

FINANCIAL MARKETS LAW COMMITTEE

ISSUE 56 – EMERGENCY POWERS LEGISLATION

APPENDIX 4A – MATERIALS RELATING TO CONTRACTS

[Please note that this document is intended to be printed on A3 Paper]

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INTRODUCTION

This document is Appendix 4A to the Financial Markets Law Committee report on “Issue 56 – Emergency Powers Legislation” dated [●] 2003 (the “**Report**”). It contains extracts of primary material relating to standard contracts used in the preparation of the report, such extracts being relevant to show how market participants in general agree to deal with an event of major operational disruption.

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	Definition of business day	Force Majeure	Illegality	Rate Disruption	Specific Settlement or Performance Disruption	Grace Periods	Market Convention Overrides	Other
<p>LMA Multicurrency and Revolving Facilities Agreement (January 2003) Published by: The Loan Market Association (LMA) www.loan-market-assoc.com</p>	<p>Clause 1.1 "Business Day means a day (other than a Saturday or Sunday) on which banks are open for general business in London [,] and: (a) (in relation to any date for payment or purchase of a currency other than euro) the principal financial centre of the country of that currency; or (b) (in relation to any date for payment or purchase of euro) any TARGET Day"</p>	<p>Not relevant</p>	<p>Clause 8.1 "Illegality- If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in any Loan: (a) that Lender shall promptly notify the Agent upon becoming aware of that event; (b) upon the Agent notifying the Company, the Commitment of that Lender will be immediately cancelled; and (c) each Borrower shall repay that Lender's participation in the Loans made to that Borrower on the last day of the Interest Period for each Loan occurring after the Agent has notified the Company or, if earlier, the date specified by the Lender in the notice delivered to the Agent (being no earlier than the last day of any applicable grace period permitted by law)."</p>	<p>Clause 11.1 "Absence of quotations Subject to Clause 11.2 (Market disruption), if LIBOR [or, if applicable, EURIBOR] is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, the applicable LIBOR [or EURIBOR] shall be determined on the basis of the quotations of the remaining Reference Banks." Clause 11.2 "Market Disruption (a) If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest on each Lender's share of that Loan for the Interest Period shall be the rate per annum which is the sum of: (i) the Margin; (ii) the rate notified to the Agent by that Lender as soon as practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per annum the cost to that Lender of funding its participation in that Loan from whatever source it may reasonably select; and (iii) the Mandatory Cost, if any, applicable to that Lender's participation in the Loan. (b) In this Agreement "Market Disruption Event" means:</p>	<p>Not relevant</p>	<p>Clause 23.1 "Non-payment An Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the place at and in the currency in which it is expressed to be payable unless: (a) its failure to pay is caused by administrative or technical error; and (b) payment is made within [] Business Days of its due date." Clause 23.3(b) "Other obligations (b) No Event of Default under paragraph (a) above in relation to Clause [] will occur if the failure to comply is capable of remedy and is remedied within: (i) (in relation to []) [] Business Days; or (ii) (in relation to []) [] Business Days, of the Agent giving notice to the Company or the Company becoming aware of the failure to comply."</p>	<p>Clause 1.1 "Quotation Day means, in relation to any period for which an interest rate is to be determined: (a) (if the currency is sterling) the first day of that period; (b) (if the currency is euro) two TARGET Days before the first day of that period; or (c) (for any other currency) two Business Days before the first day of that period, unless market practice differs in the Relevant Interbank Market for a currency, in which case the Quotation Day for that currency will be determined by the Agent in accordance with market practice in the Relevant Interbank Market (and if quotations would normally be given by leading banks in the Relevant Interbank Market on more than one day, the Quotation Day will be the last of those days)."</p>	<p>Clause 23.12 Material Adverse Change Parties to complete</p>

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				<p>(i) at or about noon on the Quotation Day for the relevant Interest Period the Screen Rate is not available and none or only one of the Reference Banks supplies a rate to the Agent to determine LIBOR [or, if applicable, EURIBOR] for the relevant currency and Interest Period; or</p> <p>(ii) before close of business in London on the Quotation Day for the relevant Interest Period, the Agent receives notifications from a Lender or Lenders (whose participations in a Loan exceed [] per cent. of that Loan) that the cost to it of obtaining matching deposits in the Relevant Interbank Market would be in excess of LIBOR [or, if applicable, EURIBOR]."</p> <p>Clause 11.3 "Alternative basis of interest or funding</p> <p>(a) If a Market Disruption Event occurs and the Agent or the Company so requires, the Agent and the Company shall enter into negotiations (for a period of not more than thirty days) with a view to agreeing a substitute basis for determining the rate of interest.</p> <p>(b) Any alternative basis agreed pursuant to paragraph (a) above shall, with the prior consent of all the Lenders and the Company, be binding on all Parties."</p>				
<p>Overseas Securities Lender's Agreement (OSLA) (December 1995)</p> <p>Published by: The International</p>	<p>Clause 1.1</p> <p>"Business Day means a day on which banks and securities markets are open for business generally in London and, in relation to the delivery or</p>	Not relevant	Not relevant	<p>Clause 1.1</p> <p>"Reference Price means:</p> <p>(a) in relation to the valuation of Securities, Equivalent Securities, Collateral and/or Collateral</p>	Not relevant	<p>Clause 12</p> <p>"Events of Default</p> <p>12.1.9 the Lender or the Borrower failing to perform any other of its obligations hereunder and not remedying such failure</p>	<p>Recitals</p> <p>2</p> <p>"All transactions carried out under this Agreement will be effected in accordance with the Rules (as hereinafter defined)</p>	<p>Clause 8</p> <p>"Set-Off Etc</p> <p>8.4 For the purposes of Clause 8.3, but subject to Clause 8.5, the Bid Value and Offer Value of any securities shall be calculated</p>

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<p>Securities Lenders Association www.isla.co.uk</p>	<p>redelivery of any of the following in relation to any loan, in the place(s) where the relevant Securities, Equivalent Securities, Collateral (including Cash Collateral) or Equivalent Collateral are to be delivered."</p>			<p>equivalent to types</p> <p>B (ii), (viii), (xi) and (xii) (more specifically referred to in the Schedule hereto) such price as is equal to the mid market quotation of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral as derived from a reputable pricing information service (such as the services provided by Reuters, Extel Statistical Services and Telerate) reasonably chosen in good faith by the Lender or if unavailable the market value thereof as derived from the prices or rates bid by a reputable dealer for the relevant instrument reasonably chosen in good faith by the Lender, in each case at Close of Business on the previous Business Day;</p> <p>(b) in relation to the valuation of Collateral and/or Collateral equivalent to Collateral types A and B(i) (more specifically referred to in the Schedule hereto), the CGO Reference Price of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral then current as determined in accordance with the CGO Rules from time to time in force; and</p> <p>(c) in relation to the valuation of Collateral and/or Collateral equivalent to Collateral types B(iii), (iv), (v), (vi) (vii) and (ix), (more specifically referred to in the Schedule hereto), the market value thereof as derived from the rates bid by Barclays Bank PLC for such instruments or, in the absence of such a bid, the average of the rates bid by two leading market makers for such instruments at Close of Business</p>		<p>within 30 days after the Non-Defaulting Party serves written notice requiring it to remedy such failure, and the Non-Defaulting Party serves a further written notice on the Defaulting Party."</p>	<p>TOGETHER WITH current market practices, customs and conventions."</p>	<p>as at the Close of Business in the most appropriate market for securities of the relevant description (as determined by the Non-Defaulting Party) on the first Business Day following the Performance Date, or if the relevant Event of Default occurs outside the normal business hours of such market, on the second Business Day following the Performance Date (the "Default Valuation Time").</p> <p>Clause 18</p> <p>"Severance</p> <p>If any provision of this Agreement is declared by any judicial or other competent authority to be void or otherwise unenforceable, that provision shall be severed from the Agreement and the remaining provisions of this Agreement shall remain in full force and effect. The Agreement shall, however, thereafter be amended by the Parties in such reasonable manner so as to achieve, without illegality, the intention of the Parties with respect to that severed provision."</p> <p>Clause 23</p> <p>"Arbitration and Jurisdiction</p> <p>23.2 This Clause 23 shall take effect notwithstanding the frustration or other termination of this Agreement."</p> <p>Note- There is no express grace period for failure to pay or repay Cash Collateral or deliver or redeliver Collateral or Equivalent</p>

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				on the previous Business Day."				Collateral or failure to comply with Clause 6 obligations (collateral); an Event of Default is triggered when the Non Defaulting party serves notice on the Defaulting Party. See Clause 12 Events of Default.
<p>Global Master Securities Lending Agreement (GMSLA) (May 2000)</p> <p>Published by: The International Securities Lenders Association</p> <p>www.isla.co.uk</p>	<p>Clause 2.1</p> <p>"Business Day means a day other than a Saturday or a Sunday on which banks and securities markets are open for business generally in each place stated in paragraph 3 of the Schedule and, in relation to the delivery or redelivery of any of the following in relation to any Loan, in the place(s) where the relevant Securities, Equivalent Securities, Collateral or Equivalent Collateral are to be delivered"</p>	Not relevant	Not relevant	<p>Clause 2</p> <p>"Market Value means:</p> <p>(a) in relation to the valuation of Securities, Equivalent Securities, Collateral or Equivalent Collateral (other than Cash Collateral or a Letter of Credit):</p> <p>(i) such price as is equal to the market quotation for the bid price of such Securities, Equivalent Securities, Collateral and/or Equivalent Collateral as derived from a reputable pricing information service reasonably chosen in good faith by Lender; or</p> <p>(ii) if unavailable the market value thereof as derived from the prices or rates bid by a reputable dealer for the relevant instrument reasonably chosen in good faith by Lender, in each case at Close of Business on the previous Business Day or, at the option of either Party where in its reasonable opinion there has been an exceptional movement in the price of the asset in question since such time, the latest available price; plus (in each case)</p> <p>(iii) the aggregate amount of Income which has accrued but not yet been paid in respect of the Securities, Equivalent Securities, Collateral or Equivalent Collateral concerned to the extent not included in such</p>	Not relevant	<p>Clause 14</p> <p>"Events of Default</p> <p>Each of the following events occurring in relation to either Party (the "Defaulting Party", the other Party being the "Non-Defaulting Party") shall be an Event of Default for the purpose of paragraph Error! Reference source not found. but only (subject to sub-paragraph (v) below) where the Non-Defaulting Party serves written notice on the Defaulting Party:-</p> <p>(i) Borrower or Lender failing to pay or repay Cash Collateral or deliver Collateral or redeliver Equivalent Collateral or Lender failing to deliver Securities upon the due date;</p> <p>(ii) Lender or Borrower failing to comply with its obligations under paragraph Error! Reference source not found.;</p> <p>(iii) Lender or Borrower failing to comply with its obligations under paragraph 6.1;</p> <p>(iv) Borrower failing to comply with its obligations to deliver Equivalent Securities in accordance with paragraph 8;</p> <p>(v) an Act of Insolvency occurring with respect to Lender or Borrower, an Act of Insolvency which is the presentation of a petition for winding up or any analogous</p>	Not relevant	<p>Clause 10</p> <p>"Set-Off Etc</p> <p>10.4 For the purposes of paragraph 10.3, but subject to paragraph 10.5, the Bid Value and Offer Value of any securities shall be calculated for securities of the relevant description (as determined by the Non-Defaulting Party) as of the first Business Day following the Termination Date, or if the relevant Event of Default occurs outside the normal business hours of such market, on the second Business Day following the Termination Date (the "Default Valuation Time").</p> <p>Clause 19</p> <p>"Severance</p> <p>If any provision of this Agreement is declared by any judicial or other competent authority to be void or otherwise unenforceable, that provision shall be severed from the Agreement and the remaining provisions of this Agreement shall remain in full force and effect. The Agreement shall, however, thereafter be amended by the Parties in such reasonable manner so as to achieve as far as possible, without illegality, the intention of the Parties with respect to that severed provision."</p>

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				<p>price, (provided that the price of Securities, Equivalent Securities, Collateral or Equivalent Collateral that are suspended shall (for the purposes of paragraph 5) be nil unless the Parties otherwise agree and (for all other purposes) shall be the price of such Securities, Equivalent Securities, Collateral or Equivalent Collateral, as the case may be, as of Close of Business on the dealing day in the relevant market last preceding the date of suspension or a commercially reasonable price agreed between the Parties"</p>		<p>proceeding or the appointment of a liquidator or analogous officer of the Defaulting Party not requiring the Non-Defaulting Party to serve written notice on the Defaulting Party;</p> <p>(vi) any representation or warranty made by Lender or Borrower being incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated;</p> <p>(vii) Lender or Borrower admitting to the other that it is unable to, or it intends not to, perform any of its obligations under this Agreement and/or in respect of any Loan;</p> <p>(viii) Lender (if applicable) or Borrower being declared in default or being suspended or expelled from membership of or participation in, any securities exchange or association or suspended or prohibited from dealing in securities by any regulatory authority;</p> <p>(ix) any of the assets of Lender or Borrower or the assets of investors held by or to the order of Lender or Borrower being transferred or ordered to be transferred to a trustee (or a person exercising similar functions) by a regulatory authority pursuant to any securities regulating legislation, or</p> <p>(x) Lender or Borrower failing to perform any other of its obligations under this Agreement and not remedying such failure within 30 days after the Non-Defaulting Party serves written notice requiring it to remedy</p>		

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						such failure"		
<p>The TBMA/ISMA Global Master Repurchase Agreement (GMRA) (October 2000)</p> <p>Published by: The Bond Market Association (BMA) www.bondmarkets.com</p> <p>and</p> <p>The International Securities Markets Association (ISMA) www.isma.org</p>	<p>Clause 2</p> <p>"Business Day -</p> <p>(i) in relation to the settlement of any Transaction which is to be settled through Clearstream or Euroclear, a day on which Clearstream or, as the case may be, Euroclear is open to settle business in the currency in which the Purchase Price and the Repurchase Price are denominated;</p> <p>(ii) in relation to the settlement of any Transaction which is to be settled through a settlement system other than Clearstream or Euroclear, a day on which that settlement system is open to settle such Transaction;</p> <p>(iii) in relation to any delivery of Securities not falling within (i) or (ii) above, a day on which banks are open for business in the place where delivery of the relevant Securities is to be effected; and</p> <p>(iv) in relation to any obligation to make a payment not falling within (i) or (ii) above, a day other than a Saturday or a Sunday on which banks are open for business in the principal financial centre of the country of which the currency in which the payment is denominated is the official currency and, if different, in the place where any account designated by the parties for the making or receipt of the payment is situated (or, in the case of a payment in euro, a day on which TARGET operates)"</p>	Not relevant	Not relevant	Not relevant	<p>Clause 10 (e)(ii)</p> <p>"Events of Default</p> <p>If by the Default Valuation Time the non-Defaulting Party has not given a Default Valuation Notice, the Default Market Value of the relevant Equivalent Securities or Equivalent Margin Securities shall be an amount equal to their Net Value at the Default Valuation Time; provided that, if at the Default Valuation Time the non-Defaulting Party reasonably determines that, owing to circumstances affecting the market in the Equivalent Securities or Equivalent Margin Securities in question, it is not possible for the non-Defaulting Party to determine a Net Value of such Equivalent Securities or Equivalent Margin Securities which is commercially reasonable, the Default Market Value of such Equivalent Securities or Equivalent Margin Securities shall be an amount equal to their Net Value as determined by the non-Defaulting Party as soon as reasonably practicable after the Default Valuation Time."</p>	<p>Clause 10 (a)</p> <p>"Events of Default</p> <p>If any of the following events (each an "Event of Default") occurs in relation to either party (the "Defaulting Party", the other party being the "non-Defaulting Party") whether acting as Seller or Buyer:-</p> <p>(i) Buyer fails to pay the Purchase Price upon the applicable Purchase Date or Seller fails to pay the Repurchase Price upon the applicable Repurchase Date, and the non-Defaulting Party serves a Default Notice on the Defaulting Party; or</p> <p>(ii) if the parties have specified in Annex 1 hereto that this subparagraph shall apply, Seller fails to deliver Purchased Securities on the Purchase Date or buyer fails to deliver Equivalent Securities on the Repurchase Date, and the non-Defaulting Party serves a Default Notice on the Defaulting Party; or</p> <p>(iii) Seller or Buyer fails to pay when due any sum payable under subparagraph (g) or (h) below, and the non-Defaulting Party serves a Default Notice on the Defaulting Party; or</p> <p>(iv) Seller or Buyer fails to comply with paragraph 4 and the non-Defaulting party serves a Default Notice on the Defaulting Party; or</p> <p>(v) Seller or Buyer fails to comply with paragraph 5 and the non-Defaulting Party serves a Default Notice on the Defaulting</p>	<p>On a default, transactions are cash settled. If the non-defaulting party is unable to deal in the market or obtain dealer quotes, the default value is taken as the "net value"</p> <p>Clause 10 (iv)</p> <p>"Events of Default</p> <p>Net Value means at any time, in relation to any Deliverable Securities or Receivable Securities, the amount which, in the reasonable opinion of the non-Defaulting Party, represents their fair market value, having regard to such pricing sources and methods (which may include, without limitation, available prices for Securities with similar maturities, terms and credit characteristics as the relevant Equivalent Securities or Equivalent Margin Securities) as the non-Defaulting Party considers appropriate, less, in the case of Receivable Securities, or plus, in the case of Deliverable Securities, all Transaction Costs which would be incurred in connection with the purchase or sale of such Securities".</p>	<p>Clause 2 (cc)</p> <p>"Market Value, with respect to any Securities as of any time on any date, the price for such Securities at such time on such date obtained from a generally recognised source agreed to by the parties (and where different prices are obtained for different delivery dates, the price so obtainable for the earliest available such delivery date) (provided that the price of Securities that are suspended shall (for the purposes of paragraph 4) be nil unless the parties otherwise agree and (for all other purposes) shall be the price of those Securities as of close of business on the dealing day in the relevant market last preceding the date of suspension) plus the aggregate amount of Income which, as of such date, has accrued but not yet been paid in respect of the Securities to the extent not included in such price as of such date, and for these purposes any sum in a currency other than the Contractual Currency for the Transaction in question shall be converted into such Contractual Currency at the Spot Rate prevailing at the relevant time".</p>

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						<p>Party; or</p> <p>(vi) an Act of Insolvency occurs with respect to Seller or Buyer and (except in the case of an Act of Insolvency which is the presentation of a petition for winding-up or any analogous proceeding or the appointment of a liquidator or analogous officer of the Defaulting Party in which case no such notice shall be required) the non-Defaulting party serves a Default Notice on the Defaulting party; or</p> <p>(vii) any representations made by Seller or Buyer are incorrect or untrue in any material respect when made or repeated or deemed to have been made or repeated, and the non-Defaulting Party serves a Default Notice on the Defaulting Party; or</p> <p>(viii) Seller or Buyer admits to the other that it is unable to or intends not to, perform any of its obligations hereunder and/or in respect of any Transaction and the non-Defaulting party serves a Default Notice on the Defaulting Party; or</p> <p>(ix) Seller or Buyer is suspended or expelled from membership of or participation in any securities exchange or association or other self regulating organisation, or suspended from dealing in securities by any government agency, or any of the assets of either Seller or Buyer or the assets of investors held by, or to the order of, Seller or Buyer are transferred or ordered to be transferred to a trustee by a regulatory authority pursuant to any securities regulating legislation and the non-Defaulting Party serves a Default</p>		

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						<p>Notice on the Defaulting Party; or</p> <p>(x) Seller or Buyer fails to perform any other of its obligations hereunder and does not remedy such failure within 30 days after notice is given by the non-Defaulting Party requiring it to do so, and the non-Defaulting Party serves a Default Notice on the Defaulting party;</p> <p>then sub-paragraphs (b) to (f) below shall apply."</p>		
<p>Bank of England Money Market Operations Master Sale and Purchase Agreement (March 2000)</p> <p>Published by: The Bank of England</p> <p>www.bankofengland.co.uk</p>	<p>Clause 1</p> <p>Definitions</p> <p>1.1 "Business Day means a day (other than a Saturday or a Sunday) on which banks are open for business in London"</p>	Not relevant	Not relevant	<p>Clause 11</p> <p>Default Interest</p> <p>"The rate applicable for the purposes of this clause 11 shall be the rate per annum which is one per cent above the London Inter-Bank Offered Rate ("LIBOR") for one month deposits in sterling, and for this purpose LIBOR shall be determined by reference to:</p> <p>(a) the rate published by the British Bankers' Association that appears on the Telerate Page 3750 as of 11 a.m. London time on the day that is two Business Days before any day in respect of which interest falls to be calculated; or</p> <p>(b) if no such rate as is referred to in (a) above is available, the average of the rates at which deposits in sterling are offered to prime banks in the London interbank market by at least two reference banks selected by the Bank at or about 11.00 a.m. London time on the day that is two Business Days before any day in respect of which interest falls to be calculated"</p>	<p>Schedule</p> <p>Market Value</p> <p>"1 (a) Subject to the following provisions of this paragraph, Market Value with respect to any Purchased Securities, Equivalent Securities, Margin Securities or Equivalent Margin Securities means, as at any date:</p> <p>(i) in relation to securities of a type capable of being held in the CGO Service, the Reference Price for such securities used for the purposes of the CGO Service on that date determined in accordance with the rules of the CGO Service;</p> <p>(ii) in relation to securities not falling within 1.1.1 above, the market value of such securities determined in accordance with the Operating Procedures.</p> <p>(b) The Counterparty and the Bank may agree in relation to any Transaction or to this Agreement generally to adopt a different basis for determining the Market Value of Purchased Securities, Equivalent Securities, Margin Securities or Equivalent Margin Securities from that set</p>	<p>Clause 9 Default</p> <p>9.1</p> <p>"For the purposes of this Agreement, and subject to clause 9.2, an Event of Default means any of the following:</p> <p>(a) if the Counterparty fails to deliver the Purchased Securities due pursuant to clause 2.5 on the Purchase Date and by the time (if any) specified for such delivery in the Operating Procedures, or fails to pay the Repurchase Price on the Repurchase Date and by the time (if any) specified for such payment in the Operating Procedures, or fails to comply with its obligations under clause 6.2, clause 6.7 or clause 6.10;</p> <p>(b) if the Counterparty fails to comply with clause 3.1 or clause 3.6 for one full Business Day following the day on which the payment or delivery was due to be made; or</p> <p>(c) if any representation or warranty made or deemed to be made or repeated by the Counterparty under this Agreement or any Transaction was or is incorrect in any</p>	<p>Clause 1 Definitions</p> <p>1.1</p> <p>" Default Market Value means, in relation to Purchased Securities, Equivalent Securities, Margin Securities or Equivalent Margin Securities, the default market value of such securities determined in accordance with the Schedule or, in relation to an amount of cash in sterling, its nominal amount;</p> <p>Market Value means, in relation to Purchased Securities, Equivalent Securities, Margin Securities or Equivalent Margin Securities, the market value of such securities determined in accordance with the Schedule or, in relation to an amount of cash in sterling, its nominal amount;</p> <p>The Net Margin provided to a Party at any time means the excess (if any) of (i) the sum of the amount of Cash Margin paid to that Party and the Market Value of Margin Securities transferred to that Party under clause 3.1 or clause 3.2 (excluding any Cash Margin which has been repaid to the other Party and any Margin</p>	Not relevant

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					<p>out in sub-paragraph (a) above".</p> <p>"2. The Market Value of any Purchased Securities, Equivalent Securities, Margin Securities or Equivalent Margin Securities shall be stated in sterling; and any amounts which would otherwise be expressed in another currency shall for this purpose be converted into sterling, and currency conversions for the purposes of clause 3.10 shall be effected, at the Spot Rate at approximately 9.00 a.m. on the day on which the valuation is effected or, for the purposes of paragraph 3.1.2 of this Schedule 4, at the Default Valuation Time."</p> <p>"3 Default Market Value</p> <p>The Default Market Value with respect to any Purchased Securities, Equivalent Securities, Margin Securities or Equivalent Margin Securities means, as at any date:</p> <p>(a) in the case of securities to be delivered to the Counterparty-</p> <p>(i) if the Bank has between the occurrence of the relevant Event of Default and the Default Valuation Time (as defined below) sold securities forming part of the same issue and being of an identical type and description to those securities and in substantially the same amount as those securities, the net proceeds of sale (after deducting all reasonable costs, fees and expenses incurred in connection therewith);</p> <p>(ii) failing such sale before the Default Valuation Time, the Market Value of such securities</p>	<p>material respect when made or deemed to be made; or</p> <p>(d) if the Counterparty defaults in the due and punctual performance of any of the other provisions of this Agreement or of any Transaction and (if capable of remedy) fails to remedy such default within three full Business Days after receipt of notice from the Bank requiring such default to be remedied; or</p> <p>(h) if a petition is filed or presented in respect of the Counterparty (other than by the Bank in respect of any obligation under this Agreement) in any court or before any agency alleging or for the bankruptcy, winding-up or other insolvency of the Counterparty (or any analogous proceeding) or seeking any reorganisation, arrangement, composition, re-adjustment, administration, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such petition (except in the case of a petition for winding-up or any analogous proceeding) not having been stayed or dismissed within 30 days of its filing"</p>	<p>Securities in respect of which Equivalent Margin Securities have been transferred to the other Party) over (ii) the sum of the amount of cash Margin paid to the other Party and the Market Value of Margin Securities transferred to the other Party under clause 3.1 or clause 3.2 (excluding any Cash Margin) which has been repaid by the other Party and any Margin Securities in respect of which Equivalent Margin Securities have been transferred by the other Party) and for this purpose any amounts not denominated in sterling shall be converted into sterling at the Spot Rate prevailing at the relevant time;</p> <p>Spot Rate means, where an amount in a currency other than sterling is to be converted into sterling at any time (the "conversion time"), the rate of exchange determined by the Bank on the basis of the middle spot rates prevailing in the London foreign exchange market -</p> <p>(a) At the observation point which coincides with or occurs next after the conversion time; or</p> <p>(b) Where the observation point referred to in (a) above falls on a different day from the conversion time, at the observation point which most closely precedes the conversion time;</p> <p>And for this purpose "observation point" means a time at which the Bank determines that it has observed rates in the London foreign exchange market which are representative in relation to the</p>	

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					<p>at the Default Valuation Time;</p> <p>(b) in the case of securities to be delivered by the Counterparty -</p> <p>(i) if the Bank has between the occurrence of the relevant Event of Default and the Default Valuation Time purchased securities forming part of the same issue and being of an identical type and description to those securities and in substantially the same amount, the cost of such purchase (including all reasonable costs, fees and expenses incurred in connection therewith);</p> <p>(ii) failing such purchase before the Default Valuation Time, the amount it would cost to buy such securities at the Default Valuation Time at the best available offer price therefore (and where different offer prices are available for different delivery dates, such offer price in respect of the earliest available such delivery date) on the most appropriate market, together with all reasonable costs, fees and expenses that would be incurred in connection therewith (calculated on the assumption that the aggregate thereof is the least that could reasonably be expected by be paid in order to carry out the transaction),</p> <p>in each case as determined by the Bank; and for this purpose the Default Valuation Time means, with respect to any securities -</p> <p>(a) if the relevant Event of Default occurs during normal business hours on a day which is a dealing day in the most appropriate market for securities</p>		currency in question"	

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					<p>of the relevant description (as determined by the Bank), the close of business in that market on the following dealing day;</p> <p>(b) in any other case, the close of business on the second dealing day in that market after the day on which the relevant Event of Default occurs.</p> <p>4. Where the amount of any securities sold or purchased as mentioned in paragraph 3.1.1. or 3.2.1 above is not identical to that of the securities to be valued for the purposes of that paragraph, the Default Market Value of those securities shall be ascertained by dividing the net proceeds of sale or cost of purchase by the amount of the securities sold or purchased so as to obtain a net unit price and multiplying that net unit price by the amount of the securities to be valued."</p>			
<p>Futures and Options Master Netting Agreement for Exchange Traded and Related Transactions (February 1997)</p> <p>Published by: Futures and Options Association (FOA)</p> <p>www.foa.co.uk</p>	<p>Section 13.3</p> <p>""Business day"</p> <p>shall be construed as a reference to a day (other than a Saturday or Sunday) on which:</p> <p>(i) in relation to a date for the payment of any sum denominated in (a) any currency (other than ecu or euro), banks generally are open for business in the principal financial centre of the country of such currency; (b) ecu, the Ecu Clearing and Settlement System operated by the Ecu Banking Association (or, if such clearing system ceases to be operative, any other clearing or settlement system determined by the Parties) is open for business; or (c) euros, settlement</p>	Not relevant	<p>Clause 9</p> <p>"Termination, Waiver and Partial Invalidation"</p> <p>If, at any time, any provision of these terms is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, nether the legality, validity or enforceability of the remaining provisions of these terms nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby."</p>	<p>Termination and Liquidation</p> <p>Clause 4.7</p> <p>"The amount payable by one Party to the other Party pursuant to the provisions of Clause 4.5, or any applicable laws or regulations, shall be paid in the Non-Defaulting Party's Base Currency by the close of business on the business day following the completion of the termination and liquidation under Clause 4.4, or any laws or regulations having a similar effect, (converted as required by applicable law into any other currency, any costs of such conversion to be borne by, and (if applicable) deducted from any payment to, the Defaulting Party). Any such amount which</p>	Not relevant	<p>Termination and Liquidation</p> <p>Clause 4.1(i)</p> <p>"a Party fails to make any payment when due under or to make or take delivery of any property when due under, or to observe or perform any other provision of, this agreement (including any Transaction governed by these terms) and such failure continues for two business days after notice of non-performance has been given by the other Party to the defaulting Party"</p>	<p>Clause 2.3</p> <p>"These terms shall not be applicable to any Transaction to the extent that action which conflicts with or overrides the provisions of this agreement has been started in relation to that Transaction by a relevant exchange or clearing organisation under applicable rules or laws and is continuing."</p>	Not relevant

	Definition of business day	Force Majeure	Illegality	Rate Disruption	Specific Settlement or Performance Disruption	Grace Periods	Market Convention Overrides	Other
	<p>of payments denominated in euros is generally possible in London or any other financial centre in Europe selected by the Parties; and</p> <p>(ii) in relation to a date for the delivery of any property, property of such type is capable of being delivered in satisfaction of obligations incurred in the market in which the obligation to delivery such first property was incurred"</p>			<p>is not paid on the due date therefore shall bear interest, at the average rate at which overnight deposits in the currency of such payment are offered by major banks in the London interbank market as of 11.00a.m. (London time) (or, if no such rate is available, at such reasonable rate as the Non-Defaulting Party may select) plus 1% per annum, for each day for which such amount remains unpaid."</p>				
<p>Futures and Options Terms of Business for Market Counterparties (September 2002)</p> <p>Published by: Futures and Options Association (FOA)</p> <p>www.foa.co.uk</p>	<p>Section 16</p> <p>"Interpretation</p> <p>Business Day means a day (other than a Saturday or Sunday) on which:</p> <p>(i) in relation to a date for the payment of any sum denominated in (a) any Currency (other than euro), banks generally are open for business in the principal financial centre of the country of such Currency; or</p> <p>(b) euros, settlement of payments denominated in euros is generally possible in London or any other financial centre in Europe selected by us in the Individually Agreed Terms Schedule; and</p> <p>(ii) in relation to a date for the delivery of any property, property of such type is capable of being delivered in satisfaction of obligations incurred in the market in which the obligation to deliver such first property was incurred;</p> <p>and</p> <p>(iii) for all other purposes, is not</p>	<p>Clause 13.2</p> <p>"Force majeure:</p> <p>We shall not be liable to you for any partial or non-performance of our obligations hereunder by reason of any cause beyond our reasonable control, including without limitation any breakdown, malfunction or failure of transmission, communication or computer facilities, industrial action, acts and regulations of any governmental or supra national bodies or authorities or the failure of any relevant intermediate broker, agent or principal of ourselves, custodian, sub-custodian, dealer, exchange, clearing house or regulatory or self-regulatory organisation, for any reason, to perform its obligations"</p>	<p>Clause 14.6</p> <p>"Partial invalidity</p> <p>If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired"</p>	<p>Not relevant</p>	<p>Section 7.8</p> <p>"Market intervention: You understand that business on a market operated by an Exchange may from time to time be suspended or restricted or the market may from time to time be closed for a temporary period or for such longer period as may be determined in accordance with the rules of any relevant Exchange on the occurrence of one or more events which require such action to be taken in the interests of, maintaining a fair and orderly market. Any such action may result in our being unable, and through us, you being unable to enter into Transactions in accordance with the rules of the relevant Exchange. Furthermore we, and through us, you may from time to time be prevented from or hindered in entering into contracts in accordance with the rules of the relevant Exchange as a result of a failure of some or all market facilities. We shall have no liability to you for any losses, costs, expenses or damages incurred or suffered by you as a result of any of the circumstances or occurrences</p>	<p>Clause 11.1</p> <p>"Events of Default</p> <p>(a) you fail to make any payment when due under this agreement or to make or take delivery of any property when due under, or to observe or perform any other provision of this Agreement and such failure continues for [one/two] Business Days after we give you notice of non-performance."</p>	<p>Section 2</p> <p>Applicable regulations and exchange requirements</p> <p>2.1 "Subject to Applicable Regulations: This Agreement and all Transactions are subject to Applicable Regulations so that: (i) if there is any conflict between this Agreement and any Applicable Regulations, the latter will prevail; and (ii) we may take or omit to take any action we consider necessary to ensure compliance with any Applicable Regulations and whatever we do or fail to do in order to comply with them will be binding on you".</p> <p>Clause 11.1</p> <p>"Events of Default</p> <p>(j)we consider it necessary or desirable to prevent what we consider is or might be a violation of any Applicable Regulation or good standard of market practice".</p>	<p>Clause 11.1</p> <p>"Events of Default</p> <p>(k) we consider it necessary or desirable for our own protection or any action is taken or event occurs which we consider might have a material adverse effect upon your ability to perform of your obligations under this Agreement".</p>

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	a bank holiday or public holiday in London"				referred to above."		Note- Transactions given up for clearing, procedure where fees paid to executing broker, exercise of options and correction of orders are all made subject to the rules and procedures of the relevant Exchange.	
<p>The International Foreign Exchange and Options Master Agreement (FEOMA) (1997) (Terms are same as in ICOM and IFEMA) Available at: The Financial Markets Lawyers Group (FMLG) www.ny.frb.org/fmlg See also, the provisions in Annex 1.</p>	<p>Section 1 "Business Day means for purposes of: (i) Section 3.2, a day which is a Local Banking Day for the applicable Designated Office of the Buyer; (ii) Section 5.1 and the definition of American Style Option, a day which is a Local Banking Day for the applicable Designated Office of the Seller; (iii) clauses (i), (viii) and (xii) of the definition of Event of Default, a day which is a Local Banking Day for the Non-Defaulting Party; (iv) solely in relation to delivery of a Currency, a day which is a Local Banking Day in relation to that Currency; and (v) any other provision of the Agreement, a day which is a Local Banking Day for the applicable Designated Offices of both Parties; provided, however, that neither Saturday nor Sunday shall be considered a Business Day for any purpose." "Local Banking Day means (i) for any Currency, a day on which commercial banks effect deliveries of that Currency in</p>	<p>See also, the provisions in Annex 1. Section 9 "9.1 Force Majeure, Act of State, Illegality and Impossibility If either Party is prevented from or hindered or delayed by reason of force majeure or act of state in the delivery or receipt of any Currency in respect of a Currency Obligation or Option or if it becomes or, in the good faith judgment of one of the Parties, may become unlawful or impossible for either Party to make or receive any payment in respect of a Currency Obligation or Option, then the Party for whom such performance has been prevented, hindered or delayed or has become illegal or impossible shall promptly give notice thereof to the other Party and either Party may, by notice to the other Party, require the close-out and liquidation of each affected Currency Obligation and Option in accordance with the provisions of Section 8.1 and, for such purposes, the Party unaffected by such force majeure, act of state, illegality or impossibility (or, if both Parties are so affected, whichever Party gave the relevant notice) shall perform the calculation required</p>	<p>See also, provisions on Force Majeure</p>	<p>Clause 1 "LIBOR with respect to any Currency and date, means the average rate at which deposits in the Currency for the relevant amount and time period are offered by major banks in the London interbank market as of 11:00 a.m. (London time) on such date, or, if major banks do not offer deposits in such Currency in the London interbank market on such date, the average rate at which deposits in the Currency for the relevant amount and time period are offered by major banks in the relevant foreign exchange market at such time on such date as may be determined by the Party making the determination."</p>	<p>Not relevant</p>	<p>See also, the provisions in Annex 1. Section 1 "Events of Default (i) the Defaulting Party shall (A) default in any payment when due under the Agreement (including, but not limited to, a Premium payment) to the Non-Defaulting Party with respect to any Currency Obligation or Option and such failure shall continue for two (2) Business Days after the Non-Defaulting Party has given the Defaulting Party written notice of non-payment, or (B) fail to perform or comply with any other obligation assumed by it under the Agreement and such failure is continuing thirty (30) days after the Non-Defaulting Party has given the Defaulting Party written notice thereof; (viii) any representation or warranty made or given or deemed made or given by the Defaulting Party pursuant to the Agreement or any Credit Support Document shall prove to have been false or misleading in any material respect as at the time it was made or given or deemed made or given and one (1) Business Day has elapsed after the Non-Defaulting Party has</p>	<p>Clause 1 "Value Date means, with respect to any FX Transaction, the Business Day (or where market practice in the relevant foreign exchange market in relation to the two Currencies involved provides for delivery of one Currency on one date which is a Local Banking Day in relation to that Currency but not to the other Currency and for delivery of the other Currency on the next Local Banking Day in relation to that other Currency ("Split Settlement") the two (2) Local Banking Days in accordance with that market practice) agreed by the Parties for delivery of the Currencies to be purchased and sold pursuant to such FX Transaction, and, with respect to any Currency Obligation, the Business Day (or, in the case of Split Settlement, Local Banking Day) upon which the obligation to deliver Currency pursuant to such Currency Obligation is to be performed." Clause 8.1(b)(2) "Determining Present Value. To the extent permitted by applicable law, the Non-</p>	<p>Clause 11.6 "Severability In the event any one or more of the provisions contained in the Agreement should be held invalid, illegal or unenforceable in any respect under the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions contained in the Agreement under the law of such jurisdiction, and the validity, legality and enforceability of such and any other provisions under the law of any other jurisdiction shall not in any way be affected or impaired thereby. The Parties shall endeavor in good faith negotiations to replace the invalid, illegal or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions." Clause 8.5 "Suspension of Obligations. Without prejudice to the foregoing, so long as a Party shall be in default in payment or performance to the other Party under the Agreement and the other Party has not exercised its rights under this Section 8, or, if</p>

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	<p>accordance with the market practice of the relevant foreign exchange market, and</p> <p>(ii) for any Party, a day in the location of the applicable Designated Office of such Party on which commercial banks in that location are not authorized or required by law to close"</p>	<p>under Section 8.1 as if it were the Non-Defaulting Party. Nothing in this Section 9.1 shall be taken as indicating that the Party treated as the Defaulting Party for the purpose of calculations required by Section 8.1 has committed any breach or default."</p> <p>"9.2 Transfer to Avoid Force Majeure, Act of State, Illegality and Impossibility.</p> <p>If Section 9.1 becomes applicable, unless prohibited by law, the Party which has been prevented, hindered or delayed from performing shall, as a condition to its right to designate a close-out and liquidation of any affected Currency Obligation or Option, use all reasonable efforts (which will not require such Party to incur a loss, excluding immaterial, incidental expenses) to transfer as soon as practicable, and in any event before the earlier to occur of the expiration date of the affected Options or twenty (20) days after it gives notice under Section 9.1, all its rights and obligations under the Agreement in respect of the affected Currency Obligations and Options to another of its Designated Offices so that such force majeure, act of state, illegality or impossibility ceases to exist. Any such transfer will be subject to the prior written consent of the other Party, which consent will not be withheld if such other Party's policies in effect at such time would permit it to enter into transactions with the transferee Designated Office on the terms proposed, unless such transfer would cause the other Party to incur a material</p>				<p>given the Defaulting Party written notice thereof;</p> <p>(xii) (A) any Credit Support Provider of the Defaulting Party or the Defaulting Party itself fails to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with the applicable Credit Support Document and such failure is continuing after any applicable grace period has elapsed;</p> <p>(B) any Credit Support Document relating to the Defaulting Party expires or ceases to be in full force and effect prior to the satisfaction of all obligations of the Defaulting Party under the Agreement, unless otherwise agreed in writing by the Non-Defaulting Party; (C) the Defaulting Party or any Credit Support Provider of the Defaulting Party (or, in either case, any Custodian acting on its behalf) disaffirms, disclaims or repudiates, in whole or in part, or challenges the validity of, any Credit Support Document; (D) any representation or warranty made or given or deemed made or given by any Credit Support Provider of the Defaulting Party pursuant to any Credit Support Document shall prove to have been false or misleading in any material respect as at the time it was made or given or deemed made or given and one (1) Business Day has elapsed after the Non-Defaulting Party has given the Defaulting Party written notice thereof; or (E) any event set out in (ii) to (vii) or (ix) to (xi) above occurs in respect of any Credit Support Provider of the Defaulting Party"</p>	<p>Defaulting Party shall adjust the Closing Gain or Closing Loss for each Value Date falling after the Close-Out Date to present value by discounting the Closing Gain or Closing Loss from and excluding the Value Date to but not including the Close-Out Date, at LIBOR with respect to the Non-Defaulting Party's Base Currency as at the Close-Out Date or at such other rate as may be prescribed by applicable law."</p>	<p>"Adequate Assurances" is specified as applying to the Agreement in Part XI of the Schedule, during the pendency of a reasonable request to a Party for adequate assurances of its ability to perform its obligations under the Agreement, the other Party may, at its election and without penalty, suspend its obligation to perform under the Agreement."</p> <p>Note that the agreement provides for conversion of amounts payable into a currency other than the final amount where prescribed by applicable law.</p>

	Definition of business day	Force Majeure	Illegality	Rate Disruption	Specific Settlement or Performance Disruption	Grace Periods	Market Convention Overrides	Other
		tax or other cost."				<p>Clause 3.2</p> <p>"Late Payment or Non-Payment of Premium</p> <p>If any Premium is not received on or before the Premium Payment Date, the Seller may elect:</p> <p>(i) to accept a late payment of such Premium;</p> <p>(ii) to give written notice of such non-payment and, if such payment shall not be received within two (2) Business Days of such notice, treat the related Option as void; or (iii) to give written notice of such non-payment and, if such payment shall not be received within two (2) Business Days of such notice, treat such non-payment as an Event of Default under clause (i) of the definition of Event of Default. If the Seller elects to act under either clause (i) or (ii) of the preceding sentence, the Buyer shall pay all out-of-pocket costs and actual damages incurred in connection with such unpaid or late Premium or void Option, including, without limitation, interest on such Premium from and including the Premium Payment Date to but excluding the late payment date in the same Currency as such Premium at overnight LIBOR and any other losses, costs or expenses incurred by the Seller in connection with such terminated Option, for the loss of its bargain, its cost of funding, or the loss incurred as a result of terminating, liquidating, obtaining or re-establishing a delta hedge or related trading position with respect to such</p>		

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						Option." Clause 11.14 "Adequate Assurances If the Parties have so agreed in Part XI of the Schedule, the failure by a Party to give adequate assurances of its ability to perform any of its obligations under the Agreement within two (2) Business Days of a written request to do so when the other Party has reasonable grounds for insecurity shall be an Event of Default under the Agreement."		
<p>Electricity Forward Agreement Association Grid Trade Master Agreement (2000)</p> <p>Published by:</p> <p>The Electricity Forward Agreement Association (EFET)</p> <p>www.efet.org</p>	<p>Schedule 1, Part 1</p> <p>Definitions</p> <p>"Banking Day" means a day (other than a Saturday or Sunday) on which the clearing banks in London are open for general business"</p>	<p>Schedule 1, Part 1</p> <p>Definitions</p> <p>"Force Majeure" means any event or circumstance beyond the reasonable control of a Party, acting and having acted as a Reasonable and Prudent Operator, which, in respect of a Settlement Period, prevents:</p> <p>(a) an ECV Notification from being submitted to the ECV Aggregation Agent; or</p> <p>(b) the aggregate Settlement Period Volumes from being received or taken into account by the Settlement Administration Agent in determining the Account Energy Imbalance Volume for the relevant Energy Account of that Party for that Settlement Period."</p> <p>Clause 9</p> <p>Force Majeure</p> <p>"If, in respect of a Settlement Period, a Party (the "Force Majeure Party") is prevented from carrying out any one or</p>	<p>Clause 12</p> <p>Termination</p> <p>12.7 "Illegality</p> <p>If, due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after that date, it becomes unlawful (other than as a result of a breach by the relevant party of clause 3.2) for a Party (the "Affected Party"):</p> <p>12.7.1 to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of that Transaction or to comply with any other material provision of this Agreement relating to that Transaction; or</p> <p>12.7.2 to perform, or for any Credit Support Provider of that Party to perform, any contingent or other obligation which the</p>	Not relevant	Not relevant	<p>Clause 12</p> <p>Termination</p> <p>12.1.3 "(Non-Payment) the Party fails to pay any amount when due under this Agreement, and that failure is not remedied on or before the 3rd Banking Day after the Non-Defaulting Party gives the Party notice of that failure"</p> <p>12.1.5 "(Material Obligations) the Party fails to perform a material obligation under this Agreement (including clause 3.3.1 but other than an obligation referred to in clause 12.1.3 or 12.1.4) and that failure is not remedied within 5 Banking Days of the Non-Defaulting Party giving the Party notice of that failure:"</p> <p>12.1.9 "(Material Adverse Change) in the reasonable opinion of the other Party, one or more events occur which cause a material adverse change in the financial standing or creditworthiness of the Party (unless all of the Party's financial obligations under this Agreement</p>	<p>Clause 12</p> <p>Termination</p> <p>12.5.3 "Market Amount" means either:</p> <p>(a) the sum (whether positive or negative) or (i) the Market Quotation for the Transactions if a Market Quotation is determined and (ii) losses and costs (or gains) in respect of any payment required to have been made and not made or non-compliance with clauses 4 or 5 on or before the Early Termination Date or as a result of suspension under clause 12.2; or</p> <p>(b) the Non-Defaulting Party's Loss (whether positive or negative) for the Transactions if a Market Quotation cannot be determined or would not (in the reasonable belief of the Non-Defaulting Party) produce a commercially reasonable result, where;</p> <p>(c) "Market Quotation" means, with respect to the Non-</p>	<p>Clause 17</p> <p>Severability</p> <p>"If any provision or part of a provision of this Agreement is found by a court or authority of competent jurisdiction to be void or unenforceable, that provision or part of a provision shall be deemed to be deleted from this Agreement and the remaining provisions shall continue in full force and effect. The Parties shall in this event seek to agree upon a valid and enforceable provision or part of a provision to replace the provision or part of a provision found to be void and unenforceable."</p>

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		<p>more of its obligations in accordance with clause 5 by reason of Force Majeure, then the Force Majeure Party shall:</p> <p>9.1 be relieved of its obligations under clause 5 to the extent that it is prevented by Force Majeure from complying with them; and</p> <p>9.2 not have to pay amounts under clause 6 to the extent of that failure to perform.</p> <p>provided that:</p> <p>9.3 the Force Majeure Party advises the other Party in writing as soon as reasonably practicable of:</p> <p>9.3.1 the event or circumstance constituting Force Majeure;</p> <p>9.3.2 its estimate of the likely effect of that Force Majeure on its ability to perform its obligations under clause 5; and</p> <p>9.3.3 its estimate of the likely period of that Force Majeure; and</p> <p>9.4 the Force Majeure Party uses all reasonable endeavours to terminate or overcome the event or circumstance constituting a Force Majeure and resumes full performance of its obligations as soon as reasonably practicable."</p>	<p>Party (or that Credit Support Provider) has under any Credit Support Document relating to that Transaction, (an "Illegality") then, unless the Parties otherwise agree in writing, either Party may elect to terminate, liquidate and accelerate that Transaction in accordance with clauses 12.3, 12.4 and 12.5, except that, for the purposes of clause 12.3, either Party may designate an Early Termination Date and, for the purposes of clause 12.4 and 12.5, references to the Defaulting Party will be read as references to the Affected Party, references to the Non-Defaulting Party will be read as references to the Party which is not the Affected Party, references to "all Transactions" will be read as references to all Transactions affected by the Illegality. However, if both Parties are Affected Parties, each Party shall determine the Termination Payment in respect of the terminated Transactions and the amount payable shall be the algebraic average of the two Termination Payments".</p> <p>12.8 Event of Default and Illegality</p> <p>"If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality it will be treated as a Illegality and will not constitute an Event of Default."</p>			<p>are fully guaranteed under a Credit Support Document), or any Credit Support Provider of the Party, and which affects the Party's, or the Credit Support Provider's, ability to perform its financial or other obligations under this Agreement or any Credit Support Document, respectively, and the Party or the Credit Support Provider fails to procure a guarantee, letter of credit, or other credit support from a person and in a form which is acceptable in the reasonable opinion of the other Party for the performance of its financial obligations under this Agreement or the Credit Support Document, respectively, within 3 Banking Days of the other Party's written request for that guarantee, letter of credit or other credit support."</p>	<p>Defaulting Party, an amount determined on the basis of the average of quotations from Reference Market Makers. Each quotation will be for an amount, if any that would be paid to the Non-Defaulting Party (expressed as a negative number) or by the Non-Defaulting Party (expressed as a positive number) in consideration of an agreement between the Non-Defaulting Party and the quoting Reference Market Maker to enter into transactions (the "Replacement Transactions") that would have the effect of preserving for the Non-Defaulting Party the economic equivalent of any payment or compliance with clause 6 (whether the underlying obligation was absolute or contingent) that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. The quotation shall (i) take into account any existing Credit Support Document with respect to the obligations of the Non-Defaulting Party but (ii) disregard any losses, costs (or gains) in respect of any payment required to have been made and not made or non-compliance with clauses 4 or 5 on or before the Early Termination Date; and</p> <p>(d) "Reference Market Makers" means 3 leading traders in the England and Wales electricity market selected by the Non-Defaulting Party in good faith which satisfy all the criteria that the Non-Defaulting Party applies generally at the time in deciding whether to offer or to make an extension of credit and which are independent of the Parties."</p>	

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<p>Short Term Flat NBP Trading Terms and Conditions (1997)</p> <p>Published by: Transco</p> <p>www.transco.uk.com</p>	<p>Clause 1.1</p> <p>""Banking Day" shall mean a day (other than a Saturday or a Sunday) on which the clearing banks in London are open for business"</p>	<p>Clause 1.1</p> <p>""Force Majeure" shall mean any event or circumstance beyond the reasonable control of a Party which totally prevents a Trade Nomination from being submitted by such Party to Transco or from being received and taken into account by Transco in determining such Party's Daily Imbalance"</p> <p>Clause 7</p> <p>"Force Majeure</p> <p>"Force Majeure</p> <p>7.1 If a Party is by reason of Force Majeure rendered unable wholly or in part to carry out its obligations in accordance with Clause 4, then upon notice in writing of such Force Majeure from the Party affected to the other Party as soon as reasonably practicable after the occurrence of the event or circumstances relied on, the Party affected shall be relieved of liability to the extent that it is in breach by reason of Force Majeure and for the period during which such Force Majeure persists, provided that:</p> <p>7.1.1 the party seeking relief under this Clause 7 shall advise the other Party as soon as practicable of the event or circumstance constituting Force Majeure together with its estimate of the likely effect of such Force Majeure on its ability to perform its obligations hereunder and of the likely period of such Force Majeure;</p>	<p>Clause 15</p> <p>"Severability</p> <p>If any of the provisions of the Transaction are found by a court or authority of competent jurisdiction to be void or unenforceable, such provision shall be deemed to be deleted from the Transaction and the remaining provisions shall continue in full force and effect. The Parties shall in such event seek to agree upon a valid and enforceable provision to replace the provision found to be void or unenforceable."</p>	<p>Not relevant</p>	<p>Clause 4.1.2</p> <p>"NBP Trades</p> <p>If, on any such Day, UK Link is affected by a Code Contingency and which affects a Party, such Party shall submit its Trade Nomination by the means and in the manner provided for in the Contingency Procedures"</p> <p>Clause 1</p> <p>"Contingency Procedures shall have the meaning set out in the Network Code"</p> <p>"Code Contingency shall have the meaning specified in the Network Code"</p> <p>"Network Code shall mean the document, as modified from time to time, setting out transportation arrangements established by Transco pursuant to its public gas transporters licence"</p>	<p>Clause 10</p> <p>"Term and Termination</p> <p>10.1 The non-defaulting Party may terminate the Transaction forthwith by giving notice to the other Party:</p> <p>10.1.4 in the event of a material adverse change in the financial standing of the other Party when compared to such Party's financial standing as at the date of the Transaction which change affects its ability to perform its financial obligations in respect of the Transaction, and such Party fails to provide reasonable security for the performance of its financial obligations in respect of the Transaction within three (3) Banking Days of the other Party's request therefor.</p> <p>10.2 The non-defaulting Party may terminate the Transaction by giving five (5) Banking Days' notice to the other Party in the event that other Party:</p> <p>10.2.1 is materially in breach of any of its obligations under the Transaction;</p> <p>10.2.2 fails to pay the amount specified in the Monthly Statement in accordance with Clause 6; provided that the Party in breach has failed to remedy the breach before expiry of the notice period. In the case of the breach being remedied, the notice is deemed not to have been given.</p> <p>For the purpose of this Clause 10.2 a persistent failure by one Party to make Trade Nominations in respect of a</p>	<p>Not relevant</p>	<p>Not relevant</p>

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		<p>and</p> <p>7.1.2 the Party affected shall use all reasonable endeavours to terminate or overcome the event or circumstance constituting Force Majeure.</p> <p>7.2 Either Party may terminate a Transaction by giving three (3) Banking Days notice to the other if Force Majeure in respect of that Transaction continues for seven (7) Days or more."</p>				Transaction shall be deemed to constitute a material breach."		
<p>European Federation of Energy Traders General Agreement Concerning the Delivery and Acceptance of Electricity (December 2000)</p> <p>Published by: The European Federation of Electricity Traders (EFET)</p> <p>www.efet.org</p>	<p>Annex 1</p> <p>Defined Terms</p> <p>"Business Day means a day (other than Saturday or Sunday) on which commercial banks are open for general business at the places where each Party has its registered office"</p>	<p>Section 7</p> <p>Non-Performance Due to Force Majeure</p> <p>"(1) Definition of Force Majeure: Unless otherwise specified in the Election Sheet, for purposes of the Agreement "Force Majeure" means an occurrence beyond the reasonable control of the Party claiming Force Majeure (the "Claiming Party") which it could not reasonably have avoided or overcome and which makes it impossible for the Claiming Party to perform its delivery or acceptance obligations, including, but without limitation, due to one or more of the following:</p> <p>(a) the failure of communications or computer systems of the relevant Network Operator(s) which prevents the Claiming Party from performing its obligations of delivery or acceptance; or</p> <p>(b) the relevant Network Operator's suspension of delivery or acceptance or its disregard of the Claiming Party's obligations with regard to Scheduling under</p>	Not relevant	<p>Section 15</p> <p>Floating Prices and Fallback Procedure for Market Disruption</p> <p>"1. Calculation of Floating Contract Prices: In the event the Contract Price is based on an index, exchange or any other kind of variable reference price (such price being a "Floating Price") the Contract Price shall be determined on the Settlement Date at the Settlement Price as specified in the applicable Individual Contract. The Settlement Price shall be determined in accordance with the Calculation Method on the Calculation Date as specified in the Individual Contract. The Calculation Date is the date specified as such in the Individual Contract on which the Settlement Price for the specific delivery is determined. The Calculation Agent shall provide prompt notice of the Settlement Price determined as well as the amount to be paid on the Due Date. Payment shall be made pursuant to § 13 (Invoicing and Payment).</p> <p>2. Market Disruption: Upon the occurrence of a Market</p>	<p>Section 15</p> <p>Floating Prices and Fallback Procedure for Market Disruption</p> <p>"Definition of Market Disruption Event:</p> <p>Market Disruption Event" under this § 15 shall mean the events stipulated under § 15.4 (a) through (f) (the existence of which shall be determined in a commercially reasonable manner by the Calculation Agent).</p> <p>For purposes of this § 15.4, "Price Source" shall mean any institution determining and publishing the price for a relevant commodity (a "Commodity Reference Price") including exchanges trading in any relevant future contracts or commodities on which the Floating Price is based.</p> <p>(a) the failure of any relevant Price Source to announce or publish information necessary for determining the Commodity Reference Price;</p> <p>(b) the temporary or permanent</p>	<p>Section 10</p> <p>Term and Termination Rights</p> <p>Clause 5</p> <p>"Definition of Material Reason:</p> <p>The Agreement may be terminated at any time for one or more of the following reasons (each, a "Material Reason"):</p> <p>(a) Non Performance: The failure of a Party or its Credit Support Provider, when required, to make a payment, to deliver any Performance Assurance or to perform any other material obligation (other than when such obligation is released pursuant to § 7 (Non-Performance Due to Force Majeure)):</p> <p>(i) under the Agreement; provided, that in the case of a failure to pay, such failure is not cured within two (2) Business Days of a written demand, or, in the case of any other failure of performance, such failure is not cured within ten (10) Business Days of a written demand</p> <p>(ii) under any Credit Support Document (after giving effect to any applicable notice or grace</p>	Not relevant	<p>Section 17</p> <p>Performance Assurance</p> <p>Clause 1</p> <p>"Right to Require Performance Assurance:</p> <p>At any time and from time to time, when a Party (the "Requesting Party") believes in good faith that a Material Adverse Change has occurred in respect of the other Party, the Requesting Party shall be entitled to require, by written notice, that the other Party provide to it or increase in amount:</p> <p>(a) a Letter of Credit; (b) cash; or (c) other security (including a bank or parent guarantee), in a form and amount reasonably acceptable to the Requesting Party (each a "Performance Assurance").</p> <p>Upon receipt of such written notice, the other Party shall within three (3) Business Days provide to the Requesting Party the Performance Assurance required.</p> <p>Clause 2. Material Adverse</p>

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		<p>the Individual Contract."</p> <p>"2. Release From Delivery and Acceptance Obligations:</p> <p>If a Party is fully or partly prevented due to Force Majeure from performing its obligations of delivery or acceptance under one or more Individual Contracts and such Party complies with the requirements of § 7.3 (Notification and Mitigation of Force Majeure), no breach or default on the part of the Claiming Party shall be deemed to have occurred and it shall be released (and not merely suspended) from those obligations for the period of time and to the extent that such Force Majeure prevents its performance. No obligation to pay damages pursuant to § 8 (Remedies for Failure to Deliver and Accept) will accrue to the Claiming Party with respect to those quantities not delivered or received."</p> <p>3. "Notification and Mitigation of Force Majeure:</p> <p>The Claiming Party shall as soon as practical after learning of the Force Majeure notify the other Party of the commencement of the Force Majeure and, to the extent then available, provide to it a non-binding estimate of the extent and expected duration of its inability to perform. The Claiming Party shall use all commercially reasonable efforts to mitigate the effects of the Force Majeure and shall, during the continuation of the Force Majeure, provide the other Party with reasonable updates, when and if available, of the extent and expected duration of its inability</p>		<p>Disruption Event as specified in § 15.4 (Definition of Market Disruption Event), the Calculation Agent shall determine an alternative price to which the relevant Individual Contract shall be settled (the "Alternative Settlement Price") according to the applicable Fallback Mechanism contained in the provisions of § 15.3 (Fallback Mechanism). In the event of a Market Disruption Event, the order of succession of §15.3 from (a) to (c) shall be binding upon the Calculation Agent.</p> <p>The Calculation Agent can only use the next following Fallback Mechanism provision if the previous Fallback Mechanism provision is not available due to a Market Disruption Event or otherwise as provided in §15.3, as applicable."</p> <p>3. "Fallback Mechanism: In the event of a Market Disruption Event the Calculation Agent shall determine the Alternative Settlement Price according to the following procedure (each a "Fallback Mechanism"): (a) Fallback Reference Price: The Calculation Agent shall determine the Alternative Settlement Price based upon the price for that Calculation Date of the first Alternate Commodity Reference Price, if any, specified in the applicable Individual Contract and which is not itself subject to a Market Disruption Event; if an Alternate Commodity Reference Price has not been agreed on in the Individual Contract, the next applicable Fallback Mechanism shall apply for the relevant</p>	<p>objective unavailability of any relevant Commodity Reference Price;</p> <p>(c) a temporary or permanent closing of the Price Source of any relevant Commodity Reference Price;</p> <p>(d) the discontinuance or suspension of, or the imposition of a material limitation on, trading in any relevant futures contract or commodity offered by the relevant exchange for the Commodity Reference Price;</p> <p>(e) the occurrence since the date such Individual Contract was entered into of a material change in the details of the composition of or specifications for any relevant commodity or Commodity Reference Price (i) which are entered into or incorporated in any relevant futures contract or offered by the relevant exchange or (ii) which are used by any other relevant institution for determining the Commodity Reference Price in compiling the price information necessary for determining such Floating Price; or</p> <p>(f) the occurrence since the commencement of the relevant Individual Contract of a material change in the method of calculation used for any relevant Commodity Reference Price to determine the price information necessary for determining such floating price."</p>	<p>period thereunder); or</p> <p>(iii) under any Performance Assurance in accordance with § 17 (Performance Assurance)."</p> <p>Section 10</p> <p>"Term and Termination Rights</p> <p>Clause 5</p> <p>(d) Failure to Deliver or Accept: If specified as applying in the Election Sheet, the failure of a Party to comply with its obligation to deliver or accept electricity under an Individual Contract, (other than, when such obligation is released pursuant to §7 (Non-Performance Due to Force Majeure)) for more than seven (7) consecutive days or for more than seven (7) days in aggregate within a period of sixty (60) days."</p>		<p>Change: A Material Adverse Change shall have occurred if any one or more of following events has occurred and is continuing insofar as such event is specified as applying to a Party in the Election Sheet:</p> <p>(h) Impaired Ability to Perform: If in the reasonable and good faith opinion of the Requesting Party, the ability of the Relevant Entity to perform its obligations under the Agreement, any Credit Support Document or any Control and Profit Transfer Agreement, as the case may be, is materially impaired."</p> <p>Section 23</p> <p>Miscellaneous</p> <p>Clause 4 "Partial Invalidity: If, at any time, any provision of this General Agreement or an Individual Contract is or becomes illegal, invalid or unenforceable, in any respect, under the law of any relevant jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of this General Agreement or of any Individual Contract, shall be in any way affected or impaired thereby. The Parties undertake to replace any illegal, invalid or unenforceable provision with a legal, valid and enforceable provision which comes as close as possible to the invalid provision as regards its economic intent."</p>

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		<p>to perform."</p> <p>4. "Effects of Force Majeure on Other Party: In the event, and to the extent, a Seller's delivery obligations are released by Force Majeure, the Buyer's corresponding acceptance and payment obligations shall also be released. In the event and to the extent a Buyer's acceptance obligations are released by Force Majeure,</p> <p>Seller's corresponding delivery obligations shall also be released.</p> <p>Calculation Agent: Unless the Parties otherwise specify in the Election Sheet or in the relevant Individual Contract, the Seller shall be the Calculation Agent."</p> <p>Section 15</p> <p>""Term and Termination Rights Clause 5(e)</p> <p>"Force Majeure: A Party is released from its obligations under the Agreement due to Force Majeure for more than thirty (30) consecutive days or for more than sixty (60) days in aggregate within a period of one calendar year."</p>		<p>Individual Contract;</p> <p>(b) Negotiated Fallback: Each Party shall promptly negotiate in good faith to agree with the other on an Alternative Settlement Price (or a method for determining the Alternative Settlement Price), and, if the Parties have not so agreed on or before the fifth (5th) Business Day following the first Calculation Date on which the Market Disruption Event existed, the next applicable Fallback Mechanism shall apply;</p> <p>(c) Dealer Fallback: On or after six (6) Business Days following the first Calculation Date on which the Market Disruption Event occurred or existed, the Parties shall promptly and jointly agree upon three independent leading participants in the relevant market ("Dealers") selected in good faith from among participants of the highest credit standing which satisfy all the criteria that the Parties apply generally in deciding whether to offer or to make an extension of credit or to enter into a transaction comparable to the Individual Contract that is affected by the Market Disruption Event. The Dealers shall be appointed to make a determination of the Alternative Settlement Price taking into consideration the latest available quotation for the relevant commodity reference price and any other information that in good faith is deemed relevant. The Alternative Settlement Price shall be the arithmetic mean of the three amounts determined to be the Alternative Settlement Price by each Dealer, in which case the calculation shall be</p>				

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				binding and conclusive in the absence of manifest error."				
<p>European Federation of Energy Traders General Agreement Concerning the Delivery and Acceptance of Natural Gas (January 2003)</p> <p>Published by: The European Federation of Electricity Traders (EFET)</p> <p>www.efet.org</p>	<p>Annex 1</p> <p>"Business Day" means a day (other than Saturday or Sunday) on which commercial banks are open for general business at the places where each Party has its registered office"</p>	<p>Section 7</p> <p>Non-Performance Due to Force Majeure</p> <p>Clause 1. "Definition of Force Majeure: <u>Unless otherwise specified in the Election Sheet,</u> for purposes of the Agreement "Force Majeure" means an occurrence beyond the reasonable control of the Party claiming Force Majeure (the "Claiming Party") which it could not reasonably have avoided or overcome and which makes it impossible for the Claiming Party to perform or procure performance of its delivery or acceptance obligations, including, but without limitation, due to one or more of the following:</p> <p>(a) the failure of communications or computer systems of the relevant Network Operator(s) which prevents the Claiming Party from performing its obligations of delivery or acceptance; or</p> <p>(b) the relevant Network's Operator failure to respond to all efforts by the Claiming Party to communicate with such Network Operator;</p> <p>Provided that "Force Majeure" shall not include any curtailment or interruption of transportation rights or any problem, occurrence or event affecting any relevant pipeline system unless this constitutes a Transportation Failure."</p> <p>Clause 2.</p> <p>"Release from Delivery and</p>	Not relevant	<p>Section 15</p> <p>Floating Prices and Fallback Procedure for Market Disruption</p> <p>1. "Calculation of Floating Contract Prices:</p> <p>In the event the Contract Price is based on an index, exchange or any other kind of variable reference price (such price being a "Floating Price") the Contract Price shall be determined on the Settlement Date at the Settlement Price as specified in the applicable Individual Contract. The Settlement Price shall be determined in accordance with the Calculation Method on the Calculation Date as specified in the Individual Contract. The Calculation Date is the date specified as such in the Individual Contract on which the Settlement Price for the specific delivery is determined. The Calculation Agent shall provide prompt notice of the Settlement Price determined as well as the amount to be paid on the Due Date. Payment shall be made pursuant to § 13 (Invoicing and Payment)."</p> <p>2. "Market Disruption: Upon the occurrence of a Market Disruption Event as specified in § 15.4 (Definition of Market Disruption Event), the Calculation Agent shall determine an alternative price to which the relevant Individual Contract shall be settled (the "Alternative Settlement Price") according to the applicable Fallback Mechanism contained in the provisions of § 15.3</p>	<p>Section 9</p> <p>Suspension of Delivery or Acceptance</p> <p>"In addition to any other rights or remedies available to a Party (the "Non-Defaulting Party"), should a Party (the "Defaulting Party") default on any payment that is due under the Agreement, or should it or its Credit Support Provider fail to provide, replace or increase the amount of any Credit Support Document or any Performance Assurance as required pursuant to the Agreement, the Non-Defaulting Party shall be entitled, no earlier than three (3) Business Days after sending a written notice to the Defaulting Party immediately to cease further delivery or acceptance (as the case may be) of Natural Gas (and be released (and not merely suspended) from its underlying delivery or acceptance obligations) under all Individual Contracts and (provided that the Non-Defaulting Party has already exercised any rights available to it to set off its obligations to make payments under the Agreement to the Defaulting Party against amounts owed by the Defaulting Party to it) the Non-Defaulting Party shall have the right to withhold payments owed by it to the Defaulting Party under the Agreement in each case until such time as the Non-Defaulting Party, has received either the required Credit Support Document or Performance Assurance or full payment (including all applicable default interest and expenses) of</p>	<p>Section 10</p> <p>Term and Termination Rights</p> <p>"Clause 3. Termination for Material Reason:</p> <p>(a) If a Material Reason (as defined below) with respect to a Party has occurred and is continuing, the other Party (the "Terminating Party") may terminate the Agreement ("Early Termination") by giving the other Party notice. A notice of Early Termination may be given by telephone if that notice is confirmed in writing within two Business Days.</p> <p>(b) A notice of Early Termination shall specify the relevant Material Reason for the Early Termination and shall designate a day as an early termination date (the "Early Termination Date"). The Early Termination Date may not be earlier than the day the notice is deemed to have been received under the Agreement nor later than 20 days after such day. With effect from the Early Termination Date all further payments and performance in respect of all Individual Contracts shall be released (and not merely suspended) and existing duties and obligations of the Parties shall be replaced by the obligation of one Party to pay the Termination Amount to the other Party as calculated in accordance with § 11.1 (Termination Amount)"</p> <p>"5 Definition of Material Reason: The Agreement may be terminated at any time for one or</p>	Not relevant	<p>Section 17</p> <p>Performance Assurance</p> <p>Clause 1</p> <p>"Right to Require Performance Assurance:</p> <p>At any time and from time to time, when a Party (the "Requesting Party") believes in good faith that a Material Adverse Change has occurred in respect of the other Party, the Requesting Party shall be entitled to require, by written notice, that the other Party provide to it or increase in amount: (a) a Letter of Credit; (b) cash; or (c) other security (including a bank or parent guarantee), in a form, amount and from an entity which is reasonably acceptable to the Requesting Party (each a "Performance Assurance"). Upon receipt of such written notice, the other Party shall within three Business Days provide to the Requesting Party the Performance Assurance required. For the avoidance of doubt, in the event that an entity providing Performance Assurance on behalf of a Party does not thereafter continue to be reasonably acceptable to the Requesting Party, the Requesting Party shall have the right to require the other Party to provide to it additional Performance Assurance in accordance "</p> <p>Clause 2</p> <p>"Material Adverse Change: A Material Adverse Change shall have occurred if any one or more</p>

	Definition of business day	Force Majeure	Illegality	Rate Disruption	Specific Settlement or Performance Disruption	Grace Periods	Market Convention Overrides	Other
		<p>Acceptance Obligations: If a Party is fully or partly prevented due to Force Majeure from performing or procuring performance of its obligations of delivery or acceptance under one or more Individual Contracts and such Party complies with the requirements of § 7.3 (Notification and Mitigation of Force Majeure) then, without prejudice to § 7.5 (Long Term Force Majeure Limit), no breach or default on the part of the Claiming Party shall be deemed to have occurred and it shall be released (and not merely suspended) from those obligations but only for the period of time and to the extent that such Force Majeure prevents its performance. Without prejudice to § 7.5 (Long Term Force Majeure Limit), no obligation to pay damages pursuant to § 8 (Remedies for Failure to Deliver or Accept the Contract Quantity) will accrue to the Claiming Party with respect to Default Quantities arising under such Individual Contracts as a result of Force Majeure affecting the Claiming Party's obligation."</p> <p>Clause 3. "Notification and Mitigation of Force Majeure: The Claiming Party shall as soon as practicable after learning of the Force Majeure notify the other Party of the commencement of the Force Majeure and of the Individual Contract(s) affected thereby and, to the extent then available, provide to it a bona fide non-binding estimate of the extent and expected duration of its inability to perform. The Claiming Party shall use all</p>		<p>(Fallback Mechanism). In the event of a Market Disruption Event, the order of succession of § 15.3 (Fallback Mechanism) from (a) to (c) shall be binding upon the Calculation Agent. The Calculation Agent can only use the next following Fallback Mechanism provision if the previous Fallback Mechanism provision is not available due to a Market Disruption Event or otherwise as provided in § 15.3 (Fallback Mechanism), as applicable."</p> <p>3. "Fallback Mechanism: In the event of a Market Disruption Event the Calculation Agent shall determine the Alternative Settlement Price according to the following procedure (each a "Fallback Mechanism"):</p> <p>(a) Fallback Reference Price: The Calculation Agent shall determine the Alternative Settlement Price which shall be the price for that Calculation Date of the first Alternate Commodity Reference Price (if any, specified in the applicable Individual Contract), which is not itself subject to a Market Disruption Event; if an Alternate Commodity Reference Price has not been agreed on in the Individual Contract, the next applicable Fallback Mechanism shall apply for the relevant Individual Contract.</p> <p>(b) Negotiated Fallback: Each Party shall promptly negotiate in good faith to agree with the other on an Alternative Settlement Price (or a method for determining the Alternative Settlement Price), and, if the Parties have not so agreed on or before the fifth Business Day</p>	<p>all outstanding amounts owed to the Non-Defaulting Party."</p>	<p>more of the following reasons (each, a "Material Reason"):</p> <p>(a) Non-Performance: The failure of a Party or its Credit Support Provider, when required, to make a payment, to deliver any Performance Assurance or to perform any other material obligation (other than when such obligation is released pursuant to § 7 (Non-Performance Due to Force Majeure)):</p> <p>(i) under the Agreement; provided, that in the case of a failure to pay, such failure is not cured within two (2) Business Days of a written demand, or, in the case of any other failure of performance (not covered by sub-paragraphs (ii) or (iii) below), such failure is not cured within ten (10) Business Days of a written demand;</p> <p>(ii) under any Credit Support Document (after giving effect to any applicable notice or grace period hereunder); or</p> <p>(iii) in accordance with § 17 (Performance Assurance)."</p> <p>(d) Failure to Deliver or Accept": <u>If specified as applying in the Election Sheet,</u> the failure of a Party to comply with its obligation to deliver or accept Natural Gas under an Individual Contract, (other than, when such obligation is released pursuant to § 7 (Non-Performance due to Force Majeure)) for more than seven consecutive days or for more than seven (7) days in aggregate within a period of sixty (60) days. "</p>		<p>of following events has occurred and is continuing in so far as such event is specified as applying to a Party in the <u>Election Sheet</u></p> <p>(h) Impaired Ability to Perform: If in the reasonable and good faith opinion of the Requesting Party, the ability of the Relevant Entity to perform its obligations under the Agreement, any Credit Support Document or any Control and Profit Transfer Agreement, as the case may be, is materially impaired. "</p> <p>Section 23</p> <p>Miscellaneous</p> <p>Clause 4 "Partial Invalidity: If, at any time, any provision of this General Agreement or an Individual Contract is or becomes illegal, invalid or unenforceable, in any respect, under the law of any relevant jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of this General Agreement or of any Individual Contract, shall be in any way affected or impaired thereby. The Parties undertake to replace any illegal, invalid or unenforceable provision with a legal, valid and enforceable provision which comes as close as possible to the invalid provision as regards its economic intent. "</p>

	Definition of business day	Force Majeure	Illegality	Rate Disruption	Specific Settlement or Performance Disruption	Grace Periods	Market Convention Overrides	Other
		<p>commercially reasonable efforts to mitigate and overcome the effects of the Force Majeure (which, in the case of a Transportation Failure, shall include using all commercially reasonable efforts to procure that the relevant Network Operator mitigates and overcomes the effects of the Transportation Failure) and shall, during the continuation of the Force Majeure, provide the other Party with reasonable bona fide updates, when and if available, of the extent and expected duration of its inability to perform such Individual Contract(s)."</p> <p>Clause 4. "Effects of Force Majeure on Other Party: In the event, and to the extent, that a Seller's delivery obligations are released by Force Majeure, the Buyer's corresponding acceptance and payment obligations shall also be released. In the event, and to the extent that a Buyer's acceptance obligations are released by Force Majeure, the Seller's corresponding delivery obligations shall also be released."</p> <p>Clause 5.</p> <p>"Long Term Force Majeure Limit: Where in respect of an Individual Contract the obligations of the Claiming Party have been adversely affected by Force Majeure on each Day for a consecutive period of Days exceeding the Long Term Force Majeure Limit and by on average more than fifty (50) per cent of the contracted quantity during such period, then the Party which is not the Claiming Party shall</p>		<p>following the first Calculation Date on which the Market Disruption Event existed, the next applicable Fallback Mechanism shall apply.</p> <p>(c) Dealer Fallback: On or after six Business Days following the first Calculation Date on which the Market Disruption Event occurred or existed, the Parties shall promptly and jointly agree upon three independent leading participants in the relevant market ("Dealers") selected in good faith from among participants of the highest credit standing which satisfy all the criteria that the Parties apply generally in deciding whether to offer or to make an extension of credit or to enter into a transaction comparable to the Individual Contract that is affected by the Market Disruption Event. The Dealers shall be appointed to make a determination of the Alternative Settlement Price taking into consideration the latest available quotation for the relevant commodity reference price and any other information that in good faith is deemed relevant. The Alternative Settlement Price shall be the arithmetic mean of the three amounts determined to be the Alternative Settlement Price by each Dealer, in which case the calculation shall be binding and conclusive in the absence of manifest error."</p> <p>4. "Definition of Market Disruption Event: "Market Disruption Event" under this § 15 (Floating Prices and Fallback Procedure for Market Disruption) shall mean the events stipulated under § 15.4(a) through § 15.4(f) (the existence</p>				

	Definition of business day	Force Majeure	Illegality	Rate Disruption	Specific Settlement or Performance Disruption	Grace Periods	Market Convention Overrides	Other
		<p>have the right to terminate such Individual Contract forthwith by written notice to the Claiming Party. Such termination shall be without prejudice to the accrued rights and obligations of the Parties under such Individual Contract up to the date of termination but neither Party shall have any liability whatsoever to the other in respect of the unexpired portion of the Total Supply Period under such Individual Contract after the date of termination. "</p> <p>Annex 1 "Long Term Force Majeure Limit" shall, in respect of an Individual Contract, have the meaning specified in the terms of such Individual Contract and if not so specified, shall be determined as follows:</p> <p>(a) if the supply period of the Individual Contract is one year or more, the Long Term Force Majeure Limit shall be ninety (90) consecutive Days;</p> <p>(b) if the supply period of the Individual Contract is not less than three months but not more than one year the Long Term Force Majeure Limit (LTFML) shall be calculated in accordance with the following formula:</p> $LTFML = Z \times \frac{90}{365}$ <p>where Z = the number of Days in the Total Supply Period of the relevant Individual Contract; and</p> <p>(c) if the supply period of the Individual Contract is less than three months, there shall be no Long Term Force Majeure</p>		<p>of which shall be determined in a commercially reasonable manner by the Calculation Agent). For purposes of this § 15.4 (Definition of Market Disruption Event), "Price Source" shall mean any institution determining and publishing the price for a relevant commodity (a "Commodity Reference Price") including exchanges trading in any relevant future contracts or commodities on which the Floating Price is based:</p> <p>(a) the failure of any relevant Price Source to announce or publish information necessary for determining the Commodity Reference Price;</p> <p>(b) the temporary or permanent objective unavailability of any relevant Commodity Reference Price;</p> <p>(c) a temporary or permanent closing of the Price Source of any relevant Commodity Reference Price;</p> <p>(d) the discontinuance or suspension of, or the imposition of a material limitation on, trading in any relevant futures contract or commodity offered by the relevant exchange for the Commodity Reference Price;</p> <p>(e) the occurrence since the date such Individual Contract was entered into of a material change in the details of the composition of or specifications for any relevant commodity or Commodity Reference Price (i) which are entered into or incorporated in any relevant futures contract or offered by the relevant exchange or (ii) which are used by any other relevant institution for determining the</p>				

	Definition of business day	Force Majeure	Illegality	Rate Disruption	Specific Settlement or Performance Disruption	Grace Periods	Market Convention Overrides	Other
		Limit"		Commodity Reference Price in compiling the price information necessary for determining such Floating Price; or (f) the occurrence since the commencement of the relevant Individual Contract of a material change in the method of calculation used for any relevant Commodity Reference Price to determine the price information necessary for determining such floating price. 5. Calculation Agent: <u>Unless the Parties otherwise specify in the Election Sheet</u> or in the relevant Individual Contract, the Seller shall be the Calculation "				
Cross Product Master Agreement (CPMA) (February 2000) Published by: The Bond Market Association (BMA) www.bondmarkets.com	Clause 1.1 "Business Day means a day on which commercial banks effect deliveries of the Base Currency in accordance with the market practice of the principal foreign exchange market for the Base Currency or, if the Base Currency is the euro, any day on which the Trans-European Automated Real-Time Gross Settlement Express Transfer (TARGET) System is open."	Part II. "Events Excluded from the Definition of "Close-Out Event" The following event(s) shall be excluded from the definition of "Close-Out Event" for purposes of this Agreement: 1. The following Termination Events under the terms of the ISDA Master Agreement identified in Paragraphs 8 and 9 of Part I of this Schedule or any similar event under any Principal Agreement: Illegality, Tax Event, Tax Event Upon Merger and Credit Event Upon Merger. 2. Any Close-Out Event under a Principal Agreement which is (i) a "Disruption Event" as that	Section 3.3 "Settlement of Settlement Accounts in Accordance with this Agreement When a Section 2 Notice has been given, all Settlement Amounts of Principal Agreements Closed Out pursuant to Section 2 (or Closed Out according to their terms on or prior to the delivery of the Section 2 Notice) shall be settled at the times and in the manner set forth in this Section 3.3 and Section 4 hereof (unless, in the good faith judgment of the Closing-Out Party, it is unlawful to do so), notwithstanding any provision to the contrary in any Closed-Out Agreement, and notwithstanding that Settlement Amounts may be payable by different branches of a Party at	See, provisions on Force Majeure to the left	Not relevant	Not relevant	Not relevant	Not relevant

	Definition of business day	Force Majeure	Illegality	Rate Disruption	Specific Settlement or Performance Disruption	Grace Periods	Market Convention Overrides	Other
		<p>term is described in Section 5.1 of the 1998 FX and Currency Option Definitions published by ISDA, EMTA and the Foreign Exchange Committee or</p> <p>(ii) any other event which (a) is in the nature of force majeure or act of state, (b) is beyond the control of a Party, (c) such Party, with reasonable diligence cannot overcome, and (d) prevents, hinders or delays such Party from performing or makes it illegal or impossible for such Party to perform its obligations when due under a Principal Agreement.</p> <p>3. Other events: []"</p>	<p>different locations or in different currencies pursuant to the terms of the relevant Principal Agreements. The date for settlement of such Settlement Amounts shall be deferred (with interest accruing at the rate and for the period specified in Section 4.5(a) hereof) until the occurrence of a Settlement Date hereunder. Each Principal Agreement is hereby amended accordingly."</p> <p>See, also provisions on Force Majeure to the left</p>					
<p>International Deposit Netting Agreement (1996)</p> <p>Published by: The British Bankers Association (BBA)</p> <p>www.bba.org.uk</p>	<p>Clause 1</p> <p>"Business Day" means, in relation to the giving of any notice to a Party, a day on which commercial banks are not authorised or required by law to close in the location of the office of the Defaulting Party to which such notice is given."</p>					<p>Clause 1</p> <p>""Event of Default" means the occurrence of any of the following with respect to a Party (the "Defaulting Party"; the other Party being the "Non-Defaulting Party):</p> <p>(i) The Defaulting Party shall default in any payment to the Non-Defaulting Party with respect to any sum when due under any Deposit Obligation and such failure shall continue for two (2) Business Days after written notice of non-payment has been given by the Non-Defaulting Party to the Defaulting Party Provided that an Event of Default shall not be treated as occurring where, and for so long as, such a default in payment is the result of the Defaulting Party being prevented or hindered from making the relevant payment by reason of force majeure or act of State or of the making of such payment</p>		

	Definition of business day	Force Majeure	Illegality	Rate Disruption	Specific Settlement or Performance Disruption	Grace Periods	Market Convention Overrides	Other
						<p>being Unlawful or impossible;</p> <p>(iv) An involuntary case or other procedure shall be commence against the Defaulting Party seeking liquidation, reorganisation (including a moratorium) or other similar relief with respect to it or its debts under any bankruptcy, insolvency or similar law or seeking the appointment of a Custodian of it or any substantial part of its assets and such involuntary case or other procedure shall not have been dismissed within five (5) days of its institution or presentation or a Custodian is appointed of the Defaulting Party or any substantial part of its assets."</p>		

ANNEX 1

In December 1999, the Foreign Exchange Committee and the Financial Markets Lawyers Group in New York published a bilateral amendment which could be entered into by parties to replace the force majeure provisions contained in the 1997 versions of ICOM, IFEMA and FEOMA. The optional amended FEOMA provisions are reproduced in full below and, subject to minor differences, are as per the provisions for ICOM and IFEMA. Please note however that the FMLG is currently reconsidering the force majeure provisions of ICOM, IFEMA and FEOMA.

www.ny.frb.org/fmlg

FEOMA

Section 9. force majeure, act of state, illegality and impossibility

"9.1 Liquidation Rights. If a Force Majeure Event occurs and is still in effect, then (but subject to Section 9.2) either Party may, by notice to the other Party on any day or days after the Waiting Period expires, require the close-out and liquidation of the Currency Obligations under any or all of the Affected Transactions in accordance with the provisions of Section 8.1 and, for such purposes, the Party unaffected by such Force Majeure Event shall perform the calculation required under Section 8.1 as if it were the Non-Defaulting Party (or, if both Parties are Affected Parties, both Parties shall so calculate in respect of all Affected Transactions which either Party determines to liquidate and the average of the amounts so determined shall be the relevant amount in respect of each Affected Transaction, except that if a Party fails to so determine an amount, the amount determined by the other Party shall govern). If a Party elects to so liquidate less than all Affected Transactions, it may liquidate additional Affected Transactions on a later day or days if the relevant Force Majeure Event is still in effect.

9.2 Waiting Period. If the Value Date of an FX Transaction, or the Settlement Date of an Option, which is an Affected Transaction, under Section 9.1 falls during the Waiting Period of the relevant Force Majeure Event, then such Value Date or Settlement Date (as applicable) will be deferred to the first Business Day (or the first day which, but for such event, would have been a Business Day) after the end of that Waiting Period (or, in the case of Split Settlement, the first Local Banking Day or the first day which, but for such event, would have been a Local Banking Day, after the end of the Waiting Period). Compensation for this deferral shall be at then current market rates as determined in a commercially reasonable manner by the calculating Party or Parties under Section 9.

9.3 Notice by Affected Party. If a Force Majeure Event has occurred, an Affected Party shall promptly give notice thereof to the other Party.

9.4 Force Majeure Event and Event of Default. Nothing in this Section 9 shall be taken as indicating that the Party treated as the Defaulting Party for the purpose of calculations required by Section 8.1 has committed any breach or default. If an event occurs that would otherwise constitute both a Force Majeure Event and an Event of Default, that event will be treated as a Force Majeure Event and will not constitute an Event of Default.

Also add the following definitions:

"Force Majeure Event", on any day determined as if such day were a Value Date of an FX Transaction or the Settlement Date of an Option (even if it is not), means (i) either Party, by reason of force majeure or act of state, is prevented from or hindered or delayed in delivering or receiving, or it is impossible to deliver or receive, any Currency in respect of a Currency Obligation or Option, and which event is beyond the control of such Party and which such Party, with reasonable diligence, cannot overcome, or (ii) it is unlawful for either Party to deliver or receive a payment of any Currency in respect of a Currency Obligation or Option. A Party whose delivery or receipt of Currency has been or would be so prevented, hindered or delayed or made unlawful or impossible is an "Affected Party", and an FX Transaction or Option under which performance has been or would be so prevented, hindered or delayed or made unlawful or impossible is an "Affected Transaction", unless the Parties have expressly agreed in an Agreement, another writing or in regard to a particular FX Transaction or Option that other disruption events or disruption fallbacks will apply to that FX Transaction or Option; in such event, that FX Transaction or Option will be subject to such disruption events or disruption fallbacks as the Parties have otherwise agreed.

"Waiting Period", in respect of a Force Majeure Event, means the first three days after such event occurs which are Business Days or which, but for such event, would have been Business Days."

ANNEX 2

Professional Codes

A number of professional codes include provisions which, to varying degrees, address the consequences of operational disruption in the financial markets. In addition, the International Chamber of Commerce has also published a standard force majeure and a standard hardship clause.

International Primary Market Association (IPMA) Recommendations January 2000

www.ipma.org.uk

Appendix C

IX Force Majeure

Clause 1

"Notwithstanding anything contained in this Agreement, [...] ("the Lead Manager") on behalf of the Managers may by notice to the Issuer [and the Guarantor] terminate this Agreement at any time before the time on the Closing Date when payment would otherwise be due under this Agreement to the Issuer in respect of the Securities if:

(a) in the opinion of the Lead Manager, circumstances shall be such as: (i) to prevent or to a material extent restrict payment for the Securities in the manner contemplated in this Agreement; or (ii) to a material extent prevent or restrict settlement of transactions in the Securities in the market or otherwise; or

(b) in the opinion of the Lead Manager, there shall have been: (i) any change in national or international policy, legal, tax or regulatory conditions; or (ii) any calamity or emergency, which has in its view caused a substantial deterioration in the price and/or value of the Securities, and, upon notice being given, the parties to this Agreement shall (except for the liability of the Issuer [and the Guarantor] in relation to expenses as provided in Clause [...] and except for any liability arising before or in relation to such termination) be released and discharged from their respective obligations under this Agreement."

Clause 2

"Notwithstanding anything contained in this Agreement, [...] ("the Lead Manager") on behalf of the Managers may by notice to the Issuer [and the Guarantor] terminate this Agreement at any time before the time on the Closing Date when payment would otherwise be due under this Agreement to the Issuer in respect of the Securities if, in the opinion of the Lead Manager, there shall have been such a change in national or international financial, political or economical conditions or currency exchange rates or exchange controls as would in their view be likely to prejudice materially the success of the offering and distribution of the Securities and dealings in the Securities in the secondary market and, upon notice being given, the parties to this Agreement shall (except for the liability of the Issuer [and the Guarantor] in relation to expenses as provided in clause [...] and except for any liability arising before or in relation to such termination) be released and discharged from their respective obligations under this Agreement."

The International Code of Conduct and Practice for Financial Markets 2002 (as amended).

www.aciforex.com/mktpractice

The ACI code provides for instances where the parties are prevented from performing their obligation under a transaction due to an event, which was not foreseeable at the time the transaction was entered into and which is beyond the parties' control. These are stated to include: capital controls, illegality or impossibility of performance, acts of God, illiquidity, etc. Market participants are encouraged to provide for these events in their contracts and should adopt the appropriate provisions, developed by industry groups. Industry groups may convene a meeting to form a market consensus in certain cases, where strict adherence to the market standard provisions is impracticable. Market participants should attend these meetings to the extent possible and be aware of, and honour the consensus reached at the meetings.

Where there are instances of general market disruption caused by sudden events such as extreme weather or other unforeseen developments and local regulators or central banks intervene with the publication of applicable procedures including interest rates to be implemented to cover interrupted settlement, market participants should strictly adhere to any rules in the absence of any written agreement dealing with such circumstances.

In addition, the Code provides that in the event of a country or a state declaring a new national bank holiday or any occurrence which would prevent settlement of banking transactions on a specified date in the future, the following procedures should be adopted for adjusting the value date on outstanding currency transactions maturing on that date:

(a) The new value date will be the first common business day (for both currencies contracted in the case of Foreign Exchange transactions) following the original value date except where a bank holiday is declared on the last business day of the month, in which case the new value date will be the first preceding common business day (for both currencies in the case of Foreign Exchange transactions) prior to month end ultimo.

(b) Value dates in Foreign Exchange Transactions will not be split other than in cases where both parties agree or where special local practice allows for split delivery as in certain Islamic countries.

(c) There will be no adjustment of Exchange Values on outstanding contracts."

The International Securities Market Association Rules and Recommendations 2001

www.isma.org

The ISMA rules (section 220 Value Date) on settlement provide a definition of business days in its explanation of value date as follows;

"Rule 221 Value date new issues

The value date for a transaction effected prior to the closing date shall be the closing date or the third business day following the trade date, whichever is the later.

With the exception of a transaction to be settled in euro, a business day for the purpose of this rule shall be a day when Clearstream, Euroclear and the cash market of the currency in which the relevant transaction is to be settled are open for business.

For a transaction to be settled in euro, a business day for the purpose of this rule shall be a day when Clearstream, Euroclear and TARGET are open for business.

In case either Clearstream, Euroclear or the cash market of the currency in which the relevant transaction is to be settled, or TARGET in the case of a transaction to be settled in euro, are closed for business between the trade date and the value date, accrued interest shall be adjusted."

"Rule 222 Normal value date

The value date for a transaction effected on or after the closing date shall be the third business day (as defined in rule 221) following the trade date.

In case either Clearstream, Euroclear or the cash market of the currency in which the relevant transaction to be settled, or TARGET I the case of a transaction to be settled in euro, are closed for business between the trade date and the value date, accrued interest shall be adjusted."

The FSA Handbook

www.fsa.gov.uk

The FSA Handbook provides the following definition of "Business Day";

" (1) (in relation to anything done or to be done in (including to be submitted to a place in) any part of the United Kingdom):

(a) (except in REC) any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday in that part of the United Kingdom;

(b) (in REC) (as defined in section 167 of the Companies Act 1989) any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday in any part of the United Kingdom;

(2) (in relation to anything done or to be done by reference to a market outside the United Kingdom) any day on which that market is normally open for business."

The Non-Investment Products (NIPs) Code May 2003

www.bankofengland.co.uk

Published by the Bank of England, the NIPs Code addresses (at paragraphs 106 and 107) the issue of market disruption and bank holidays;

Paragraph 106

"There have been instances of general disruption to the wholesale markets which have, in turn, resulted in interruptions to the sterling settlement systems and consequent delays in sterling payments. It has been agreed that in such unexpected circumstances the Bank of England should determine and publish the interest rate(s) which parties to deals affected by such interruptions should use to calculate the appropriate interest adjustment (unless all the parties to the deal agree instead on some other arrangement - such as to continue to apply the existing rate of interest on the original transaction or as provided for in the relevant documentation). The Bank of England shall have absolute discretion in its determination of any interest rate(s), and shall not be required to explain its method of determining the same and shall not be liable to any person in respect of such determination."

Paragraph 107

"Occasionally unforeseen events mean that market participants will have entered into contracts for a particular maturity date only to find, subsequently, that that day is declared a public holiday. It is normal market practice in London to extend contracts maturing on a non-business day to the next working day. But to minimise possible disputes market participants may need to agree settlement arrangements for such deals with their counterparties in advance."

International Chamber of Commerce 2003

www.iccwbo.org

"Force Majeure Clause

1. Unless otherwise agreed in the contract between the parties expressly or impliedly, where a party to a contract fails to perform one or more of its contractual duties, the consequences set out in paragraphs 4 to 9 of this Clause will follow if and to the extent that that party proves:
 - (c) that its failure to perform was caused by an impediment beyond its reasonable control; and
 - (d) that it could not reasonably have been expected to have taken the occurrence of the impediment into account at the time of the conclusion of the contract; and
 - (e) that it could not reasonably have avoided or overcome the effects of the impediment.
2. Where a contracting party fails to perform one or more of its contractual duties because of default by a third party whom it has engaged to perform the whole or part of the contract, the consequences set out in paragraphs 4 to 9 of this Clause will only apply to the contracting party:
 - (a) if and to the extent that the contracting party establishes the requirements set out in paragraph 1 of this Clause; and
 - (b) if and to the extent that the contracting party proves that the same requirements apply to the third party.
3. In the absence of proof to the contrary and unless otherwise agreed in the contract between the parties expressly or impliedly, a party invoking this Clause shall be presumed to have established the conditions described in paragraph 1(a) and (b) of this Clause in case of the occurrence of one or more of the following impediments:
 - (a) war (whether declared or not), armed conflict or the serious threat of same (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, extensive military mobilisation;
 - (b) civil war, riot rebellion and revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience;
 - (c) act of terrorism, sabotage or piracy;
 - (d) act of authority whether lawful or unlawful, compliance with any law or governmental order, rule, regulation or direction, curfew restriction, expropriation, compulsory acquisition, seizure of works, requisition, nationalisation;
 - (e) act of God, plague, epidemic, natural disaster such as but not limited to violent storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tidal wave, tsunami, flood, damage or destruction by lightning, drought;
 - (f) explosion, fire, destruction of machines, equipment, factories and of any kind of installation, prolonged break-down of transport, telecommunications or electric current;
 - (g) general labour disturbance such as but not limited to boycott, strike and lock-out, go-slow, occupation of factories and premises.
4. A party successfully invoking this Clause is, subject to paragraph 6 below, relieved from its duty to perform its obligations under the contract from the time at which the impediment causes the failure to perform if notice thereof is given without delay or, if notice thereof is not given without delay, from the time at which notice thereof reaches the other party.
5. A party successfully invoking this Clause is, subject to paragraph 6 below, relieved from any liability in damages or any other contractual remedy for breach of contract from the time indicated in paragraph 4.
6. Where the effect of the impediment or event invoked is temporary, the consequences set out under paragraphs 4 and 5 above shall apply only insofar, to the extent that and as long as the impediment or the listed event invoked impedes performance by the party invoking this Clause of its contractual duties. Where this paragraph applies, the party invoking this Clause is under an obligation to notify the other party as soon as the impediment or listed event ceases to impede performance of its contractual duties.
7. A party invoking this Clause is under an obligation to take all reasonable means to limit the effect of the impediment or event invoked upon performance of its contractual duties.
8. Where the duration of the impediment invoked under paragraph 1 of this Clause or of the listed event invoked under paragraph 3 of this Clause has the effect of substantially depriving either or both of the contracting parties of what they were reasonably entitled to expect under the contract, either party has the right to terminate the contract by notification within a reasonable period to the other party.
9. Where paragraph 8 above applies and where either contracting party has, by reason of anything done by another contracting party in the performance of the contract, derived a benefit before the termination of the contract, the party deriving such a benefit shall be under a duty to pay to the other party a sum of money equivalent to the value of such benefit."

"Hardship Clause

1. A party to a contract is bound to perform its contractual duties even if events have rendered performance more onerous than could reasonably have been anticipated at the time of the conclusion of the contract.
2. Notwithstanding paragraph 1 of this Clause, where a party to a contract proves that:
 - (h) the continued performance of its contractual duties has become excessively onerous due to an event beyond its reasonable control which it could not reasonably have been expected to have taken into account at the time of the conclusion of the contract; and that
 - (i) it could not reasonably have avoided or overcome the event or its consequences,

the parties are bound, within a reasonable time of the invocation of this Clause, to negotiate alternative contractual terms which reasonably allow for the consequences of the event.

3. Where paragraph 2 of this Clause applies, but where alternative contractual terms which reasonably allow for the consequences of the event are not agreed by the other party to the contract as provided in that paragraph, the party invoking this Clause is entitled to termination of the contract."

Investment Management Association's (IMA) Model Terms for Discretionary Fund Management 2003

www.investmentuk.org

G18 Liability of Manager

"(a) The Manager accepts responsibility for loss to the Customer to the extent that such loss is due to the negligence, wilful default or fraud of itself or any delegates appointed pursuant to paragraph G(a) above or that of its or their employees. The Manager also accepts liability for any Custodian which is an Associate.

(b) The Manager will not otherwise be liable for any loss to the Customer

(c) No warranty or undertaking is given by the Manager as to the performance or profitability of the Fund (or any part of it) or that the investment objectives stated in G2 of the Schedule will be successfully accomplished".

G29 Force Majeure

"No party shall be liable for any failure or delay in performing any of its obligations under or pursuant to this Agreement if such failure or delay is due to any cause whatsoever outside its reasonable control and it shall be entitled to a reasonable extension of the time for performing such obligations as a result of such cause. Events outside a party's reasonable control shall include without limitation; acts of God; any change to the law, order or regulation of a governmental, supranational or regulatory body; currency restrictions, devaluations and fluctuations; an act of terrorism; market conditions affecting the execution or settlement of transactions or the value of assets; failure or breakdown in communications not reasonably within the control of the Manger; and the failure of any relevant exchange or clearing house."

CMR5 Client Money held outside the United Kingdom

"The Customer agrees that its client money may be held outside the United Kingdom and that in such circumstances the legal and regulatory regime applying to the approved bank with which the client money is held will be different from that of the United Kingdom and, in the event of a failure of the bank, the Customer's money may be treated in a different manner from that which would apply if the money was held by a bank in the United Kingdom."

C5 Liability of Custodian

"(a) The Custodian accepts responsibility for the acts and omissions of its nominees. The Custodian also accepts responsibility for loss to the Customer which is due to its negligence, wilful default or fraud, or that of any sub-custodian which is an Associate.

(b) Except insofar as the same may result from the negligence, wilful default or fraud of the Custodian, its sub-custodians, or nominees, or its or their employees, the Customer agrees to indemnify the Custodian against all costs, losses, claims and expenses which may be incurred by or made against the Custodian either (i) as a result of any party claiming to be entitled to investments which form part of the Fund at the time when the Custodian first assumes custodial responsibility for the Fund; or (ii) in consequence of any breach by the Customer of the Agreement; or (iii) arising out of any action properly taken by the Custodian in accordance with the Agreement.

(c) The Custodian shall retain a lien or security interest over any assets of the Fund to the extent that any costs, losses, or claims for which the Customer is obliged to indemnify the Custodian remain unpaid. Details of any further rights the Custodian may have to a lien or security interest over the assets of the Fund are as stated in item C4 of the Schedule. The Customer agrees that the assets of the Fund may also be subject to a lien in favour of any sub-custodian, nominee or agent appointed by the Custodian in accordance with the Agreement in respect of charges relating to the administration and safekeeping of such assets.

(d) Where the Customer is a trustee, the Customer's liability under the Agreement shall be limited, in the absence of fraud, to the assets of the trust from time to time.

(e) If any sub-custodian should fail to deliver any necessary documents or to account for any securities, the Custodian will take all reasonable steps on behalf of the Customer to recover such documents or securities, or any sums due, or compensation in lieu thereof, but subject thereto (and to paragraph C5(a)) shall not be liable for any such failure. All reasonable costs incurred by the Custodian shall be paid by the Customer."