

# ISDA<sup>®</sup>

International Swaps and Derivatives Association, Inc.

## ISDA McCARTHY AND STONE LOAN CDS PROTOCOL

published on 22 March, 2010

by the International Swaps and Derivatives Association, Inc.

The International Swaps and Derivatives Association, Inc. (**ISDA**) has published this ISDA McCarthy and Stone Loan CDS Protocol (this **Protocol**) to enable parties to Covered Transactions to (i) agree that a Credit Event Notice and Notice of Publicly Available Information in respect of the Covered Transactions will be deemed to have been effectively delivered on the Notice Date without requiring the actual delivery of such notices and (ii) to amend the terms of such Covered Transactions.

Accordingly, a party that has entered into a Covered Transaction may adhere to this Protocol and be bound by its terms by completing and delivering a letter substantially in the form of Exhibit 1 to this Protocol (an **Adherence Letter**) to ISDA, as agent, as described below.

### 1. **Adherence to and Effectiveness**

- (a) By adhering to this Protocol in the manner set forth in this paragraph 1, a party (an **Adhering Party**) that wishes to (i) agree that a Credit Event Notice and Notice of Publicly Available Information in respect of the Covered Transactions will be deemed to have been effectively delivered on the Notice Date without requiring the actual delivery of such notices and (ii) amend the terms of a Covered Transaction, in each case on the terms and subject to the conditions set forth in this Protocol and the Adherence Letter, agrees that (i) a Credit Event Notice and Notice of Publicly Available Information in respect of the Covered Transactions will be deemed to have been effectively delivered on the Notice Date without requiring actual delivery of such notices and (ii) the terms of each Covered Transaction, if any, between it and each other Adhering Party will be amended in accordance with the terms of the Schedule to this Protocol.
- (b) Adherence to this Protocol will be evidenced by the execution and delivery, in accordance with paragraph 3(e) below, of an Adherence Letter, to ISDA, as agent, on or before 6 April 2010 or such later date designated by ISDA by notice given no later than 6 April 2010 on its website at [www.isda.org](http://www.isda.org) (or by any other suitable means) (in either case, the **Cut-off Date**). After the Cut-off Date, ISDA will not accept any further Adherence Letters to the Protocol.
- (c) Each Adhering Party will deliver two copies of the Adherence Letter, one a manually signed original and the other a conformed copy containing, in place of each signature, the printed or typewritten name of each signatory.
- (d) The agreement to deem the relevant notices to have been given and to make the amendments contemplated by this Protocol, on the terms and subject to the conditions set forth in this Protocol, will, as between any two Adhering Parties, be effective on the Implementation Date. Any such deeming and the amendments set out in the Schedule

hereto will apply to any Covered Transaction entered into on or prior to the Implementation Date between the Adhering Parties and will be effective from the Implementation Date.

- (e) This Protocol is intended for use without negotiation, but without prejudice to any amendment, modification or waiver in respect of a Covered Transaction that the parties may otherwise effect in accordance with the terms of that Covered Transaction and the Governing ISDA Master Agreement, and in adhering to this Protocol, an Adhering Party may not specify additional provisions, conditions or limitations in its Adherence Letter or otherwise.
- (f) Any purported adherence that ISDA, as agent, determines in good faith is not in compliance with this Protocol will be void and ISDA will inform the relevant party of such fact as soon as reasonably possible after making such determination.
- (g) The Adhering Parties acknowledge and agree that adherence to this Protocol is irrevocable.

## 2. Representations and Agreements

On the Implementation Date, each Adhering Party represents to each other Adhering Party with which it has or may have entered into a Covered Transaction, that:

- (a) **Status.** It is, if relevant, duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing or, if it otherwise represents its status in or pursuant to the Governing ISDA Master Agreement, has such status;
- (b) **Powers.** It has the power to execute and deliver the Adherence Letter and to perform its obligations under the Adherence Letter, each Covered Transaction and the Governing ISDA Master Agreement, in each case as amended by the Adherence Letter and this Protocol, and has taken all necessary action to authorise such execution, delivery and performance;
- (c) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (d) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to the Adherence Letter and the Governing ISDA Master Agreement, as amended by the Adherence Letter and this Protocol, have been obtained and are in full force and effect and all conditions of any such consents have been complied with;
- (e) **Obligations Binding.** Its obligations under the Adherence Letter and the Governing ISDA Master Agreement, as amended by the Adherence Letter and this Protocol, constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)); and
- (f) **Credit Support.** Its adherence to this Protocol and any amendment contemplated by this Protocol will not, in and of itself, adversely affect any obligations owed, whether by it or by

any third party, under any Credit Support Document relating to the Governing ISDA Master Agreement.

Each Adhering Party agrees with each other Adhering Party with which it has or may have a Governing ISDA Master Agreement that:

- (a) each of the foregoing representations will be deemed to be a representation for purposes of Section 5(a)(iv) of each such Governing ISDA Master Agreement entered into on or prior to the Implementation Date between them; and
- (b) any Credit Support Document between the Adhering Parties that relates to a Covered Transaction will be deemed to be amended to the extent necessary, such that the operation thereof is not affected by the adherence by the Adhering Parties to this Protocol and any amendments contemplated by this Protocol.

### **3. Miscellaneous**

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

- (i) This Protocol constitutes the entire agreement and understanding of the Adhering Parties with respect to its subject matter and supersedes all oral communications and prior writings (except as otherwise provided herein) with respect thereto. Each Adhering Party acknowledges that in adhering to this Protocol it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to elsewhere in this Protocol or in the Schedule hereto) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Protocol will limit or exclude any liability of an Adhering Party for fraud.
- (ii) Except for any amendment deemed to be made pursuant to this Protocol in respect of a Covered Transaction, all terms and conditions of each Covered Transaction will continue in full force and effect in accordance with its provisions in effect immediately prior to the Implementation Date. This Protocol will, with respect to its subject matter, survive, and any amendments deemed to be made pursuant to it will form a part of, each Covered Transaction between the Adhering Parties notwithstanding Section 9(a) (or in the case of an ISDA Master Agreement that is a 1992 ISDA Master Agreement (Local Currency – Single Jurisdiction), Section 8(a)) of the Governing ISDA Master Agreement.

- (b) ***Amendments.*** An amendment, modification or waiver in respect of the matters contemplated by this Protocol will only be effective if made in accordance with the terms of the Governing ISDA Master Agreement and then only with effect between the parties to the Governing ISDA Master Agreement (and will only be effective to amend or override the provisions contained in paragraph 1 of this Protocol and the Schedule hereto if it expressly refers in writing to this paragraph 3(b) of this Protocol and would otherwise be effective in accordance with Section 9(b) (or in the case of an ISDA Master Agreement that is a 1992 ISDA Master Agreement (Local Currency – Single Jurisdiction), Section 8(b)) of the Governing ISDA Master Agreement in effect between the parties).

- (c) **Headings.** The headings used in this Protocol and any Adherence Letter are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Protocol or any Adherence Letter.
- (d) **Governing Law.** This Protocol and each Adherence Letter and any non-contractual obligations arising out of or in connection with each such document, will, as between two Adhering Parties and in respect of each Covered Transaction between them, be governed by and construed in accordance with English law and the amendments to each Covered Transaction shall be governed by and construed in accordance with the law specified to govern that Covered Transaction and otherwise in accordance with applicable choice of law doctrine.
- (e) **Notices.** Any Adherence Letter must be in writing and delivered as a locked PDF (portable document format) attachment to an email to ISDA at McCarthyStone@isda.org and will be deemed effectively delivered on the date it is delivered unless on the date of that delivery the New York ISDA office is closed or that communication is delivered after 5:00 p.m., New York time, in which case that communication will be deemed effectively delivered on the next day the New York ISDA office is open. Each Adhering Party agrees that the determination of the date and time of delivery of any Adherence Letter shall be determined by ISDA in its sole and absolute discretion.

#### 4. Definitions

As used in this Protocol, **Credit Support Document** and **Transaction** each has the meaning given to that term in the related Governing ISDA Master Agreement and **Credit Derivative Transaction** has the meaning given to such term in the 2003 ISDA Credit Derivatives Definitions, as published by ISDA (the **Credit Derivatives Definitions**). Each capitalised term used in this Protocol or the Schedule hereto but not defined herein or therein has the meaning given that term in the Credit Derivatives Definitions or in the relevant Documentation.

References in this Protocol and the Schedule hereto to the following terms have the meaning indicated below:

**Auction Date** means 15 April 2010.

**Confirmation** means, in relation to a Covered Transaction between two Adhering Parties, each document or other confirming evidence exchanged between the parties or otherwise effective for the purpose of confirming or evidencing the Covered Transaction (including, for the avoidance of doubt, any loan transaction supplement).

**Covered Transaction** means (i) each European Loan CDS Transaction and each option to enter into a European Loan CDS Transaction and (ii) each LevX CDS Transaction and each option to enter into a LevX CDS Transaction, in each case in respect of which each of the parties is an Adhering Party and for which:

- (a) Mother Bidco Limited is a Reference Entity;
- (b) the relevant McCarthy and Stone Reference Obligation and McCarthy and Stone Senior Loans are the only Deliverable Obligations;
- (c) the Effective Date is prior to the Auction Date;

- (d) the Trade Date is on or prior to the Implementation Date;
- (e) the Scheduled Termination Date is on or after the Default Date; and
- (f) the portion of the Credit Derivative Transaction relating to the McCarthy and Stone Reference Obligations is still outstanding as of the Implementation Date .

**Default Date** means 23 April 2009.

**Documentation** means the Governing ISDA Master Agreement, Standard Terms Supplement and Confirmation relating to a Covered Transaction.

**European Loan CDS Transaction** means a Credit Derivative Transaction evidenced by a Confirmation that incorporates the ISDA Standard Terms Supplement for use with Credit Derivative Transactions on Leveraged Loans published on 3 October 2008, any previous or amended version thereof, or any other Credit Derivative Transaction entered into on the basis of a confirmation on substantially similar terms.

**Governing ISDA Master Agreement** means, in respect of a Covered Transaction, the ISDA Master Agreement governing such Covered Transaction and of which such Covered Transaction forms a part, whether executed by the parties thereto or incorporated by reference in the Confirmation relating to such Covered Transaction.

**Implementation Date** means, with respect to any two Adhering Parties, the date of receipt by ISDA, as agent, of an Adherence Letter from the later of the Adhering Parties to adhere.

**ISDA Master Agreement** means any of the following: (i) the ISDA 2002 Master Agreement; (ii) the 1992 ISDA Master Agreement (Multicurrency – Cross Border); (iii) the 1992 ISDA Master Agreement (Local Currency – Single Jurisdiction); (iv) the 1987 ISDA Interest Rate and Currency Exchange Agreement; and (v) the 1987 ISDA Interest Rate Swap Agreement.

**LevX CDS Transaction** means a Credit Derivative Transaction evidenced by a Confirmation that incorporates the iTraxx® LevX® Standard Terms Supplement for use with Credit Derivative Transactions on Leveraged Loans published on 3 October 2008, any previous or amended version thereof, or any other Credit Derivative Transaction entered into on the basis of a confirmation on substantially similar terms.

**McCarthy and Stone Reference Obligation** means the Facility D entered into pursuant to the GBP 930,000,000 Senior Facilities Agreement dated 1 August 2006, as amended, restated and/or supplemented from time to time.

**McCarthy and Stone Senior Loans** means each obligation that would constitute a Senior Loan pursuant to the Documentation, assuming that the McCarthy and Stone Reference Obligation is specified as a Reference Obligation in the relevant Confirmation in the case of a European Loan CDS Transaction or in respect of any Component Transaction in the case of a LevX CDS Transaction.

**Notice Date** means 6 April 2010

**Standard Terms Supplement** means, in relation to a Covered Transaction between two Adhering Parties, the standard terms supplement incorporated by reference into the relevant Confirmation.

**EXHIBIT 1**  
**to ISDA McCarthy and Stone Loan CDS Protocol**

**Form of Adherence Letter**

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[Letterhead of Adhering Party]

[Date]

**International Swaps and Derivatives Association, Inc.**

**Send to:** McCarthyStone @isda.org

Dear Sirs,

**ISDA McCarthy and Stone Loan CDS Protocol - Adherence**

The purpose of this letter is to confirm our adherence to the ISDA McCarthy and Stone Loan CDS Protocol as published by the International Swaps and Derivatives Association, Inc. on 22 March 2010 (the **Protocol**). This letter constitutes an Adherence Letter as referred to in the Protocol. The definitions and provisions contained in the Protocol are incorporated into this Adherence Letter, which will supplement and form part of each Covered Transaction entered into on or prior to the Implementation Date between us and each other Adhering Party.

**1. Specified Terms**

We hereby agree that:

- (a) A Credit Event Notice and Notice of Publicly Available Information in respect of the Covered Transactions will be deemed to have been effectively delivered on the Notice Date without requiring the actual delivery of such notices (as further set out in Schedule 1); and
- (b) the amendments in the Schedule to the Protocol shall apply to each Covered Transaction to which we are a party in accordance with the terms of the Protocol.

**2. Appointment as Agent and Release**

We hereby appoint ISDA as our agent for the limited purposes of the Protocol and accordingly we waive, and hereby release ISDA from, any rights, claims, actions or causes of action whatsoever (whether in contract, tort or otherwise) arising out of, or in any way relating to, this Adherence Letter or our adherence to the Protocol or any actions contemplated as being required by ISDA.

**[3. DTCC Account Number**

For purposes of electronic matching and counterparty recognition, our DTCC Account Number is as follows, but you understand and agree that our failure to provide any such details pursuant to this

Adherence Letter will not affect the legal validity and binding nature of the Protocol with respect to us:

DTCC Account Number: [    ].]

**[3][4]. Contact Details**

Our contact details for purposes of this Adherence Letter are:

Name:

Address:

Telephone:

Fax:

E-mail:

We consent to the publication of a conformed copy of this letter by ISDA and to the disclosure by ISDA of the contents of this letter.

Yours faithfully,

[ADHERING PARTY]<sup>1</sup>

By:

Name:

Title:

Signature:

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<sup>1</sup> Specify legal name of Adhering Party. If you are an investment or asset manager and act on behalf of multiple funds, you must indicate in the signature block, "Investment/Asset Manager, acting on behalf of each of the funds and accounts listed in the relevant Master Agreement (or other agreement which deems a Master Agreement to have been created) between it and another Adhering Party" (or such other language that indicates the funds to which this letter is applicable). A separate Adherence Letter for each fund does *not* need to be submitted to ISDA. Further, no specific names of clients of the investment or asset manager will be publicly disclosed on the ISDA website in connection with the Protocol (unless such names are contained in the Adherence Letter or any attached appendix).

## **SCHEDULE**

### **Covered Transactions**

#### **1. Deemed Event Determination Date**

With effect from the Implementation Date and with respect to each Covered Transaction:

- (a) a Credit Event Notice specifying Bankruptcy as the Credit Event and a Notice of Publicly Available Information shall be deemed to be effective on the Notice Date and the Notice Date shall be deemed to be the Event Determination Date for purposes of each such Covered Transaction or for any portion of such Covered Transaction applicable to the McCarthy and Stone Reference Obligation, as applicable (and for the avoidance of doubt, such date shall be the Event Determination Date for all Covered Transactions even if any city other than London is specified as the Calculation Agent City for any such Covered Transaction);
- (b) any Credit Event Notice or Notice of Publicly Available Information (other than a notice deemed to be given pursuant to this Protocol) delivered in respect of any portion of any Covered Transaction applicable to the McCarthy and Stone Reference Obligation shall be deemed revoked, and neither Adhering Party shall have any obligations with respect to such revoked notice; and
- (c) each Adhering Party agrees not to deliver any other Credit Event Notice or Notice of Publicly Available Information (other than a notice deemed to be given pursuant to this Protocol) in respect of any portion of a Covered Transaction applicable to the McCarthy and Stone Reference Obligation, and any such notice delivered shall be void and have no effect.

#### **2. Amendments**

With effect from the Implementation Date, and with respect to each Covered Transaction, notwithstanding the definition of "Settlement Method" therein, the Adhering Parties hereto agree that the ELCDS Auction Settlement Terms appended hereto as Appendix I shall constitute a Market Settlement Mechanism that covers the Facility D entered into pursuant to the GBP 930,000,000 Senior Facilities Agreement dated 1 August 2006, as amended, restated and/or supplemented from time to time.

## APPENDIX I

### FORM OF McCARTHY AND STONE ELCDS AUCTION SETTLEMENT TERMS

# ELCDS AUCTION SETTLEMENT TERMS

## For McCarthy and Stone

### First Lien Loans

published on 22 March 2010

by the International Swaps and Derivatives Association, Inc. and International Index Company Ltd.

The International Swaps and Derivatives Association, Inc. ("ISDA") and International Index Company Ltd. have published these ELCDS Auction Settlement Terms to enable parties to Covered Transactions to settle such Covered Transactions based upon a Final Price determined pursuant to the terms set forth below (an "Auction").

*Note that whilst each Inside Market Bid, Inside Market Offer, Physical Settlement Request, Limit Bid and Limit Offer will be denominated in a notional amount based on an amount of the Facility D entered into pursuant to the GBP 930,000,000 Senior Facilities Agreement dated 1 August 2006 (as amended, restated and/or supplemented from time to time), the total commitment, or outstanding principal balance (as the case may be) of the Deliverable Obligations which are required to be Delivered pursuant to the Representative Auction-Settled Transaction shall be equal to such notional amount multiplied by the Writedown Adjustment Factor.*

- (1) On or before the Business Day prior to the Auction Date, the Administrators will publish a list of the Participating Bidders.
- (2) Any customer that wishes to submit a Customer Physical Settlement Request to a Participating Bidder must submit a valid Customer Physical Settlement Request Letter to the relevant Participating Bidder at or prior to 5:00 p.m. London time on the Business Day prior to the Auction Date. Each Customer Physical Settlement Request submitted to a Participating Bidder must be, to the best of the relevant customer's knowledge and belief, in the same direction as, and (when aggregated with all other Customer Physical Settlement Requests, if any, submitted by such customer to one or more other Participating Bidders) not in excess of, its Market Position. Each Participating Bidder must accept Customer Physical Settlement Requests from any customer with whom it has a trading relationship, provided that such Customer Physical Settlement Request is no larger than, and is in the same direction as, such customer's Dealer-Specific Market Position with respect to that Participating Bidder and/or its affiliates (in aggregate). A Participating Bidder may, but is not required to, accept a Customer Physical Settlement Request larger than the relevant customer's Dealer-Specific Market Position in respect of such Participating Bidder and/or its affiliates. If a Participating Bidder decides not to accept a Customer Physical Settlement Request in accordance with this Section (2), such Participating Bidder shall promptly notify such customer of such decision.
- (3) During the Initial Bidding Period, each Participating Bidder will be expected to submit to the Administrators a Valid Inside Market Submission and may submit a Physical Settlement Request

(which Physical Settlement Request will equal the aggregate of the relevant Participating Bidder's Dealer Physical Settlement Request and all Customer Physical Settlement Requests, if any, that the relevant Participating Bidder receives and accepts from its customers pursuant to Section (2) above). Each Dealer Physical Settlement Request must be, to the best of the relevant Participating Bidder's knowledge and belief, in the same direction as, and not in excess of, its Market Position.

- (4) If the Administrators receive at least five Valid Inside Market Submissions, the Administrators will determine the **"Inside Market Midpoint"** as follows:
- (a) The Administrators will sort the Inside Market Bids and Inside Market Offers in the Valid Inside Market Submissions separately, with the Inside Market Bids sorted in descending order and the Inside Market Offers sorted in ascending order. Each Inside Market Bid will then be matched with the corresponding Inside Market Offer (i.e., the highest Inside Market Bid being matched with the lowest Inside Market Offer, the second highest Inside Market Bid with the second lowest Inside Market Offer, etc.) (each such Inside Market Bid/Inside Market Offer pair constituting a **"Matched Market"**). For the purposes of sorting the Inside Market Bids and Inside Market Offers, where two Inside Market Bids are equal, the one submitted first to the Administrators will be considered to be the lower of the two, and where two Inside Market Offers are equal, the one submitted first to the Administrators will be considered to be the higher of the two.
  - (b) The Administrators will then calculate the mean of the Inside Market Bids and Inside Market Offers included in the Best Half of the Matched Markets that are Non-Tradeable Markets. To identify the Best Half, the Administrators will sort all Non-Tradeable Markets in order of the spread between the Inside Market Bid and Inside Market Offer within each Matched Market, from smallest spread to largest. The Best Half of the Matched Markets are those in the first half of such list. In the event that the number of Non-Tradeable Markets is an odd number, the Administrators will round up the number of Matched Markets to include in the Best Half. The Administrators will then calculate the Inside Market Midpoint by finding the mean of all the Inside Market Bids and Inside Market Offers included in the Matched Markets that fall within the Best Half (with the results rounded to the nearest one-eighth of one percent).
  - (c) The steps described in (a) and (b) above are illustrated in the following example (which is not intended to reflect indicative prices for the Deliverable Obligations):

Step 1 – Sort Inside Market Bids from highest to lowest and Inside Market Offers from lowest to highest.

Contributed		Sorted		
IM Bids	IM Offers	IM Bids	IM Offers	
39.500%	41.000%	45.000%	34.000%	Tradeable Markets
40.000%	42.000%	41.000%	39.500%	
41.000%	43.000%	41.000%	40.000%	Non-Tradeable Markets
45.000%	47.000%	<b>40.000%</b>	<b>41.000%</b>	
32.000%	34.000%	<b>39.500%</b>	<b>42.000%</b>	
38.750%	40.000%	<b>38.750%</b>	<b>42.750%</b>	Matched Markets
38.000%	39.500%	38.000%	43.000%	
41.000%	42.750%	32.000%	47.000%	

Best Half {

Step 2 – Ignore all Tradeable Markets.

Step 3 – The Inside Market Midpoint is the mean of the Best Half of the Non-Tradeable Markets. If there is an odd number of Non-Tradeable Markets, round up to determine the number of Matched Markets in the Best Half.

Best Half	
IM Bids	IM Offers
40.000%	41.000%
39.500%	42.000%
38.750%	42.750%

Inside Market Midpoint = Average (40, 41, 39.5, 42, 38.75, 42.75) =  
**40.667%, rounded to the nearest one-eighth of one percent 40.625%**

(5) For each Tradeable Market, one of the Participating Bidders whose Inside Market Bid or Inside Market Offer forms part of such Tradeable Market will make a payment to ISDA (the "**Adjustment Amount**") on the third Business Day after the Final Price Determination Date, such payment to be calculated by the Administrators as follows:

- (a) The "**Adjustment Amount**" in respect of a Tradeable Market will be an amount equal to (i) the Inside Market Quotation Amount *multiplied by* (ii) either (A) if the Open Interest is an offer to sell Deliverable Obligations, the greater of (I) zero and (II) the Inside Market Bid forming part of such Tradeable Market minus the Inside Market Midpoint or (B) if the Open Interest is a bid to purchase Deliverable Obligations, the greater of (I) zero and (II) the Inside Market Midpoint *minus* the Inside Market Offer forming part of such Tradeable Market. Each Participating Bidder agrees that (1) if the Open Interest is an offer to sell Deliverable Obligations, the Participating Bidder whose Inside Market Bid formed part of such Tradeable Market will pay the Adjustment Amount to ISDA and (2) if the Open Interest is a bid to purchase Deliverable Obligations, the Participating Bidder whose Inside Market Offer formed part of such Tradeable Market will pay the Adjustment Amount to ISDA. Any payments of Adjustment Amounts shall be used by ISDA to defray any costs related to any auction that ISDA has coordinated (including the Auction), or that ISDA will in the future coordinate, for purposes of settlement of Credit Derivative Transactions. To the extent that ISDA determines at any time that the aggregate of all such payments received by ISDA (and not previously applied by ISDA to defray auction-related costs) up to and including such time exceeds the costs (including future costs as determined by ISDA) of such auctions, ISDA may in its sole discretion distribute any such excess among all entities that have previously acted as participating bidders in any prior auction proportionately, based upon participation as a participating bidder in such prior auctions. Payments of Adjustment Amounts will not be conducted or effected by, or through, any Administrator.
- (b) The steps described in (a) above are illustrated in the following example (which is not intended to reflect indicative prices for the Deliverable Obligations):

Step 1 – Consider only Tradeable Markets.

Tradeable Markets	
IM Bids	IM Offers
45.000%	34.000%
41.000%	39.500%
41.000%	40.000%

Step 2 – Calculate the Adjustment Amount for each Tradeable Market by (i)(A) if the Open Interest is an offer to sell Deliverable Obligations, determining the greater of (I) zero and (II) the Inside Market Bid forming part of such Tradeable Market minus the Inside Market Midpoint or (B) if the Open Interest is a bid to purchase Deliverable Obligations, determining the greater of (I) zero and (II) the Inside Market Midpoint minus the Inside Market Offer forming part of such Tradeable Market and (ii) multiplying the resulting amount by the Inside Market Quotation Amount.

Example calculation of Adjustment Amount if the Open Interest is an offer to sell Deliverable Obligations:

IM Bids	IMM	Adjustment Amount (as a percentage of the Inside Market Quotation Amount)
45.000%	40.625%	4.375%
41.000%	40.625%	0.375%
41.000%	40.625%	0.375%

Example calculation of Adjustment Amount if the Open Interest is a bid to purchase Deliverable Obligations:

IMM	IM Offers	Adjustment Amount (as a percentage of the Inside Market Quotation Amount)
40.625%	34.000%	6.625%
40.625%	39.500%	1.125%
40.625%	40.000%	0.625%

- (6) If an Inside Market Midpoint has been determined pursuant to Section (4) above, the Administrators will match all Physical Settlement Requests with one another in order to determine the Open Interest.
- (a) If the sum of all Quotation Amounts stated in each Physical Settlement Sell Request is less than the sum of all Quotation Amounts stated in each Physical Settlement Buy Request, all Physical Settlement Sell Requests will be matched with Physical Settlement Buy Requests, subject to the Rounding Convention, or if the sum of all Quotation Amounts stated in each Physical Settlement Buy Request is less than the sum of all Quotation Amounts stated in each Physical Settlement Sell Request, all Physical Settlement Buy Requests will be matched with Physical Settlement Sell Requests, subject to the Rounding Convention (each such match, a "**Market Position Trade**"), and each such pair will form a trade at the Final Price as described in Section (9) below.
- (b) Within 30 minutes of the conclusion of the Initial Bidding Period, the Administrators will publish the following information on their respective websites:
- (i) the size and direction of the Open Interest;
  - (ii) the Inside Market Midpoint; and
  - (iii) the details of any Adjustment Amounts.

If, for any reason, the Initial Bidding Period lasts longer, or occurs later, than the Originally Scheduled Initial Bidding Period, the Administrators will publish such information on their

respective websites at such time as they determine (in their sole and absolute discretion) in order to preserve the integrity of the Auction.

- (7) Customer Limit Order Requests may be submitted to the relevant Participating Bidder at any time after the publication of the information set out in accordance with Section (6)(b) above and prior to the end of the Subsequent Bidding Period (determined, for these purposes only, without regard to any extension that may be made by the Administrator). Each Customer Limit Order Request submitted to a Participating Bidder must be in the opposite direction of the Open Interest and, to the best of the customer's knowledge and belief (when aggregated with all other Customer Limit Order Requests, if any, submitted by such customer to one or more Participating Bidders) not in excess of the size of the Open Interest. The Participating Bidder may, but is not obliged to, take into account in its Limit Order Submissions any Customer Limit Order Request submitted to it in accordance with this Section (7) provided that if a Participating Bidder, for any reason, decides not to accept a Customer Limit Order Request from a customer, such Participating Bidder shall promptly notify such customer of its decision not to accept such customer's Customer Limit Order Request.
- (8) During the Subsequent Bidding Period, each Participating Bidder will submit its Limit Order Submissions. All Inside Market Bids (if the Open Interest is an offer to sell Deliverable Obligations) or Inside Market Offers (if the Open Interest is a bid to purchase Deliverable Obligations), as applicable, submitted during the Initial Bidding Period (regardless of whether or not they form part of a Tradeable Market) will, together with all Limit Bids (if the Open Interest is an offer to sell Deliverable Obligations) or Limit Offers (if the Open Interest is a bid to purchase Deliverable Obligations), as applicable, be considered "**Unmatched Limit Orders**", however any Inside Market Bid that forms part of a Tradeable Market and is higher than the Inside Market Midpoint and any Inside Market Offer that forms part of a Tradeable Market and is lower than the Inside Market Midpoint will, in each case, be deemed to be equal to the Inside Market Midpoint for purposes of serving as an Unmatched Limit Order. The difference between the aggregate Quotation Amount of a Participating Bidder's Limit Order Submissions and the portion of such aggregate Quotation Amount attributable to any Customer Limit Order Requests received by such Participating Bidder that are taken into account in the Limit Order Submission received by the Administrators from such Participating Bidder during the Subsequent Bidding Period must be, to the best of such Participating Bidder's knowledge and belief, not in excess of the size of the Open Interest. If the Open Interest is an offer to sell Deliverable Obligations, then any Limit Bid that would otherwise be at a price above the Inside Market Midpoint plus the Cap Amount shall be deemed to be at a price equal to the Inside Market Midpoint plus the Cap Amount. If the Open Interest is a bid to purchase Deliverable Obligations, then any Limit Offer that would otherwise be at a price below the Inside Market Midpoint minus the Cap Amount shall be deemed to be at a price equal to the Inside Market Midpoint minus the Cap Amount.
- (9) The Administrators will then match the Open Interest against the corresponding Unmatched Limit Orders.
  - (a) If the Open Interest is a bid to purchase Deliverable Obligations, it will be matched against the Unmatched Limit Orders that are Offers. If the Open Interest is an offer to sell Deliverable Obligations, it will be matched against the Unmatched Limit Orders that are Bids.

- (b) The Open Interest will be matched against each applicable Unmatched Limit Order, beginning with the Unmatched Limit Order that is the lowest Offer or the highest Bid, as the case may be, and moving to the next remaining lowest (in the case of Offers) or next remaining highest (in the case of Bids) until:
  - (i) the full amount of the Open Interest has been matched against Unmatched Limit Orders totalling the same size as the Open Interest; or
  - (ii) all of the Unmatched Limit Orders of the relevant direction (i.e., Offers, if the Open Interest is a bid to purchase Deliverable Obligations or Bids, if the Open Interest is an offer to sell Deliverable Obligations) have been matched to the Open Interest.

Each Unmatched Limit Order that is matched to the Open Interest under Section (9)(b)(i) or (ii) above is a "**Matched Limit Order**" and each such match between a Matched Limit Order and a Physical Settlement Request is a "**Matched Limit Order Trade**". If, in the case of Section (9)(b)(i) above, there are multiple Unmatched Limit Orders stating the same price and each could be the final Unmatched Limit Order to be matched to the Open Interest, then such final Unmatched Limit Orders will be filled Pro Rata against the remaining Open Interest, subject to the Rounding Convention.

- (c) If the final matching of the Open Interest against the applicable Unmatched Limit Orders occurs pursuant to Section (9)(b)(i) above, the Final Price will be the price associated with the Matched Limit Order that is the highest Offer or the lowest Bid, as the case may be, provided that (A) if the Open Interest is an offer to sell Deliverable Obligations and the price associated with the lowest Matched Limit Order exceeds the Inside Market Midpoint by more than the Cap Amount, then the Final Price will be the Inside Market Midpoint plus the Cap Amount and (B) if the Open Interest is a bid to purchase Deliverable Obligations and the Inside Market Midpoint exceeds the price associated with the highest Matched Limit Order by more than the Cap Amount, then the Final Price will be the Inside Market Midpoint minus the Cap Amount. If the Open Interest is zero, the Final Price will be the Inside Market Midpoint.
- (d) If the final matching of the Open Interest against the applicable Unmatched Limit Orders occurs pursuant to Section (9)(b)(ii) above, the Final Price shall be (A) if the Open Interest is a bid to purchase Deliverable Obligations, the greater of (i) 100% and (ii) the highest Limit Offer or Inside Market Offer received or (B) if the Open Interest is an offer to sell Deliverable Obligations, zero. In such case, notwithstanding Sections (6)(a) or (9)(b) above, all Physical Settlement Requests of the same direction as the Open Interest (e.g., bids to purchase or offers to sell) will be matched Pro Rata, subject to the Rounding Convention, against the Limit Order Submissions and Physical Settlement Requests on the opposite side of the market to form Market Position Trades or Matched Limit Order Trades, as applicable.
- (e) In all cases, if the Final Price determined pursuant to these ELCDS Auction Settlement Terms is greater than 100%, then for the purposes of settling the Covered Transactions only, the Final Price shall be deemed to be 100%.
- (f) Each Participating Bidder whose Physical Settlement Request or Matched Limit Order, as the case may be, forms part of either a Market Position Trade or a Matched Limit Order Trade will be deemed to have entered into a bilateral agreement on terms equivalent to the Representative Auction-Settled Transaction for which (i) the Floating Rate Payer Calculation Amount is equal to the Quotation Amount in respect of the relevant Market

Position Trade or Matched Limit Order Trade, as the case may be, and (ii) (A) the Seller is the Participating Bidder whose Physical Settlement Buy Request forms part of such Market Position Trade or whose Physical Settlement Buy Request, Limit Bid or Inside Market Bid, as the case may be, forms part of such Matched Limit Order Trade and (B) the Buyer is the Participating Bidder whose Physical Settlement Sell Request forms part of such Market Position Trade or whose Physical Settlement Sell Request, Limit Offer or Inside Market Offer, as the case may be, forms part of such Matched Limit Order Trade; provided that, (i) in the case of the Matched Limit Order Trades containing the highest Offer or the lowest Bid, as the case may be, the Quotation Amount will, if necessary, be reduced to reflect the size of the remaining Open Interest, and (ii) in the event that there are multiple Matched Limit Orders stating the highest Offer or lowest Bid, as the case may be, then such Matched Limit Orders will be filled Pro Rata against the remaining Open Interest, subject to the Rounding Convention. Participating Bidders whose Physical Settlement Request or Matched Limit Order, as the case may be, forms part of a Market Position Trade or Matched Limit Order Trade will be matched with one another by the Administrators in their sole and absolute discretion and to the extent reasonably practicable so as to minimise the number of Representative Auction-Settled Transactions to be entered into and further to minimise the number of Representative Auction-Settled Transactions for which the Notional Amount will be smaller than GBP 1,000,000 provided that, prior to such matching, the Quotation Amounts in respect of Matched Limit Orders or Physical Settlement Requests, as the case may be, submitted by the same Participating Bidder will be matched with each other, to the extent possible. Transactions entered into by and between Participating Bidders pursuant to Market Position Trades or Matched Limit Order Trades will not be conducted or effected by, or through, any Administrator.

- (10) A Delayed Auction Date or a Materiality Event Delayed Auction Date may occur under the following circumstances:
- (a) If at any time before the determination of the Final Price, an event occurs or exists (i) prior to the commencement of an Initial Bidding Period or (ii) subsequent to such Initial Bidding Period but prior to the commencement of the related Subsequent Bidding Period, that is considered by any two Participating Bidders to be a Potential Materiality Event, then such Participating Bidders shall have a right to require the Administrators to call a vote of the Auction Settlement Committee to determine whether such event is a Materiality Event, which vote will take place in the case of (i) above, before the end of such Initial Bidding Period or, in the case of (ii) above, before the end of such Subsequent Bidding Period. If a majority of the entities casting a vote in the Auction Settlement Committee votes that such event is a Materiality Event, then such Initial Bidding Period and, if applicable, such Subsequent Bidding Period will be deemed to have been cancelled and the entire process contemplated by these ELCDS Auction Settlement Terms shall recommence on the next Business Day (or such other Business Day selected by the Administrators), unless prior to 10:00 a.m., London time on such Business Day, at a vote of the Auction Settlement Committee held by the Administrators, a majority of the entities casting a vote in the Auction Settlement Committee votes that the news of the Materiality Event has not yet been sufficiently widely disseminated or another Materiality Event has occurred or exists, in which case the entire process contemplated by these ELCDS Auction Settlement Terms shall recommence on the following Business Day (i.e., unless the Administrators have selected another Business Day, the second Business Day after the original vote establishing the occurrence of a Materiality Event (or such other Business Day selected by the Administrator), and, if (and to the extent) necessary, on each Business Day thereafter (or such other Business Day selected by the Administrators) but in no event later than the 30th

calendar day after the Common Event Determination Date (any such date on which a delayed Initial Bidding Period actually occurs following a particular Materiality Event, a "**Materiality Event Delayed Auction Date**"). The Administrators will publish the results of any vote of the Auction Settlement Committee with respect to the declaration of a Materiality Event on their respective websites.

- (b) If the process described above does not result in a Final Price for any reason, in the absence of the declaration of a Materiality Event, the relevant steps will be repeated on the Auction Date with the Initial Bidding Period and the Subsequent Bidding Period each occurring two hours or, if a third attempt is necessary, four hours, later than the Originally Scheduled Initial Bidding Period or the Originally Scheduled Subsequent Bidding Period, as applicable. If a Final Price cannot be determined on any such subsequent attempts on the Auction Date itself, in the absence of the declaration of a Materiality Event, up to three attempts will be made on the same schedule on the Business Day following the Auction Date (such date, the "**Delayed Auction Date**").
  - (c) In the case where a Materiality Event has been declared, if the process described above does not result in a Final Price on the related Materiality Event Delayed Auction Date for any reason, in the absence of the declaration of another Materiality Event, the relevant steps will be repeated on such Materiality Event Delayed Auction Date with the Initial Bidding Period and the Subsequent Bidding Period each occurring two hours or, if a third attempt is necessary, four hours, later than originally scheduled on such Materiality Event Delayed Auction Date. If a Final Price cannot be determined on any such subsequent attempts on such Materiality Event Delayed Auction Date itself, in the absence of the declaration of another Materiality Event, up to three attempts will be made on the same schedule on the Business Day following such Materiality Event Delayed Auction Date.
  - (d) If, after the earlier of (i) the additional attempts described in Section (10)(b) and (c) above, and (ii) the 30th calendar day after the Common Event Determination Date, a Final Price has not been determined, an "**Auction Cancellation Event**" will be deemed to have occurred (the date of such an event, an "**Auction Cancellation Date**"). The Administrators will announce the occurrence of an Auction Cancellation Event on their respective websites.
- (11) Within one hour of the conclusion of the Subsequent Bidding Period, the Administrators will publish the following information on their respective websites:
- (a) the Final Price;
  - (b) the names of the Participating Bidders who submitted Bids, Offers and Physical Settlement Requests, together with the details of all such Bids, Offers and Physical Settlement Requests submitted by each (e.g., Participating Bidders and Quotation Amounts); and
  - (c) the details and size of all Market Position Trades or Matched Limit Order Trades.

If, for any reason, the Subsequent Bidding Period lasts longer, or occurs later, than the Originally Scheduled Subsequent Bidding Period, the Administrators will publish such information on their respective websites at such time as they determine (in their sole and absolute discretion) in order to preserve the integrity of the Auction.

- (12) The following rules will apply to Physical Settlement Requests, Inside Market Submissions and Limit Order Submissions submitted by any Participating Bidder:
- (a) Any Inside Market Bid, Inside Market Offer or Limit Order Submission may not be amended either by the Participating Bidder or the Administrators after the conclusion of the Initial Bidding Period or Subsequent Bidding Period, as applicable, even if such Submission is a mistake, and all Participating Bidders will be required to comply with the terms of any Matched Limit Order Trade of which such Inside Market Bid, Inside Market Offer or Limit Order Submission forms a part.
  - (b) If a Participating Bidder submits a Physical Settlement Request that is in the same direction as, but less than or equal to, such Participating Bidder's Market Position, such Physical Settlement Request may not be amended by either the Participating Bidder or the Administrators after the conclusion of the Initial Bidding Period, even if such Submission is a mistake, and all Participating Bidders will be required to comply with the terms of any Market Position Trade or Matched Limit Order Trade of which such Physical Settlement Request forms a part.
  - (c) If a Participating Bidder becomes aware that the Physical Settlement Request it has submitted is in the opposite direction from, or is greater than, its Market Position, such Participating Bidder will immediately notify the Administrators and will submit its corrected Physical Settlement Request.
  - (d) If the Administrators become aware of such corrected Physical Settlement Request at least thirty minutes prior to the beginning of the Subsequent Bidding Period (the "**Correction Deadline**"), the Administrators will determine the Open Interest based on the corrected Submission at least fifteen minutes prior to the beginning of the Subsequent Bidding Period. If the Administrators do not become aware of such corrected Physical Settlement Request until after the Correction Deadline, the Administrators will not re-calculate the Open Interest or the Final Price, and all Covered Transactions will settle according to the Final Price published by the Administrators.
  - (e) All Bids and Offers will be expressed as a percentage of the commitment (rather than the drawn commitment) of Deliverable Obligations.
- (13) Each Auction Party agrees that:
- (a) No Participating Bidder will be liable to any party for any form of damages, whether direct, indirect, special or consequential, arising as a result of the publication of a Final Price (or any other result of the procedures contemplated by these ELCDS Auction Settlement Terms), and agrees to waive any claim that may arise against any Participating Bidder, in each case except in the case of fraud or wilful misconduct on the part of such Participating Bidder.
  - (b) None of ISDA, its advisers, any Administrator or any Participating Bidder will be liable to any party for any form of damages, whether direct, indirect, special or consequential, arising in connection with the inclusion or exclusion of any obligation of the New Reference Entity in or from the list of Deliverable Obligations referenced in the definition thereof in Section (17) below and, without limiting any otherwise applicable waivers, each Auction Party agrees to waive any claim that may arise against any such party in connection with the development of such list of Deliverable Obligations, except in the case of fraud or wilful misconduct on the part of such party.

- (14) Each Auction Party that is not a Participating Bidder agrees that neither Administrator will be liable to any party for any form of damages, whether direct, indirect, special or consequential, arising in connection with the performance of its duties under the auction procedures contemplated by these ELCDS Auction Settlement Terms, and agrees to waive any claim that may arise against either Administrator in connection with the performance of the relevant Administrator's duties under these ELCDS Auction Settlement Terms, except in the case of fraud or wilful misconduct on the part of such Administrator.
- (15) Notwithstanding any provision to the contrary governing any Covered Transaction, the terms of Schedule 1 hereto shall apply to all Covered Transactions.
- (16) Each Participating Bidder and each customer that submits a Customer Physical Settlement Request through a Participating Bidder or a Customer Limit Order Request through a Participating Bidder that is taken into account by such Participating Bidder in the Physical Settlement Request or Limit Order Submission, as the case may be, received by the Administrators from such Participating Bidder during the Subsequent Bidding Period agrees that any such Customer Physical Settlement Request and any such Customer Limit Order Request submitted by such customer will (in the case of a Customer Limit Order Submission, to the extent such Customer Limit Order Submission is matched in order to form a Matched Limit Order Trade) be treated by such customer and Participating Bidder as if such customer and Participating Bidder had entered into a bilateral agreement on terms equivalent to the Representative Auction-Settled Transaction (i) which, notwithstanding the definition of Representative Auction-Settled Transaction, shall be deemed to be governed by a master agreement and any credit support arrangements executed or otherwise in place between the customer and the Participating Bidder or if no such master agreement has been executed or is otherwise in place, by a deemed master agreement (including any credit support arrangements) between the Participating Bidder and the customer on substantially the same terms as the master agreement and credit support arrangements in place between the customer and the affiliate of the Participating Bidder that is such customer's normal trading counterparty, (ii) for which the Floating Rate Payer Calculation Amount is equal to the Quotation Amount in respect of the relevant Customer Physical Settlement Request or Matched Limit Order Trade, as the case may be, and (iii) for which (A) the customer will be the Seller if the relevant Customer Physical Settlement Request is a Physical Settlement Buy Request or if the relevant Customer Limit Order Request is a Limit Bid and (B) the customer will be the Buyer if the relevant Customer Physical Settlement Request is a Physical Settlement Sell Request or if the relevant Customer Limit Order Request is a Limit Offer; provided that, in the case of a Customer Physical Settlement Request or a Customer Limit Order Request that is taken into account in any Physical Settlement Request or Limit Order Submission that is matched in order to form the Matched Limit Order Trade that contains the highest Offer or the lowest Bid, as the case may be, the Quotation Amount will, if necessary, be reduced to reflect the size of the remaining Open Interest. Transactions entered into by and between customers and Participating Bidders in respect of Market Position Trades or Matched Limit Order Trades will not be conducted or effected by, or through, any Administrator.
- (17) References in these ELCDS Auction Settlement Terms to the following terms have the meaning indicated below:

"**Adjustment Amount**" has the meaning set forth in Section (5)(a) above.

"**Administrators**" means both Markit Group Limited and Creditex Brokerage LLP acting together.

"**Auction Cancellation Date**" has the meaning set forth in Section (10)(d) above.

**"Auction Cancellation Event"** has the meaning set forth in Section (10)(d) above.

**"Auction Date"** means 15 April 2010.

**"Auction-Linked Cash Settled Transaction"** means, in respect of a Participating Bidder or a customer, any ELCDS Transaction or LevX Transaction (in each case, other than a Covered Transaction) all or any portion of which is linked to the Facility D, to which such Participating Bidder or customer, as the case may be, or its affiliate is a party and which will be cash-settled (by bilateral agreement between the parties thereto) at the Final Price determined pursuant to these ELCDS Auction Settlement Terms.

**"Auction Party"** means any Participating Bidder, party to a Covered Transaction, party to an Auction-Linked Cash Settled Transaction or customer whose Customer Physical Settlement Request or Customer Limit Order Request is taken into account in a Participating Bidder's Physical Settlement Request or Limit Order Submission.

**"Auction Settlement Committee"** means the entities that are Participating Bidders.

**"Best Half"** means the group of Matched Markets determined pursuant to Section (4)(b) above.

**"Bid"** means an Inside Market Bid or a Limit Bid.

**"Bidding Agreement Letter"** means a letter agreement, substantially in the form of Exhibit 1 to these ELCDS Auction Settlement Terms, executed and delivered to the Administrators, International Index Company Ltd. and ISDA no later than 5:00 p.m. London time on the Cut-off Date.

**"Business Day"** means a day on which commercial banks and foreign exchange markets are generally open to settle payments in London and on which TARGET (the Trans-European Automated Real-time Gross Settlement Express Transfer System) is open.

**"Cap Amount"** means 1% of par.

**"Common Event Determination Date"** means 6 April 2010.

**"Correction Deadline"** has the meaning set forth in Section (12)(d) above.

**"Covered Transaction"** means each ELCDS Covered Transaction and each LevX Covered Transaction.

**"Credit Definitions"** means the 2003 ISDA Credit Derivatives Definitions as supplemented by the May 2003 Supplement to the 2003 ISDA Credit Derivatives Definitions, each as published by ISDA.

**"Crossing Market"** means any Matched Market for which the Inside Market Bid is higher than the Inside Market Offer.

**"Customer Limit Order Request"** means a firm commitment by a customer, submitted by such customer to a Participating Bidder, to enter as Buyer (i.e., the party that would Deliver Deliverable Obligations) or Seller (i.e., the party that has an obligation to accept Delivery of Deliverable Obligations) into an agreement on terms equivalent to the Representative Auction-Settled Transaction for which the Floating Rate Payer Calculation Amount is the Quotation Amount stated in such Customer Limit Order Request and at the Reference Price stated in such Customer Limit Order Request (expressed as a percentage (in increments of one-eighth of one percent (e.g., 33.375%)).

**"Customer Physical Settlement Request"** means a firm commitment by a customer submitted by such customer to a Participating Bidder (which may be taken into account by such Participating Bidder in the Physical Settlement Request received by the Administrators from such Participating Bidder during the Initial Bidding Period) to enter as Buyer (i.e., the party that would Deliver Deliverable Obligations) or Seller (i.e., the party that has an obligation to accept Delivery of Deliverable Obligations) into an agreement on terms equivalent to the Representative Auction-Settled Transaction for which the Floating Rate Payer Calculation Amount is the Quotation Amount (expressed as an amount of commitment of Deliverable Obligations) stated in such Customer Physical Settlement Request.

**"Customer Physical Settlement Request Letter"** means a letter agreement, substantially in the form of Exhibit 3 to these ELCDS Auction Settlement Terms, executed and delivered to the relevant Participating Bidder no later than 5:00 p.m. London time on the Business Day prior to the Auction Date.

**"Cut-off Date"** means 13 April 2010.

**"Dealer Physical Settlement Request"** means a Physical Settlement Buy Request or a Physical Settlement Sell Request taking into account the Market Position of it and its affiliates only, submitted by a Participating Bidder and received by the Administrators during the Initial Bidding Period.

**"Dealer-Specific Market Position"** means, with respect to a customer and a Participating Bidder, such customer's Market Position with respect to its Covered Transactions and Auction-Linked Cash Settled Transactions only with such Participating Bidder and/or its affiliates (in aggregate), calculated by such customer in good faith.

**"Default Date"** means 23 April 2009.

**"Delayed Auction Date"** has the meaning set forth in Section (10)(b) above.

**"Deliverable Obligation"** means any of the New First Lien Loans.

**"ELCDS Covered Transaction"** means each ELCDS Transaction (i) the documentation for which is based on the ELCDS Standard Terms or any predecessor to such ELCDS Standard Terms that requires that such ELCDS Transaction be settled by reference to any Final Price determined pursuant to these ELCDS Auction Settlement Terms, (ii) referencing (with respect to at least part of such transaction) the Facility D, (iii) for which an Event Determination Date relating to the Old Reference Entity or Old Reference Entities and/or the Facility D occurs under the documentation governing the relevant ELCDS Transaction on or prior to the Business Day immediately preceding the Final Price Determination Date, (iv) the Scheduled Termination Date for which is on or after the Default Date, (v) the portion of which attributable to the Facility D is still outstanding as of the Business Day immediately prior to the Final Price Determination Date and (vi) the parties to which are both Adhering Parties to the ISDA McCarthy and Stone Loan CDS Protocol published on 22 March 2010 by the International Swaps and Derivatives Association, Inc. (the **"McCarthy and Stone Protocol"**).

**"ELCDS Physical Settlement Terms"** means the LMA Trade Confirmation (Distressed/Bank Debt) or LMA Trade Confirmation (Distressed/Claims) (as applicable) and the Standard Terms and Conditions for Distressed Trade Transactions (Bank Debt/Claims), each as published by The Loan Market Association (the **"LMA"**) in their most recent form (the **"LMA Confirmation"**) with the modifications to such terms as set forth in Annex I to the ELCDS Standard Terms or LevX Standard

Terms, as the case may be published by ISDA or the International Index Company Ltd. most recently prior to the Auction Date.

**"ELCDS Standard Terms"** means the version of the ISDA Standard Terms Supplement for use with Credit Derivative Transactions on Leveraged Loans published by ISDA most recently prior to the Auction Date.

**"ELCDS Transaction"** means a Credit Derivative Transaction (as defined in the Credit Definitions) in respect of which the only deliverable obligations are the Facility D and Senior Loans (as defined in the relevant Credit Derivative Transaction).

**"Facility D"** means the Facility D entered into pursuant to the GBP 930,000,000 Senior Facilities Agreement dated 1 August 2006, as amended, restated and/or supplemented from time to time.

**"Final Price"** means the price determined to be the Final Price pursuant to Section (9)(c) or (d) above.

**"Final Price Determination Date"** means the day the Final Price is determined.

**"Initial Bidding Period"** means any time between 9:45 a.m. and 10:00 a.m. London time on the Auction Date or such period that lasts longer, or occurs later, as the Administrators may prescribe if they determine (in their sole and absolute discretion) that such modified period is required to preserve the integrity of the Auction (the **"Originally Scheduled Initial Bidding Period"**) or, if the process described in Sections (3) and (4)(a) and (4)(b) above must be repeated pursuant to Section (10) above, the fifteen minute period occurring two or four hours, as the case may be, after the Originally Scheduled Initial Bidding Period on the Auction Date, or at such times on a subsequent Business Day as required under Section (10) above (or at such other times as the Administrators, in their sole and absolute discretion, determine is necessary to implement the procedures described in these ELCDS Auction Settlement Terms), until the earlier of the Final Price Determination Date or the occurrence of an Auction Cancellation Event.

**"Inside Market Bid"** means a firm commitment by a Participating Bidder, submitted as part of a Valid Inside Market Submission, to enter as Seller (i.e., the party that has an obligation to accept Delivery of Deliverable Obligations) into an agreement on terms equivalent to the Representative Auction-Settled Transaction for which the Floating Rate Payer Calculation Amount is the Inside Market Quotation Amount and at the Reference Price stated in the Valid Inside Market Submission.

**"Inside Market Midpoint"** means the price determined to be the Inside Market Midpoint pursuant to Section (4) above.

**"Inside Market Offer"** means a firm commitment by a Participating Bidder, submitted as part of a Valid Inside Market Submission, to enter as Buyer (i.e., the party that would Deliver Deliverable Obligations) into an agreement on terms equivalent to the Representative Auction-Settled Transaction for which the Floating Rate Payer Calculation Amount is the Inside Market Quotation Amount and at the Reference Price stated in the Valid Inside Market Submission.

**"Inside Market Quotation Amount"** means GBP 1,000,000.

**"LevX Covered Transaction"** means each LevX Transaction (i) the documentation for which is based on an iTraxx® LevX® Standard Terms Supplement for use with Credit Derivative Transactions on Leveraged Loans published by ISDA or any predecessor to such terms that requires that such LevX Transaction be settled by reference to any Final Price determined pursuant to these

ELCDS Auction Settlement Terms, (ii) referencing a LevX index published by International Index Company Ltd., (iii) referencing (with respect to at least part of such transaction) the Facility D, (iv) for which an Event Determination Date relating to the Old Reference Entity or Old Reference Entities and/or the Facility D occurs under the documentation governing the relevant LevX Transaction on or prior to the Business Day immediately preceding the Final Price Determination Date, (v) the Scheduled Termination Date for which is on or after the Default Date, (vi) the portion of which attributable to the Facility D is still outstanding as of the Business Day immediately prior to the Final Price Determination Date and (vii) the parties to which are both Adhering Parties to the McCarthy and Stone Protocol.

**"LevX Transaction"** means a Credit Derivative Transaction (as defined in the Credit Definitions) referencing a LevX index published by International Index Company Ltd., in respect of which the deliverable obligations include the Facility D and Senior Loans (as defined in the relevant Credit Derivative Transaction).

**"Limit Bid"** means a firm commitment by a Participating Bidder, submitted as part of a Limit Order Submission, to enter as Seller (i.e., the party that has an obligation to accept Delivery of Deliverable Obligations) into an agreement on terms equivalent to the Representative Auction-Settled Transaction for which the Floating Rate Payer Calculation Amount is the Quotation Amount stated in such Limit Order Submission and at the Reference Price stated in such Limit Order Submission.

**"Limit Offer"** means a firm commitment by a Participating Bidder, submitted as part of a Limit Order Submission, to enter as Buyer (i.e., the party that would Deliver Deliverable Obligations) into an agreement on terms equivalent to the Representative Auction-Settled Transaction for which the Floating Rate Payer Calculation Amount is the Quotation Amount stated in such Limit Order Submission and at the Reference Price stated in such Limit Order Submission.

**"Limit Order Submission"** means a submission from a Participating Bidder (which may take into account any Customer Limit Order Requests) received by the Administrators during the Subsequent Bidding Period of a Limit Bid or a Limit Offer expressed as a percentage (in increments of one-eighth of one percent (e.g., 35.375%)) and for which a Quotation Amount is stated.

**"Market Position"** means, in respect of a customer or a Participating Bidder, the aggregate amount of Deliverable Obligations the relevant Participating Bidder or customer, as applicable, would have to buy or sell in order to obtain an identical risk profile with respect to both (i) all Covered Transactions to which it or any of its affiliates is a party and (ii) all Auction-Linked Cash Settled Transactions, after settlement under these ELCDS Auction Settlement Terms compared to its risk profile before settlement under these ELCDS Auction Settlement Terms, such risk profile to be determined without regard to whether the original transactions were documented as cash settled or physically settled transactions.

**"Market Position Trade"** has the meaning set forth in Section (6)(a) above.

**"Matched Limit Order"** has the meaning set forth in Section (9)(b) above.

**"Matched Limit Order Trade"** has the meaning set forth in Section (9)(b) above.

**"Matched Market"** has the meaning set forth in Section (4)(a) above.

**"Materiality Event"** means a Potential Materiality Event that has been determined to be a Materiality Event pursuant to Section (10)(a) above.

"**Materiality Event Delayed Auction Date**" has the meaning set forth in Section (10)(a) above.

"**New First Lien Loans**" means the following:

Credit	Credit Agreement Name	Example Borrower	Lien Ranking	Facility Name
McCarthy and Stone	Facilities Agreement dated 24 April 2009	Hackremco (No. 2579) Limited	1st Lien	Facility A PIK Facility

"**New Reference Entity**" means Hackremco (No. 2579) Limited or any other person (excluding a lender, finance party or other provider of any credit) who is a borrower (or otherwise entitled to the benefit of any credit), guarantor, obligor or other surety under or in respect of any New First Lien Loan.

"**Non-Tradeable Market**" means any Matched Market that is not a Tradeable Market.

"**Notice of Physical Settlement Date**" means the later to occur of (i) the thirtieth calendar day (as adjusted in accordance with the Following Business Day Convention (as defined in the Credit Definitions)) after the Common Event Determination Date and (ii) the second Business Day following the Final Price Determination Date.

"**Offer**" means any Limit Offer or any Inside Market Offer.

"**Old Reference Entity**" means Mother Bidco Limited or any other person (excluding a lender, finance party or other provider of any credit) who is a borrower (or otherwise entitled to the benefit of any credit), guarantor, obligor or other surety under or in respect of the Facility D.

"**Open Interest**" means the difference between (i) the sum of all Quotation Amounts stated in each Physical Settlement Buy Request and (ii) the sum of all Quotation Amounts stated in each Physical Settlement Sell Request.

"**Participating Bidder**" means any institution that submits a valid Bidding Agreement Letter no later than 5:00 p.m. London time on the Cut-off Date.

"**Physical Settlement Buy Request**" means a firm commitment by a Participating Bidder (which may take into account any Customer Physical Settlement Requests), received by the Administrators during the Initial Bidding Period, to enter, as Seller (i.e., the party that has an obligation to accept Delivery of Deliverable Obligations), into an agreement on terms equivalent to the Representative Auction-Settled Transaction for which the Floating Rate Payer Calculation Amount is the Quotation Amount (expressed as an amount of commitment of Deliverable Obligations) stated in the Submission.

"**Physical Settlement Request**" means a Physical Settlement Buy Request or a Physical Settlement Sell Request submitted by a Participating Bidder and received by the Administrators during the Initial Bidding Period.

"**Physical Settlement Sell Request**" means a firm commitment by a Participating Bidder (which may take into account any Customer Physical Settlement Requests), received by the Administrators during the Initial Bidding Period, to enter, as Buyer (i.e., the party that would Deliver Deliverable Obligations), into an agreement on terms equivalent to the Representative Auction-Settled

Transaction for which the Floating Rate Payer Calculation Amount is the Quotation Amount (expressed as an amount of commitment of Deliverable Obligations) stated in the Submission.

**"Potential Materiality Event"** means an event or news the occurrence of which has or could have a significant effect on the price of the Representative Auction-Settled Transaction.

**"Pro Rata"** means that Participating Bidders' orders are matched proportionally with respect to the Quotation Amount of each such order and the total amount of orders that can be matched in the relevant part of the Auction.

**"Quotation Amount"** means the GBP amount stated as the notional amount with respect to a particular Limit Bid, Limit Offer, Inside Market Bid, Inside Market Offer or Physical Settlement Request in a Participating Bidder's Submission, which amount will be (i) for any Limit Bid or Limit Offer, a minimum amount of GBP 1,000,000, (ii) for any Inside Market Bid or Inside Market Offer, equal to the Inside Market Quotation Amount and (iii) for any Physical Settlement Request, a minimum amount of GBP 1,000,000.

**"Representative Auction-Settled Transaction"** means a Credit Derivative Transaction (as defined in the Credit Definitions) on the terms as set out in the ELCDS Standard Terms, (i) incorporating the definitions and provisions contained in the Credit Definitions and the ELCDS Standard Terms, (ii) which shall supplement, form a part of, and be subject to, the master agreement (including any credit support arrangements) in place between the parties thereto (and if no such master agreement is in place between the parties, an agreement in the form of the ISDA 2002 Master Agreement as if the parties had executed an agreement in such form (but without any Schedule except for the election of English law as the governing law) on the Auction Date) and for which:

- (a) the reference obligations to which the Credit Derivative Transaction relates is the New First Lien Loans;
- (b) the reference entity or reference entities to which the Credit Derivative Transaction relates is the New Reference Entity or New Reference Entities;
- (c) it shall be deemed that no Market Settlement Mechanism (as defined in the ELCDS Standard Terms) that covers the New First Lien Loans has been announced pursuant to the ELCDS Auction Rules (as defined in the ELCDS Standard Terms) before the NOPS Date (as defined in the ELCDS Standard Terms);
- (d) sub-paragraph (ii) of "Settlement Method" shall be amended by the amendment to sub-clause (b) by the deletion of "." and the addition of "; or" therefore and the further addition of a sub-clause (c) as follows:

"(c) on or prior to the Delivery Date, any lender under the New First Lien Loans exercises its right of pre-emption (as permitted by the terms of the facility agreement in relation thereto) in relation to some or all of the portion of the New First Lien Loans specified in the Notice of Physical Settlement, in which case Cash Settlement shall apply as though:

(A) Buyer's Cash Settlement Election had been made on the date on which the pre-emption rights are exercised (the "Pre-emption Exercise Date") in relation to the portion of the New First Lien Loans with respect to which the pre-emption rights have been exercised (and Buyer shall deliver an irrevocable notice to Seller (which shall be subject to the requirements regarding notices set forth in Section 1.10(a) of the Credit Derivatives Definitions) on or as soon as possible after such Pre-emption Exercise Date;

(B) the Final Price shall be deemed to be a percentage equal to the product of (a) the price paid for the New First Lien Loans by the lender exercising its pre-emption rights divided by the par value of such New First Lien Loans, expressed as a percentage and (b) the Writedown Adjustment Factor; and

(C) the Cash Settlement Date shall be deemed to be three Business Days following the Pre-emption Exercise Date.

- (e) Cash Settlement Only shall be Not Applicable;
- (f) the Event Determination Date is the Common Event Determination Date;
- (g) a Credit Event Notice and Notice of Publicly Available Information are deemed to have been effectively delivered on a timely basis;
- (h) all Fixed Amounts are deemed to have been paid when due;
- (i) the only Deliverable Obligations applicable are the obligations specified as Deliverable Obligations in these ELCDS Auction Settlement Terms;
- (j) the IBLOR Terms will be deemed not to apply to the Deliverable Obligations;
- (k) the Reference Price is the Final Price determined pursuant to these ELCDS Auction Settlement Terms;
- (l) the Calculation Agent is (i) if both parties to the Representative Auction-Settled Transaction are Participating Bidders, the Seller under such Representative Auction-Settled Transaction and (ii) if only one party to the Representative Auction-Settled Transaction is a Participating Bidder, such Participating Bidder;
- (m) the "Trade Date" (as defined in the ELCDS Physical Settlement Terms) with respect to a Representative Auction-Settled Transaction shall be deemed to be the Final Price Determination Date;
- (n) if Cash Settlement is applicable under the Representative Auction-Settled Transaction, the definition of "Cash Settlement Amount" in the ELCDS Standard Terms shall, in respect of the portion of the Transaction to which Cash Settlement applies, be amended by:
  - (A) the deletion of "the greater of: (a) zero; and (b)" in each of sub-paragraphs (i), (ii) and (iii) thereof;
  - (B) the deletion of (i)(b)(A) and the replacement thereof with the following:

"an amount equal to (x) the Notified Delivery Amount minus the Cash Settled Asset Entitlement Portion, if any, divided by (y) the Writedown Adjustment Factor";
  - (C) the deletion of (ii)(b) and the replacement thereof with the following:

"an amount equal to (x) (I) the Cash Settled Asset Entitlement Portion minus (II) the product of the Writedown Adjustment Factor and the sum of the Asset Prices for each Asset in the Asset Entitlement, divided by (y) the Writedown Adjustment Factor";
  - (D) the deletion of (iii)(a)(B)(x) and replacement thereof with the following:

"an amount equal to (x) the portion of the Notified Delivery Amount minus the Cash Settled Asset Entitlement Portion, in each case, which relates to the drawn commitment, divided by (y) the Writedown Adjustment Factor"; and

- (E) the deletion of (iii)(b)(B)(x) and replacement thereof with the following:

"an amount equal to (x) the portion of the Notified Delivery Amount minus the Cash Settled Asset Entitlement Portion, in each case, which relates to the undrawn commitment, divided by (y) the Writedown Adjustment Factor; "

- (o) the Notified Delivery Amount shall be, in respect of a Deliverable Obligation which is a Revolver or a Resetable Loan, the total commitment (including both the drawn and undrawn commitment) or, in respect of all other Deliverable Obligations, the outstanding principal balance, in each case, as specified in respect of such Deliverable Obligation in the Notice of Physical Settlement, provided that the aggregate of the Currency Equivalents of the Notified Delivery Amounts in respect of each Deliverable Obligation shall not exceed an amount equal to the product of (i) the Floating Rate Payer Calculation Amount and (ii) the Writedown Adjustment Factor (the "Adjusted Floating Rate Payer Calculation Amount"), and provided further that the portion of the Notified Delivery Amount which is constituted by the Facility A shall represent no less than 85 per cent of the entire Notified Delivery Amount;
- (p) the following amendments are made to the Credit Definitions (as amended by the ELCDS Standard Terms) for purposes of the Representative Auction-Settled Transaction (and such amendments shall prevail over the ELCDS Standard Terms if and to the extent of any inconsistency between these amendments and the ELCDS Standard Terms):
- (i) Section 3.4 of the Credit Definitions is deleted and the following is inserted in its place:

"'Notice of Physical Settlement' means a notice from Buyer to Seller (which may be by telephone and which shall be subject to the requirements regarding notices set forth in Section 1.10) that (i) irrevocably confirms that Buyer will settle the Credit Derivative Transaction and require performance in accordance with Physical Settlement as the Settlement Method and (ii) contains a detailed description of the Deliverable Obligations that Buyer will, subject to Section 9.2(c)(ii), Deliver to Seller, including the Notified Delivery Amount of each such Deliverable Obligation to be Delivered and the information described in the form of Notice of Physical Settlement attached as Exhibit 2 to these ELCDS Auction Settlement Terms, or such other information as is customarily used in the loan or loan credit default swap market to identify particular loans. Once the Notice of Physical Settlement is effective, Buyer is not entitled to change the contents of such Notice of Physical Settlement except that Buyer may correct any errors or inconsistencies in the detailed description of the Deliverable Obligations by notice to Seller (given as aforesaid) prior to the relevant Delivery Date.

If Buyer fails to deliver an effective Notice of Physical Settlement on or before the Notice of Physical Settlement Date, Buyer will have no right thereafter to deliver a Notice of Physical Settlement. If Buyer has not delivered an effective Notice of Physical Settlement, Seller will have the right, from but excluding the Notice of Physical Settlement Date to and including the fifteenth calendar day after the Notice of Physical Settlement Date, to deliver a notice to Buyer, which notice shall contain

a detailed description of the Deliverable Obligations that Buyer will be required to Deliver to Seller, including the Notified Delivery Amount of each such Deliverable Obligation (the aggregate of such Notified Delivery Amounts (or the relevant Currency Equivalents) being equal to or less than the Adjusted Floating Rate Payer Calculation Amount) and provided further that the portion of the Notified Delivery Amount which is constituted by Facility A shall represent no less than 85 per cent of the entire Notified Delivery Amount.

If Buyer delivers an effective Notice of Physical Settlement on or before the Notice of Physical Settlement Date but such Notice of Physical Settlement specifies Deliverable Obligations with an aggregate Notified Delivery Amount (or Currency Equivalent) less than the Adjusted Floating Rate Payer Calculation Amount, Seller will have the right, from but excluding the Notice of Physical Settlement Date to and including the fifteenth calendar day after the Notice of Physical Settlement Date, to deliver a notice to Buyer, which notice shall contain a detailed description of the additional Deliverable Obligations that Buyer will be required to Deliver to Seller, including the Notified Delivery Amount of each such Deliverable Obligation; provided that the aggregate specified Notified Delivery Amount (or Currency Equivalent) shall be equal to or less than the amount by which the Adjusted Floating Rate Payer Calculation Amount exceeds the Notified Delivery Amount of Deliverable Obligations (or Currency Equivalent thereof) specified in the Notice of Physical Settlement delivered by Buyer. In such a case, the Conditions to Settlement in respect of the portion of the Credit Derivative Transaction to which the Notice of Physical Settlement delivered by Buyer relates shall be satisfied separately to the portion of the Credit Derivative Transaction to which the Notice of Physical Settlement delivered by Seller relates.

Any notice delivered by Seller pursuant to this Section 3.4 will include the information described in the form of Notice of Physical Settlement attached as Exhibit 2 to these ELCDS Auction Settlement Terms, or such other information as is customarily used in the loan or loan credit default swap market to identify particular loans. Delivery of any such notice shall be deemed to be effective delivery of a Notice of Physical Settlement or an effective amendment to any Notice of Physical Settlement delivered by Buyer, as applicable. Buyer may not change any such notice, other than to correct errors or inconsistencies.

If the fifteenth calendar day after the Notice of Physical Settlement Date is not a Business Day, the last day on which Seller may deliver a notice described in this Section 3.4 shall be adjusted in accordance with the Following Business Day Convention.

If Buyer fails to deliver an effective Notice of Physical Settlement on or prior to the Notice of Physical Settlement Date, and Seller fails to deliver the relevant notice to Buyer on or prior to the fifteenth calendar day after the Notice of Physical Settlement Date (subject to adjustment in accordance with the Following Business Day Convention), then such fifteenth calendar day will be the Termination Date.";

- (ii) Section 7.1 of the Credit Definitions shall be amended by the addition of the following at the end thereof:

"provided that, if Cash Settlement is applicable, then in respect of the portion of the Transaction to which Cash Settlement applies (a) if the Cash Settlement Amount is a positive number, Seller shall, subject to Section 3.1, pay the Cash Settlement Amount to Buyer on the Cash Settlement Date; and (b) if the Cash Settlement Amount is a negative number, Buyer shall, subject to Section 3.1, pay the absolute value of the Cash Settlement Amount to Seller on the Cash Settlement Date.";

- (iii) Section 7.4 of the Credit Definitions shall be amended by the deletion of the first sentence thereof and the replacement thereof by the following:

""Final Price" means the product of (a) the price of the Reference Obligation, expressed as a percentage, determined in accordance with the specified Valuation Method and (b) the Writedown Adjustment Factor."

- (iv) Section 8.1 of the Credit Definitions shall be amended by the deletion of the following:

"and no payment will be due in relation to any undrawn commitments under the Deliverable Obligations"

and the replacement thereof by the following:

". In respect of any undrawn commitments under the Deliverable Obligations, Buyer shall pay Seller an amount equal to the product of (a) the undrawn commitments under the Deliverable Obligations that Buyer has Delivered and (b) 100% minus the Reference Price, provided that if such amount is a negative number, Seller shall pay the absolute value thereof to Buyer.";

- (v) Section 8.5 of the Credit Definitions shall be deleted and replaced with the following:

""Physical Settlement Amount" means, subject to Section 8.1 of the Credit Derivatives Definitions (as amended pursuant to paragraph 6(1) (*Physical Settlement*) above), with respect to a Deliverable Obligation, an amount equal to the product of (i) the relevant Notified Delivery Amount divided by the Writedown Adjustment Factor (the "Adjusted Notified Delivery Amount") and (ii) the Reference Price.";

- (q) notwithstanding the fact that the Notice of Physical Settlement may be delivered after the Final Price Determination Date, the Notice Of Physical Settlement shall be deemed to have been effective (and the NOPS Date (as defined in the ELCDS Standard Terms) shall be deemed to have occurred) as of the Final Price Determination Date and the definition of Notified Delivery Amount and Currency Rate shall be construed as being by reference to the commitment or exchange rate, respectively, of the Deliverable Obligations on such day;

- (r) Annex I shall be amended by the deletion of item 7 and the replacement thereof by the following:

"The "Purchase Rate" shall be the Reference Price."; and

- (s) for the purposes hereof:

**"Rounding Convention"** means that, if a Participating Bidder's order is matched in an amount that is not an integral multiple of GBP 100,000, then the amount to be so matched will be rounded down

to the nearest GBP 100,000. The difference between the total amounts of all orders having been filled Pro Rata and the total of all rounded down amounts will be allocated GBP 100,000 at a time to Participating Bidders in order, beginning with the Participating Bidder with the order stating the largest Quotation Amount at the same price. In the event that there are Participating Bidders with identical orders of such type, GBP 100,000 amounts will be allocated first to the Participating Bidder whose orders were received first by the Administrators.

**"Submission"** means, with respect to a Participating Bidder, any Valid Inside Market Submission, Limit Order Submission or Physical Settlement Request submitted by such Participating Bidder to the Administrators.

**"Subsequent Bidding Period"** means any time between 12:45 p.m. and 1:00 p.m. London time on the Auction Date or such period that lasts longer, or occurs later, as the Administrators may prescribe if they determine (in their sole and absolute discretion) that such modified period is required to preserve the integrity of the Auction (in each case, the **"Originally Scheduled Subsequent Bidding Period"**) or, if the process described in Sections (3) and (4)(a) and (4)(b) above must be repeated pursuant to Section (10) above, the fifteen minute period occurring two or four hours, as the case may be, after the relevant Originally Scheduled Subsequent Bidding Period on the Auction Date, or at such times on a subsequent Business Day as required under Section (10) above (or at such other times as the Administrators, in their sole and absolute discretion, determine is necessary to implement the procedures described in these ELCDS Auction Settlement Terms), until the earlier of the Final Price Determination Date or the occurrence of an Auction Cancellation Event. If any Subsequent Bidding Period would occur after 6:00 p.m. London time on the relevant day, then the Subsequent Bidding Period will be any time between 9:45 a.m. and 10:00 a.m. London time on the subsequent Business Day or such period that lasts longer, or occurs later, as the Administrators may prescribe if they determine (in their sole and absolute discretion) that such modified period is required to preserve the integrity of the Auction.

**"Touching Market"** means any Matched Market for which the Inside Market Bid and Inside Market Offer are equal.

**"Tradeable Market"** means any Matched Market that is a Crossing Market or a Touching Market.

**"Unmatched Limit Order"** has the meaning set forth in Section (8) above.

**"Valid Inside Market Submission"** means a submission from a Participating Bidder received by the Administrators during the Initial Bidding Period of both an Inside Market Bid and an Inside Market Offer, each expressed as a percentage (in increments of one eighth of one percent (e.g., 35.375%)) which do not differ from one another by more than 10% of par, and for which the Inside Market Bid is not greater than or equal to the Inside Market Offer.

**"Writedown Adjustment Factor"** shall mean 80%.

**Form of Bidding Agreement Letter**

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**[Letterhead of Participating Bidder]**

**[Date]**

**Markit Group Limited**  
**Send to: cea@markit.com**

**Creditex Brokerage LLP**  
**Send to: CEF@creditex.com**

**International Swaps and Derivatives Association, Inc.**  
**Send to: lcdsprotocol@isda.org**

**International Index Company Ltd.**  
**Send to: itraxx@indexco.com**

Dear Sirs,

We write to inform you that we wish to be a "Participating Bidder," as defined in the ELCDS Auction Settlement Terms in connection with the auction under the ELCDS Auction Settlement Terms related to transactions with respect to McCarthy and Stone First Lien Loans (the "**Auction**"). Capitalised terms used in this letter but not defined herein have the meanings specified in the Auction.

We hereby notify you that it is our intention that, pursuant to the ELCDS Auction Settlement Terms at the time of submission, any Dealer Physical Settlement Request we submit will, to the best of our knowledge and belief, be in the same direction as and will not exceed our Market Position.

By signing and returning this Bidding Agreement Letter to you, we represent that:

- (a) from time to time we regularly trade in one or more obligations of the types of obligations listed under the definition of "Deliverable Obligations" (as such term is defined in the ELCDS Auction Settlement Terms) in the secondary loan market or we regularly trade loan credit default swaps with respect to entities like the "New Reference Entity" (as such term is defined in the ELCDS Auction Settlement Terms);
- (b) we are, or our affiliate is, an Eligible LevX Market Maker, as defined in the Markit iTraxx LevX Index Rules from time to time;
- (c) none of our affiliates has previously submitted a Bidding Agreement Letter to you; and
- (d) we are not, as of the date of this letter, subject to any requirement that would make it impossible or illegal for us to deliver or accept delivery of any of the Deliverable Obligations.

In addition, we agree that neither Administrator shall be liable to us for any indirect, special or consequential damages resulting from our participation in the Auction (including any Adjustment Amounts involving our Bid or Offer), and that each Administrator's maximum cumulative liability for direct and any other damages arising out of our participation in the Auction (including any Adjustment Amounts), other than damages

resulting from gross negligence, wilful misconduct or breach of representations made to the Participating Bidders in Creditex Brokerage LLP's letter to the Participating Bidders dated on or about the date of the Auction on the part of such Administrator, is limited to USD 10,000 in the aggregate.

We agree to abide by the terms of the Auction set out in the ELCDS Auction Settlement Terms, including, for the avoidance of doubt, Section 12 of the ELCDS Auction Settlement Terms.

We also agree to pay to ISDA (i) our share of any fees payable by ISDA to the Administrators or to ISDA's legal advisers in connection with the administration of the Auction or the development of the relevant lists of Deliverable Obligations and (ii) any Adjustment Amounts payable by us pursuant to the terms of the Protocol (such fees together with any such Adjustment Amounts, "**Auction Costs**"). We agree to pay any Auction costs to ISDA within twenty-one calendar days of receipt of a written invoice submitted by ISDA for such Auction Costs.

Our contact details for purposes of this Bidding Agreement Letter are:

Name:  
Address:  
Telephone:  
Fax:  
E-mail:

Our contact details for purposes of receiving any invoices relating to Auction Costs are:

Name:  
Address:  
Telephone:  
Fax:  
E-mail:

We consent to the publication of the conformed copy of this letter by ISDA and International Index Company Ltd. and to the disclosure by ISDA and International Index Company Ltd. of the contents of this letter.

Yours faithfully,

[PARTICIPATING BIDDER]<sup>2</sup>

By:

Name:

Title:

Signature:

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<sup>2</sup> Specify legal name of Participating Bidder.

**Form of Notice of Physical Settlement**

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Attention: [client contact]  
By Fax: [facsimile]  
By Phone: [telephone]

[CLIENT]

Dear Sirs,

NOTICE OF PHYSICAL SETTLEMENT

Credit Derivative Transaction Details<sup>3</sup>: Transaction formed pursuant to the auction governed by the ELCDS Auction Settlement Terms published by the International Swaps and Derivatives Association, Inc. and International Index Company Ltd. on 22 March 2010 in respect of McCarthy and Stone (the "**ELCDS Auction Settlement Terms**") with respect to the New First Lien Loans as defined therein (the "**Auction**") entered into between [SELLER], as Seller (i.e., the party identified by the Auction Administrators as having an obligation to accept Delivery of Deliverable Obligations), and [BUYER] as Buyer (i.e., the party identified by the Auction Administrators as having the obligation to Deliver Deliverable Obligations), and for which the "**Floating Rate Payer Calculation Amount**" is [ ]<sup>4</sup>.

Reference is made to the Credit Derivative Transaction described above (the "**Transaction**").

- (1) Pursuant to Section (17) of the ELCDS Auction Settlement Terms, the Event Determination Date for this Transaction is 6 April 2010, and a Credit Event Notice and Notice of Publicly Available Information are deemed to have been effectively delivered on a timely basis.
- (2) Any capitalised term not otherwise defined in this letter will have the meaning, if any, assigned to such term in the ELCDS Auction Settlement Terms or, if no meaning is specified therein, in the 2003 ISDA Credit Derivatives Definitions, as published by the International Swaps and Derivatives Association, Inc.
- (3) We hereby confirm that we will settle the Transaction and require performance by you in accordance with the Physical Settlement Method, as modified by the ELCDS Standard Terms. Subject to the

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<sup>3</sup> These Transaction Details will need to be adjusted appropriately where this form is used in respect of a transaction between a customer and a Participating Bidder.

<sup>4</sup> The Quotation Amount of the Transaction identified by Auction Administrators or, in the case of a Representative Auction-Settled Transaction between a Participating Bidder and a customer, the amount specified by such Participating Bidder.

terms of the Transaction, we will deliver to you according to the terms of the ELCDS Standard Terms the following Deliverable Obligations against payment of the amount determined pursuant to the ELCDS Standard Terms using the Final Price of [ ]% as the Reference Price:

**Deliverable Obligations:** [ ]

**Notified Delivery Amount:** [ ]

**Credit Agreement:** [ ]

**Borrower Example:** [ ]

**Global Facility Amount:** [ ]

**Ranking:** [ ]

(4) This letter shall be governed by and interpreted in accordance with English law.

Very truly yours,

[ ]

By: \_\_\_\_\_

Name:

Title:

**Form of Customer Physical Settlement Request Letter**

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**[Letterhead of Customer]**

**[Date]**

Attention: [Participating Bidder]  
By Fax: [facsimile]  
By Phone: [telephone]

Dear Sirs,

We write to inform you that we wish to submit a Customer Physical Settlement Request as defined in the ELCDS Auction Settlement Terms published by the International Swaps and Derivatives Association, Inc. and International Index Company Ltd. on 22 March 2010, in respect of McCarthy and Stone New First Lien Loans. Capitalised terms used in this letter but not defined herein have the meanings specified in the ELCDS Auction Settlement Terms.

By signing and returning this Customer Physical Settlement Request Letter to you, we represent that:

- (a) the Customer Physical Settlement Request set out below is to the best of our knowledge and belief, in the same direction as and (when aggregated with all Customer Physical Settlement Requests submitted by us to one or more Participating Bidders) not in excess of our Market Position; and
- (b) we are not, as of the date of this letter, subject to any requirement that would make it impossible or illegal for us to deliver or accept delivery of any of the Deliverable Obligations.

The Customer Physical Settlement Request is a Physical Settlement [Buy][Sell] Request of GBP [●].

Our contact details for purposes of this Customer Physical Settlement Request Letter are:

Name:  
Address:  
Telephone:  
Fax:  
E-mail:

Yours faithfully,

[CUSTOMER]<sup>5</sup>

By:

Name:

Title:

Signature:

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<sup>5</sup> Specify legal name of customer.

### Schedule 1 to the ELCDS Auction Settlement Terms

Notwithstanding any provision to the contrary governing any Covered Transaction, the following shall apply to all Covered Transactions with effect from the later of the Common Event Determination Date and the Trade Date in respect of the relevant Covered Transaction:

(a) *Effect of Actual Notices.*

Any Notice of Physical Settlement delivered with respect to the Old Reference Entity or Old Reference Entities and/or the Facility D shall be deemed revoked, and neither party shall have any obligations with respect to any such notice.

(b) *No Additional Notice Deliveries.*

Each party agrees not to deliver any Notice of Physical Settlement with respect to the Old Reference Entity and the Facility D, and any such notice delivered shall be void and have no effect.

(c) *Delivery of Notice of Physical Settlement.*

The Conditions to Settlement in each Covered Transaction are amended by eliminating any requirement that Buyer deliver a Notice of Physical Settlement with respect to the Old Reference Entity or Old Reference Entities and/or the Facility D.

(d) *Accruals.*

With respect to any ELCDS Covered Transaction or LevX Covered Transaction, (A) the Fixed Amount on such Covered Transaction, or the portion thereof to which the Facility D relates, as applicable, shall accrue to and including the Common Event Determination Date, and (B) the resulting Fixed Amount in respect of the Facility D shall be paid on the Cash Settlement Date.

(e) *Settlement Terms.*

With respect to any Covered Transaction, such Covered Transaction, or the portion thereof to which the Facility D relates, as applicable, shall settle as if the Settlement Method specified in the documentation governing such Covered Transaction (or portion thereof) were Cash Settlement, subject to the following:

(A) The Final Price will be determined as described in the ELCDS Auction Settlement Terms, with the Final Price Determination Date as the Single Valuation Date. Notwithstanding Section 7.4 of the Credit Definitions, the Calculation Agent will not be obligated to provide any notice with respect to Quotations or the calculation of such Final Price.

(B) The Cash Settlement Amount will be an amount equal to the greater of:

(i) zero; and

(ii) the product of:

(a) Floating Rate Payer Calculation Amount; and

(b) (A) the Reference Price; minus

(B) the Final Price.

(C) The Cash Settlement Date shall be 22 April 2010.

(f) *Auction Cancellation.*

If an Auction Cancellation Event occurs, subsections (b), (c)(ii) and (e) above shall be rescinded and have no further effect. For the avoidance of doubt, if an Auction Cancellation Event occurs, a party may deliver a Notice of Physical Settlement or any other relevant notice with respect to any Covered Transaction in accordance with the relevant documentation and settle any Covered Transaction in accordance with the relevant documentation; provided that the reference to "Event Determination Date" in Section 3.4 of the Credit Definitions shall be deemed to refer to the relevant Auction Cancellation Date.

(g) *Bespoke ELCDS Transactions.*

To the extent the documentation governing any ELCDS Covered Transaction differs from the ELCDS Standard Terms, the terms of this Schedule 1 shall be construed in respect of such ELCDS Covered Transaction taking into account any such differences to effectuate the parties' intent that, other than in the case of an Auction Cancellation Event, the Final Price determined pursuant to the ELCDS Auction Settlement Terms be used to determine the amounts payable and/or other rights and obligations of the parties with respect to the portion of such ELCDS Covered Transaction referencing the Facility D.