs Base Case ($M)
[redacted]	5 yrs. 7x24; EKPC Zone	$[redacted]
[redacted]	5 yrs.; 7x24; EKPC Zone	$[redacted]
[redacted]	5 yrs. 7x24; EKPC Zone	$[redacted]
	7 yrs. 7x24; EKPC Zone	$[redacted]
	10 yrs. 7x24; EKPC Zone	$[redacted]
	15 yrs. 7x24; EKPC Zone	$[redacted]
	20 yrs. 7x24; EKPC Zone	$[redacted]
[redacted]	5 yrs.; 7x24; EKPC Zone	$[redacted]
[redacted]	20 yrs. Based on new build	$[redacted]

*[redacted]

**At this point in time, the EKPC administration fee of $.80/MWh was not known or included in the All-In cost calculation.

Original Shortlist and Rationale

Respondent	Nature of Proposal(s)	Short-List Rationale
[redacted]	5-7-9 year energy-only at AD Hub; 5 years energy-only at EKPC Zone	• Will only provide 5 years energy-only at EKPC Zone. Can go longer term at AD Hub (locking in energy portion), then lock in EKPC basis differential in future
[redacted]	5 and 10 year proposals for RTO capacity	• Likely provider of capacity to lock in economics for PJM PY 2021 and beyond
[redacted]	5 years at EKPC Zone or AD Hub	• Only market-based offer that provides capacity and energy at fixed price (although only a 5-year term)
[redacted]	5-7-10-15-20 year energy-only at EKPC Zone	• Competitive prices and the longest terms for marketers offering at EKPC Zone (10 and 15 years) • Provides Alternate Supply in PJM for other co-ops • Greater market presence than [redacted]
[redacted]	5 year energy-only at EKPC Zone	• Highest price of energy-only offers at EKPC Zone
[redacted]	20 year PPA based on new-build generator	• Significantly higher price than any other proposal, although it does represent a 20 year offer

Revised Proposal Matrix and Revised Shortlist

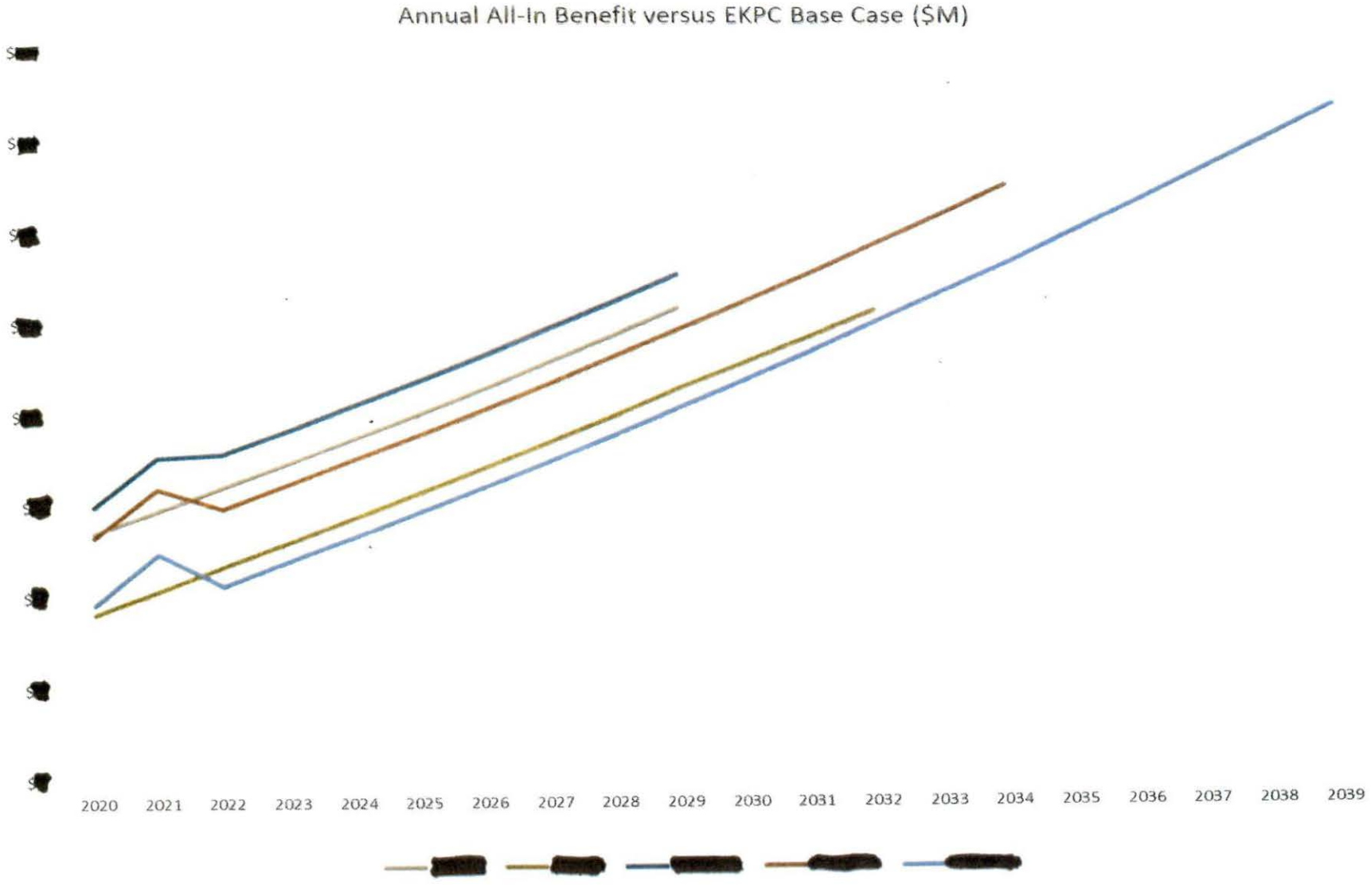
Respondent	Capacity	Energy	Element Pricing	Original Price
[redacted]	**10 yrs. 68.5 MWs RTO Capacity** **13 yrs. 68.5 MWs RTO Capacity**	**10 yrs. 7x24; EKPC Zone** **13 yrs. 7x24; EKPC Zone**	**$[redacted]/MW-day, $[redacted]/MWh** **$[redacted]/MW-day, $[redacted]/MWh**	N/A-Different Product N/A-Different Product
[redacted]				
[redacted]	5 yrs.; 7x24; EKPC Zone; RTO capacity included		$[redacted]/MWh	$[redacted]/MWh
[redacted]	8 yrs. 68.5 MW RTO Capacity Starting 21/22 **13 yrs. 68.5 MW RTO Capacity Starting 21/22**	5, 10, 15, **20 yrs.** 7x24; EKPC Zone	8 yr. Capacity $[redacted]/MW-Day **13 yr. Capacity $[redacted]/MW-Day** 5 yr. Energy $[redacted]/MWh 10 yr. Energy $[redacted]/MWh 15 yr. Energy $[redacted]/MWh **20 yr. Energy $[redacted]/MWh**	$[redacted]/MWh $[redacted]/MWh $[redacted]/MWh $[redacted]/MWh
[redacted] (unchanged)	Pass-through	5 yrs. load following; EKPC Zone 5 yrs. 7x24; EKPC Zone	$[redacted]/MWh $[redacted]/MWh	Same *slight change in capacity est.
[redacted]	20 yrs. based on new build		$[redacted]/MWh	$[redacted]/MWh

Scenario Analysis on Final Zone Price Risk for Morgan Stanley Capital Group

Financial Hedge Capacity Risk at $[redacted]/MW-day

- NPV assuming a perfect hedge = $[redacted]
- Scenarios considered for increase between RTO Price and Final Zonal Pricing
  - 10% = $[redacted] / MW-day in every year - **NPV = $[redacted]**
  - 25% = $[redacted] / MW-day in every year - **NPV = $[redacted]**
  - 50% = $[redacted] / MW-day in every year - **NPV = $[redacted]**
  - 75% = $[redacted] / MW-day in every year - **NPV = $[redacted]**
  - 80% = $[redacted] / MW-day in every year - **NPV = $[redacted]**
    - Morgan's offer to fully fix price through the Final Zonal Pricing
  - 100% = $[redacted] / MW-day in every year - **NPV = $[redacted]**

Revised Shortlist Annual Savings versus the EKPC Base Case



Final Shortlist Total NPV Savings versus EKPC Base Case

Respondent	Nature of Proposal(s)	Benefit vs Base Case ($M)
[redacted]	10 years 7x24; EKPC Zone	[redacted]
[redacted]	13 years 7x24; EKPC Zone	[redacted]
[redacted]	10 years 7x24; EKPC Zone	[redacted]
[redacted]	15 years 7x24; EKPC Zone	[redacted]
MSCG	20 years 7x24; EKPC Zone	[redacted]

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION FOR APPROVAL OF MASTER POWER PURCHASE AND SALE AGREEMENT AND TRANSACTIONS THEREUNDER	) Case No. 2018-00_____

VERIFICATION OF CARTER BABBIT

STATE OF GEORGIA

COUNTY OF FULTON

Carter Babbit, Vice President of Power Supply of EnerVision, Inc., being duly sworn, states that he has supervised the preparation of his direct testimony included with South Kentucky Rural Electric Cooperative Corporation's Application in the above-styled matter, that he would respond in the same manner to the questions therein if so asked upon taking the stand, and that his testimony is true and accurate to the best of his knowledge, information, and belief formed after reasonable inquiry.

Carter Babbit

The foregoing Verification was signed, acknowledged and sworn to before me this 15th day of January, 2018, by Carter Babbit, Vice President of Power Supply of EnerVision, Inc.

Mary M. Eubanks

NOTARY PUBLIC, Notary # _____

Commission expiration: 2/28/2020

SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION
FINANCIAL EXHIBIT - 807 KAR 5:001, SECTION 12
EXHIBIT 19

Unless otherwise noted, the financial information contained in this Exhibit is for the twelve months ended November 30, 2017, which is within the 90-day requirement of 807 KAR 5:001, Section 12.

Section 12(2) (a)	South Kentucky has no stock authorized.
Section 12(2) (b)	South Kentucky has no stock issued or outstanding.
Section 12(2) (c)	South Kentucky has no preferred stock issued.
Section 12(2) (d)	There exist two (2) mortgages on property of South Kentucky: (i) that certain Restated Mortgage and Security Agreement dated November 1, 2016, under which South Kentucky is the mortgagor and the United States of America Rural Utilities Service, National Rural Utilities Cooperative Finance Corporation, and CoBank, ACB are the mortgagees, and the amount of indebtedness authorized to be secured is $500,000,000.00; and (ii) that certain Mortgage dated December 31, 2007, under which South Kentucky is the mortgagor and the City of Monticello, Kentucky is the mortgagee, and the amount of principal indebtedness authorized to be secured is $4,400,000.00. Copies of these mortgages are provided at Attachment A and Attachment B to this Exhibit. The current actual indebtedness secured is shown on Attachment C to this Exhibit. There are no sinking fund provisions contained in either mortgage.
Section 12(2) (e)	South Kentucky has no bonds authorized or issued.
Section 12(2) (f)	Attachment C to this Exhibit contains the listing of South Kentucky's total notes outstanding.
Section 12(2) (g)	South Kentucky has no other indebtedness.
Section 12(2) (h)	As South Kentucky has no stock authorized, issued, or outstanding, no dividends have been paid during the five previous fiscal years.
Section 12(2) (i)	Attachments D and E to this Exhibit contain South Kentucky's detailed balance sheet and statement of operations.

SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION
FINANCIAL EXHIBIT - 807 KAR 5:001, SECTION 12
EXHIBIT 19

ATTACHMENT A

RUS PROJECT DESIGNATION:

KENTUCKY 0054-BD8 WAYNE

RESTATED MORTGAGE AND SECURITY AGREEMENT

made by and among

SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION
925 North Main Street
Somerset, Kentucky 42503-1575,

Mortgagor, and

UNITED STATES OF AMERICA
Rural Utilities Service
Washington, D.C. 20250-1500,

Mortgagee, and

NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION
20701 Cooperative Way
Dulles, Virginia 20166,

Mortgagee, and

CoBank, ACB
6340 S. Fiddlers Green Circle
Greenwood Village, Colorado 80111

Mortgagee

Dated as of November 1, 2016

THIS INSTRUMENT GRANTS A SECURITY INTEREST IN A TRANSMITTING UTILITY.
THE DEBTOR AS MORTGAGOR IS A TRANSMITTING UTILITY.
THIS INSTRUMENT CONTAINS PROVISIONS THAT COVER REAL AND PERSONAL PROPERTY, FIXTURES, AFTER-ACQUIRED PROPERTY, PROCEEDS, FUTURE ADVANCES AND FUTURE OBLIGATIONS.
NOTICE THIS MORTGAGE SECURES CREDIT IN THE AMOUNT OF UP TO $500,000,000.00. INDEBTEDNESS SECURED HEREUNDER, INCLUDING FUTURE INDEBTEDNESS, TOGETHER WITH INTEREST, ARE SENIOR TO INDEBTEDNESS TO OTHER CREDITORS UNDER MORTGAGES AND LIENS FILED OR RECORDED SUBSEQUENT HERETO.
THIS INSTRUMENT WAS PREPARED BY JANET SAFIAN, AS ATTORNEY FOR UNITED STATES DEPARTMENT OF AGRICULTURE, RURAL UTILITIES SERVICE, WASHINGTON, D.C. 20250-1500.
MORTGAGOR'S ORGANIZATIONAL IDENTIFICATION NUMBER IS 0047666.

RESTATED MORTGAGE AND SECURITY AGREEMENT, dated as of November 1, 2016 (hereinafter sometimes called this "Mortgage"), is made by and among SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION (hereinafter called the "Mortgagor"), a corporation existing under the laws of the Commonwealth of Kentucky, and the UNITED STATES OF AMERICA acting by and through the Administrator of the Rural Utilities Service (hereinafter called the "Government"), NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION (hereinafter called "CFC"), a corporation existing under the laws of the District of Columbia, and CoBank, ACB (hereinafter called "CoBank"),a federally chartered instrumentality of the United States, and is intended to confer rights and benefits on both the Government, CFC and CoBank, as well as any and all other lenders pursuant to Article II of this Mortgage that enter into a supplemental mortgage in accordance with Section 2.04 of Article II hereof (the Government, CFC and CoBank and any such other lenders being herein sometimes collectively referred to as the "Mortgagees").

RECITALS

WHEREAS, the Mortgagor, the Government, CFC, and CoBank or its predecessor are parties to that certain Restated Mortgage and Security Agreement dated as of September 1, 2005, as supplemented, amended or restated (the "Original Mortgage" identified in Schedule "A" of this Mortgage) originally entered into among the Mortgagor, the Government acting by and through the Administrator of the Rural Electrification Administration, the predecessor of RUS, CFC, and CoBank;

WHEREAS, the Mortgagor deems it necessary to borrow money for its corporate purposes and to issue its promissory notes and other debt obligations therefor from time to time in one or more series, and to mortgage and pledge its property hereinafter described or mentioned to secure the payment of the same;

WHEREAS, the Mortgagor desires to enter into this Mortgage pursuant to which all secured debt of the Mortgagor hereunder shall be secured on parity;

WHEREAS, this Mortgage restates and consolidates the Original Mortgage while preserving the priority of the Lien under the Original Mortgage securing the payment of Mortgagor's outstanding obligations secured under the Original Mortgage, which indebtedness is described more particularly by listing the Original Notes in Schedule "A" hereto; and

WHEREAS, all acts necessary to make this Mortgage a valid and binding legal instrument for the security of such notes and obligations, subject to the terms of this Mortgage, have been in all respects duly authorized;

NOW, THEREFORE, THIS MORTGAGE WITNESSETH: That to secure the payment of the principal of (and premium, if any) and interest on the Original Notes and all Notes issued hereunder according to their tenor and effect, and the performance of all provisions therein and herein contained, and in consideration of the covenants herein contained, the purchase or guarantee of Notes by the guarantors or holders thereof, and other good and valuable consideration, the Mortgagor has mortgaged, pledged and granted a continuing security interest in, and by these presents does hereby grant, bargain, sell, alienate, remise, release, convey, assign, transfer, hypothecate, pledge, set over and confirm, pledge, and grant a continuing security interest and lien in for the purposes hereinafter expressed, unto the Mortgagees all property, assets, rights, privileges and franchises of the Mortgagor of every kind and description, real, personal or mixed, tangible and intangible, of the kind or nature specifically mentioned herein OR ANY OTHER KIND OR NATURE, except any Excepted Property, now owned or hereafter acquired or arising by the Mortgagor (by purchase, consolidation, merger, donation, construction, erection or in any other way) wherever located, including (without limitation) all and singular the following:

GRANTING CLAUSE FIRST

A. all of those fee and leasehold interests in real property set forth in Schedule "B" hereto, subject in each case to those matters set forth in such Schedule;

C. all right, title and interest of the Mortgagor in and to those contracts of the Mortgagor

(i) relating to the ownership, operation or maintenance of any generation, transmission or distribution facility owned, whether solely or jointly, by the Mortgagor,

(ii) for the purchase of electric power and energy by the Mortgagor and having an original term in excess of 3 years,

(iii) for the sale of electric power and energy by the Mortgagor and having an original term in excess of 3 years, and

(iv) for the transmission of electric power and energy by or on behalf of the Mortgagor and having an original term in excess of 3 years, including in respect of any of the foregoing, any amendments, supplements and replacements thereto;

D. all the property, rights, privileges, allowances and franchises particularly described in the annexed Schedule "B" are hereby made a part of, and deemed to be described in, this Granting Clause as fully as if set forth in this Granting Clause at length; and

ALSO ALL OTHER PROPERTY, real estate, lands, easements, servitudes, licenses, permits, allowances, consents, franchises, privileges, rights of way and other rights in or relating to real estate or the occupancy of the same; all power sites, storage rights, water rights, water locations, water appropriations, ditches, flumes, reservoirs, reservoir sites, canals, raceways, waterways, dams, dam sites, aqueducts, and all other rights or means for appropriating, conveying, storing and supplying water; all rights of way and roads; all plants for the generation of electric and other forms of energy (whether now known or hereafter developed) by steam, water, sunlight, chemical processes and/or (without limitation) all other sources of power (whether now known or hereafter developed); all power houses, gas plants, street lighting systems, standards and other equipment incidental thereto; all telephone, radio, television and other communications, image and data transmission systems, air conditioning systems and equipment incidental thereto, water wheels, waterworks, water systems, steam and hot water plants, substations, lines, service and supply systems, bridges, culverts, tracks, ice or refrigeration plants and equipment, offices, buildings and other structures and the equipment thereto, all machinery, engines, boilers, dynamos, turbines, electric, gas and other machines, prime movers, regulators, meters, transformers, generators (including, but not limited to, engine-driven generators and turbo generator units), motors, electrical, gas and mechanical appliances, conduits, cables, water, steam, gas or other pipes, gas mains and pipes, service pipes, fittings, valves and connections, pole and transmission lines, towers, overhead conductors and devices, underground conduits, underground conductors and devices, wires, cables, tools, implements, apparatus, storage battery equipment, and all other equipment, fixtures and personalty; all municipal and other franchises, consents, certificates or permits; all emissions allowances; all lines for the transmission and distribution of electric current and other forms of energy, gas, steam, water or communications, images and data for any purpose including towers, poles, wires, cables, pipes, conduits, ducts and all apparatus for use in connection therewith, and (except as hereinbefore or hereinafter expressly excepted) all the right, title and interest of the Mortgagor in and to all other property of any kind or nature appertaining to and/or used and/or occupied and/or employed in connection with any property hereinbefore described, but in all circumstances excluding Excepted Property;

GRANTING CLAUSE SECOND

With the exception of Excepted Property, all right, title and interest of the Mortgagor in, to and under all personal property and fixtures of every kind and nature including without limitation all goods (including inventory, equipment and any accessions thereto), instruments (including promissory notes), documents, accounts, chattel paper, electronic chattel paper, deposit accounts (including, but not limited to, money held in a trust account pursuant hereto or to a loan agreement), letter-of-credit rights, investment property (including certificated and uncertificated securities, security entitlements and securities accounts), software, general intangibles (including, but not limited to, payment intangibles), supporting obligations, any other contract rights or rights to the payment of money, insurance claims, and proceeds (as such terms are presently or hereinafter defined in the applicable UCC; provided, however that the term "instrument" shall be such term as defined in Article 9 of the applicable UCC rather than Article 3);

GRANTING CLAUSE THIRD

With the exception of Excepted Property, all right, title and interest of the Mortgagor in, to and under any and all agreements, leases or contracts heretofore or hereafter executed by and between the Mortgagor and any person, firm or corporation relating to the Mortgaged Property (including contracts for the lease, occupancy or sale of the Mortgaged Property, or any portion thereof);

GRANTING CLAUSE FOURTH

With the exception of Excepted Property, all right title and interest of the Mortgagor in, to and under any and all books, records and correspondence relating to the Mortgaged Property, including, but not limited to all records, ledgers, leases and computer and automatic machinery software and programs, including without limitation, programs, databases, disc or tape files and automatic machinery print outs, runs and other computer prepared information indicating, summarizing, evidencing or otherwise necessary or helpful in the collection of or realization on the Mortgaged Property;

GRANTING CLAUSE FIFTH

All other property, real, personal or mixed, of whatever kind and description and wheresoever situated, including without limitation goods, accounts, money held in a trust account pursuant hereto or to a loan agreement, and general intangibles now owned or which may be hereafter acquired by the Mortgagor, but excluding Excepted Property, now owned or which may be hereafter acquired by the Mortgagor, it being the intention hereof that all property, rights, privileges, allowances and franchises now owned by the Mortgagor or acquired by the Mortgagor after the date hereof (other than Excepted Property) shall be as fully embraced within and subjected to the lien hereof as if such property were specifically described herein;

GRANTING CLAUSE SIXTH

Also any Excepted Property that may, from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien hereof by the Mortgagor or by anyone in its behalf; and any Mortgagee is hereby authorized to receive the same at any time as additional security hereunder for the benefit of all the Mortgagees. Such subjection to the lien hereof of any Excepted Property as additional security may be made subject to any reservations, limitations or conditions which shall be set forth in a written instrument executed by the Mortgagor or the person so acting in its behalf or by such Mortgagee respecting the use and disposition of such property or the proceeds thereof;

GRANTING CLAUSE SEVENTH

Together with (subject to the rights of the Mortgagor set forth in Section 5.01) all and singular the tenements, hereditaments and appurtenances belonging or in anywise appertaining to the aforesaid property or any part thereof, with the reversion and reversions, remainder and remainders and all the tolls, earnings, rents, issues, profits, revenues and other income, products and proceeds of the property subjected or required to be subjected to the lien of this Mortgage, and all other property of any nature appertaining to any of the plants, systems, business or operations of the Mortgagor, whether or not affixed to the realty, used in the operation of any of the premises or plants or the Utility System, or otherwise, which are now owned or acquired by the Mortgagor, and all the estate, right, title and interest of every nature whatsoever, at law as well as in equity, of the Mortgagor in and to the same and every part thereof (other than Excepted Property with respect to any of the foregoing).

EXCEPTED PROPERTY

There is, however, expressly excepted and excluded from the lien and operation of this Mortgage the following described property of the Mortgagor, now owned or hereafter acquired (herein sometimes referred to as "Excepted Property"):

A. all shares of stock, securities or other interests of the Mortgagor in the National Rural Utilities Cooperative Finance Corporation and CoBank, ACB and its predecessors in interest other than any stock, securities or other interests that are specifically described in Subclause D of Granting Clause First as being subjected to the lien hereof;

B. all rolling stock (except mobile substations), automobiles, buses, trucks, truck cranes, tractors, trailers and similar vehicles and movable equipment which are titled and/or registered in any state of the United States of America, and all tools, accessories and supplies used in connection with any of the foregoing;

C. all vessels, boats, ships, barges and other marine equipment, all airplanes, airplane engines and other flight equipment, and all tools, accessories and supplies used in connection with any of the foregoing;

D. all office furniture, equipment and supplies that is not data processing, accounting or other computer equipment or software;

E. all leasehold interests for office purposes;

F. all leasehold interests of the Mortgagor under leases for an original term (including any period for which the Mortgagor shall have a right of renewal) of less than five (5) years;

G. all timber and crops (both growing and harvested) and all coal, ore, gas, oil and other minerals (both in place or severed);

H. the last day of the term of each leasehold estate (oral or written) and any agreement therefor, now or hereafter enjoyed by the Mortgagor and whether falling within a general or specific description of property herein: PROVIDED, HOWEVER, that the Mortgagor covenants and agrees that it will hold each such last day in trust for the use and benefit of all of the Mortgagees and Noteholders and that it will dispose of each such last day from time to time in accordance with such written order as the Mortgagee in its discretion may give;

I. all permits, licenses, franchises, contracts, agreements, contract rights and other rights not specifically subjected or required to be subjected to the lien hereof by the express provisions of this Mortgage, whether now owned or hereafter acquired by the Mortgagor, which by their terms or by reason of applicable law would become void or voidable if mortgaged or pledged hereunder by the Mortgagor, or which cannot be granted, conveyed, mortgaged, transferred or assigned by this Mortgage without the consent of other parties whose consent has been withheld, or without subjecting any Mortgagee to a liability not otherwise contemplated by the provisions of this Mortgage, or which otherwise may not be, hereby lawfully and effectively granted, conveyed, mortgaged, transferred and assigned by the Mortgagor; and

J. the property identified in Schedule "C" hereto.

PROVIDED, HOWEVER, that (i) if, upon the occurrence of an Event of Default, any Mortgagee, or any receiver appointed pursuant to statutory provision or order of court, shall have entered into possession of all or substantially all of the Mortgaged Property, all the Excepted Property described or referred to in the foregoing Subdivisions A through H, inclusive, then owned or thereafter acquired by the Mortgagor shall immediately, and, in the case of any Excepted Property described or referred to in Subdivisions I through J, inclusive, upon demand of any Mortgagee or such receiver, become subject to the lien hereof to the extent permitted by law, and any Mortgagee or such receiver may, to the extent permitted by law, at the same time likewise take possession thereof, and (ii) whenever all Events of Default shall have been cured and the possession of all or substantially all of the Mortgaged Property shall have been restored to the Mortgagor, such Excepted Property shall again be excepted and excluded from the lien hereof to the extent and otherwise as hereinabove set forth.

However, pursuant to Granting Clause Sixth, the Mortgagor may subject to the lien of this Mortgage any Excepted Property, whereupon the same shall cease to be Excepted Property;

HABENDUM

TO HAVE AND TO HOLD all said property, rights, privileges and franchises of every kind and description, real, personal or mixed, hereby and hereafter (by supplemental mortgage or otherwise) granted, bargained, sold, aliened, remised, released, conveyed, assigned, transferred, mortgaged, encumbered, hypothecated, pledged, set over, confirmed, or subjected to a continuing security interest and lien as aforesaid, together with all the appurtenances thereto appertaining (said properties, rights, privileges and franchises, including any cash and securities hereafter deposited with any Mortgagee (other than any such cash, if any, which is specifically stated herein not to be deemed part of the Mortgaged Property), being herein collectively called the "Mortgaged Property") unto the Mortgagees and the respective assigns of the Mortgagees forever, to secure equally and ratably the payment of the principal of (and premium, if any) and interest on the Notes, according to their terms, without preference, priority or distinction as to interest or principal (except as otherwise specifically provided herein) or as to lien or otherwise of any Note over any other Note by reason of the priority in time of the execution, delivery or maturity thereof or of the assignment or negotiation thereof, or otherwise, and to secure the due performance of all of the covenants, agreements and provisions herein and in the Loan Agreements contained, and for the uses and purposes and upon the terms, conditions, provisos and agreements hereinafter expressed and declared.

SUBJECT, HOWEVER, to Permitted Encumbrances (as defined in Section 1.01).

ARTICLE I

DEFINITIONS & OTHER PROVISIONS OF GENERAL APPLICATION

Section 1.01. **Definitions.**

In addition to the terms defined elsewhere in this Mortgage, the terms defined in this Article I shall have the meanings specified herein and under the UCC, unless the context clearly requires otherwise. The terms defined herein include the plural as well as the singular and the singular as well as the plural.

Accounting Requirements shall mean the requirements of any system of accounts prescribed by RUS so long as the Government is the holder, insurer or guarantor of any Notes, or, in the absence thereof, the requirements of generally accepted accounting principles applicable to businesses similar to that of the Mortgagor.

Additional Notes shall mean any Government Notes issued by the Mortgagor to the Government or guaranteed or insured as to payment by the Government and any Notes issued by the Mortgagor to any other lender, in either case pursuant to Article II of this Mortgage, including any refunding, renewal, or substitute Notes or Government Notes which may from time to time be executed and delivered by the Mortgagor pursuant to the terms of Article II.

Board shall mean either the Board of Directors or the Board of Trustees, as the case may be, of the Mortgagor.

Business Day shall mean any day that the Government is open for business.

Debt Service Coverage Ratio ("DSC") shall mean the ratio determined as follows: for each calendar year add

(i) Patronage Capital or Margins of the Mortgagor,

(ii) Interest Expense on Total Long Term Debt of the Mortgagor (as computed in accordance with the principles set forth in the definition of TIER) and

(iii) Depreciation and Amortization Expense of the Mortgagor, and divide the total so obtained by an amount equal to the sum of all payments of principal and interest required to be made on

account of Total Long-Term Debt during such calendar year increasing said sum by any addition to interest expense on account of Restricted Rentals as computed with respect to the Times Interest Earned Ratio herein.

Depreciation and Amortization Expense shall mean an amount constituting the depreciation and amortization of the Mortgagor as computed pursuant to Accounting Requirements.

Electric System shall mean, and shall be broadly construed to encompass and include, all of the Mortgagor's interests in all electric production, transmission, distribution, conservation, load management, general plant and other related facilities, equipment or property and in any mine, well, pipeline, plant, structure or other facility for the development, production, manufacture, storage, fabrication or processing of fossil, nuclear or other fuel of any kind or in any facility or rights with respect to the supply of water, in each case for use, in whole or in major part, in any of the Mortgagor's generating plants, now existing or hereafter acquired by lease, contract, purchase or otherwise or constructed by the Mortgagor, including any interest or participation of the Mortgagor in any such facilities or any rights to the output or capacity thereof, together with all additions, betterments, extensions and improvements to such Electric System or any part thereof hereafter made and together with all lands, easements and rights-of-way of the Mortgagor and all other works, property or structures of the Mortgagor and contract rights and other tangible and intangible assets of the Mortgagor used or useful in connection with or related to such Electric System, including without limitation a contract right or other contractual arrangement referred to in Granting Clause First, Subclause C, but excluding any Excepted Property.

Environmental Law and Environmental Laws shall mean all federal, state, and local laws, regulations, and requirements related to protection of human health or the environment, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.), the Clean Water Act (33 U.S.C. 1251 et seq.) and the Clean Air Act (42 U.S.C. 7401 et seq.), and any amendments and implementing regulations of such acts.

Equity shall mean the total margins and equities computed pursuant to Accounting Requirements, but excluding any Regulatory Created Assets.

Event of Default shall have the meaning specified in Section 4.01 hereof.

Excepted Property shall have the meaning stated in the Granting Clauses.

Government shall mean the United States of America acting by and through the Administrator of RUS or REA and shall include its successors and assigns.

Government Notes shall mean the Original Notes, and any Additional Notes, issued by the Mortgagor to the Government, or guaranteed or insured as to payment by the Government.

Independent shall mean when used with respect to any specified person or entity means such a person or entity who (1) is in fact independent, (2) does not have any direct financial interest or any material indirect financial interest in the Mortgagor or in any affiliate of the Mortgagor and (3) is not connected with the Mortgagor as an officer, employee, promoter, underwriter, trustee, partner, director or person performing similar functions.

Interest Expense shall mean an amount constituting the interest expense of the Mortgagor as computed pursuant to Accounting Requirements.

Lien shall mean any statutory or common law or non-consensual mortgage, pledge, security interest, encumbrance, lien, right of set off, claim or charge of any kind, including, without limitation, any conditional sale or other title retention transaction, any lease transaction in the nature thereof and any secured transaction under the UCC.

Loan Agreement shall mean any agreement executed by and between the Mortgagor and the Government or any other lender in connection with the execution and delivery of any Notes secured hereby.

Long-Term Debt shall mean any amount included in Total Long-Term Debt pursuant to Accounting Requirements.

Long-Term Lease shall mean a lease having an unexpired term (taking into account terms of renewal at the option of the lessor, whether or not such lease has previously been renewed) of more than 12 months.

Margins shall mean the sum of amounts recorded as operating margins and non-operating margins as computed in accordance with Accounting Requirements.

Maximum Debt Limit, if any, shall mean the amount more particularly described in Schedule "A" hereof.

Mortgage shall mean this Restated Mortgage and Security Agreement, including any amendments or supplements thereto from time to time.

Mortgaged Property shall have the meaning specified as stated in the Habendum to the Granting Clauses.

Mortgagee or Mortgagees shall mean the parties identified in the first paragraph of this instrument as the Mortgagees, as well as any and all other entities that become a Mortgagee pursuant to Article II of this Mortgage by entering into a supplemental mortgage in accordance with Section 2.04 of Article II hereof. The term also includes in all cases the successors and assigns of any Mortgagee.

Net Utility Plant shall mean the amount constituting the total utility plant of the Mortgagor less depreciation computed in accordance with Accounting Requirements.

Note or Notes shall mean one or more of the Government Notes, and any other Notes which may, from time to time, be secured under this Mortgage.

Noteholder or Noteholders shall mean one or more of the holders of Notes secured by this Mortgage; PROVIDED, however, that in the case of any Notes that have been guaranteed or insured as to payment by the Government, as to such Notes, Noteholder or Noteholders shall mean the Government, exclusively, regardless of whether such Notes are in the possession of the Government.

Original Mortgage means the instrument(s) identified as such in Schedule "A" hereof.

Original Notes shall mean the Notes listed on Schedule "A" hereto as such, such Notes being instruments evidencing outstanding indebtedness of the Mortgagor (i) to the Government (including indebtedness which has been issued by the Mortgagor to a third party and guaranteed or insured as to payment by the Government) and (ii) to each other Mortgagee on the date of this Mortgage.

Outstanding Notes shall mean as of the date of determination, (i) all Notes theretofore issued, executed and delivered to any Mortgagee and (ii) any Notes guaranteed or insured as to payment by the Government, except (a) Notes referred to in clause (i) or (ii) for which the principal and interest have been fully paid and which have been canceled by the Noteholder, and (b) Notes the payment for which has been provided for pursuant to Section 5.03.

Permitted Debt shall have the meaning specified in Section 3.08.

Permitted Encumbrances shall mean:

(1) as to the property specifically described in Granting Clause First, the restrictions, exceptions, reservations, conditions, limitations, interests and other matters which are set forth or referred to in

such descriptions and each of which fits one or more of the clauses of this definition, PROVIDED, such matters do not in the aggregate materially detract from the value of the Mortgaged Property taken as a whole and do not materially impair the use of such property for the purposes for which it is held by the Mortgagor;

(2) liens for taxes, assessments and other governmental charges which are not delinquent;

(3) liens for taxes, assessments and other governmental charges already delinquent which are currently being contested in good faith by appropriate proceedings; PROVIDED the Mortgagor shall have set aside on its books adequate reserves with respect thereto;

(4) mechanics', workmen's, repairmen's, materialmen's, warehousemen's and carriers' liens and other similar liens arising in the ordinary course of business for charges which are not delinquent, or which are being contested in good faith and have not proceeded to judgment; PROVIDED the Mortgagor shall have set aside on its books adequate reserves with respect thereto;

(5) liens in respect of judgments or awards with respect to which the Mortgagor shall in good faith currently be prosecuting an appeal or proceedings for review and with respect to which the Mortgagor shall have secured a stay of execution pending such appeal or proceedings for review; PROVIDED the Mortgagor shall have set aside on its books adequate reserves with respect thereto;

(6) easements and similar rights granted by the Mortgagor over or in respect of any Mortgaged Property, PROVIDED that in the opinion of the Board or a duly authorized officer of the Mortgagor such grant will not impair the usefulness of such property in the conduct of the Mortgagor's business and will not be prejudicial to the interests of the Mortgagees, and similar rights granted by any predecessor in title of the Mortgagor;

(7) easements, leases, reservations or other rights of others in any property of the Mortgagor for streets, roads, bridges, pipes, pipe lines, railroads, electric transmission and distribution lines, telegraph and telephone lines, the removal of oil, gas, coal or other minerals and other similar purposes, flood rights, river control and development rights, sewage and drainage rights, restrictions against pollution and zoning laws and minor defects and irregularities in the record evidence of title, PROVIDED that such easements, leases, reservations, rights, restrictions, laws, defects and irregularities do not materially affect the marketability of title to such property and do not in the aggregate materially impair the use of the Mortgaged Property taken as a whole for the purposes for which it is held by the Mortgagor;

(8) liens upon lands over which easements or rights of way are acquired by the Mortgagor for any of the purposes specified in Clause (7) of this definition, securing indebtedness neither created, assumed nor guaranteed by the Mortgagor nor on account of which it customarily pays interest, which liens do not materially impair the use of such easements or rights of way for the purposes for which they are held by the Mortgagor;

(9) leases existing at the date of this instrument affecting property owned by the Mortgagor at said date which have been previously disclosed to the Mortgagees in writing and leases for a term of not more than two years (including any extensions or renewals) affecting property acquired by the Mortgagor after said date;

(10) terminable or short term leases or permits for occupancy, which leases or permits expressly grant to the Mortgagor the right to terminate them at any time on not more than six months' notice and which occupancy does not interfere with the operation of the business of the Mortgagor;

(11) any lien or privilege vested in any lessor, licensor or permittor for rent to become due or for other obligations or acts to be performed, the payment of which rent or performance of which other

obligations or acts is required under leases, subleases, licenses or permits, so long as the payment of such rent or the performance of such other obligations or acts is not delinquent;

(12) liens or privileges of any employees of the Mortgagor for salary or wages earned but not yet payable;

(13) the burdens of any law or governmental regulation or permit requiring the Mortgagor to maintain certain facilities or perform certain acts as a condition of its occupancy of or interference with any public lands or any river or stream or navigable waters;

(14) any irregularities in or deficiencies of title to any rights-of-way for pipe lines, telephone lines, telegraph lines, power lines or appurtenances thereto, or other improvements thereon, and to any real estate used or to be used primarily for right-of-way purposes, PROVIDED that in the opinion of counsel for the Mortgagor, the Mortgagor shall have obtained from the apparent owner of the lands or estates therein covered by any such right-of-way a sufficient right, by the terms of the instrument granting such right-of-way, to the use thereof for the construction, operation or maintenance of the lines, appurtenances or improvements for which the same are used or are to be used, or PROVIDED that in the opinion of counsel for the Mortgagor, the Mortgagor has power under eminent domain, or similar statues, to remove such irregularities or deficiencies;

(15) rights reserved to, or vested in, any municipality or governmental or other public authority to control or regulate any property of the Mortgagor, or to use such property in any manner, which rights do not materially impair the use of such property, for the purposes for which it is held by the Mortgagor;

(16) any obligations or duties, affecting the property of the Mortgagor, to any municipality or governmental or other public authority with respect to any franchise, grant, license or permit;

(17) any right which any municipal or governmental authority may have by virtue of any franchise, license, contract or statute to purchase, or designate a purchaser of or order the sale of, any property of the Mortgagor upon payment of cash or reasonable compensation therefor or to terminate any franchise, license or other rights or to regulate the property and business of the Mortgagor; PROVIDED, HOWEVER, that nothing in this clause 17 is intended to waive any claim or rights that the Government may otherwise have under Federal laws;

(18) as to properties of other operating electric companies acquired after the date of this Mortgage by the Mortgagor as permitted by Section 3.10 hereof, reservations and other matters as to which such properties may be subject as more fully set forth in such Section;

(19) any lien required by law or governmental regulations as a condition to the transaction of any business or the exercise of any privilege or license, or to enable the Mortgagor to maintain self-insurance or to participate in any fund established to cover any insurance risks or in connection with workmen's compensation, unemployment insurance, old age pensions or other social security, or to share in the privileges or benefits required for companies participating in such arrangements; PROVIDED, HOWEVER, that nothing in this clause 19 is intended to waive any claim or rights that the Government may otherwise have under Federal laws;

(20) liens arising out of any defeased mortgage or indenture of the Mortgagor;

(21) the undivided interest of other owners, and liens on such undivided interests, in property owned jointly with the Mortgagor as well as the rights of such owners to such property pursuant to the ownership contracts;

(22) any lien or privilege vested in any lessor, licensor or permittor for rent to become due or for other obligations or acts to be performed, the payment of which rent or the performance of which other obligations or acts is required under leases, subleases, licenses or permits, so long as the payment of such rent or the performance of such other obligations or acts is not delinquent;

(23) purchase money mortgages permitted by Section 3.08;

(24) the Original Mortgage;

(25) this Mortgage.

Property Additions shall mean Utility System property as to which the Mortgagor shall provide Title Evidence and which shall be (or, if retired, shall have been) subject to the lien of this Mortgage, which shall be properly chargeable to the Mortgagor's utility plant accounts under Accounting Requirements (including property constructed or acquired to replace retired property credited to such accounts) and which shall be:

(1) acquired (including acquisition by merger, consolidation, conveyance or transfer) or constructed by the Mortgagor after the date hereof, including property in the process of construction, insofar as not reflected on the books of the Mortgagor with respect to periods on or prior to the date hereof, and

(2) used or useful in the utility business of the Mortgagor conducted with the properties described in the Granting Clauses of this Mortgage, even though separate from and not physically connected with such properties.

"Property Additions" shall also include:

(3) easements and rights-of-way that are useful for the conduct of the utility business of the Mortgagor, and

(4) property located or constructed on, over or under public highways, rivers or other public property if the Mortgagor has the lawful right under permits, licenses or franchises granted by a governmental body having jurisdiction in the premises or by the law of the State in which such property is located to maintain and operate such property for an unlimited, indeterminate or indefinite period or for the period, if any, specified in such permit, license or franchise or law and to remove such property at the expiration of the period covered by such permit, license or franchise or law, or if the terms of such permit, license, franchise or law require any public authority having the right to take over such property to pay fair consideration therefor.

"Property Additions" shall NOT include:

(a) good will, going concern value, contracts, agreements, franchises, licenses or permits, whether acquired as such, separate and distinct from the property operated in connection therewith, or acquired as an incident thereto, or

(b) any shares of stock or indebtedness or certificates or evidences of interest therein or other securities, or

(c) any plant or system or other property in which the Mortgagor shall acquire only a leasehold interest, or any betterments, extensions, improvements or additions (other than movable physical personal property which the Mortgagor has the right to remove), of, upon or to any plant or system or other property in which the Mortgagor shall own only a leasehold interest unless (i) the term of the leasehold interest in the property to which such betterment, extension, improvement or addition relates shall extend for at least 75% of the useful life of such betterment, extension, improvement or addition and (ii) the lessor shall have agreed to give the Mortgagee reasonable notice and opportunity to cure any default by the Mortgagor under such lease and not to disturb any Mortgagee's possession of such leasehold estate in the event any Mortgagee succeeds to the Mortgagor's interest in such lease upon any Mortgagee's exercise of

any remedies under this Mortgage so long as there is no default in the performance of the tenant's covenants contained therein, or

(d) any property of the Mortgagor subject to the Permitted Encumbrance described in clause (23) of the definition thereof.

Prudent Utility Practice shall mean any of the practices, methods and acts which, in the exercise of reasonable judgment, in light of the facts, including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry prior thereto, known at the time the decision was made, would have been expected to accomplish the desired result consistent with cost-effectiveness, reliability, safety and expedition. It is recognized that Prudent Utility Practice is not intended to be limited to optimum practice, method or act to the exclusion of all others, but rather is a spectrum of possible practices, methods or acts which could have been expected to accomplish the desired result at the lowest reasonable cost consistent with cost-effectiveness, reliability, safety and expedition.

REA shall mean the Rural Electrification Administration of the United States Department of Agriculture, the predecessor of RUS.

Regulatory Created Assets shall mean the sum of any amounts properly recordable as unrecovered plant and regulatory study costs or as other regulatory assets, pursuant to Accounting Requirements.

Restricted Rentals shall mean all rentals required to be paid under finance leases and charged to income, exclusive of any amounts paid under any such lease (whether or not designated therein as rental or additional rental) for maintenance or repairs, insurance, taxes, assessments, water rates or similar charges. For the purpose of this definition the term "finance lease" shall mean any lease having a rental term (including the term for which such lease may be renewed or extended at the option of the lessee) in excess of 3 years and covering property having an initial cost in excess of $250,000 other than aircraft, ships, barges, automobiles, trucks, trailers, rolling stock and vehicles; office, garage and warehouse space; office equipment and computers.

RUS shall mean the Rural Utilities Service, an agency of the United States Department of Agriculture, or if at any time after the execution of this Mortgage RUS is not existing and performing the duties of administering a program of rural electrification as currently assigned to it, then the entity performing such duties at such time.

Security Interest shall mean any assignment, transfer, mortgage, hypothecation or pledge.

Subordinated Indebtedness shall mean secured indebtedness of the Mortgagor, payment of which shall be subordinated to the prior payment of the Notes in accordance with the provisions of Section 3.08 hereof by subordination agreement in form and substance satisfactory to each Mortgagee which approval will not be unreasonably withheld.

Supplemental Mortgage shall mean an instrument of the type described in Section 2.04.

Times Interest Earned Ratio ("TIER") shall mean the ratio determined as follows: for each calendar year: add (i) patronage capital or margins of the Mortgagor and (ii) Interest Expense on Total Long-Term Debt of the Mortgagor and divide the total so obtained by Interest Expense on Total Long-Term Debt of the Mortgagor, provided, however, that in computing Interest Expense on Total Long-Term Debt, there shall be added, to the extent not otherwise included, an amount equal to 33-1/3% of the excess of Restricted Rentals paid by the Mortgagor over 2% of the Mortgagor's Equity.

Title Evidence shall mean with respect to any real property:

(1) an opinion of counsel to the effect that the Mortgagor has title, whether fairly deducible of record or based upon prescriptive rights (or, as to personal property, based on such evidence as counsel shall determine to be sufficient), as in the opinion of counsel is satisfactory for the use thereof in connection with the operations of the Mortgagor, and counsel in giving such opinion may disregard any irregularity or deficiency in the record evidence of title which, in the opinion of such counsel, can be cured by proceedings within the power of the Mortgagor or does not substantially impair the usefulness of such property for the purpose of the Mortgagor and may base such opinion upon counsel's own investigation or upon affidavits, certificates, abstracts of title, statements or investigations made by persons in whom such counsel has confidence or upon examination of a certificate or guaranty of title or policy of title insurance in which counsel has confidence; or

(2) a mortgagee's policy of title insurance in the amount of the cost to the Mortgagor of the land included in Property Additions, as such cost is determined by the Mortgagor in accordance with the Accounting Requirements, issued in favor of the Mortgagees by an entity authorized to insure title in the states where the subject property is located, showing the Mortgagor as the owner of the subject property and insuring the lien of this Mortgage; and with respect to any personal property a certificate of the general manager or other duly authorized officer that the Mortgagor lawfully owns and is possessed of such property.

Total Assets shall mean an amount constituting total assets of the Mortgagor as computed pursuant to Accounting Requirements, but excluding any Regulatory Created Assets.

Total Long-Term Debt shall mean the total outstanding long-term debt of the Mortgagor as computed pursuant to Accounting Requirements.

Total Utility Plant shall mean the total of all property properly recorded in the utility plant accounts of the Mortgagor, pursuant to Accounting Requirements.

Uniform Commercial Code or UCC shall mean the UCC of the state referred to in Section 1.04, and if Mortgaged Property is located in a state other than that state, then as to such Mortgaged Property UCC refers to the UCC in effect in the state where such property is located.

Utility System shall mean the Electric System and all of the Mortgagor's interest in community infrastructure located substantially within its electric service territory, namely water and waste systems, solid waste disposal facilities, telecommunications and other electronic communications systems, and natural gas distribution systems.

Section 1.02. **General Rules of Construction**:

a. Accounting terms not defined in Section 1.01 are used in this Mortgage in their ordinary sense and any computations relating to such terms shall be computed in accordance with the Accounting Requirements.

b. Any reference to "directors" or "board of directors" shall be deemed to mean "trustees" or "board of trustees," as the case may be.

Section 1.03. **Special Rules of Construction if RUS is a Mortgagee**:

During any period that RUS is a Mortgagee, the following additional provisions shall apply:

a. In the case of any Notes that have been guaranteed or insured as to payment by RUS, as to such Notes RUS shall be considered to be the Noteholder, exclusively, regardless of whether such Notes are in the possession of RUS.

b. In the case of any prior approval rights conferred upon RUS by Federal statutes, including (without limitation) Section 7 of the Rural Electrification Act of 1936, as amended, with respect to

the sale or disposition of property, rights, or franchises of the Mortgagor, all such statutory rights are reserved except to the extent that they are expressly modified or waived in this Mortgage.

Section 1.04. **Governing Law**:

This Mortgage shall be construed in and governed by Federal law to the extent applicable, and otherwise by the laws of the state listed on Schedule "A" hereto.

Section 1.05. **Notices**:

All demands, notices, reports, approvals, designations, or directions required or permitted to be given hereunder shall be in writing and shall be deemed to be properly given if sent by registered or certified mail, postage prepaid, or delivered by hand, or sent by facsimile transmission, receipt confirmed, addressed to the proper party or parties at the addresses listed on Schedule "A" hereto, and as to any other person, firm, corporation or governmental body or agency having an interest herein by reason of being a Mortgagee, at the last address designated by such person, firm, corporation, governmental body or agency to the Mortgagor and the other Mortgagees. Any such party may from time to time designate to each other a new address to which demands, notices, reports, approvals, designations or directions may be addressed, and from and after any such designation the address designated shall be deemed to be the address of such party in lieu of the address given above.

ARTICLE II

ADDITIONAL NOTES

Section 2.01. **Additional Notes**:

(a) Without the prior consent of any Mortgagee or any Noteholder, the Mortgagor may issue Additional Notes to the Government or to another lender or lenders for the purpose of acquiring, procuring or constructing new or replacement Eligible Property Additions and such Additional Notes will thereupon be secured equally and ratably with the Notes if each of the following requirements are satisfied:

(1) As evidenced by a certificate of an Independent certified public accountant sent to each Mortgagee on or before the first advance of proceeds from such Additional Notes:

(i) The Mortgagor shall have achieved for each of the two calendar years immediately preceding the issuance of such Additional Notes, a TIER of not less than 1.25 and a DSC of not less than 1.25;

(ii) After taking into account the effect of such Additional Notes on the Total Long Term Debt of the Mortgagor, the ratio of the Mortgagor's Net Utility Plant to its Total Long Term Debt shall be greater than or equal to 1.0 on a pro forma basis;

(iii) After taking into account the effect of such Additional Notes on the Total Assets of such Mortgagor, the Mortgagor shall have Equity greater than or equal to 27 percent of Total Assets on a pro forma basis; and

(iv) The sum of the aggregate principal amount of such Additional Notes (if any) that are not related to the Electric System if added to the aggregate outstanding principal amount of all the existing Notes (if any) that are not related to the Electric System will not exceed 30% of the Mortgagor's Equity on a pro forma basis.

(2) No Event of Default has occurred and is continuing hereunder, or any event which with the giving of notice or lapse of time or both would become an Event of Default has occurred and is continuing.

(3) The Eligible Property Additions being constructed, acquired, procured or replaced are part of the Mortgagor's Utility System.

(4) The Mortgagor's general manager or other duly authorized officer shall send to each of the Mortgagees a certificate in substantially the form attached hereto as Exhibit A on or before the date of the first advance of proceeds from such Additional Notes.

(b) For purposes of this section:

(1) "Eligible Property Additions" shall mean Property Additions acquired or whose construction was completed not more than 5 years prior to the issuance of the Additional Notes and Property Additions acquired or whose construction is started and/or completed not more than 4 years after issuance of the Additional Notes, but shall exclude any Property Additions financed by any other debt secured under the Mortgage at the time additional Notes are issued;

(2) Notes are considered to be "issued" on, and the date of "issuance" shall be, the date on which they are executed by the Mortgagor; and

(3) For purposes of calculating the pro forma ratios in subparagraphs (a)(1)(ii) and (iii), the values for Total Long Term Debt and Total Assets before debt issuance and the values for Equity and Net Utility Plant shall be the most recently available end-of-month figures preceding the issuance of the Additional Notes, but in no case for a month ending more than 180 days preceding such issuance.

Section 2.02. **Refunding or Refinancing Notes**:

The Mortgagor shall also have the right without the consent of any Mortgagee or any Noteholder to issue Additional Notes for the purpose of refunding or refinancing any Notes so long as the total amount of outstanding indebtedness evidenced by such Additional Note or Notes is not greater than 105% of the then outstanding principal balance of the Note or Notes being refunded or refinanced. PROVIDED, HOWEVER, that the Mortgagor may not exercise its rights under this Section if an Event of Default has occurred and is continuing, or any event which with the giving of notice or lapse of time or both would become an Event of Default has occurred and is continuing. On or before the first advance of proceeds from Additional Notes issued under this section, the Mortgagor shall notify each Mortgagee of the refunding or refinancing. Additional Notes issued pursuant to this Section 2.02 will thereupon be secured equally and ratably with the Notes.

Section 2.03. **Other Additional Notes**:

With the prior written consent of each Mortgagee, the Mortgagor may issue Additional Notes to the Government or any lender or lenders, which Notes will thereupon be secured equally and ratably with Notes without regard to whether any of the requirements of Sections 2.01 or 2.02 are satisfied.

Section 2.04. **Additional Lenders Entitled to the Benefit of This Mortgage**:

Without the prior consent of any Mortgagee or any Noteholder, each new lender designated as a payee in any Additional Notes issued by the Mortgagor pursuant to Section 2.01 or 2.02 of this Mortgage shall become a Mortgagee hereunder upon the execution and delivery by the Mortgagor and such lender of a supplemental mortgage hereto designating such lender as a Mortgagee hereunder. Such new lender shall be entitled to the benefits of this Mortgage without further act or deed. Each

Mortgagee and each person or entity that becomes a lender pursuant to Section 2.01 or 2.02 of this Mortgage shall, upon the request of the Mortgagor to do so, execute and deliver a supplement to this Mortgage in substantially the form set forth in Section 2.05 to evidence the addition of such new lender as an additional Mortgagee entitled to the benefits of this Mortgage. The failure of any existing Mortgagee to enter into such supplemental mortgage shall not deprive the new lender of its rights under this Mortgage; provided that such additional indebtedness otherwise conforms in all respects with the requirements for issuing Additional Notes under this Mortgage.

Section 2.05. **Form of Supplemental Mortgage**:

(a) The form of supplemental mortgage referred to in Section 2.04 is attached to this Mortgage as Exhibit B and hereby incorporated by reference as if set forth in full at this point.

(b) In the event that the Mortgagor subsequently issues Additional Notes pursuant to Sections 2.01 or 2.02 to any existing Mortgagee and that Mortgagee desires further assurance that such Additional Notes will be secured by the lien of the Mortgage, an instrument substantially in the form of the supplemental mortgage attached as Exhibit B may be used.

(c) In the event that the Mortgagor issues Additional Notes pursuant to Section 2.03 to either an existing Mortgagee or a new lender, in either case with the prior written consent of each Mortgagee, then an instrument substantially in the form of the supplemental mortgage attached as Exhibit B may also be used.

ARTICLE III

PARTICULAR COVENANTS OF THE MORTGAGOR

Section 3.01. **Payment of Debt Service on Notes**:

The Mortgagor will duly and punctually pay the principal, premium, if any, and interest on the Notes in accordance with the terms of the Notes, the Loan Agreements, this Mortgage and any Supplemental Mortgage authorizing such Notes.

Section 3.02. **Warranty of Title**:

(a) At the time of the execution and delivery of this instrument, the Mortgagor has good and marketable title in fee simple to the real property specifically described in Granting Clause First as owned in fee and good and marketable title to the interests in real property specifically described in Granting Clause First, subject to no mortgage, lien, charge or encumbrance except as stated therein, and has full power and lawful authority to grant, bargain, sell, alien, remise, release, convey, assign, transfer, encumber, mortgage, pledge, set over and confirm said real property and interests in real property in the manner and form aforesaid.

(b) At the time of the execution and delivery of this instrument, the Mortgagor lawfully owns and is possessed of the personal property specifically described in Granting Clauses First through Seventh, subject to no mortgage, lien, charge or encumbrance except as stated therein, and has full power and lawful authority to mortgage, assign, transfer, deliver, pledge and grant a continuing security interest in said property and, including any proceeds thereof, in the manner and form aforesaid.

(c) The Mortgagor hereby does and will forever warrant and defend the title to the property specifically described in Granting Clause First against the claims and demands of all persons whomsoever, except Permitted Encumbrances.

Section 3.03. **After-Acquired Property; Further Assurances; Recording:**

(a) All property of every kind, other than Excepted Property, acquired by the Mortgagor after the date hereof, shall, immediately upon the acquisition thereof by the Mortgagor, and without any further mortgage, conveyance or assignment, become subject to the lien of this Mortgage; SUBJECT, HOWEVER, to Permitted Encumbrances and the exceptions, if any, to which all of the Mortgagees consent. Nevertheless, the Mortgagor will do, execute, acknowledge and deliver all and every such further acts, conveyances, mortgages, financing statements and assurances as any Mortgagee shall require for accomplishing the purposes of this Mortgage, including, but not limited to, at the request of any Mortgagee, taking such actions and executing and delivering such documents as are necessary under the Uniform Commercial Code or other applicable law to perfect or establish the Mortgagees' first priority security interests in any Mortgaged Property to the extent that such perfection or priority cannot be accomplished by the filing of a financing statement.

(b) The Mortgagor will cause this Mortgage and all Supplemental Mortgages and other instruments of further assurance, including all financing statements covering security interests in personal property, to be promptly recorded, registered and filed, and will execute and file such financing statements and cause to be issued and filed such continuation statements, all in such manner and in such places as may be required by law fully to preserve and protect the rights of all of the Mortgagees and Noteholders hereunder to all property comprising the Mortgaged Property. The Mortgagor will furnish to each Mortgagee:

(1) promptly after the execution and delivery of this instrument and of each Supplemental Mortgage or other instrument of further assurance, an Opinion of Counsel stating that, in the opinion of such Counsel, this instrument and all such Supplemental Mortgages and other instruments of further assurance have been properly recorded, registered and filed to the extent necessary to make effective the lien intended to be created by this Mortgage, and reciting the details of such action or referring to prior Opinions of Counsel in which such details are given, and stating that all financing statements and continuation statements have been executed and filed that are necessary fully to preserve and protect the rights of all of the Mortgagees and Noteholders hereunder, or stating that, in the opinion of such Counsel, no such action is necessary to make the lien effective; and

(2) during the month of January in each year following the first anniversary of the date of this Mortgage, an Opinion of Counsel, dated on or about the date of delivery, either stating that, in the opinion of such Counsel, such action has been taken with respect to the recording, registering, filing, re-recording, re-registering and re-filing of this instrument and of all Supplemental Mortgages, financing statements, continuation statements or other instruments of further assurances as is necessary to maintain the lien of this Mortgage (including the lien on any property acquired by the Mortgagor after the execution and delivery of this instrument and owned by the Mortgagor at the end of preceding calendar year) and reciting the details of such action or referring to prior Opinions of Counsel in which such details are given, and stating that all financing statements and continuation statements have been executed and filed that are necessary to fully preserve and protect the rights of all of the Mortgagees and Noteholders hereunder, or stating that, in the opinion of such Counsel, no such action is necessary to maintain such lien.

Section 3.04. **Environmental Requirements and Indemnity**:

(a) The Mortgagor shall, with respect to all facilities which may be part of the Mortgaged Property, comply with all Environmental Laws.

(b) The Mortgagor shall defend, indemnify, and hold harmless each Mortgagee, its successors and assigns, from and against any and all liabilities, losses, damages, costs, expenses (including but not limited to reasonable attorneys' fees and expenses), causes of actions, administrative proceedings, suits, claims, demands, or judgments of any nature arising out of or in connection with any matter related to the Mortgage Property and any Environmental Law, including but not limited to:

(1) the past, present, or future presence of any hazardous substance, contaminant, pollutant, or hazardous waste on or related to the Mortgaged Property;

(2) any failure at any time by the undersigned to comply with the terms of any order related to the Mortgaged Property and issued by any Federal, state, or municipal department or agency (other than RUS) exercising its authority to enforce any Environmental Law; and

(3) any lien or claim imposed under any Environmental Law related to clause (1).

(c) Within 10 (ten) business days after receiving knowledge of any liability, losses, damages, costs, expenses (including but not limited to reasonable attorneys' fees and expenses), cause of action, administrative proceeding, suit, claim, demand, judgment, lien, reportable event including but not limited to the release of a hazardous substance, or potential or actual violation or non-compliance arising out of or in connection with the Mortgaged Property and any Environmental Law, the Mortgagor shall provide each Mortgagee with written notice of such matter. With respect to any matter upon which it has provided such notice, the Mortgagor shall immediately take any and all appropriate actions to remedy, cure, defend, or otherwise affirmatively respond to the matter.

Section 3.05. **Payment of Taxes**:

The Mortgagor will pay or cause to be paid as they become due and payable all taxes, assessments and other governmental charges lawfully levied or assessed or imposed upon the Mortgaged Property or any part thereof or upon any income therefrom, and also (to the extent that such payment will not be contrary to any applicable laws) all taxes, assessments and other governmental charges lawfully levied, assessed or imposed upon the lien or interest of the Noteholders or of the Mortgagees in the Mortgaged Property, so that (to the extent aforesaid) the lien of this Mortgage shall at all times be wholly preserved at the cost of the Mortgagor and without expense to the Mortgagees or the Noteholders; PROVIDED, HOWEVER, that the Mortgagor shall not be required to pay and discharge or cause to be paid and discharged any such tax, assessment or governmental charge to the extent that the amount, applicability or validity thereof shall currently be contested in good faith by appropriate proceedings and the Mortgagor shall have established and shall maintain adequate reserves on its books for the payment of the same.

Section 3.06. **Authority to Execute and Deliver Notes, Loan Agreements and Mortgage; All Action Taken; Enforceable Obligations**:

The Mortgagor is authorized under its articles of incorporation and bylaws (or code of regulations) and all applicable laws and by corporate action to execute and deliver the Notes, any Additional Notes, the Loan Agreements and this Mortgage. The Notes, the Loan Agreements and this Mortgage are, and any Additional Notes and Loan Agreements when executed and delivered will be, the valid and enforceable obligations of the Mortgagor in accordance with their respective terms.

Section 3.07. **Restrictions on Further Encumbrances on Property:**

Except to secure Additional Notes, the Mortgagor will not, without the prior written consent of each Mortgagee, create or incur or suffer or permit to be created or incurred or to exist any Lien, charge, assignment, pledge or mortgage on any of the Mortgaged Property inferior to, prior to, or on a parity with the Lien of this Mortgage except for the Permitted Encumbrances. Subject to the provisions of Section 3.08, or unless approved by each of the Mortgagees, the Mortgagor will purchase all materials, equipment and replacements to be incorporated in or used in connection with the Mortgaged Property outright and not subject to any conditional sales agreement, chattel mortgage, bailment, lease or other agreement reserving to the seller any right, title or Lien.

Section 3.08. **Restrictions On Additional Permitted Debt:**

The Mortgagor shall not incur, assume, guarantee or otherwise become liable in respect of any debt for borrowed money and Restricted Rentals (including Subordinated Debt) other than the following: ("Permitted Debt")

(1) Additional Notes issued in compliance with Article II hereof;

(2) Purchase money indebtedness in non-Utility System property, in an amount not exceeding 10% of Net Utility Plant;

(3) Restricted Rentals in an amount not to exceed 5% of Equity during any 12 consecutive calendar month period;

(4) Unsecured lease obligations incurred in the ordinary course of business except Restricted Rentals;

(5) Unsecured indebtedness for borrowed money;

(6) Debt represented by dividends declared but not paid; and

(7) Subordinated Indebtedness approved by each Mortgagee.

PROVIDED, However, that the Mortgagor may incur Permitted Debt without the consent of the Mortgagee only so long as there exists no Event of Default hereunder and there has been no continuing occurrence which with the passage of time and giving of notice could become an Event of Default hereunder.

PROVIDED, FURTHER, by executing this Mortgage any consent of RUS that the Mortgagor would otherwise be required to obtain under this Section is hereby deemed to be given or waived by RUS by operation of law to the extent, but only to the extent, that to impose such a requirement of RUS consent would clearly violate existing Federal laws or government regulations.

Section 3.09. **Preservation of Corporate Existence and Franchises:**

The Mortgagor will, so long as any Outstanding Notes exist, take or cause to be taken all such action as from time to time may be necessary to preserve its corporate existence and to preserve and renew all franchises, rights of way, easements, permits, and licenses now or hereafter to be granted or upon it conferred the loss of which would have a material adverse affect on the Mortgagor's financial condition or business. The Mortgagor will comply with all laws, ordinances, regulations, orders, decrees and other legal requirements applicable to it or its property the violation of which could have a material adverse affect on the Mortgagor's financial condition or business.

Section 3.10. **Limitations on Consolidations and Mergers:**

The Mortgagor shall not, without the prior written approval of each Mortgagee, consolidate or merge with any other corporation or convey or transfer the Mortgaged Property substantially as an entirety unless:

(1) such consolidation, merger, conveyance or transfer shall be on such terms as shall fully preserve the lien and security hereof and the rights and powers of the Mortgagees hereunder;

(2) the entity formed by such consolidation or with which the Mortgagor is merged or the corporation which acquires by conveyance or transfer the Mortgaged Property substantially as an entirety shall execute and deliver to the Mortgagees a mortgage supplemental hereto in recordable form and containing an assumption by such successor entity of the due and punctual payment of the principal of and interest on all of the Outstanding Notes and the performance and observance of every covenant and condition of this Mortgage;

(3) immediately after giving effect to such transaction, no default hereunder shall have occurred and be continuing;

(4) the Mortgagor shall have delivered to the Mortgagees a certificate of its general manager or other officer, in form and substance satisfactory to each of the Mortgagees, which shall state that such consolidation, merger, conveyance or transfer and such supplemental mortgage comply with this subsection and that all conditions precedent herein provided for relating to such transaction have been complied with;

(5) the Mortgagor shall have delivered to the Mortgagees an opinion of counsel in form and substance satisfactory to each of the Mortgagees; and

(6) the entity formed by such consolidation or with which the Mortgagor is merged or the corporation which acquires by conveyance or transfer the Mortgaged Property substantially as an entirety shall be an entity -

(A) having Equity equal to at least 27% of its Total Assets on a pro forma basis after giving effect to such transaction,

(B) having a pro forma TIER of not less than 1.25 and a pro forma DSC of not less than 1.25 for each of the two preceding calendar years, and

(C) having Net Utility Plant equal to or greater than 1.0 times its Total Long-Term Debt on a pro forma basis. Upon any consolidation or merger or any conveyance or transfer of the Mortgaged Property substantially as an entirety in accordance with this subsection, the successor entity formed by such consolidation or with which the Mortgagor is merged or to which such conveyance or transfer is made shall succeed to, and be substituted for, and may exercise every right and power of, the Mortgagor under this Mortgage with the same effect as if such successor entity had been named as the Mortgagor herein.

Section 3.11. **Limitations on Transfers of Property**:

The Mortgagor may not, except as provided in Section 3.10 above, without the prior written approval of each Mortgagee, sell, lease or transfer any Mortgaged Property to any other person or entity (including any subsidiary or affiliate of the Mortgagor), unless

(1) there exists no Event of Default or occurrence which with the passing of time and the giving of notice would be an Event of Default,

(2) fair market value is obtained for such property,

(3) the aggregate value of assets so sold, leased or transferred in any 12-month period is less than 10% of Net Utility Plant, and

(4) the proceeds of such sale, lease or transfer, less ordinary and reasonable expenses incident to such transaction, are immediately

(i) applied as a prepayment of all Notes equally and ratably,

(ii) in the case of dispositions of equipment, materials or scrap, applied to the purchase of other property useful in the Mortgagor's utility business, not necessarily of the same kind as the property disposed of, which shall forthwith become subject to the Lien of the Mortgage, or

(iii) applied to the acquisition or construction of utility plant.

Section 3.12. **Maintenance of Mortgaged Property**:

(a) So long as the Mortgagor holds title to the Mortgaged Property, the Mortgagor will at all times maintain and preserve the Mortgaged Property which is used or useful in the Mortgagor's business and each and every part and parcel thereof in good repair, working order and condition, ordinary wear and tear and acts of God excepted, and in compliance with Prudent Utility Practice and in compliance with all applicable laws, regulations and orders, and will from time to time make all needed and proper repairs, renewals and replacements, and useful and proper alterations, additions, betterments and improvements, and will, subject to contingencies beyond its reasonable control, at all times use all reasonable diligence to furnish the consumers served by it through the Mortgaged Property, or any part thereof, with an adequate supply of electric power and energy. If any substantial part of the Mortgaged Property is leased by the Mortgagor to any other party, the lease agreement between the Mortgagor and the lessee shall obligate the lessee to comply with the provisions of subsections (a) and (b) of this Section in respect of the leased facilities and to permit the Mortgagor to operate the leased facilities in the event of any failure by the lessee to so comply.

(b) If in the sole judgment of any Mortgagee, the Mortgaged Property is not being maintained and repaired in accordance with paragraph (a) of this section, such Mortgagee may send to the Mortgagor a written report of needed improvements and the Mortgagor will upon receipt of such written report promptly undertake to accomplish such improvements.

(c) The Mortgagor further agrees that upon reasonable written request of any Mortgagee, which request together with the requests of any other Mortgagees shall be made no more frequently than once every three years, the Mortgagor will supply promptly to each Mortgagee a certification (hereinafter called the "Engineer's Certification"), in form satisfactory to the requestor, prepared by a professional engineer, who shall be satisfactory to the Mortgagees, as to the condition of the Mortgaged Property. If in the sole judgment of any Mortgagee the Engineer's Certification discloses the need for improvements to the condition of the Mortgaged Property or any other operations of the Mortgagor, such Mortgagee may send to the Mortgagor a written report of such improvements and the Mortgagor will upon receipt of such written report promptly undertake to accomplish such of these improvements as are required by such Mortgagee.

Section 3.13. **Insurance; Restoration of Damaged Mortgaged Property**:

(a) The Mortgagor will take out, as the respective risks are incurred, and maintain the classes and amounts of insurance in conformance with generally accepted utility industry standards

for such classes and amounts of coverages of utilities of the size and character of the Mortgagor and consistent with Prudent Utility Practice.

(b) The foregoing insurance coverage shall be obtained by means of bond and policy forms approved by regulatory authorities having jurisdiction, and, with respect to insurance upon any part of the Mortgaged Property, shall provide that the insurance shall be payable to the Mortgagees as their interests may appear by means of the standard mortgagee clause without contribution. Each policy or other contract for such insurance shall contain an agreement by the insurer that, notwithstanding any right of cancellation reserved to such insurer, such policy or contract shall continue in force for at least 30 days after written notice to each Mortgagee of cancellation.

(c) In the event of damage to or the destruction or loss of any portion of the Mortgaged Property which is used or useful in the Mortgagor's business and which shall be covered by insurance, unless each Mortgagee shall otherwise agree, the Mortgagor shall replace or restore such damaged, destroyed or lost portion so that such Mortgaged Property shall be in substantially the same condition as it was in prior to such damage, destruction or loss, and shall apply the proceeds of the insurance for that purpose. The Mortgagor shall replace the lost portion of such Mortgaged Property or shall commence such restoration promptly after such damage, destruction or loss shall have occurred and shall complete such replacement or restoration as expeditiously as practicable, and shall pay or cause to be paid out of the proceeds of such insurance all costs and expenses in connection therewith.

(d) Sums recovered under any policy or fidelity bond by the Mortgagor for a loss of funds advanced under the Notes or recovered by any Mortgagee or any Noteholder for any loss under such policy or bond shall, unless applied as provided in the preceding paragraph, be used to finance construction of utility plant secured or to be secured by this Mortgage, or unless otherwise directed by the Mortgagees, be applied to the prepayment of the Notes pro rata according to the unpaid principal amounts thereof (such prepayments to be applied to such Notes and installments thereof as may be designated by the respective Mortgagee at the time of any such prepayment), or be used to construct or acquire utility plant which will become part of the Mortgaged Property. At the request of any Mortgagee, the Mortgagor shall exercise such rights and remedies which they may have under such policy or fidelity bond and which may be designated by such Mortgagee, and the Mortgagor hereby irrevocably appoints each Mortgagee as its agent to exercise such rights and remedies under such policy or bond as such Mortgagee may choose, and the Mortgagor shall pay all costs and reasonable expenses incurred by the Mortgagee in connection with such exercise.

Section 3.14. **Mortgagee Right to Expend Money to Protect Mortgaged Property**:

The Mortgagor agrees that any Mortgagee from time to time hereunder may, in its sole discretion, after having given 5 Business Days prior written notice to the Mortgagor, but shall not be obligated to, advance funds on behalf of the Mortgagor, in order to insure the Mortgagor's compliance with any covenant, warranty, representation or agreement of the Mortgagor made in or pursuant to this Mortgage or any of the Loan Agreements, to preserve or protect any right or interest of the Mortgagees in the Mortgaged Property or under or pursuant to this Mortgage or any of the Loan Agreements, including without limitation, the payment of any insurance premiums or taxes and the satisfaction or discharge of any judgment or any Lien upon the Mortgaged Property or other property or assets of the Mortgagor; provided, however, that the making of any such advance by or through any Mortgagee shall not constitute a waiver by any Mortgagee of any Event of Default with respect to which such advance is made nor relieve the Mortgagor of any such Event of Default. The Mortgagor shall pay to a Mortgagee upon demand all such advances made by such Mortgagee with interest thereon at a rate equal to that on the Note having the highest interest rate but in no event shall such

rate be in excess of the maximum rate permitted by applicable law. All such advances shall be included in the obligations and secured by the security interest granted hereunder.

Section 3.15. **Time Extensions for Payment of Notes:**

Any Mortgagee may, at any time or times in succession without notice to or the consent of the Mortgagor, or any other Mortgagee, and upon such terms as such Mortgagee may prescribe, grant to any person, firm or corporation who shall have become obligated to pay all or any part of the principal of (and premium, if any) or interest on any Note held by or indebtedness owed to such Mortgagee or who may be affected by the lien hereby created, an extension of the time for the payment of such principal, (and premium, if any) or interest, and after any such extension the Mortgagor will remain liable for the payment of such Note or indebtedness to the same extent as though it had at the time of such extension consented thereto in writing.

Section 3.16. **Application of Proceeds from Condemnation:**

(a) In the event that the Mortgaged Property or any part thereof, shall be taken under the power of eminent domain, all proceeds and avails therefrom may be used to finance construction of utility plant secured or to be secured by this Mortgage. Any proceeds not so used shall forthwith be applied by the Mortgagor: first, to the ratable payment of any indebtedness secured by this Mortgage other than principal of or interest on the Notes; second, to the ratable payment of interest which shall have accrued on the Notes and be unpaid; third, to the ratable payment of or on account of the unpaid principal of the Notes, to such installments thereof as may be designated by the respective Mortgagee at the time of any such payment; and fourth, the balance shall be paid to whomsoever shall be entitled thereto.

(b) If any part of the Mortgaged Property shall be taken by eminent domain, each Mortgagee shall release the property so taken from the Mortgaged Property and shall be fully protected in so doing upon being furnished with:

(1) A certificate of a duly authorized officer of the Mortgagor requesting such release, describing the property to be released and stating that such property has been taken by eminent domain and that all conditions precedent herein provided or relating to such release have been complied with; and

(2) an opinion of counsel to the effect that such property has been lawfully taken by exercise of the right of eminent domain, that the award for such property so taken has become final and that all conditions precedent herein provided for relating to such release have been complied with.

Section 3.17. **Compliance with Loan Agreements; Notice of Amendments to and Defaults under Loan Agreements:**

The Mortgagor will observe and perform all of the material covenants, agreements, terms and conditions contained in any Loan Agreement entered into in connection with the issuance of any of the Notes, as from time to time amended. The Mortgagor will send promptly to each Mortgagee notice of any default by the Mortgagor under any Loan Agreement and notice of any amendment to any Loan Agreement. Upon request of any Mortgagee, the Mortgagor will furnish to such Mortgagee single copies of such Loan Agreements and amendments thereto as such Mortgagee may request.

Section 3.18. **Rights of Way, etc., Necessary in Business:**

The Mortgagor will use its best efforts to obtain all such rights of way, easements from landowners and releases from lienors as shall be necessary or advisable in the conduct of its business, and, if requested by any Mortgagee, deliver to such Mortgagee evidence satisfactory to such Mortgagee of the obtaining of such rights of way, easements or releases.

Section 3.19. **Limitations on Providing Free Electric Services:**

The Mortgagor will not furnish or supply or cause to be furnished or supplied any electric power, energy or capacity free of charge to any person, firm or corporation, public or private, and the Mortgagor will enforce the payment of any and all amounts owning to the Mortgagor by reason of the ownership and operation of the Utility System by discontinuing such use, output, capacity, or service, or by filing suit therefor within 90 days after any such accounts are due, or by both such discontinuance and by filing suit.

Section 3.20. **Keeping Books; Inspection by Mortgagee:**

The Mortgagor will keep proper books, records and accounts, in which full and correct entries shall be made of all dealings or transactions of or in relation to the Notes and the Utility System, properties, business and affairs of the Mortgagor in accordance with the Accounting Requirements. The Mortgagor will at any and all times, upon the written request of any Mortgagee and at the expense of the Mortgagor, permit such Mortgagee by its representatives to inspect the Utility System and properties, books of account, records, reports and other papers of the Mortgagor and to take copies and extracts therefrom, and will afford and procure a reasonable opportunity to make any such inspection, and the Mortgagor will furnish to each Mortgagee any and all such information as such Mortgagee may request, with respect to the performance by the Mortgagor of its covenants under this Mortgage, the Notes and the Loan Agreements.

Section 3.21. **Maximum Debt Limit:**

The Notes at any one time secured by this Mortgage shall not in the aggregate principal amount exceed the Maximum Debt Limit.

Section 3.22. **Authorization to File Financing Statements:**

The Mortgagor hereby irrevocably authorizes the Mortgagee at any time and from time to time to file in any jurisdiction any initial financing statements and amendments thereto that:

(a) Indicate the Mortgaged Property (i) as all assets of the Mortgagor or words of similar effect, regardless of whether any particular asset comprised in the Mortgaged Property falls within the scope of Article 9 of the applicable UCC, or (ii) as being of an equal or lesser scope or with greater detail, and

(b) Contain any other information required by the applicable UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including, but not limited to (i) whether the Mortgagor is an organization, the type of organization and any organizational identification number issued to the Mortgagor, and (ii) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Mortgaged Property relates. The Mortgagor agrees to furnish any such information to the Mortgagee promptly upon request. The Mortgagor also ratifies its authorization for the Mortgagee to have filed in any UCC jurisdiction any like initial financing statements or amendments thereto if filed prior to the date hereof.

ARTICLE IV

EVENTS OF DEFAULT AND REMEDIES

Section 4.01. **Events of Default:**

Each of the following shall be an "Event of Default" under this Mortgage:

(a) default shall be made in the payment of any installment of or on account of interest on or principal of (or premium, if any associated with) any Note or Notes for more than five (5) Business Days after the same shall be required to be made;

(b) default shall be made in the due observance or performance of any other of the covenants, conditions or agreements on the part of the Mortgagor, in any of the Notes, Loan Agreements or in this Mortgage, and such default shall continue for a period of thirty (30) days after written notice specifying such default and requiring the same to be remedied and stating that such notice is a "Notice of Default" hereunder shall have been given to the Mortgagor by any Mortgagee; PROVIDED, HOWEVER that in the case of a default on the terms of a Note or Loan Agreement of a particular Mortgagee, the "Notice of Default" required under this paragraph may only be given by that Mortgagee;

(c) the Mortgagor shall file a petition in bankruptcy or be adjudicated a bankrupt or insolvent, or shall make an assignment for the benefit of its creditors, or shall consent to the appointment of a receiver of itself or of its property, or shall institute proceedings for its reorganization or proceedings instituted by others for its reorganization shall not be dismissed within sixty (60) days after the institution thereof;

(d) a receiver or liquidator of the Mortgagor or of any substantial portion of its property shall be appointed and the order appointing such receiver or liquidator shall not be vacated within sixty (60) days after the entry thereof;

(e) the Mortgagor shall forfeit or otherwise be deprived of its corporate charter or franchises, permits, easements, or licenses required to carry on any material portion of its business;

(f) a final judgment for an amount of more than $25,000 shall be entered against the Mortgagor and shall remain unsatisfied or without a stay in respect thereof for a period of sixty (60) days; or,

(g) any material representation or warranty made by the Mortgagor herein, in the Loan Agreements or in any certificate or financial statement delivered hereunder or thereunder shall prove to be false or misleading in any material respect at the time made.

Section 4.02. **Acceleration of Maturity; Rescission and Annulment:**

(a) If an Event of Default described in Section 4.01(a) has occurred and is continuing, any Mortgagee upon which such default has occurred may declare the principal of all its Notes secured hereunder to be due and payable immediately by a notice in writing to the Mortgagor and to the other Mortgagees (failure to provide said notice to any other Mortgagee shall not affect the validity of any acceleration of the Note or Notes by such Mortgagee), and upon such declaration, all unpaid principal (and premium, if any) and accrued interest so declared shall become due and payable immediately, anything contained herein or in any Note or Notes to the contrary notwithstanding.

(b) If any other Event of Default shall have occurred and be continuing, any Mortgagee may declare the principal of all its Notes secured hereunder to be due and payable immediately by a notice in writing to the Mortgagor and to the other Mortgagees (failure to provide said notice to any other Mortgagee shall not affect the validity of any acceleration of the Note or Notes by such Mortgagee), and upon such declaration, all unpaid principal (and premium, if any) and accrued interest so declared shall become due and payable immediately, anything contained herein or in any Note or Notes to the contrary notwithstanding.

(c) Upon receipt of actual knowledge of or any notice of acceleration by any Mortgagee, any other Mortgagee may declare the principal of all of its Notes to be due and payable

immediately by a notice in writing to the Mortgagor and upon such declaration, all unpaid principal (and premium, if any) and accrued interest so declared shall become due and payable immediately, anything contained herein or in any Note or Notes or Loan Agreements to the contrary notwithstanding.

(d) If after the unpaid principal of (and premium, if any) and accrued interest on any of the Notes shall have been so declared to be due and payable, all payments in respect of principal and interest which shall have become due and payable by the terms of such Note or Notes (other than amounts due as a result of the acceleration of the Notes) shall be paid to the respective Mortgagees, and (i) all other defaults under the Loan Agreements, the Notes and this Mortgage shall have been made good or cured to the satisfaction of the Mortgagees representing at least 80% of the aggregate unpaid principal balance of all of the Notes then outstanding, (ii) proceedings to foreclose the lien of this Mortgage have not been commenced, and (iii) all reasonable expenses paid or incurred by the Mortgagees in connection with the acceleration shall have been paid to the respective Mortgagees, then in every such case such Mortgagees representing at least 80% of the aggregate unpaid principal balance of all of the Notes then outstanding may by written notice to the Mortgagor, for purposes of this Mortgage, annul such declaration and waive such default and the consequences thereof, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Section 4.03. **Remedies of Mortgagees**:

If one or more of the Events of Default shall occur and be continuing, any Mortgagee personally or by attorney, in its or their discretion, may, in so far as not prohibited by law:

(a) take immediate possession of the Mortgaged Property, collect and receive all credits, outstanding accounts and bills receivable of the Mortgagor and all rents, income, revenues, proceeds and profits pertaining to or arising from the Mortgaged Property, or any part thereof, whether then past due or accruing thereafter, and issue binding receipts therefor; and manage, control and operate the Mortgaged Property as fully as the Mortgagor might do if in possession thereof, including, without limitation, the making of all repairs or replacements deemed necessary or advisable by such Mortgagee in possession;

(b) proceed to protect and enforce the rights of all of the Mortgagees by suits or actions in equity or at law in any court or courts of competent jurisdiction, whether for specific performance of any covenant or any agreement contained herein or in aid of the execution of any power herein granted or for the foreclosure hereof or hereunder or for the sale of the Mortgaged Property, or any part thereof, or to collect the debts hereby secured or for the enforcement of such other or additional appropriate legal or equitable remedies as may be deemed necessary or advisable to protect and enforce the rights and remedies herein granted or conferred, and in the event of the institution of any such action or suit the Mortgagee instituting such action or suit shall have the right to have appointed a receiver of the Mortgaged Property and of all proceeds, rents, income, revenues and profits pertaining thereto or arising therefrom, whether then past due or accruing after the appointment of such receiver, derived, received or had from the time of the commencement of such suit or action, and such receiver shall have all the usual powers and duties of receivers in like and similar cases, to the fullest extent permitted by law, and if application shall be made for the appointment of a receiver the Mortgagor hereby expressly consents that the court to which such application shall be made may make said appointment; and

(c) sell or cause to be sold all and singular the Mortgaged Property or any part thereof, and all right, title, interest, claim and demand of the Mortgagor therein or thereto, at public auction

at such place in any county (or its equivalent locality) in which the property to be sold, or any part thereof, is located, at such time and upon such terms as may be specified in a notice of sale, which shall state the time when and the place where the sale is to be held, shall contain a brief general description of the property to be sold, and shall be given by mailing a copy thereof to the Mortgagor at least fifteen (15) days prior to the date fixed for such sale and by publishing the same once in each week for two successive calendar weeks prior to the date of such sale in a newspaper of general circulation published in said locality or, if no such newspaper is published in such locality, in a newspaper of general circulation in such locality, the first such publication to be not less than fifteen (15) days nor more than thirty (30) days prior to the date fixed for such sale. Any sale to be made under this subparagraph (c) of this Section 4.03 may be adjourned from time to time by announcement at the time and place appointed for such sale or for such adjourned sale or sales, and without further notice or publication the sale may be had at the time and place to which the same shall be adjourned; provided, however, that in the event another or different notice of sale or another or different manner of conducting the same shall be required by law the notice of sale shall be given or the sale be conducted, as the case may be, in accordance with the applicable provisions of law. The expense incurred by any Mortgagee (including, but not limited to, receiver's fees, counsel fees, cost of advertisement and agents' compensation) in the exercise of any of the remedies provided in this Mortgage shall be secured by this Mortgage.

(d) In the event that a Mortgagee proceeds to enforce remedies under this Section, any other Mortgagee may join in such proceedings. In the event that the Mortgagees are not in agreement with the method or manner of enforcement chosen by any other Mortgagee, the Mortgagees representing a majority of the aggregate unpaid principal balance on the then outstanding Notes may direct the method and manner in which remedial action will proceed.

Section 4.04. **Application of Proceeds from Remedial Actions**:

Any proceeds or funds arising from the exercise of any rights or the enforcement of any remedies herein provided after the payment or provision for the payment of any and all costs and expenses in connection with the exercise of such rights or the enforcement of such remedies shall be applied first, to the ratable payment of indebtedness hereby secured other than the principal of or interest on the Notes; second, to the ratable payment of interest which shall have accrued on the Notes and which shall be unpaid; third, to the ratable payment of or on account of the unpaid principal of the Notes; and the balance, if any, shall be paid to whomsoever shall be entitled thereto.

Section 4.05. **Remedies Cumulative; No Election**:

Every right or remedy herein conferred upon or reserved to the Mortgagees or to the Noteholders shall be cumulative and shall be in addition to every other right and remedy given hereunder or now or hereafter existing at law, or in equity, or by statute. The pursuit of any right or remedy shall not be construed as an election.

Section 4.06. **Waiver of Appraisement Rights; Marshaling of Assets Not Required**:

The Mortgagor, for itself and all who may claim through or under it, covenants that it will not at any time insist upon or plead, or in any manner whatever claim, or take the benefit or advantage of, any appraisement, valuation, stay, extension or redemption laws now or hereafter in force in any locality where any of the Mortgaged Property may be situated, in order to prevent, delay or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property, or any part thereof, or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser or purchasers thereat, and the Mortgagor, for itself and all who may claim through or under it, hereby waives the benefit of all such laws unless such waiver shall be forbidden by law.

Under no circumstances shall there be any marshaling of assets upon any foreclosure or to other enforcement of this Mortgage.

Section 4.07. **Notice of Default**:

The Mortgagor covenants that it will give immediate written notice to each Mortgagee of the occurrence of any Event of Default or in the event that any right or remedy described in Sections 4.02 and 4.03 hereof is exercised or enforced or any action is taken to exercise or enforce any such right or remedy.

ARTICLE V

POSSESSION UNTIL DEFAULT-DEFEASANCE CLAUSE

Section 5.01. **Possession Until Default**:

Until some one or more of the Events of Default shall have happened, the Mortgagor shall be suffered and permitted to retain actual possession of the Mortgaged Property, and to manage, operate and use the same and any part thereof, with the rights and franchises appertaining thereto, and to collect, receive, take, use and enjoy the rents, revenues, issues, earnings, income, proceeds, products and profits thereof or therefrom, subject to the provisions of this Mortgage.

Section 5.02. **Defeasance**:

If the Mortgagor shall pay or cause to be paid the whole amount of the principal of (and premium, if any) and interest on the Notes at the times and in the manner therein provided, and shall also pay or cause to be paid all other sums payable by the Mortgagor hereunder or under any Loan Agreement and shall keep and perform, all covenants herein required to be kept and performed by it, then and in that case, all property, rights and interest hereby conveyed or assigned or pledged shall revert to the Mortgagor and the estate, right, title and interest of the Mortgagee so paid shall thereupon cease, determine and become void and such Mortgagee, in such case, on written demand of the Mortgagor but at the Mortgagor's cost and expense, shall enter satisfaction of the Mortgage upon the record. In any event, each Mortgagee, upon payment in full to such Mortgagee by the Mortgagor of all principal of (and premium, if any) and interest on any Note held by such Mortgagee and the payment and discharge by the Mortgagor of all charges due to such Mortgagee hereunder or under any Loan Agreement, shall execute and deliver to the Mortgagor such instrument of satisfaction, discharge or release as shall be required by law in the circumstances.

Section 5.03. **Special Defeasance**:

Other than any Notes excluded by the foregoing Sections 5.01 and 5.02 and Notes which have become due and payable, the Mortgagor may cause the Lien of this Mortgage to be defeased with respect to any Note for which it has deposited or caused to be deposited in trust solely for the purpose an amount sufficient to pay and discharge the entire indebtedness on such Note for principal (and premium, if any) and interest to the date of maturity thereof; PROVIDED, HOWEVER, that depository serving as trustee for such trust must first be accepted as such by the Mortgagee whose Notes are being defeased under this section. In such event, such a Note will no longer be considered to be an Outstanding Note for purposes of this Mortgage and the Mortgagee shall execute and deliver to the Mortgagor such instrument of satisfaction, discharge or release as shall be required by law in the circumstances.

ARTICLE VI

MISCELLANEOUS

Section 6.01. **Property Deemed Real Property**:

It is hereby declared to be the intention of the Mortgagor that any electric generating plant or plants and facilities and all electric transmission and distribution lines, or other Electric System or Utility System facilities, embraced in the Mortgaged Property, including (without limitation) all rights of way and easements granted or given to the Mortgagor or obtained by it to use real property in connection with the construction, operation or maintenance of such plant, lines, facilities or systems, and all other property physically attached to any of the foregoing, shall be deemed to be real property.

Section 6.02. **Mortgage to Bind and Benefit Successors and Assigns**:

All of the covenants, stipulations, promises, undertakings and agreements herein contained by or on behalf of the Mortgagor shall bind its successors and assigns, whether so specified or not, and all titles, rights and remedies hereby granted to or conferred upon the Mortgagees shall pass to and inure to the benefit of the successors and assigns of the Mortgagees and shall be deemed to be granted or conferred for the ratable benefit and security of all who shall from time to time be a Mortgagee. The Mortgagor hereby agrees to execute such consents, acknowledgments and other instruments as may be reasonably requested by any Mortgagee in connection with the assignment, transfer, mortgage, hypothecation or pledge of the rights or interests of such Mortgagee hereunder or under the Notes or in and to any of the Mortgaged Property.

Section 6.03. **Headings**:

The descriptive headings of the various articles and sections of this Mortgage and also the table of contents were formulated and inserted for convenience only and shall not be deemed to affect the meaning or construction of any of the provisions hereof.

Section 6.04. **Severability Clause**:

In case any provision of this Mortgage or in the Notes or in the Loan Agreements shall be invalid or unenforceable, the validity, legality and enforceability of the remaining provisions thereof shall not in any way be affected or impaired, nor, nor shall any invalidity or unenforceability as to any Mortgagee hereunder affect or impair the rights hereunder of any other Mortgagee.

Section 6.05. **Mortgage Deemed Security Agreement**:

To the extent that any of the property described or referred to in this Mortgage is governed by the provisions of the UCC this Mortgage is hereby deemed a "security agreement" under the UCC, and, if so elected by any Mortgagee, a "financing statement" under the UCC for said security agreement. The mailing addresses of the Mortgagor as debtor, and the Mortgagees as secured parties are as set forth in Schedule "A" hereof. If any Mortgagee so directs the Mortgagor to do so, the Mortgagor shall file as a financing statement under the UCC for said security agreement and for the benefit of all of the Mortgagees, an instrument other than this Mortgage. In such case, the instrument to be filed shall be in a form customarily accepted by the filing office as a financing statement. PROCEEDS OF COLLATERAL ARE COVERED HEREBY. The Mortgagor is an organization of the type and organized in the jurisdiction set forth on the first page hereof. The cover page hereof accurately sets forth the Mortgagor's organizational identification number or accurately states that the Mortgagor has none.

Section 6.06. **Indemnification by Mortgagor of Mortgagees:**

The Mortgagor agrees to indemnify and save harmless each Mortgagee against any liability or damages which any of them may incur or sustain in the exercise and performance of their rightful powers and duties hereunder. For such reimbursement and indemnity, each Mortgagee shall be secured under this Mortgage in the same manner as the Notes and all such reimbursements for expense or damage shall be paid to the Mortgagee incurring or suffering the same with interest at the rate specified in Section 3.14 hereof. The Mortgagor's obligation to indemnify the Mortgagees under this section and under Section 3.04 shall survive the satisfaction of the Notes, the reconveyance or foreclosure of this Mortgage, the acceptance of a deed in lieu of foreclosure, or any transfer or abandonment of the Mortgaged Property.

IN WITNESS WHEREOF, SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION, as Mortgagor, has caused this Restated Mortgage and Security Agreement to be signed in its name and its corporate seal to be hereunto affixed and attested by its officers thereunto duly authorized, UNITED STATES OF AMERICA, as Mortgagee and NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION, as Mortgagee, have each caused this Restated Mortgage and Security Agreement to be signed in their respective names by duly authorized persons, all as of this day and year first above written.

SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

by _____, Chairman

(Seal)

Attest: _____
Secretary

Executed by the Mortgagor in the presence of:

_____

_____
Witnesses

UNITED STATES OF AMERICA

by _____

Brandon McBride

Administrator
of the
Rural Utilities Service

Executed by United States of America, Mortgagee, in the presence of:

_____ MICHELE L. BROOKS

_____ Joshua J. Cohen

Witnesses

DISTRICT OF COLUMBIA) SS

On this 1st day of November, 2016, personally appeared before me Brandon McBride, who, being duly sworn, did say that he is the Administrator of the Rural Utilities Service, an agency of the United States of America, and acknowledged to me that, acting under a delegation of authority duly given and evidenced by law and presently in effect, he executed said instrument as the act and deed of the United States of America for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF I have heretofore set my hand and official seal the day and year last above written.

_____

Notary Public ROBIN MEIGEL

ROBIN MEIGEL NOTARY PUBLIC DISTRICT OF COLUMBIA MY COMMISSION EXPIRES 11-30-2020

(Notarial Seal)

My commission expires: 11-30-2020.

COMMONWEALTH OF KENTUCKY)

) SS

COUNTY OF Pulaski)

I, Amy Acton, a Notary Public in and for the County and Commonwealth aforesaid, do hereby certify that Gregory D. Redmon, personally known to me to be the Chairman of South Kentucky Rural Electric Cooperative Corporation, a corporation of the Commonwealth of Kentucky, and to me known to be the identical person whose name is as Chairman of said corporation, subscribed to the foregoing instrument, appeared before me this day in person and produced the foregoing instrument to me in the County aforesaid and acknowledged that as such Chairman he signed the foregoing instrument pursuant to authority given by the board of directors of said corporation as his free and voluntary act and deed and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth and that the seal affixed to the foregoing instrument is the corporate seal of said corporation.

Given under my hand this 18th day of January, 2017.

Amy Acton

Notary Public in and for
County, Kentucky

(Notarial Seal)

My Commission expires: July 16, 2018

COBANK, ACB

by _____
James E. Rogers

Assistant Corporate Secretary

(SEAL)

Attest: _____ Kelli Cholas
Assistant Corporate Secretary

Executed by CoBank, ACB,
Mortgagee, in the presence of:

_____ DREW HUTCHISON

_____ Kathleen Savageau
Witnesses

STATE OF COLORADO)

) SS

COUNTY OF ARAPAHOE)

This instrument was acknowledged before me on November 29, 2016, by James E. Rogers and Kelli Cholas, each an Assistant Corporate Secretary of CoBank, ACB, a federally chartered instrumentality of the United States, on behalf of said entity.

Witness my hand and official seal.

My commission expires:

8/5/2020

_____
Notary Public - State of Colorado

ELLEN WINGENTER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20164029783
MY COMMISSION EXPIRES AUGUST 5, 2020

NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORPORATION

by Ashley Welsh

Assistant Secretary-Treasurer

(SEAL)

Attest: Jennifer Mink

Assistant Secretary-Treasurer

Executed by the above-named,
Mortgagee, in the presence of:

Kristen Matthews

Joyce Malkoun

Witnesses

COMMONWEALTH OF VIRGINIA)

) SS

COUNTY OF LOUDOUN)

I, Shannon Denise Clouden, a Notary Public in and for the Commonwealth of Virginia, County of Loudoun, do certify that Ashley Welsh, whose name is signed to the writing above, bearing date on the 11 day of November, 20 16, has acknowledged the same before me in my county aforesaid.

Given under my hand this 11 day of November, 20 16.

Shannon Denise Clouden
Notary Public

SHANNON DENISE CLOUDEN
Notary Public
Commonwealth of Virginia
7501045
My Commission Expires Nov 30, 2019

(Notarial Seal)

My commission expires: _____.

SCHEDULE A: Part One

1. The Maximum Debt Limit referred to in Section 1.01 is $500,000,000.00.

2. The state referred to in Section 1.04 is Kentucky.

3. The addresses of the parties referred to in Sections 1.05 and 6.05 are as follows:

As to the Mortgagor:

South Kentucky Rural Electric Cooperative Corporation
925 North Main Street
Somerset, Kentucky 42503-1575

As to the Mortgagees:

Rural Utilities Service
United States Department of Agriculture
Washington, DC 20250-1500

National Rural Utilities
Cooperative Finance Corporation
20701 Cooperative Way
Dulles, Virginia 20166

CoBank, ACB
6340 S. Fiddlers Green Circle
Greenwood Village, Colorado 80111

4. The Original Mortgage as referred to in the first WHEREAS clause above is more particularly described as follows:

Instrument Title	Instrument Date
Restated Mortgage and Security Agreement	September 1, 2005
Supplemental Mortgage	November 1, 2007
Supplemental Mortgage	November 3, 2008
Supplemental Mortgage	March 1, 2011

5. The outstanding secured obligations of the Mortgagor referred to in the fourth WHEREAS clause above are evidenced by the Original Notes described below:

ORIGINAL NOTES issued to the Government [1]

Loan Designation	Face Amount	Date	Final Maturity	% Rate[2]
AV61	$8,315,000.00	01 Aug 1997	01 Aug 2032	V
AZ8[3]	$8,709,000.00	01 Nov 2007	31 Dec 2041	V
BA8[4]	$30,762,000.00	03 Nov 2008	31 Dec 2042	V
BC8[6]	$51,000,000.00	01 Mar 2011	31 Dec 2045	V
BD8[7]	$40,000,000.00	01 Nov 2016	31 Dec 2050	V

[1]"Government" as used in this listing refers to the United States of America acting through the Administrator of the Rural Utilities Service (RUS) or its predecessor agency, the Rural Electrification Administration (REA). Any Notes which are payable to a third party and which either RUS or REA has guaranteed as to payment are also described in this listing as being issued to the Government. Such guaranteed Notes are typically issued to the Federal Financing Bank (FFB), an instrumentality of the United States Department of Treasury, and held by RUS, but may also be issued to non governmental entities.

[2]V=variable interest rate calculated by RUS pursuant to title 7 of the Code of Federal Regulations or by the Secretary of Treasury. CFC=an interest rate which may be fixed or variable from time to time as provided in the CFC Loan Agreement pertaining to a loan which has been made by CFC and guaranteed by RUS. CoBank=an interest rate which may be fixed or variable from time to time as provided in the CoBank Loan Agreement pertaining to a loan which has been made by CoBank and guaranteed by RUS.

[3]In addition to this note which the Mortgagor has issued to FFB, the Mortgagor has also issued a corresponding promissory note to RUS designated as the certain "Reimbursement Note" bearing even date therewith. Such Reimbursement Note is payable to the Government on demand and evidences the Mortgagor's obligation immediately to repay RUS, any payment which RUS may make pursuant to the RUS guarantee of such FFB note, together with interest, expenses and penalties (all as described in such Reimbursement Note). Such Reimbursement Note is an "Additional Note issued to the Government" for purposes of this Part One of Schedule A and this Mortgage and is entitled to all of the benefits and security of this Mortgage.

[4]See footnote 3 in this Schedule A.

[5]See footnote 3 in this Schedule A.

[6]See footnote 3 in this Schedule A.

[7]See footnote 3 in this Schedule A.

SCHEDULE A: Part Two

The outstanding secured obligations of the Mortgagor referred to in the fourth WHEREAS clause above are evidenced by the Original Notes described below:

ORIGINAL NOTES issued to CFC

CFC Loan Designation	Face Amount of Note	Note Date	Maturity Date
KY054-C-9017	$865,000.00	04/29/1982	04/29/2017
KY054-C-9018	$1,339,000.00	04/12/1984	04/12/2019
KY054-C-9019	$1,379,167.00	07/07/1986	07/07/2021
KY054-C-9020	$1,951,546.00	11/09/1989	11/09/2024
KY054-C-9021	$1,573,196.00	12/05/1991	12/05/2026
KY054-C-9022	$2,265,625.00	08/26/1993	08/26/2028
KY054-C-9023	$3,564,000.00	08/01/1997	08/01/2032
KY054-A-9027	$10,074,440.00	09/28/2010	09/28/2027

SCHEDULE A: PART Three

CoBank

The outstanding secured obligations of the Mortgagor referred to in the fourth WHEREAS clause above are evidenced by the Original Notes described below:

ORIGINAL NOTES issued to CoBank, ACB

Payor: South Kentucky Rural Electric Cooperative Corporation

OUTSTANDING NOTES issued to CoBank:

CoBank Loan Designation	Face Amount of Note	Note Date	Maturity Date	% Rate
00087244T01	$58,634,282.39	March 25, 2016	February 20, 2034	3.55%

SCHEDULE B

Property Schedule

The fee and leasehold interests in real property referred to in Subclause A of Granting Clause First are described on the attached pages designated 1 through 4 of this Schedule B.

The recording jurisdictions referred to in Subclause B of Granting Clause First are: Counties of Adair, Casey, Clinton, Cumberland, Laurel, Lincoln, McCreary, Pulaski, Rockcastle, Russell and Wayne in the Commonwealth of Kentucky and Counties of Pickett and Scott in the State of Tennessee.

The contracts referred to in Subclause C of Granting Clause First include without limitation the Wholesale Power Contract, dated as of October 1, 1964, between the Mortgagor and East Kentucky Rural Cooperative Corporation, as amended.

Schedule B – Property Schedule

a) The Existing Electric Facilities are located in the following counties:

Adair, Casey, Clinton, Cumberland, Laurel, Lincoln, McCreary, Pulaski, Rockcastle, Russell, and Wayne, in the State of Kentucky; and Pickett and Scott, in the State of Tennessee.

b) The property referred to in the last line of Paragraph I of the Granting clause includes the following:

1. A certain tract of land described in a certain deed, dated April 9, 1959, by L. C. Denney and Lena Denney, his wife, as grantors, to the Mortgagor, as grantee, and recorded on April 9, 1959, in the Office of the County Court Clerk of Wayne County, in the state of Kentucky, in Deed Book 109, on page 497;

2. A certain tract of land described in a certain deed, dated April 10, 1959, by Clona Burke and Ike Burke, her husband, as grantors, to the Mortgagor, as grantee, and recorded on April 10, 1959, in the Office of the County Court Clerk of Wayne County, in the state of Kentucky, in Deed Book 109, on page 503;

3. A certain tract of land described in a certain deed, dated April 10, 1959, by Ike Burke, and Clona Burke, his wife, as grantors, to the Mortgagor, as grantee, and recorded on April 10, 1959 in the Office of the County Court Clerk of Wayne County, in the state of Kentucky, in Deed Book 109, on page 502;

4. A certain tract of land described in a certain deed, dated February 27, 1961, by Wesley Gregory and his wife, Bessie Gregory, as grantors, to the Mortgagor, as grantee, and recorded on February 27, 1961, in the Office of the County Court Clerk of Wayne County, in the state of Kentucky, in Deed Book 112, on page 274;

5. A certain tract of land described in a certain deed, dated July 24, 1961, by Ella Mae Pleasant and Robert Pleasant, her husband, as grantors, to the Mortgagor, as grantee, and recorded on July 24, 1961, in the Office of the County Court Clerk of Pulaski County, in the state of Kentucky, in Deed Book 236, on page 397, except that portion thereof conveyed by the Mortgagor as grantor to Kenneth Weddle and Pauline Weddle, his wife, as grantees, by deed, dated May 5, 1966, and recorded in the Office of the County Court Clerk of Pulaski County, in the state of Kentucky, in Deed Book 271, page 195; and

6. A certain tract of land described in a certain deed dated December 27, 1967, by Kenneth Weddle, a single man, and Pauline Weddle, a single woman, as grantors, to the Mortgagor, as grantee, and recorded on January 8, 1968, in the Office of the County Court Clerk of Pulaski County, in the State of Kentucky, in Deed Book 280, on page 453;

7. A certain tract of land described in a certain deed, dated November 21, 1995, by The Monticello Banking Company, as grantor, to the Mortgagor, as grantee, and recorded on November 21, 1995, in the Office of the County Clerk of Wayne County in the state of Kentucky, in Deed Book 247, on page 166;

8. A certain tract of land described in a certain deed, dated March 14, 2003, by James A. Staton and Diane Staton, his wife and Mitchell Staton and Judy Staton, his wife, as grantors, to the Mortgagor, as grantee, and recorded on March 18, 2003, in the office of the County Court Clerk of Clinton County in the state of Kentucky, in Deed Book 122, on page 109;

9. A certain tract of land described in a certain deed, dated August 27, 2003, by Darrell L. Saunders, as grantor, to the Mortgagor, as grantee, and recorded on September 5, 2003, in the office of the County Court Clerk of Russell County in the state of Kentucky, in Deed Book 218, on page 25;

10. A certain tract of land described in a certain deed, dated November 24, 2003, by William E. Alcorn and Antha Alcorn, his wife, as grantors, to the Mortgagor, as grantee, and recorded on November 24, 2003, in the office of the County Court Clerk of McCreary County in the state of Kentucky, in Deed Book 166, on page 751-753;

11. A certain tract of land described in a certain deed, dated February 6, 2004, by LEL, Ltd., as grantor, to the Mortgagor, as grantee, and recorded on February 11, 2004, in the office of the County Court Clerk of McCreary County in the state of Kentucky, in Deed Book 167, on page 530-532.

12. A certain tract of land lying and being in the Snow Community of Clinton County, Kentucky, described in a certain deed dated December 28, 2004, sold by Kent Shearer and Bobbi Shearer, husband and wife, as grantors, to the Mortgagor, South Kentucky Rural Electric Cooperative Corporation, as grantee, and recorded on January 11, 2005, in the Office of the County Court Clerk of Clinton County in the state of Kentucky, in Deed Book 128, on page 84.

13. Those certain tracts of land described in a certain deed, dated December 31, 2007, by The Electric Plant Board of the City of Monticello, Kentucky, grantor, to the Mortgagor, as grantee, and recorded on January 2, 2008, in the Office of the Clerk of Wayne County, in the state of Kentucky, in Deed Book 325, on page 738.

14. A certain tract of land described in a certain deed, dated December 10, 2009, by The Proctor C. Rankin, Sr. and Matilda P. Rankin Revocable Living Trusts of July 10, 1992, as grantors, to the Mortgagor, as grantee, and recorded on December 15, 2009 in the Office of the County Clerk of Wayne County in the State of Kentucky, in Deed Book 335, on page 747.

15. A certain tract of land located in McCreary County, Kentucky, described in a certain deed dated November 10, 2010, conveyed and sold to South Kentucky Rural Electric Cooperative Corporation, the Grantee, by Global Tower Assets IV, LLC, the Grantor.

16. A certain tract of land containing approximately 0.363, together with a certain tract of land containing approximately 1.357 acres, located near State Route No. 1275, known as Spann Hill Road, in Wayne County, Kentucky, described in a certain deed dated November 10, 2010, conveyed and sold to South Kentucky Rural Electric Cooperative Corporation, the Grantee, by Global Tower Assets IV, LLC, the Grantor.

17. A certain tract of land located in Pulaski County, Kentucky near State Route No. 1003 described in a certain deed dated November 10, 2010, conveyed and sold to South Kentucky Rural Electric Cooperative Corporation, the Grantee, by Global Tower Assets IV, LLC, the Grantor.

18. A certain tract of land located in Clinton County, Kentucky near State Route No. 734 containing 1.722 acres together with a tract of land in Clinton County, Kentucky containing 0.344 acres, described in a certain deed dated November 10, 2010, conveyed and sold to South Kentucky Rural Electric Cooperative Corporation, the Grantee, by Global Tower Assets IV, LLC, the Grantor.

19. A certain tract or parcel of land lying and being in Pulaski County, Kentucky located at the intersection of Parkers Mill Road and Weddle Lane conveyed to South Kentucky Rural Electric Cooperative Corporation from Citizens National Bank, a/k/a Citizens Bancshares Inc., by Deed dated April 20, 2015, of record in Deed Book 928, Page 543, Pulaski County Clerk's Office, Kentucky.

SCHEDULE C

Excepted Property

None.

Exhibit A

Manager's Certificate

MANAGER'S CERTIFICATE REQUIRED UNDER MORTGAGE SECTION 2.01 FOR ADDITIONAL NOTES

On behalf of *Name of Borrower* (the "Borrower"),

I _____ hereby certify as follows:

(1) I am the Manager of the Borrower and have been duly authorized to deliver this certificate in connection with the Additional Note or Notes to be issued on or about *Date Note(s) are to be Signed* _ pursuant to Section 2.01 of the Mortgage dated _____.

No Event of Default has occurred and is continuing under the Mortgage, or any event which with the giving of notice or lapse of time or both would become an Event of Default has occurred and is continuing.

The Additional Notes described in paragraph 1 are for the purpose of funding Property Additions being constructed, acquired, procured or replaced that are or will become part of the Borrower's Utility System.

The Property Additions referred to in paragraph 3 are Eligible Property Additions, i.e. Property Additions acquired or whose construction was completed not more than 5 years prior to the issuance of additional Notes and Property Additions acquired or whose construction is started and/or completed not more than 4 years after issuance of the additional Notes, but shall exclude any Property Additions financed by any other debt secured under the Mortgage at the time additional Notes are issued

I have reviewed the certificate of the Independent certified public accountant also being delivered to each of the Mortgagees pursuant to Section 2.01 in connection with the aforesaid Additional Note or Notes and concur with the conclusions expressed therein.

Capitalized terms that are used in this certificate but are not defined herein have the meanings defined in the Mortgage.

SAMPLE - NOT FOR EXECUTION

_____ _____

Signed Date

_____ _____

Name

_____ _____

Title

Name and Address of Borrower

_____

_____

_____

_____

_____

_____

Exhibit B

Form of Supplemental Mortgage

Supplemental Mortgage and Security Agreement, dated as of _____, (hereinafter sometimes called this "Supplemental Mortgage") is made by and among _____(hereinafter called the "Mortgagor"), a corporation existing under the laws of the State of_____, and the UNITED STATES OF AMERICA acting by and through the Administrator of the Rural Utilities Service (hereinafter called the "Government"),_____ (Supplemental Lender) (hereinafter called_____), a _____ existing under the laws of _____, and intended to confer rights and benefits on both the Government and _____ and _____ in accordance with this Supplemental Mortgage and the Original Mortgage (hereinafter defined) (the Government and the Supplemental Lenders being hereinafter sometimes collectively referred to as the "Mortgagees").

Recitals

Whereas, the Mortgagor, the Government and _____ are parties to that certain Restated Mortgage and Security Agreement (the "Original Mortgage" as identified in Schedule "A" of this Supplemental Mortgage) originally entered into between the Mortgagor, the Government acting by and through the Administrator of the Rural Utilities Service (hereinafter called "RUS"), and _____ ; and

Whereas, the Original Mortgage as the same may have been previously supplemented, amended or restated is hereinafter referred to as the "Existing Mortgage"; and

Whereas, the Mortgagor deems it necessary to borrow money for its corporate purposes and to issue its promissory notes and other debt obligations therefor, and to mortgage and pledge its property hereinafter described or mentioned to secure the payment of the same, and to enter into this Supplemental Mortgage pursuant to which all secured debt of the Mortgagor hereunder shall be secured on parity, and to add _____ as a Mortgagee and secured party hereunder and under the Existing Mortgage (the Supplemental Mortgage and the Existing Mortgage, hereinafter sometimes collectively referred to the "Mortgage"); and

Whereas, all of the Mortgagor's Outstanding Notes listed in Schedule "A" hereto is secured pari passu by the Existing Mortgage for the benefit of all of the Mortgagees under the Existing Mortgage; and

Whereas, the Existing Mortgage provides the terms by which additional pari passu obligations may be issued thereunder and further provides that the Existing Mortgage may be supplemented from time to time to evidence that such obligations are entitled to the security of the Existing Mortgage and to add additional Mortgagees; and

Whereas, by their execution and delivery of this Supplemental Mortgage the parties hereto do hereby secure the Additional Notes listed in Schedule "A" pari passu with the Outstanding Notes under the Existing Mortgage {and do hereby add _____ as a Mortgagee and a secured party under the Existing Mortgage}; and

Whereas, all acts necessary to make this Supplemental Mortgage a valid and binding legal instrument for the security of such notes and related obligations under the terms of the Mortgage, have been in all respects duly authorized:

Now, Therefore, This Supplemental Mortgage Witnesseth: That to secure the payment of the principal of (and premium, if any) and interest on all Notes issued hereunder according to their tenor and effect, and the performance of all provisions therein and herein contained, and in consideration of the covenants herein contained and the purchase or guarantee of Notes by the guarantors or holders thereof, the Mortgagor has mortgaged, pledged and granted a continuing security interest in, and by these presents does hereby grant, bargain, sell, alienate, remise, release, convey, assign, transfer, hypothecate, pledge, set over and confirm, pledge and grant a continuing security interest in for the purposes hereinafter expressed, unto the Mortgagees all property, rights, privileges and franchises of the Mortgagor of every kind and description, real, personal or mixed, tangible and intangible, of the kind or nature specifically mentioned herein or any other kind or nature, except any Excepted

Property set forth on Schedule "C" hereof owned or hereafter acquired by the Mortgagor (by purchase, consolidation, merger, donation, construction, erection or in any other way) wherever located, including (without limitation) all and singular the following:

A. all of those fee and leasehold interests in real property set forth in Schedule "B" hereto, subject in each case to those matters set forth in such Schedule; and

B. all of those fee and leasehold interests in real property set forth in Schedule "B" of the Existing Mortgage or in any restatement, amendment or supplement thereto, subject in each case to those matters set forth in such Schedule; and

C. all of the kinds, types or items of property, now owned or hereafter acquired, described as Mortgaged Property in the Existing Mortgage or in any restatement, amendment to supplement thereto as Mortgaged Property.

It is Further Agreed and Covenanted That the Original Mortgage, as previously restated, amended or supplemented, and this Supplement shall constitute one agreement and the parties hereto shall be bound by all of the terms thereof and, without limiting the foregoing.

(1) All capitalized terms not defined herein shall have the meaning given in Article I of the Existing Mortgage.

This Supplemental Mortgage is one of the Supplemental Mortgages contemplated by Article II of the Original Mortgage.

The Maximum Debt Limit for the Mortgage shall be as set forth in Schedule "A" hereto.

In Witness Whereof, _____ as Mortgagor

[ACKNOWLEDGMENTS]

SAMPLE - NOT FOR
EXECUTION

Supplemental Mortgage Schedule A

Maximum Debt Limit and Other Information

(1) The Maximum Debt Limit is $_____ .

The Original Mortgage as referred to in the first WHEREAS clause above is more particularly described as follows:_____ .

The Outstanding Notes referred to in the fourth WHEREAS clause above are more particularly described as follows:

The Additional Notes described in the sixth WHEREAS clause above are more particularly described as follows:

Supplemental Mortgage Schedule B

Property Schedule

The fee and leasehold interests in real property referred to in clause A of the Granting Clause are described on the attached pages designated through of this Schedule B.

SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION
FINANCIAL EXHIBIT - 807 KAR 5:001, SECTION 12
EXHIBIT 19

ATTACHMENT B

REAL ESTATE MORTGAGE

THIS MORTGAGE made and entered into this 31st day of **December, 2007,** between **SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION,** acting by and through its duly authorized officer, Allen Anderson, of P.O. Box 910, Somerset, Kentucky 42502, (whether jointly or severally referred to as **"MORTGAGOR"**), and the and **THE CITY OF MONTICELLO, KENTUCKY,** of P.O. Box 550, 157 South Main Street, Monticello, Kentucky 42633, (hereinafter referred to as **"MORTGAGEE"**).

W I T N E S S E T H : :

WHEREAS, MORTGAGOR (jointly and severally) is indebted to **MORTGAGEE** for money due and owing in the sum of **FOUR MILLION FOUR HUNDRED THOUSAND----00/100 DOLLARS ($4,400,000.00)** with interest thereon at the rate of **FOUR AND THREE QUARTERS (4.75%) per cent per annum** until paid, which is evidenced by **MORTGAGOR'S** promissory note of even date herewith, which it has signed, executed and delivered to **MORTGAGEE**, with interest as set forth in said note and due and payable **in 30 annual installments, with said annual principal installments being in the amount of $146,666.67 plus accumulated interest on the unpaid principal or balance, with the first of said annual installment of $146,666.67 plus interest at 4.75% per annum on the unpaid balance to be due and owing on the 31st day of December, 2008 and with a like annual principal installment plus interest being due and payable on each consecutive and successive year thereafter on the 31st day of December, with the final annual installment being due and payable on the 31st day of December, 2037, it being the maturity date, which note shall not be pre-payable.**

NOW THEREFORE, in order to secure the full and prompt payment of said note, with any renewals or extensions thereof, or any additional amounts as provided herein, with offset, the **MORTGAGOR**, waiving and releasing all homestead exemption and all other exemptions allowed by laws, and all rights, title and interest, present or future, actual or contingent, including dower or curtesy, as to property herein described, do hereby grant, bargain, alien, convey and mortgage unto the **MORTGAGEE**, its successors and

assigns forever, with covenant of general warranty the following described real property, together with all improvements and appurtenances thereto, rents, issues and profits therefrom, situated in the **County of Wayne & Pulaski**, Commonwealth of Kentucky, to-wit:

See Exhibit "A" attached hereto for a more complete description of the real estate being pledged and mortgaged herein.

It is agreed that this mortgage shall secure all renewals or extensions of the note set out herein in whole or in part and no renewal or extension shall be deemed a payment or novation so as to discharge this mortgage.

If a default occurs in the payment of any installment under the note and real estate mortgage when due and owing, **MORTGAGEE** shall send **MORTGAGOR** a thirty (30) day written notice at the above address to cure the default, but if not paid within thirty (30) days from the date of said notice, then the entire principal sum and accrued interest shall at once become due and payable without further notice at the option of the holder of the note and real estate mortgage. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

In the event of the partial or total taking of the mortgaged property through the exercise of the power of eminent domain, it is agreed that **MORTGAGOR** shall apply the proceeds from such taking to the prepayment of the note. In the event that any of the mortgaged property shall be destroyed or damaged at any time by fire or any other cause whatsoever, the **MORTGAGOR** will, at their option either (a) promptly restore, or replace the same in a manner that the value thereof when restored or replaced, will be at least equal to the value thereof immediately prior to such destruction or damage, or (b) will pay in full the unpaid balance on the note. If the **MORTGAGOR** shall fail to perform any of the covenants contained in this paragraph, the holder of the note may perform the same on behalf of the **MORTGAGOR,** but shall be under no obligation to do so, and may apply either their own funds or any sum in their hands

representing the proceeds of any insurance upon the mortgaged premises for such purpose; and all sums expended (except proceeds of insurance representing the loss in question) shall be at once repayable by the **MORTGAGOR**, and shall bear interest at the rate shown on the note until paid, and shall be secured hereby, but no action on the part of the holder of the note shall relieve the **MORTGAGOR** from any default hereunder.

MORTGAGOR covenants that it will not sell, transfer or convey the real estate mortgaged herein, nor permit the indebtedness secured hereby to be assumed, without the written consent of the mortgagee, except that Mortgagor may further encumber the proeprty in favor of National Rural Utilities Cooperative Finance Corporation and/or the United States of America without the written consent of the mortgagee; and that a sale, transfer, or conveyance of the premises, or assumption of this mortgage with the consent of the **MORTGAGEE**, shall not operate to release or in any way discharge the **MORTGAGOR** from their primary liability for the payment of said debt. Except as permitted herein, should **MORTGAGOR** or its successors or assigns sell, transfer or convey this property or permit the indebtedness secured hereby to be assumed, this mortgage shall immediately become due and payable at option of the **MORTGAGEE.**

If foreclosure proceedings of any junior lien of any kind whatsoever shall be instituted, **MORTGAGEE** herein may immediately declare its debt hereby secured and the note evidencing same as being immediately due and payable and may start such proceedings as may be necessary to protect its interest in the premises, and its lien herein granted upon rents and profits shall be prior to the lien of any junior lien holder upon rents or profits.

It is expressly stipulated and agreed that the lien of this mortgage shall extend to and include any expenses that might be incurred by **MORTGAGEE** in the collection of this demand hereinbefore recited and should legal proceedings be instituted for the collection of said demands, or any part hereof, the **MORTGAGOR** shall be liable for, reasonable attorney's fees incurred by **MORTGAGEE.**

The **MORTGAGOR** covenants that it will maintain the improvements on said premises in good repair, and not commit or permit any waste to the improvements or the premises herein mortgaged; and that they will not alter, destroy or remove any improvements now on said

property without the written consent of the **MORTGAGEE. MORTGAGOR** agrees to make any repairs demanded by the **MORTGAGEE. MORTGAGOR** further covenant that upon a default in payment of any installment on said note or the breach of any covenant or condition of this instrument, the **MORTGAGEE,** shall have the right at its option to apply for and have appointed by a court of competent jurisdiction, a receiver to take charge of said property and to collect the rents, issues, and profits of the property herein mortgaged, and to apply the same to the payment of the costs of such receivership, to the payment of any superior liens that may have accrued against the property and any delinquent payment or payments as have accrued or that may become due under the terms of this mortgage. Application by the **MORTGAGEE** for receiver shall in no way impair its right to payment of rents and profits or thereafter impair the right to precipitate the collection of the debt herein secured by this mortgage.

The **MORTGAGOR** covenants that neither **MORTGAGOR** nor, to the best knowledge of **MORTGAGOR,** any other person has ever caused or permitted any Hazardous Material (as hereinafter defined) to be located or disposed of on, under or at the Property or any part thereof, and neither the Property nor any part thereof has ever been used) whether by **MORTGAGOR** or, to the best knowledge of **MORTGAGOR,** by any other person) as a dump site or permanent or temporary storage site for any Hazardous Material. **MORTGAGOR** agrees to indemnify and hold **MORTGAGEE** harmless from and against any and all losses, liabilities, damages, injuries, costs, expenses (including without limitation reasonable attorney and consultant fees), claims for damage to the environment, claims for fines or civil penalties, costs of any settlement or judgment, and claims of any and every kind whatsoever, paid, incurred or suffered by **MORTGAGEE,** or asserted against **MORTGAGEE** by any person, entity or governmental agency for, with respect to, or as a direct or indirect result of, the presence on or under the Property of, or the actual or threatened escape, spillage, discharge, emission, or release from the Property of, or transportation of, any Hazardous Material or any noncompliance with any Environmental Law. This indemnity shall apply notwithstanding any negligent or other contributory conduct by or on the part of **MORTGAGEE** or any other person, and shall survive payment of the indebtedness hereby secured, satisfaction and release of this mortgage, foreclosure of this mortgage or conveyance of the Property in lieu thereof. For purposes of this mortgage, "Environmental Law" shall mean any

Federal, State or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning any Hazardous Material, as now or at any time hereafter in effect. "Hazardous Material" shall mean any hazardous, toxic or dangerous waste, substance or material defined as such in, or for purposes of, any Environmental Law. **MORTGAGOR** shall promptly give **MORTGAGEE** written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Material or Environmental Law.

The **MORTGAGOR** covenants that until said debt and interest are fully paid, it will promptly pay all taxes, assessments or other governmental levies that are now and may hereafter become a lien upon said property and will keep the improvements on said premises insured against loss by fire, windstorm, flood or other casualty in a sum commensurate with the value of the property, at least to the extent of protecting the equity of the **MORTGAGEE** in said property, or to the insurable value of said improvements, in some good and solvent insurance company to be approved by the **MORTGAGEE**, and will cause the policy or policies therefore to be assigned or made payable to the **MORTGAGEE** by standard mortgage clause attached thereto, and deliver same, with all premiums fully paid, to the **MORTGAGEE** to be held as additional collateral for this loan and that should they fail to promptly pay taxes, assessments or governmental levy or procure insurance as provided under this provision, the **MORTGAGEE** may pay said taxes, assessments, or levies and procure insurance thereon and any monies so expended by it shall bear interest at the same rate as the principal rate secured by this mortgage from the first day of the month in which any such payment is made and shall be added to and deemed a part of the debt hereby secured, or the **MORTGAGEE** upon such failure upon the part of the **MORTGAGOR** or upon his failure to pay any installment of said note when due, or upon the mortgagor's violation of any of the terms or condition hereof, may at its option, declare the entire unpaid balance of said note immediately due and proceed to enforce this mortgage.

In the event **MORTGAGOR** files bankruptcy, **MORTGAGOR** agrees and consents to **MORTGAGEE** receiving and collecting ongoing and continuing interest on all deficiencies, arrearages and uncollected sums due **MORTGAGEE**.

It is understood that time is of the essence in this contract but that a waiver by the **MORTGAGEE** of a breach of any of the terms and conditions of said note or this mortgage shall not constitute a waiver upon subsequent breach of the terms or conditions thereof. **MORTGAGOR** shall not pre-pay any or all of such indebtedness as set forth in the promissory note of even date herewith due and owing **MORTGAGEE**.

If this box is checked [ ] this mortgage is taken to secure a loan made for the purpose of erecting, improving or adding to a building on the mortgage property.

TO HAVE AND TO HOLD the foregoing described real property, together with all appurtenances thereunto belonging unto the **MORTGAGEE**, its successors and assigns, for the purposes aforesaid, forever, conditioned, however, that **MORTGAGOR** will pay the indebtedness when due, together with all extensions, renewals, all accrued interest thereon, and any and all sums advanced for taxes and insurance premiums or any other sums advanced or loaned by **MORTGAGEE** to **MORTGAGOR** as principal, joint maker and/or endorser, then this mortgage shall become null and void, otherwise, remain in full force and effect.

IN TESTIMONY WHEREOF, witness the signature of the **MORTGAGOR**, this 31st day of **December, 2007.**

SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION

BY: Allen Anderson CEO

ALLEN ANDERSON, CHIEF EXECUTIVE OFFICER

HAVING SEEN AND AGREED TO THE TERMS OF THIS INSTRUMENT:

CITY OF MONTICELLO, KENTUCKY

BY: Kenneth D Catron Mayor

KENNETH CATRON, MAYOR

STATE OF KENTUCKY
COUNTY OF WAYNE

The foregoing instrument was signed and acknowledged before me this 31st day of **December, 2007** by **South Kentucky Rural Electric Cooperative Corporation,** acting by and through its duly authorized officer, Allen Anderson, Chief Executive Officer.

My Comm. Expires: 5/26/2010

Notary Public

STATE OF KENTUCKY
COUNTY OF WAYNE

The foregoing instrument was signed and acknowledged before me this 31st day of **December, 2007** by **The City of Monticello, Kentucky,** acting by and through its duly authorized officer, Kenneth Catron, Mayor.

My Comm. Expires: 5/26/2010

Notary Public

THIS INSTRUMENT PREPARED BY:
PHILLIPS & PHILLIPS
ATTORNEYS AT LAW
P.O. BOX 391
MONTICELLO, KENTUCKY 42633

BY: _____
ATTORNEY

SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION
FINANCIAL EXHIBIT - 807 KAR 5:001, SECTION 12
EXHIBIT 19

ATTACHMENT C

SOUTH KENTUCKY RECC
Existing Notes Outstanding
November 30, 2017

Loan #	Advance #	Issue Date	Maturity Date	Number of Years	Interest Rate %	Original Loan Amount	Principle Balance as of 11/30/2017	Interest Paid in Fiscal Year 2017	Interest Paid in 12 Month Period Ending 11/30/2017
CoBank									
0087244T01		Apr-16	May-34	18	3.550	58,632,798	54,810,490	1,855,365	2,025,122
RUS									
AV61	IB330	Nov-97	Nov-27	30	0.750v	4,157,500	2,099,182	9,949	10,843
AV61	IB335	Jun-99	Jun-29	30	0.875v	4,157,500	2,088,890	11,869	12,576
Totals						8,315,000	4,188,072	21,818	23,419
FFB									
AZ8	H0010	Oct-08	Dec-41	33	3.455	5,400,000	4,559,211	166,649	166,649
BA8	H0015	Mar-09	Dec-41	32	3.649	3,309,000	2,808,417	108,169	108,169
BA8	H0020	Mar-09	Dec-42	33	3.699	17,000,000	14,809,611	577,366	577,366
BA8	H0025	Aug-10	Dec-42	32	3.249	13,762,000	11,862,042	408,445	408,445
BC8	H0030	Jan-13	Jan-46	33	2.657	15,000,000	13,543,476	384,115	384,115
BC8	H0035	Dec-13	Jan-46	32	3.550	6,200,000	5,796,480	216,732	216,732
BC8	H0040	Oct-17	Mar-44	30	1.065v	3,000,000	2,681,852	21,308	21,308
BC8	F0045	Sep-14	Dec-44	30	1.065v	3,000,000	2,723,331	21,638	21,638
BC8	F0050	Oct-14	Jan-46	31	2.870	10,000,000	9,427,410	287,705	287,705
BC8	F0055	Dec-15	Jan-46	30	1.065v	1,000,000	945,712	7,514	7,514
BC8	F0060	Dec-15	Jan-46	30	1.065v	1,000,000	945,723	7,514	7,514
BC8	F0065	Dec-15	Jan-46	30	1.065v	1,000,000	945,666	7,514	7,514
BC8	F0075	Dec-15	Jan-46	30	2.601	3,500,000	3,365,326	93,537	93,537
BC8	F0070	Dec-15	Jan-46	30	1.065v	1,000,000	945,607	7,513	7,513
BC8	F0080	Dec-15	Jan-46	30	1.065v	1,000,000	945,607	7,513	7,513
BC8	F0085	Feb-16	Jan-46	30	2.307	3,000,000	2,893,121	71,792	71,792
BC8	F0090	Feb-16	Jan-46	30	2.223	1,000,000	963,896	23,097	23,097
BC8	F0095	Feb-16	Jan-46	30	2.223	1,300,000	1,253,064	30,027	30,027
BD8	0005-0001	Aug-17	Jan-51	33	2.571	2,000,000	2,000,000	5,614	5,614
BD8	0005-0002	Sep-17	Jan-51	33	2.513	2,000,000	2,000,000	-	-
Totals						94,471,000	85,415,551	2,453,761	2,453,761
CFC									
9017		Apr-82	Feb-17	30	6.100	1,325,052	-	244	244
9018		Feb-84	Feb-19	35	6.100	1,325,052	121,219	10,651	10,651
9019		Mar-86	Mar-21	35	6.200	1,324,000	306,331	21,520	21,520
9020		Aug-89	Aug-24	35	6.250	1,893,000	761,137	50,016	50,016
9021		Sep-91	Nov-26	35	6.250	1,526,000	730,189	46,990	46,990
9022		Jul-93	May-28	35	6.650	2,175,000	1,221,787	82,932	82,932
9023		Jan-99	May-32	35	6.700	3,564,000	2,445,326	164,799	164,799
9027007		Sep-10	Aug-17	7	3.800	783,686	-	11,256	11,256
9027008		Sep-10	Aug-18	8	4.000	666,861	502,626	26,693	26,693
9027009		Sep-10	Aug-19	9	4.150	709,921	709,921	29,462	29,462
9027010		Sep-10	Aug-20	10	4.250	521,640	521,640	22,170	22,170
9027011		Sep-10	Aug-21	11	4.350	587,738	587,738	25,567	25,567
9027012		Sep-10	Aug-22	12	4.400	424,043	424,043	18,658	18,658
9027013		Sep-10	Aug-23	13	4.500	425,366	425,366	19,141	19,141
9027014		Sep-10	Aug-24	14	4.550	274,832	274,832	12,505	12,505
CFC Totals						17,526,191	9,032,156	542,603	542,603
City of Monticello		Dec-07	Dec-37	30	4.750	4,400,000	3,080,000	-	153,267
REDL Loan Fund						8,310,469	2,510,797		
REDL Grant Fund						3,080,000	2,566,000		
Total						194,735,458	161,603,066	4,873,547	5,198,172

Less RUS Payments Unapplied	Less RUS Unapplied Payments	24,984,991	
Less Current Maturities	Less Current Maturities	6,952,950	
Less Interest Accrual Adjustment			(735)
Total Long Term Debt		129,665,124	
Interest Expense on Long Term Debt per Balance Sheet Ending 11/30/2017			5,197,437

SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION
FINANCIAL EXHIBIT - 807 KAR 5:001, SECTION 12
EXHIBIT 19

ATTACHMENT D

South Kentucky Rural Electric Cooperative
Balance Sheet
November 30, 2017

Assets and Other Debits

Total Utility Plant in Service	$257,224,291
Construction Work in Progress	1,009,432
Total Utility Plant	258,233,723
Accum Prov for Dep & Amort	(68,624,566)
Net Utility Plant	189,609,157
Non-Utility Property (Net)	24,793
Inv in Assoc Org - Pat Capital	69,219,870
Inv in Assoc Org Othr Gen Fnd	1,602,639
Inv in Econ Devel Projects	4,498,676
Other Investments	273
Total Other Prop & Investments	75,346,251
Cash - General Funds	2,135,014
Temporary Investments	2,705,271
Accts Recv - Sales Energy (Net)	2,928,329
Accts Recv - Other (Net)	1,427,621
Material & Supplies - Elec & Oth	1,372,300
Prepayments	250,689
Other Current & Accr Assets	8,484,489
Total Current & Accr Assets	19,303,714
Regulatory Assets	1,960,799
Other Deferred Debits	2,850,159
Total Assets and Other Debits	$289,070,080

Liabilities and Other Credits

Memberships	$1,330,042
Patronage Capital	111,893,167
Operating Margins - Prior Year	7,578,670
Operating Margins - Current Year	7,139,213
Non-Operating Margins	1,118,792
Other Margins & Equities	382,551
Total Margins & Equities	129,442,434
Long Term Debt - RUS (Net)	(21,075,306)
Payments Unapplied (24,984,991.36)	
Long Term Debt - FFB - RUS - GUAR	83,369,372
Long Term Debt - Other (Net)	63,029,992
Long Term Debt - RUS - Econ Dev (Net)	4,341,066
Total Long Term Debt	129,665,124
Accum Operating Provisions	9,674,071
Total Other Noncurr Liability	9,674,071
Accounts Payable	8,613,075
Consumer Deposits	1,671,469
Curr Maturities Long Term Debt	6,217,219
Curr Maturit LT Debt Econ Dev	735,731
Other Current & Accrued Liab	2,690,068
Total Current & Accrued Liab	19,927,563
Other Deferred Credits	360,887
Total Liabilities & Other Credits	$289,070,080

SOUTH KENTUCKY RURAL ELECTRIC COOPERATIVE CORPORATION
FINANCIAL EXHIBIT - 807 KAR 5:001, SECTION 12
EXHIBIT 19

ATTACHMENT E

South Kentucky Rural Electric Cooperative
Statement of Operations
Twelve Months Ending November 30, 2017

Operating Revenue and Patronage Capital	$120,349,225
Less: Cost of Purchased Power	87,292,642
Net Revenue	33,056,583
Distribution Expense - Operation	4,087,943
Distribution Expense - Maintenance	7,557,187
Consumer Accounts Expense	3,503,593
Customer Service and Informational Expenses	(30,696)
Sales Expense	24,357
Administrative & General Expense	4,263,176
Total Operation & Maintenance Expense (Less Power Cost)	19,405,560
Depreciation and Amortization Expense	8,215,168
Tax Expense - Property & Gross Receipts	151,595
Interest on Long Term Debt	5,197,437
Interest Expense - Other	9,431
Other Deductions	60,940
Total Cost of Electric Service (Less Power Cost)	33,040,130
Patronage Capital & Operating Margins	16,453
Non-Operating Margins - Interest	1,233,891
Non-Operating Margins - Other	(100,213)
Generation & Transmission Capital Credits	6,234,638
Other Capital Credits & Patronage Dividends	189,880
Patronage Capital or Margins	$7,574,650