

USER'S GUIDE
TO THE
MASTER NETTING, SETOFF, SECURITY,
AND COLLATERAL AGREEMENT



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INTRODUCTION

In late 1998 Edison Electric Institute (“EEI”) and National Energy Marketers Association (“NEM”) commenced a project to develop a standard form of wholesale electricity purchase and sale agreement. In January 1999 a group of over 80 EEI member utilities, affiliated and independent power marketers, merchant power producers and end-user representatives formed a Working Group and Drafting Committee. The end product, published in April 2000, is the EEI/NEM Master Power Purchase & Sale Agreement (the “EEI Agreement”). The Drafting Committee continued its work with the preparation and publication of a Collateral Annex and model special provisions designed for use in connection with the EEI Agreement. The EEI Agreement and these supplemental materials are all available on the EEI website (<http://www.eei.org/>).

Widespread industry use of the EEI Agreement as well as master agreements typically used for other commodities and products (e.g., ISDA, GIB/NAESB) and the pending amendments to the United States Bankruptcy Code led the Drafting Committee to consider the need for a master netting agreement that could be used by market participants purchasing, selling or exchanging physical commodities, swaps, options or other derivatives pursuant to forward contracts, commodities contracts, swap agreements or other instruments to permit the netting of Settlement Amounts under various master agreements, and, if desired, the calculation and collateralization of a single net credit exposure between market participants.

This User’s Guide accompanies the EEI/NEM Master Netting, Setoff, Security and Collateral Agreement (the “Master Netting Agreement”) and is designed, along with the Survey of the Legal Landscape Applicable to Master Netting Agreements (the “Legal Landscape”) to assist users with the selection of the available options, explain the intent of the Drafting Committee with respect to certain provisions and the consequences of particular option selections and highlight issues that merit additional consideration by market participants.

Users considering the Master Netting Agreement should review each Underlying Master Agreement, particularly the provisions therein relating to defaults, events of default, other termination events, remedies, credit and collateral security. In addition, users should review and be familiar with their credit enhancement documents in respect of their Underlying Master Agreements, including any related guarantees (and the scope of obligations guaranteed thereby and any financial limits thereon), and their credit agreements and indentures, in particular any restrictions therein on the granting of liens or security interests.

Capitalized terms used in this User’s Guide and not defined herein have the meanings given such terms in the Master Netting Agreement. Section references are to sections in the Master Netting Agreement.

THIS USER'S GUIDE DOES NOT PURPORT AND SHOULD NOT BE CONSIDERED TO BE A GUIDE TO OR EXPLANATION OF ALL RELEVANT ISSUES OR CONSIDERATIONS IN A PARTICULAR TRANSACTION OR CONTRACTUAL RELATIONSHIP. PARTIES SHOULD THEREFORE CONSULT WITH THEIR LEGAL ADVISORS AND ANY OTHER ADVISOR THEY DEEM APPROPRIATE PRIOR TO USING THE MASTER NETTING AGREEMENT DOCUMENTATION. NEITHER EEI NOR NEM ASSUMES ANY RESPONSIBILITY FOR ANY USE OF THE MASTER NETTING AGREEMENT DOCUMENTATION OR ANY DEFINITION OR PROVISION CONTAINED THEREIN.

THIS USER'S GUIDE WAS PREPARED TO FACILITATE UNDERSTANDING OF THE MASTER NETTING AGREEMENT. NEITHER EEI NOR ANY MEMBER OR PARTICIPATING COMPANY NOR ANY OF THEIR RESPECTIVE AGENTS, REPRESENTATIVES OR ATTORNEYS SHALL BE RESPONSIBLE FOR ITS USE, OR ANY DAMAGES RESULTING THEREFROM.

**USER'S GUIDE
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Master Netting Agreement Structure

The Master Netting Agreement consists of the Cover Sheet, the Master Netting Agreement itself, the Collateral Annex and the Credit Elections Cover Sheet to the Collateral Annex. This User's Guide is designed to assist users with their consideration of the options provided in the Master Netting Agreement itself and does not discuss the credit decisions, considerations and options required or available under the Collateral Annex and the Credit Elections Cover Sheet. This User's Guide explains and comments on the significant provisions of, and options in, the Master Netting Agreement in an effort to assist users with their analysis of the considerations affecting in particular, the selection of the MNA Default Options and the Remedies Options.

Recitals

The recitals should be reviewed for factual correctness and modified, if necessary, in light of the particular circumstances of the user and its counterparty. The recitals reflect, at least in part, the objective to be achieved by use of the Master Netting Agreement, namely, (a) the determination and collateralization of each Party's aggregate net Exposure to the other, and (b) the ability to Close-Out all Transactions under all Underlying Master Agreements upon the occurrence of an MNA Default, and to net and setoff all Obligations arising as a result of such a total Close-Out.

Section 1. Single Agreement

The Master Netting Agreement integrates all Underlying Master Agreements "for the purposes set forth [t]herein," i.e., cross-default, cross-netting and cross-setoff in accordance with the user's selected options. This significant modifying (and limiting) phrase also appears in the second recital, in the lead-in paragraph of Section 2 (Definitions), and in Section 21 (Conflicts and Inconsistencies) and similarly establishes the scope and limits the application of those respective provisions. The concept is also embedded in Section 23(a) (Continuation of Master Agreements; Severability) by virtue of that Section's cross-reference to Section 1 and Section 20 (Notices). Integrating the Master Netting Agreement and all Underlying Master Agreements (in the same manner as each Underlying Master Agreement integrates all Transactions entered into under it) is intended to bolster the Parties' cross-netting and cross-setoff rights. It is intended that for purposes other than those set forth in the Master Netting Agreement, the Underlying Master Agreements remain separate agreements.

Section 2. Definitions: Applicable Rate

The term "Applicable Rate" is used in Section 5 (Settlement). The Applicable Rate specified by a user on the Cover Sheet is applied to the MNA Final Settlement Amount from the Early Termination Date to the date on which payment of the MNA Final Settlement Amount is due. It is also applied to the MNA Final Settlement Amount from the due date until the date on

which payment is made if the Non-defaulting Party suspends payment of the MNA Final Settlement Amount upon the reasonable belief by either Party that bankruptcy court approval of any such payment is required. See the discussion relating to Default Rate, *infra*.

Section 2. Definitions: Close-Out

As used in the Master Netting Agreement, Close-Out can refer to (i) Close-Out of less than all Transactions under one or more Underlying Master Agreements, (ii) Close-Out of all Transactions under one or more Underlying Master Agreements or (iii) Close-Out of all (and not less than all) Transactions under all Underlying Master Agreements depending on the purposes set forth therein.

Section 2. Definitions: Comparable Provision

This definition is central to MNA Default Option A. Clause (i) is intended to allow an event of default in an Underlying Master Agreement to be a Comparable Provision to a Section 3(d) default if it describes “fundamentally the same or similar event,” even though in different words. It is, therefore, the substance that should govern. Clauses (ii), (iii) and (iv) make clear that three common differences in the ways in which events of default are drafted (with different cure periods, materiality qualifiers or credit quality linkages) do not prevent them from being Comparable Provisions.

In addition, clause (iii), which addresses materiality qualifiers, provides a useful example of the consequences of making certain elections under the Master Netting Agreement. If MNA Default Option A is selected, materiality qualifiers in all Underlying Master Agreement defaults, events of defaults, termination events or similar provisions that are Comparable Provisions (other than No-Fault Termination Events) are conformed to Section 3(d), but if MNA Default Option C is selected, the presence or absence of materiality qualifiers in defaults, events of default, termination events or similar provisions in Underlying Master Agreements (including No-Fault Termination Events) are preserved. They are also preserved in defaults, events of default, termination events or similar provisions in Underlying Master Agreements that are not Comparable Provisions (which are defined as UMA Defaults or No-Fault Termination Events) if MNA Default Option A is selected. And lastly, if MNA Default Option B is selected, all materiality qualifiers in Underlying Master Agreements defaults, events of default, termination events or similar provisions (other than No-Fault Termination Events) are “replaced by” those in the Section 3(d) events of default.

Users should note that in order for a default, event of default, termination event or similar provision in an Underlying Master Agreement to be a Comparable Provision, it must be one the remedy for which permits total Close-Out of all Transactions under such Underlying Master Agreement. This is intended to prevent No-Fault Termination Events from being Comparable Provisions and producing a Close-Out of all Transactions under all Underlying Master Agreements. This focus on the result produced by the event (i.e., total Close-Out or partial Close-Out) rather than the term (default, event of default or termination event) by which it is defined is important. An example would be the termination event provided under the Credit Event Upon Merger provision in Section 5(b)(iv) of the ISDA Multicurrency Cross Border Master Agreement (the “ISDA Master Agreement”). This provision is a Comparable Provision

to Section 3(d)(v) even if the Creditworthiness of Resulting Entity (Party) Option and/or the Transfer of Assets (Party) Option is NOT selected, because it permits total Close-Out of all Transactions under a user's ISDA master agreement. As a result, under MNA Default Option A, the Credit Event Upon Merger provision will be conformed to Section 3(d)(v), and under MNA Default Option B, it will be replaced by Section 3(d)(v), in either case giving effect to the user's elections pursuant to the Creditworthiness of Resulting Entity (Party) Option and the Transfer of Assets (Party) Option. Examples of termination events not constituting Comparable Provisions that result in partial Close-Out might be change-in-tax-law or regulatory-out provisions in Underlying Master Agreements that permit termination only of affected Transactions. Such provisions are No-Fault Termination Events and cannot be Comparable Provisions. This is the case even if a user's individual situation turns out to be one in which the No-Fault Termination Event does in fact result in the termination of all Transactions under an Underlying Master Agreement because all Transactions are affected Transactions.

Users should also note that, in determining which events of default, termination events or similar provisions in Underlying Master Agreements constitute Comparable Provisions, the elections made by a user in Section 3(d) are given effect. Thus, if the Cross Default Option is not selected, cross defaults in Underlying Master Agreements would not be Comparable Provisions. On the other hand, a user's selections pursuant to the Transfer of Assets Options or the Creditworthiness of Resulting Entity Options do not prevent "merger without assumption" or "credit event upon merger" defaults or termination events from being Comparable Provisions because they describe "fundamentally the same or similar event or circumstance."

Section 2. Definitions: Confirmation

As with the EEI Agreement, terms of a specific Confirmation or Transaction can override any inconsistent provision in the Master Netting Agreement with respect to such Transaction. This is specifically provided for in Section 21 (Conflicts and Inconsistencies).

Section 2. Definitions: Default Rate

The term "Default Rate" is used in Section 5 (Settlement). The Default Rate specified by a user on the Cover Sheet is applied to the MNA Final Settlement Amount from the date on which payment of the MNA Final Settlement Amount is due until the date on which payment is made, except in the case where the Non-defaulting Party suspends payment of the MNA Final Settlement Amount upon the reasonable belief by either Party that bankruptcy court approval of any such payment is required, in which case the Applicable Rate is applied. See the discussion relating to Applicable Rate, *supra*.

Section 2. Definitions: Discount Rate

The Discount Rate specified by a user on the Cover Sheet is used in the determination of Gains and Losses, which is relevant only if Settlement Amount Option B is selected or if Settlement Amount Option A is selected and an Underlying Master Agreement has no method for calculating Settlement Amounts. See the discussion relating to Gains and Losses, *infra*.

Section 2. Definitions: Gains and Losses

Users should note that the determination of Gains or Losses is only relevant in the event of an MNA Default and not relevant in the case of a UMA Default or a No-Fault Termination Event. This follows from Section 3(c), pursuant to which no event that constitutes a No-Fault Termination Event or a UMA Default can be an MNA Default, and the Parties' rights, remedies and the related procedures set forth in the relevant Underlying Master Agreements are their only rights and remedies. Users should also note that the terms "Gains" and "Losses" are only relevant if Settlement Amount Option B is selected or if Settlement Amount Option A is selected and an Underlying Master Agreement has no method for calculating Settlement Amounts. A Non-defaulting Party, in determining its Gains and Losses, must act in a commercially reasonable manner and may, to the extent consistent therewith, determine Gains or Losses by reference to third-party information such as quotations from dealers, published prices or indices or information obtained through a recognized exchange or clearinghouse, with such adjustments thereto as may be necessary to reflect the specific terms of a particular terminated Transaction or group of terminated Transactions. To the extent consistent with the requirement for commercial reasonableness, a Non-defaulting Party may also use internally-generated information in determining its Gains or Losses.

Users should be aware that the Master Netting Agreement does not provide any safe harbor conduct or process for determining Gains or Losses that will be conclusively considered to satisfy the requirement for commercial reasonableness. The Parties, of course, are always free to do so, whether with respect to a particular Transaction or all Transactions.

See the discussion relating to Settlement Amount Options A and B, *infra*.

Section 2. Definitions: Indebtedness Options A and B

Indebtedness Option A is intended to be a representative definition of indebtedness that would be required to be reflected on a Person's balance sheet prepared in accordance with GAAP (including contingent obligations of this kind). Indebtedness Option B is intended to be as broad as possible and to cover any and every obligation of a Person for the payment or repayment of money, and to offer users an option to broaden substantially the scope of the Cross Default Option provided in Section 3(d)(vi). A user's selection of Indebtedness Option A or Indebtedness Option B is irrelevant unless the Cross Default Option is selected, and the latter only relevant for users selecting MNA Default Option A (in which case cross-defaults in Underlying Master Agreements will be conformed to Section 3(d)(vi)) or MNA Default Option B (in which case cross-defaults in Underlying Master Agreements will be replaced by Section 3(d)(vi)).

Section 2. Definitions: Material Affiliates

If the Cross Default Option is selected on the Cover Sheet, each Party is required to specify its Material Affiliates, if any, on the Cover Sheet. That option, if selected, causes Section 3d(vi) of the Master Netting Agreement to be applicable. See the discussion relating to Cross Default Option, *infra*. See the discussion relating to Specified Affiliates, *infra*.

Section 2. Definitions: No-Fault Termination Event

This provision is intended to define events or circumstances, such as a third-party action (e.g., an action by a governmental entity) or an uncontrollable force, the remedy for which does not include the Close-Out of all Transactions (i.e., partial Close-Out) under an Underlying Master Agreement. An example would be the occurrence of an Illegality or Tax Event under the ISDA Master Agreement resulting in the termination of only affected Transactions. These events and the associated rights and remedies, including calculation of any settlement or termination payments, under the relevant Underlying Master Agreement(s) are not intended to be affected by the Master Netting Agreement. This is the case under each MNA Default Option and each Remedy Option. See the discussion relating to No-Fault Termination Events and UMA Default, *infra*.

Section 2. Definitions: Settlement Amount Options A and B

Settlement Amount Option A preserves the user's Settlement Amount determination methodology(ies) in its Underlying Master Agreements, adding thereto, without duplication, Costs and any net Unpaid Amounts. Settlement Amount Option B overrides the Underlying Master Agreement methodology(ies) and substitutes the algebraic sum of Losses and Gains plus, without duplication, Costs and any net Unpaid Amounts.

Settlement Amounts are positive if owed to the Non-defaulting Party and negative if owed to the Defaulting Party. This convention is followed throughout the Master Netting Agreement. Amounts owed to the Non-defaulting Party are always expressed as positive values and amounts owed to the Defaulting Party are always expressed as negative values.

Section 2. Definitions: Specified Affiliates

The term "Specified Affiliates" is used in Section 5 (Settlement) and Section 6 (Setoff). The Non-defaulting Party is entitled to setoff under Section 6 any UMA Final Settlement Amounts or MNA Final Settlement Amounts against all amounts owed by the Defaulting Party or any of its Specified Affiliates to the Non-defaulting Party or any of its Specified Affiliates under any agreement (or vice versa). Section 5 permits a Non-defaulting Party that owes a Final Settlement Amount to the Defaulting Party to defer such payment until all other obligations owed by the Defaulting Party or any of its Specified Affiliates to the Non-defaulting Party or any of its Specified Affiliates are paid in full.

Section 2. Definitions: UMA Default

Under MNA Default Option A, defaults, events of default, termination events or similar provisions in an Underlying Master Agreement that permit total Close-Out and that are NOT Comparable Provisions to the Section 3(d) events of default are preserved and defined as UMA Defaults. As discussed above, the determination of which events of default, termination events or similar provisions in Underlying Master Agreements constitute Comparable Provisions takes into account a user's Section 3(d) elections. See the discussion relating to Definitions: Comparable Provision, *supra*.

There are no UMA Defaults if a user selects MNA Default Option B or MNA Default Option C. That is because: under MNA Default Option B, the Section 3(d) events of default completely and exclusively replace and supersede all events of default in Underlying Master Agreements, effectively eliminating all defaults, events of default, termination events or similar provisions that permit total Close-Out, including those that are NOT Comparable Provisions to the Section 3(d) events of default. In addition, under MNA Default Option C, any event giving rise to any total Close-Out right in an Underlying Master Agreement is defined as an MNA Default, effectively recharacterizing all defaults, events of default, termination events or similar provisions in all Underlying Master Agreements that permit total Close-Out as MNA Defaults. See the discussions relating to MNA Default Option B and MNA Default Option C, *infra*.

Users selecting MNA Default Option A will preserve as UMA Defaults all defaults, events of default, termination events or similar provisions that permit total Close-Out and that are not Comparable Provisions and retain the associated rights and remedies in the relevant Underlying Master Agreement. Users selecting MNA Default Option B will effectively amend all defaults, events of default, termination events or similar provisions that permit total Close-Out and that are not Comparable Provisions out of their Underlying Master Agreements and effectively convert all defaults, events of default, termination events or similar provisions that permit total Close-Out and that are Comparable Provisions into MNA Defaults. Users selecting MNA Default Option C will effectively convert all defaults, events of default, termination events or similar provisions that permit total Close-Out of all Transactions under an Underlying Master Agreement into MNA Defaults with the result that the rights and remedies provided for in the Master Netting Agreement, rather than those provided for in the relevant Underlying Master Agreements, will control if Remedies Option A is selected and will control from Close-Out onward if Remedies Option B is selected.

The foregoing discussion is modified by, and subject to, the provisions in Section 3(c) with respect to No-Fault Termination Events, which survive and are governed by the relevant Underlying Master Agreement regardless of a user's selection of MNA Default Options A, B or C. See the discussion relating to No-Fault Termination Events and UMA Defaults, *infra*.

Sections 3(a) and (b). MNA Default Option A

Users may benefit from thinking of MNA Default Option A as “Comparable Provisions Conformed.” Under this option, the term “MNA Default” has EXCLUSIVELY the meaning set forth in Section 3(d) of the Master Netting Agreement, taking into account a user's elections therein.

Except for No-Fault Termination Events, all defaults, events of default, termination events or similar provisions in Underlying Master Agreements that permit total Close-Out and that are Comparable Provisions to the Section 3(d) events of default (except Section 3(d)(i) (nonpayment)) are CONFORMED to the language of Section 3(d) of the Master Netting Agreement. See the discussion relating to Definitions: Comparable Provision, *supra*.

Any defaults, events of default, termination events or similar provisions in an Underlying Master Agreement that permit total Close-Out and that are NOT Comparable Provisions to the Section 3(d) events of default are preserved as UMA Defaults, including nonpayment defaults

under one or more Underlying Master Agreements cumulatively less than the Aggregate Delinquency Amount--it being the intent that these sub-threshold nonpayment defaults are NOT Comparable Provisions that are conformed by a user's selection of MNA Default Option A.

No-Fault Termination Events and their consequences are also preserved. See the discussion relating to No-Fault Termination Events and UMA Defaults, *infra*.

Thus, if a user selects MNA Default Option A, the defaults, events of default, termination events or similar provisions under each Underlying Master Agreement that are not No-Fault Termination Events because they permit total Close-Out become either MNA Defaults or UMA Defaults, depending on whether or not they constitute Comparable Provisions. Users with Underlying Master Agreements that provide specifically negotiated "non-standard" defaults may select MNA Default Option A to preserve those non-standard defaults as UMA Defaults (with their associated rights and remedies under the applicable Underlying Master Agreement).

An example of a UMA Default might be a change-in-control default or termination event in an Underlying Master Agreement, which is an event of default or termination event that typically permits total Close-Out. There is no Comparable Provision in Section 3(d), so it is not an MNA Default, conformed or otherwise. It thus becomes a UMA Default, potentially leading to total Close-Out of all Transactions under the relevant Underlying Master Agreement, but no more.

A further example would be a non-payment default (e.g., \$100,000) under an Underlying Master Agreement in an amount (taken together with all others) less than the Aggregate Delinquency Amount (e.g., \$5,000,000). In such case, there is no MNA Default and the UMA Default gives rise to the rights and remedies available to the Non-Defaulting Party pursuant to the relevant Underlying Master Agreement which, presumably, would include Close-Out of all transactions under such Underlying Master Agreement, but not Transactions under other Underlying Master Agreements.

See the discussion relating to Consequences of Selecting MNA Default Option A and Remedies Option A or B -- Summary, *infra*.

Sections 3(a) and (b). MNA Default Option B

Users may benefit from thinking of MNA Default Option B as "Complete Replacement." Under MNA Default Option B, the term "MNA Default" has EXCLUSIVELY the meaning set forth in Section 3(d) of the Master Netting Agreement, taking into account a user's Section 3(d) elections.

The MNA Defaults (including Section 3(d)(i) and the user's related choice with respect to Agreement Delinquency Amount) replace and supersede ALL defaults, events of default, termination events and similar provisions in all Underlying Master Agreements that permit total Close-Out. No-Fault Termination Events, however, are preserved. See discussion relating to No-Fault Termination Events and UMA Defaults, *infra*.

Thus, defaults, events of default, termination events and similar provisions that are not (a) Comparable Provisions or (b) No-Fault Termination Events because they permit total Close-

Out are effectively eliminated. Users having specially negotiated “non-standard” defaults in Underlying Master Agreements will lose the benefit of those provisions if MNA Default Option B is selected.

Users with Underlying Master Agreements that provide only “standard” (i.e., Section 3(d)) defaults may select MNA Default Option B to harmonize wording, cure periods, materiality qualifiers and event triggers (or the absence thereof). Users wishing to preserve all non-payment defaults should specify a zero Aggregate Delinquency Amount.

See the discussion related to Consequences of selecting MNA Default Option B and Remedies Option A or B -- Summary, *infra*.

Sections 3(a) and (b). MNA Default Option C

Under MNA Default Option C, an “MNA Default” is defined as follows:

- (i) breach by a Party of the representations and warranties in the Master Netting Agreement (Section 3(d)(ii)),
- (ii) non-performance by a Party of any material obligations in the Master Netting Agreement, (Section 3(d)(iii)),
- (iii) failure to Transfer (or comply with restrictions on use of) (x) Performance Assurance in accordance with the Master Netting Agreement or (y) any other credit support in accordance with other credit support arrangements (Section 3(d)(viii)), or
- (iv) any event or circumstance that permits a Party to Close-Out all Transactions under any Underlying Master Agreement.

MNA Default Option C, if selected, gives a user as MNA Defaults a subset of the Section 3(d) events of default, and, in addition, recharacterizes as MNA Defaults any defaults, events of default, termination event or similar provisions that permit total Close-Out of all Transactions under any Underlying Master Agreement. Unlike MNA Default Option A, there is no UMA Default concept and no different regime for UMA Defaults (and thus no possibility of Close-Out of less than all Underlying Master Agreements). MNA Default Option C gives a user results opposite those obtained by selecting MNA Default Option B, as the formulations of the events permitting total Close-Out of all Transactions in an Underlying Master Agreement are preserved and recharacterized as MNA Defaults, providing a user with the right to terminate all (and not less than all) Underlying Master Agreements. This is to be contrasted with MNA Default Option B's “complete replacement” approach.

No-Fault Termination Events and their consequences are, however, preserved. See the discussion relating to No-Fault Termination Events and UMA Defaults, *infra*.

Users desiring to rely on the default, event of default and termination event provisions in their Underlying Master Agreements will select MNA Default Option C. This option effectively provides cross-default, cross-netting and cross-setoff rights (i.e., the ability to achieve Close-Out

of all Transactions under all Underlying Master Agreements) for the MNA Defaults in Section 3(d)(ii), 3(d)(iii) and 3(d)(viii) and for any default, events of default, termination event or similar provisions in any Underlying Master Agreement that permits total Close-Out of Transactions thereunder. This cross-default result (default under any is a default under all) is to be contrasted with MNA Default Option B, which eliminates defaults other than the Section 3(d) events, and with MNA Default Option A, which conforms defaults that are Comparable Provisions to the Section 3(d) formulation and preserves non-Comparable Provisions as UMA Defaults.

Some examples of results under MNA Default Option C: (1) a change-in-control event of default or termination event in an Underlying Master Agreement becomes an MNA Default (assuming it gives rise to a right to total Close-Out of all Transactions under that Underlying Master Agreement) and all, but not less than all, Transactions under all Underlying Master Agreements are subject to Close-Out; and (2) a regulatory out or change-in-tax law termination event or other No-Fault Termination Event is not an MNA Default, and pursuant to Section 3(c), all rights and remedies in the Underlying Master Agreement are preserved.

See the discussion relating to Consequences of Selecting MNA Default Option C and Remedies Option A or B -- Summary, *infra*.

Section 3(c). No-Fault Termination Events and UMA Defaults

Users should note that, pursuant to Section 3(c) of the Master Netting Agreement, regardless which MNA Default Option is selected, all No-Fault Termination Events survive unamended. In addition, defaults, events of default, termination events or similar provisions under Underlying Master Agreements that permit total Close-Out and that are NOT Comparable Provisions survive as UMA Defaults if Default Option A is selected.

Section 3(c) preserves the rights and remedies in the relevant Underlying Master Agreement upon the occurrence of a No-Fault Termination Event, and assuming MNA Default Option A is selected, upon the occurrence of a UMA Default; provided, however, that matters related to Performance Assurance, including its application, are governed by the Collateral Annex. Users are reminded that the definition of No-Fault Termination Event is based on the affected Party's resulting right to terminate only affected (and not all) Transactions (i.e. partial Close-Out), and further that, in given circumstances, the fact that there may only be affected Transactions under an Underlying Master Agreement (and, thus, all Transactions are terminated) does not operate to re-classify a No-Fault Termination Event into an MNA Default.

See the discussion relating to Collateral, *infra*.

Section 3(d)(i). Non-Payment MNA Default

Users should note that this nonpayment MNA Default (i) has an exclusion for amounts subject to a good faith dispute and (ii) requires that the Aggregate Delinquency Amount threshold be reached. Note that cure, which must be within three (3) Business Days after notice, requires complete pay-down to a zero balance.

Users selecting MNA Default Option A or MNA Default Option B must designate an Aggregate Delinquency Amount on the Cover Sheet. Users selecting MNA Default Option C

need not do so because non-payment defaults under MNA Default Option C are exactly those in the Underlying Master Agreements.

See the discussion relating to MNA Default Option A and MNA Default Option B, *supra*.

Section 3(d)(v). Transfer of Assets (Party) Option

The Transfer of Assets (Party) Option permits Parties to include sales of all or substantially all of a Party's assets as transactions triggering the merger without assumption MNA Default. Users should be aware, however, that the inclusion or exclusion of asset sales from similar provisions in Underlying Master Agreements does not prevent such provisions from being Comparable Provisions. See discussion relating to Definitions: Comparable Provision, *supra*. For users familiar with the ISDA Master Agreement, the selection of this option will conform the Section 3(d)(v) scope to that of Section 5(a)(viii) of the ISDA Master Agreement.

Users should remember that for purposes of determining whether defaults, events of default, termination events or similar provisions are Comparable Provisions, their Section 3(d) elections are taken into account. Users desiring to preserve their events of default relating to mergers without assumption as set forth in their Underlying Master Agreements generally can do so in two ways: by their inclusion or exclusion of asset sales pursuant to the Transfer of Assets (Party) Option if such users have selected MNA Default Option A or B, or by selecting MNA Default Option C.

Section 3(d)(v)(B). Creditworthiness of Resulting Entity (Party) Option

This option, if selected by a user, will expand the merger (and, if the Transfer of Assets (Party) Option is selected, the transfer of assets) without assumption MNA Default (Section 3(d)(v)) to include (even if the resulting or surviving entity shall have assumed all Obligations under the Master Netting Agreement and all Underlying Master Agreements) all mergers (transfers of assets) or similar transactions if the credit quality of the resulting or surviving (or transferee) entity shall be "materially weaker" than that of a Party entering into a merger (transfer of assets) or similar transaction immediately prior thereto. The effect is to make a merger or transfer of assets resulting in lower counterparty credit quality an MNA Default, as long as MNA Default Option A or MNA Default Option B has been selected. If the Creditworthiness of Resulting Entity (Party) Option is not selected, lower post-merger (transfer of assets) counterparty credit quality may entitle a Party to an increase in Performance Assurance, depending on the options chosen in the Collateral Annex, but it will not trigger a separate MNA Default.

The Creditworthiness of Resulting Entity (Party) Option, if selected, provides an MNA Default that is analogue to Section 5(b)(iv) of the ISDA Master Agreement (Credit Event Upon Merger).

See the discussion relating to Definitions: Comparable Provisions, *supra*.

Section 3(d)(vi). Cross Default Option

Selection of the Cross Default Option by a user requires that a user identify on the Cover Sheet its Material Affiliates and designate on the Cover Sheet a Cross Default Amount and its Indebtedness Option selection. If selected by a user, this option provides (i) a cross-default to a Party's Indebtedness as well as the Indebtedness of its Material Affiliates having an aggregate principal amount not less than the Cross Default Amount and (ii) a cross-default to any default by such Party or any of its Material Affiliates in making any payment or payments on such Indebtedness, collectively in the aggregate amount of not less than the Cross-Default Amount. This option is only relevant if MNA Default Option A or MNA Option B is selected, as Section 3(d)(vi) is not an MNA Default under MNA Default Option C.

Users having specially negotiated cross-default provisions in their Underlying Master Agreements (e.g., ISDA Master Agreements) should understand that this option, if selected, will effectively eliminate those specially negotiated provisions, under either MNA Default Option A or MNA Default Option B.

See the discussion relating to Indebtedness Options A and B and Definitions: Comparable Provision, *supra*.

Section 3(d)(vii). Adequate Assurances Option

If the Adequate Assurances Option provided in Section 11(c) is selected, then a specific default relating to a Party's obligation to provide adequate assurances is included.

Section 3(d)(ix)(4). Transfer of Assets (Guarantor) Option

Selection of this option has exactly the same effect as selection of the Transfer of Assets (Party) Option, except that it applies in respect of a Party's Guarantor. Unless the Transfer of Assets (Guarantor) Option is selected, sales of all or substantially all of a Guarantor's assets are not incorporated in the Guarantor merger without assumption MNA Default. As with the Transfer of Assets (Party) Option, the selection of this option conforms the scope of Section 3(d)(ix) to that of Section 5(a)(viii) of the ISDA Master Agreement.

Section 3(d)(ix)(4)(B). Creditworthiness of Resulting Entity (Guarantor) Option

Selection of this option has exactly the same effect as selection of the Creditworthiness of Resulting Entity (Party) Option, except that it applies in respect of a Party's Guarantor. Selection of this option expands the Guarantor merger (and, if the Transfer of Assets (Guarantor) Option is selected, the Guarantor transfer of assets) without assumption MNA Default (Section 3(d)(ix)(4)) to include all mergers (transfers of assets) or similar transactions involving a Party's Guarantor if the surviving or resulting (or transferee) entity shall have a materially weaker credit quality than that of the predecessor Guarantor immediately prior to such merger (transfer of assets) or similar transaction. As with the Creditworthiness of Resulting Entity (Party) Option, the effect is to make a merger or transfer of assets resulting in lower counterparty Guarantor credit quality an MNA Default, as long as MNA Default Option A or MNA Default Option B has been selected. If the Creditworthiness of Resulting Entity (Guarantor) Option is not selected, lower post-merger (transfer of assets) counterparty Guarantor credit quality may

entitle a Party to an increase in Performance Assurance, depending on options chosen in the Collateral Annex, but it will not trigger a separate MNA Default.

As with the Creditworthiness of Resulting Entity (Party) Option, selection of this option provides an analogue to Section 5(b)(iv) of the ISDA Master Agreement.

In connection with entering into the Master Netting Agreement, users are advised generally to review their credit enhancement documents in respect of their Underlying Master Agreements with particular attention to any related guarantees and the scope of obligations guaranteed thereby and any financial limits thereon.

Sections 4(a) and (b). Remedies Option A

Subject to a user's selection of the Suspension Opt Out Option, upon a user's selection of Remedies Option A, the Master Netting Agreement remedies supersede and replace all rights and remedies in Underlying Master Agreements arising by virtue of an MNA Default or a Potential MNA Default, other than:

- (i) if Settlement Amount Option A is selected, the calculation of Settlement Amounts,
- (ii) expense reimbursement and indemnification, or
- (iii) setoff, netting or recoupment

(the "3 Exceptions"), and if a user has selected the Suspension Opt Out Option, any right to suspend performance provided for in an Underlying Master Agreement.

Unless a user selects the Suspension Opt Out Option (in which case any Underlying Master Agreement suspension rights are preserved):

- (a) on a Potential MNA Default, the Non-defaulting Party shall have the right to suspend payment or performance under any or all Underlying Master Agreements for a single period of five (5) days, and
- (b) on an MNA Default, the Non-defaulting Party shall have the right to suspend payment or performance under any or all Underlying Master Agreements for a single period of fourteen (14) days.

And in addition, on an MNA Default, the Non-defaulting Party shall also have the right to:

- (1) setoff, net and recoup in accordance with the Master Netting Agreement or the Underlying Master Agreements,
- (2) liquidate and apply Performance Assurance,

- (3) designate an Early Termination Date for Close-Out of all Transactions under all Underlying Master Agreements (with the effect set forth in Section 5 (Settlement) and Section 6 (Setoff)), or
- (4) take any other action permitted at law or in equity.

The common remedies provisions, Section 4(c) and 4(d), will also apply. See the discussion relating to Master Netting Agreement Defaults -- Common Remedies Provisions, *infra*.

Users will note that by selecting MNA Default Option A they will have, in respect of UMA Defaults, the rights and remedies provided for in the relevant Underlying Master Agreement necessary to allow payment of any amounts due and payable under such Underlying Master Agreement and/or total Close-Out of the relevant Underlying Master Agreement; provided, however, that matters relating to Performance Assurance, including its application, are governed by the Collateral Annex. Regardless of the selected MNA Default Option, users will have, in respect of No-Fault Termination Events, the rights, remedies and procedures provided for in the relevant Underlying Master Agreement.

See the discussion relating to Collateral, *infra*.

Sections 4(a) and (b). Remedies Option B

Pursuant to Remedies Option B, if an MNA Default shall have occurred and be continuing, the Non-defaulting Party shall have the right to:

- (i) exercise rights and remedies under any applicable Underlying Master Agreement, other than Close-Out rights,
- (ii) liquidate and apply Performance Assurance,
- (iii) take any other action permitted at law or in equity; or
- (iv) designate an Early Termination Date for Close-Out of all Transactions under all Underlying Master Agreements (with the effect set forth in Section 5 (Settlement) and Section 6 (Setoff)).

Upon designation of an Early Termination Date, the rights and remedies specified in Underlying Master Agreements are superseded, other than:

- (a) if Settlement Amount Option A is selected, the calculation of Settlement Amounts,
- (b) expense reimbursement and indemnification, or
- (c) setoff, netting or recoupment.

The common remedies provisions, Sections 4(c) and 4(d), will also apply. See discussion relating to Master Netting Agreement Defaults — Common Remedies Provisions, *infra*. As with Remedies Option A, (i) regardless of the selected MNA Default Option, users will have, in respect of No-Fault Termination Events, and (ii) if MNA Default Option A is selected, in respect of UMA Defaults, the rights and remedies provided for in the relevant Underlying Master Agreement; provided, however, that matters relating to Performance Assurance, including its application, are governed by the Collateral Annex.

Section 4(b). Remedies Option A - Suspension Opt Out Option

Selection of this option by a user de-selects the suspension provisions embedded in Remedies Option A, namely, a single period of five (5) days in the case of a Potential MNA Default and a single period of fourteen (14) days in the case of an MNA Default, and preserves the applicable suspension rights, if any, in a user's Underlying Master Agreements and under applicable law. Users should note that under Remedies Option A, unless this option is selected, the ten (10) day suspension right provided for in Section 5.7 of the EEI Agreement will be superseded. Users should also note that under Remedies Option B, pre-Close-Out suspension rights under the Underlying Master Agreements are preserved and post-Close-Out suspension rights are provided under the Master Netting Agreement. Thus, a user selecting Remedies Option B and a user selecting Remedies Options A and “opting out” under the Suspension Opt-Out Option will be in the same position with respect to suspension rights, to the extent provided for in an Underlying Master Agreement, with respect to Transactions governed thereby.

Users having Underlying Master Agreements that do not provide for the right to suspend performance prior to the declaration of an Early Termination Date may obtain that right by selecting Remedies Option A, but only for limited time periods therein specified.

Sections 4(c) and 4(d). Master Netting Agreement Defaults — Common Remedies Provisions

After designation of an Early Termination Date, a Non-defaulting Party may:

- (i) suspend payment/performance under the Master Netting Agreement or any/all Underlying Master Agreements;
- (ii) liquidate and apply Performance Assurance;
- (iii) setoff, net and recoup under the Master Netting Agreement and the Underlying Master Agreements; or
- (iv) take any other action permitted at law or in equity.

If any Underlying Master Agreement has automatically Closed-Out on or prior to the Early Termination Date, the Settlement Amount is nonetheless included in MNA Final Settlement Amount.

Sections 3(a), 3(b), 4(a) and 4(b). Consequences of Selecting MNA Default Option A and Remedies Option A or B

Defaults under MNA Default Option A

Selection of MNA Default Option A produces bifurcated results. MNA Defaults consist of defaults, events of default, termination events or similar provisions under each Underlying Master Agreement that permit total Close-Out and that are Comparable Provisions to the defaults set forth in Section 3(d)(i) through (x) (subject to a user's elections pertaining to Transfer of Assets (Party), Creditworthiness of Resulting Entity (Party), Cross Default, Adequate Assurance, Transfer of Assets (Guarantor), Creditworthiness of Resulting Entity (Guarantor) and other defaults specified on the Cover Sheet). UMA Defaults consist of nonpayment defaults under Underlying Master Agreements that, taken together, are less than the specified Aggregate Delinquency Amount, and any defaults, events of default, termination events or similar provision under Underlying Master Agreements that permit total Close-Out and that are not Comparable Provisions and not No-Fault Termination Events. MNA Defaults give rise to the remedies selected in the Master Netting Agreement with respect to all Transactions; UMA Defaults give rise to remedies with respect to all Transactions under the relevant Underlying Master Agreement. The Parties' rights under an Underlying Master Agreement upon the occurrence of No-Fault Termination Event are unaffected.

Consequences of Selecting Remedies Option A

If Remedies Option A is selected, the Master Netting Agreement remedies supersede and replace all rights and remedies in the Underlying Master Agreements arising by virtue of an MNA Default other than (i) if Settlement Amount Option A is selected, the calculation of Settlement Amounts, (ii) expense reimbursement and indemnification, or (iii) setoff, netting and recoupment.

Under Remedies Option A, a Non-defaulting Party may, unless it shall have selected the Suspension Opt Out Option (in which case any Underlying Master Agreement suspension rights are preserved), suspend payment or performance under any or all Underlying Master Agreements for a single period of five (5) days upon a Potential MNA Default and suspend payment or performance under any or all Underlying Master Agreements for a single period of fourteen (14) days upon an MNA Default, unless an Early Termination Date has been declared, in which case performance may be suspended through Close-Out. The occurrence of an MNA Default, if Remedies Option A is selected, entitles the Non-defaulting Party to (1) setoff, net and recoup under the Master Netting Agreement or any Underlying Master Agreement, (2) liquidate and apply Performance Assurance, (3) designate an Early Termination Date for all Transactions (with the effect set forth in Section 5 (Settlement) and Section 6 (Setoff)), or (4) take any other action permitted at law or in equity.

Consequences of Selecting Remedies Option B

Remedies Option B entitles a Non-defaulting Party, upon an MNA Default, to (A) exercise its rights and remedies under the applicable Underlying Master Agreement as a result of the event giving rise to the MNA Default other than rights to Close-Out any

Transactions, (B) apply Performance Assurance, (C) take any other action permitted at law or in equity, or (D) designate an Early Termination Date for Close-Out of all Transactions under all Underlying Master Agreements.

Under Remedies Option B, upon designation of an Early Termination Date, the rights and remedies specified in the Underlying Master Agreements are superseded, other than (i) if Settlement Amount Option A is selected, the calculation of Settlement Amount, (ii) expense reimbursement and indemnification, or (iii) setoff, netting or recoupment (the same regime as under Remedies Option A).

Provisions Common to Remedies Option A and Remedies Option B

Sections 4(c) and 4(d), the Master Netting Agreement provisions common to Remedies Option A and Remedies Option B, provide that (i) after designation of an Early Termination Date, a Non-defaulting Party may (a) suspend payment/performance under the Master Netting Agreement or any/all Underlying Master Agreements through Close-Out; (b) liquidate/apply Performance Assurance; (c) setoff, net and recoup under the Master Netting Agreement and the Underlying Master Agreements; or (d) take any other action permitted at law or in equity, and (ii) if any Underlying Master Agreement has automatically Closed-Out on or prior to the Early Termination Date, the Settlement Amount is nonetheless included in the MNA Final Settlement Amount.

The remedies provided for under Remedies Option A or Remedies Option B are NOT triggered upon the occurrence of a UMA Default or a No-Fault Termination Event and the Parties retain the right to exercise any and all remedies under the Underlying Master Agreements for UMA Defaults or No-Fault Termination Events, including the right to the total Close-Out of any or all of the Transactions under an Underlying Master Agreement upon the occurrence of a UMA Default.

Summary

The Section 3(d) events of default are the exclusive set of MNA Defaults, and Comparable Provisions (except nonpayment) in Underlying Master Agreements are conformed. Defaults, events of default, termination events or similar provisions in Underlying Master Agreements that permit total Close-Out and that are NOT Comparable Provisions are UMA Defaults, unless they are No-Fault Termination Events.

UMA Defaults give rise to the rights and remedies in the relevant Underlying Master Agreement. MNA Defaults give rise to Master Netting Agreement remedies exclusively (subject to the 3 Exceptions) under Remedies Option A, which also gives a user the option to retain the 5/14 day suspension rights regime or to opt out in favor of suspension rights provided for in the relevant Underlying Master Agreement. Remedies Option B preserves remedies provided for in the relevant Underlying Master Agreement until Close-Out, then, as with Option A, Master Netting Agreement remedies become exclusive (subject to the 3 Exceptions). From and after Close-Out, the same results are obtained under Remedies Option A or Remedies Option B.

No-Fault Termination Events and their consequences are not affected under either scenario.

Sections 3(a), 3(b), 4(a) and 4(b). Consequences of Selecting MNA Default Option B and Remedies Option A or B

Defaults under MNA Default Option B

Selection of MNA Default Option B limits the defaults, events of default, termination events or similar provisions that trigger remedies to those defaults set forth in the Master Netting Agreement. MNA Defaults consist exclusively of those defaults set forth in Section 3(d)(i) through (x) (subject to a user's elections with respect to Transfer of Assets (Party), Creditworthiness of Resulting Entity (Party), Cross Default, Adequate Assurance, Transfer of Assets (Guarantor), Creditworthiness of Resulting Party (Guarantor) and other defaults specified on the Cover Sheet). There are no UMA Defaults because all defaults, events of default, termination events and similar provision (other than those constituting No-Fault Termination Events) under the Underlying Master Agreements that permit total Close-Out are superseded and replaced by the MNA Defaults. No-Fault Termination Events consist of any default, events of default, termination events or similar provisions under the Underlying Master Agreements that do NOT permit total Close-Out of all Transactions under the applicable Underlying Master Agreement and those are unaffected.

Consequences of Selecting Remedies Option A

If Remedies Option A is selected, the Master Netting Agreement remedies supersede and replace all rights and remedies in the Underlying Master Agreements arising by virtue of an MNA Default other than (i) if Settlement Amount Option A is selected, the calculation of Settlement Amounts, (ii) expense reimbursement and indemnification, or (iii) setoff, netting and recoupment.

Under Remedies Option A, a Non-defaulting Party may, unless it shall have selected the Suspension Opt Out Option (in which case any Underlying Master Agreement suspension rights are preserved), suspend payment or performance under any or all Underlying Master Agreements for a single period of five (5) days upon a Potential MNA Default and suspend payment or performance under any or all Underlying Master Agreements for a single period of fourteen (14) days upon an MNA Default, unless an Early Termination Date has been declared, in which case performance may be suspended through Close-Out. The occurrence of an MNA Default, if Remedies Option A is selected, entitles the Non-defaulting Party to (1) setoff, net and recoup under the Master Netting Agreement or any Underlying Master Agreement, (2) liquidate and apply Performance Assurance, (3) designate an Early Termination Date for all Transactions (with the effect set forth in Section 5 (Settlement) and Section 6 (Setoff)), or (4) take any other action permitted at law or in equity.

Consequences of Selecting Remedies Option B

Remedies Option B entitles a Non-defaulting Party, upon an MNA Default, to (A) exercise its rights and remedies under any applicable Underlying Master Agreement as a result of the event giving rise to the MNA Default other than rights to Close-Out any Transactions, (B) apply Performance Assurance, (C) take any other action permitted at law or in equity, or (D)

designate an Early Termination Date for Close-Out of all Transactions under all Underlying Master Agreements.

Under Remedies Option B, upon designation of an Early Termination Date, the rights and remedies specified in the Underlying Master Agreements are superseded, other than (i) if Settlement Amount Option A is selected, the calculation of Settlement Amount, (ii) expense reimbursement and indemnification, or (iii) setoff, netting or recoupment (the same regime as under Remedies Option A).

Provisions Common to Remedies Option A and Remedies Option B

Sections 4(c) and 4(d), the Master Netting Agreement provisions common to Remedies Option A and Remedies Option B, provide that (i) after designation of an Early Termination Date, a Non-defaulting Party may (a) suspend payment/performance under the Master Netting Agreement or any/all Underlying Master Agreements through Close-Out; (b) liquidate/apply Performance Assurance; (c) setoff, net and recoup under the Master Netting Agreement and the Underlying Master Agreements; or (d) take any other action permitted at law or in equity, and (ii) if any Underlying Master Agreement has automatically Closed-Out on or prior to the Early Termination Date, the Settlement Amount is nonetheless included in the MNA Final Settlement Amount.

The remedies provided for under Remedies Option A or Remedies Option B are NOT triggered upon the occurrence of a No-Fault Termination Event and the Parties retain the right to exercise any and all remedies under the Underlying Master Agreements for No-Fault Termination Events, including the right to Close-Out any affected Transactions.

Summary

MNA Default Option B produces congruent results on a “top-down” basis. The Section 3(d) events of default (giving effect to a user’s Section 3(d) elections) are the exclusive set of MNA Defaults, and they replace and supersede ALL defaults, events of default, termination events or similar provisions in all Underlying Master Agreements that permit total Close-Out. Thus, MNA Defaults are the only defaults under the Master Netting Agreement or any Underlying Master Agreement. There are no UMA Defaults. As with MNA Default Option A, No-Fault Termination Events and their consequences are not affected.

Remedies Option A gives a user, exclusively, the rights and remedies in the Master Netting Agreement (subject to the 3 Exceptions) with an option to retain the 5/14 day suspension rights regime or opt out in favor of suspension rights provided for in the relevant Underlying Master Agreement. Remedies Option B preserves the remedies (but not the events of default) provided for in the relevant Underlying Master Agreement (including any suspension rights) until any Close-Out, then as with Remedies Option A, Master Netting Agreement remedies become exclusive (subject to the 3 Exceptions). From and after any Close-Out, the same results are obtained under Remedies Option A or Remedies Option B.

Sections 3(a), 3(b), 4(a) and 4(b). Consequences of Selecting MNA Default Option C and Remedies Option A or B

Defaults under MNA Default Option C

Selection of MNA Default Option C limits the events of default that trigger remedies to three of the MNA Defaults set forth in Section 3(d) and the defaults, events of default, termination events or similar provisions under any Underlying Master Agreements that permit total Close-Out of all Transactions under such Underlying Master Agreement. Specifically, MNA Defaults consist exclusively of those defaults set forth in Sections 3(d)(ii) (breach of representations and warranties under the Master Netting Agreement), 3(d)(iii) (nonperformance of Obligations under the Master Netting Agreement) and 3(d)(viii) (failure to Transfer (or comply with restrictions on use of) Performance Assurance in accordance with the Master Netting Agreement or any other credit support in accordance with other credit support arrangements) and any event or circumstance that permits a Party to Close-Out all Transactions under any Underlying Master Agreement. There are no UMA Defaults *per se* because all events of default under the Underlying Master Agreements are subsumed by their recharacterization as MNA Defaults. No-Fault Termination Events consist of any events or circumstances under the Underlying Master Agreements that do NOT result in total Close-Out of all Transactions under the applicable Underlying Master Agreement and those are unaffected.

Consequences of Selecting Remedies Option A

If Remedies Option A is selected, the Master Netting Agreement remedies supersede and replace all rights and remedies in the Underlying Master Agreements arising by virtue of an MNA Default other than (i) if Settlement Amount Option A is selected, the calculation of Settlement Amounts, (ii) expense reimbursement and indemnification, or (iii) setoff, netting and recoupment.

Under Remedies Option A, a Non-defaulting Party may, unless it shall have selected the Suspension Opt Out Option (in which case any Underlying Master Agreement suspension rights are preserved), suspend payment or performance under any or all Underlying Master Agreements for a single period of five (5) days upon a Potential MNA Default and suspend payment or performance under any or all Underlying Master Agreements for a single period of fourteen (14) days upon an MNA Default, unless an Early Termination Date has been declared, in which case performance may be suspended through Close-Out. The occurrence of an MNA Default, if Remedies Option A is selected, entitles the Non-defaulting Party to (1) setoff, net and recoup under the Master Netting Agreement or any Underlying Master Netting Agreement, (2) liquidate and apply Performance Assurance, (3) designate an Early Termination Date for all Transactions (with the effect set forth in Section 5 (Settlement) and Section 6 (Setoff)), or (4) take any other action permitted at law or in equity.

Consequences of Selecting Remedies Option B

Remedies Option B entitles a Non-defaulting Party, upon an MNA Default, to (A) exercise its rights and remedies under any applicable Underlying Master Agreement as a result of the event giving rise to the MNA Default other than rights to Close-Out any Transactions, (B)

apply Performance Assurance, (C) take any other action permitted at law or in equity, or (D) designate an Early Termination Date for Close-Out of all Transactions under all Underlying Master Agreements.

Under Remedies Option B, upon designation of an Early Termination Date, the rights and remedies specified in the Underlying Master Agreements are superseded, other than (i) if Settlement Amount Option A is selected, the calculation of Settlement Amount, (ii) expense reimbursement and indemnification, or (iii) setoff, netting or recoupment (the same regime as under Remedies Option A).

Provisions Common to Remedies Option A and Remedies Option B

Sections 4(c) and 4(d), the Master Netting Agreement provision common to Remedies Option A and Remedies Option B, provide that (i) after designation of an Early Termination Date, a Non-defaulting Party may (a) suspend payment/performance under the Master Netting Agreement or any/all Underlying Master Agreements through Close-Out; (b) liquidate/apply Performance Assurance; (c) setoff, net and recoup under the Master Netting Agreement and the Underlying Master Agreements; or (d) take any other action permitted at law or in equity, and (ii) if any Underlying Master Agreement has automatically Closed-Out on or prior to the Early Termination Date, the Settlement Amount is nonetheless included in the MNA Final Settlement Amount.

The remedies provided for under Remedies Option A or Remedies Option B are NOT triggered upon the occurrence of a No-Fault Termination Event and the Parties retain the right to exercise any and all remedies under the Underlying Master Agreements for No-Fault Termination Events, including the right to Close-Out any affected Transactions.

Summary

MNA Default Option C produces congruent results on a “bottoms-up” basis. MNA Defaults include the events of default specified in Sections 3(d)(ii), (iii) and (viii) and all defaults, events of default, termination events or similar provisions in Underlying Master Agreements that permit total Close-Out of all Transactions under the relevant Underlying Master Agreement. Thus, as with MNA Default Option B, there are no separate UMA Defaults. As with MNA Default Option A and MNA Default Option B, No-Fault Termination Events and their consequences are unaffected.

Remedies Option A gives a user, exclusively, the rights and remedies in the Master Netting Agreement (subject to the 3 Exceptions) with an option to retain the 5/14 day suspension rights regime or opt out in favor of suspension rights provided for in the relevant Underlying Master Agreement. Remedies Option B preserves the remedies (but not the events of default) provided for in the relevant Underlying Master Agreement (including any suspension rights) until any Close-Out, then as with Remedies Option A, Master Netting Agreement remedies become exclusive (subject to the 3 Exceptions). From and after any Close-Out, the same results are obtained under Remedies Option A or Remedies Option B.

Section 5 (a), (b), (c), (d), (e) and (f). Settlement

These provisions enable the Non-defaulting Party, in exercising its remedies under the Master Netting Agreement, to net all amounts owed between the Non-defaulting Party and the Defaulting Party under all Underlying Master Agreements into a single MNA Final Settlement Amount. If an Obligation under an Underlying Master Agreement is unascertainable, the Non-defaulting Party may, acting in a commercially reasonable manner, estimate the amount of such Obligation and setoff in respect of the estimate, subject to accounting to the Defaulting Party when the Obligation is ascertained. As of the Early Termination Date designated by the Non-Defaulting Party after an MNA Default, all (and not less than all) Transactions under all the Underlying Master Agreements are Closed-Out (unless it is commercially impractical with respect to a Transaction, in which case such Transaction will be Closed-Out as soon as reasonably practical). Because there is no “cherry-picking” allowed, users should determine carefully whether to exclude as Underlying Master Agreements on the Cover Sheet any agreement permitting “cherry-picking.”

The Non-defaulting Party calculates the MNA Final Settlement Amount to be paid. The MNA Final Settlement Amount is the algebraic sum of all UMA Final Settlement Amounts with respect to each Underlying Master Agreement, each determined in accordance with a user’s election of Settlement Amount Options A and B, less, if the sum of the UMA Final Settlement Amount is positive, the amount received by the Non-Defaulting Party to the extent the Non-Defaulting Party exercises its Performance Assurance rights or, plus, if the sum of the UMA Final Settlement Amount is negative, the value of any Performance Assurance held by the Defaulting Party. The MNA Final Settlement Amount also includes interest on the MNA Final Settlement Amount at the Applicable Rate from the Early Termination Date to the date on which payment of the MNA Final Settlement Amount is due.

After delivery by the Non-defaulting Party to the Defaulting Party of notice of the MNA Final Settlement Amount (which shall include calculations of each relevant Settlement Amount and any amounts setoff or applied as Performance Assurance in accordance with the Master Netting Agreement (see discussion, *infra*)), the Party from whom payment is due will have three (3) Business Days to make payment. Even if a Party disputes the MNA Final Settlement Amount, it must still pay the MNA Final Settlement Amount (while providing notice of the amount and basis of its dispute). If all or a portion of the MNA Final Settlement Amount or interest thereon is not paid when due, then the Default Rate is applied to the MNA Final Settlement Amount from the date due until the date paid.

In a situation where the MNA Final Settlement Amount is owed by the Non-defaulting Party to the Defaulting Party, the Non-defaulting Party is not be required to pay the Defaulting Party until (i) the Non-defaulting Party receives reasonably satisfactory confirmation that all other obligations of the Defaulting Party and its Specified Affiliates to the Non-defaulting Party and its Specified Affiliates owed as of the payment date have been paid in full and (ii) the Defaulting Party executes a release specifying that payment by the Non-defaulting Party of the MNA Final Settlement Amount constitutes resolution of all its Obligations under the Master Netting Agreement, the Underlying Master Agreement and all Transactions. Users should be aware that this payment deferral right is of the same breadth as the Section 6 setoff rights. It

extends to the Parties and their respective Specified Affiliates and to all agreements between them.

It is important to note that under Section 5, amounts may be setoff if they are “owed,” which term is defined and used in Section 6.

It is also important that users verify the absence of prior liens on or security interests in either Party’s receivables under all Underlying Master Agreements (and any other agreements between the Parties or their Specified Affiliates), undertaking UCC lien searches and performing such other due diligence investigations deemed necessary or appropriate. See the discussion relating to Security Interest Deletion Option, *infra*.

Sections 5(i) and (j). Security Interest Deletion Option

UNLESS DELETED, the security interest provisions will apply and are intended to augment the Bankruptcy Code protections of Close-Out, netting and setoff rights and relief from the automatic stay applicable to forwards and futures on the one hand, and to swaps and financial contracts on the other, and may (like the integration of all Underlying Master Agreements into a single contract set forth in Section 1) provide increased protection of cross-product (i.e., physical against financial, and vice versa) netting rights. Pursuant to these provisions, a Party grants to its counterparty a security interest in all amounts payable to it by the counterparty under any Underlying Master Agreement.

As these provisions involve the grant of a security interest, users will be advised to select DELETE in the absence of consultation with a user’s general counsel and with the general counsel of a user’s ultimate parent company, as the case may be. A user’s or a parent company’s indentures, credit agreements, or other material contracts may contain limitations or outright prohibitions on the granting of liens, and such prohibitions frequently extend to subsidiaries, particularly if a subsidiary is deemed material to its parent company. Failure to select the Security Interest Deletion Option (and thereby DELETE Sections 5(i) and 5(j)) could result in a default under one or more of a user’s indentures, credit agreements or other material contracts. Those defaults could create cross-defaults to other instruments. Accordingly, users should proceed with caution.

In addition, users not selecting the Security Interest Deletion Option should verify that neither Party has previously granted any lien on or security interest in its receivables under any Underlying Master Agreement, undertaking UCC lien searches and such other due diligence deemed necessary or appropriate. Failure to take such precautions may result in a user’s unawareness of a pre-existing lien or security interest that could prevent exercise of anticipated settlement, netting or setoff rights.

Discussion of the currently pending Bankruptcy Reform Act and its possible effect on this option is set forth in the Legal Landscape.

Section 6. Setoff

This provision enables a Non-defaulting Party that is exercising its remedies under Section 4 of the Master Netting Agreement to setoff any MNA Final Settlement Amount or

UMA Final Settlement Amounts (which may be payable by the Defaulting Party to the Non-Defaulting Party, or vice versa) against all amounts owed (i) by the Defaulting Party or any of its Specified Affiliates to the Non-Defaulting Party or any of the Specified Affiliates under any and all other agreements, or (ii) by the Non-defaulting Party or any of its Specified Affiliates to the Defaulting Party or any of its Specified Affiliates under any and all other agreements. In addition to covering obligations other than those set forth in the Underlying Master Agreements, the setoff rights in Section 6 (Setoff) are also broader than those set forth in Section 5 (Settlement) in that the Settlement provisions (other than Section 5(f)(i)) relate only to the Non-defaulting and the Defaulting Party.

It is important to note that under Section 6, amounts may be set off if they are “owed,” which term, pursuant to Section 6(c), includes in addition to amounts due and payable, amounts accrued (whether or not such amounts have been or could be invoiced). This is intended to provide setoff rights for the value of all commodities delivered or services performed between the Parties and their Specified Affiliates.

It is also important to note that only the Non-defaulting Party has set off rights under the Master Netting Agreement. Accordingly, provisions in Underlying Master Agreements that provide setoff rights to Defaulting Parties will be effectively eliminated by virtue of Section 21 (Conflicts and Inconsistencies).

Section 8(a). Payment Allocation Option

The selection of this provision by a user permits a Party, if its counterparty fails to designate the Obligations to which any payment is to be allocated under the Underlying Master Agreements or Transactions, to allocate the payment in its sole commercially reasonable discretion among the amounts due under the Underlying Master Agreements and/or Transactions.

Section 8(b). Payment Netting Option

The selection of this provision by a user replaces and supersedes all payment netting provisions in a user’s Underlying Master Agreements. Section 8(b) provides that if on any date amounts are due and payable under the same Underlying Master Agreement by each Party to the other, the Parties agree to payment of a single net balance. Note that Section 8(b) operates at the Underlying Master Agreement level and only addresses payments pursuant to the same Underlying Master Agreement. Note further that unlike Sections 5 and 6, Section 8(b) uses the term “due and payable,” not the term “owed,” and the drafters intended thereby a differing result.

Section 9. Collateral

The purpose of Section 9 is to make clear that, with respect to all Underlying Master Agreements and all Transactions, all matters relating to the determination, administration and application of Performance Assurance or any other form of collateral or credit support is governed by the Master Netting Agreement, including the Collateral Annex. A Non-defaulting Party may realize on or apply any collateral upon the occurrence of an MNA Default, or pursuant to the terms of any Underlying Master Agreement or any Transaction upon (1) a UMA Default, (2) a No-fault Termination Event or (3) an MNA Default if Remedies Option B is selected (and

the relevant Underlying Master Agreement permits the application of collateral prior to Close-Out).

Users should note that under the Master Netting Agreement and the Collateral Annex, guaranties do not constitute, and are not treated as, Performance Assurance. Thus, unlike Performance Assurance which is pursuant to Section 9 exclusively governed by the Master Netting Agreement and the Collateral Annex (for all Transactions under all Underlying Master Agreements) guaranties are unaffected by the Master Netting Agreement, including Section 9. Thus, users entering into the Master Netting Agreement must review and consider their existing guaranties with particular attention to any limits on guaranteed amounts and the precise scope of guaranteed obligations. Users having issued to counterparties more than one guaranty, or guaranteeing obligations other than the Obligations should consider amending and restating such guaranties to assure that their objectives in entering into the Master Netting Agreement are achieved without detrimental affect on other contractual relationships or credit exposures.

See the discussion relating to Continuation of Master Agreements and Severability, *infra*.

Section 10(a). Representations and Warranties

Users will want to consider this basic package of representations and warranties and determine whether additional representations and warranties are necessary or appropriate. Particular consideration should be given to whether the financial statements representation and warranty should be modified. Additional representations and warranties that a user might consider include solvency, regulatory authorizations, absence of litigation, and forward contract merchant status, among others. Lastly, users will be well-advised to review their Underlying Master Agreements for specialized representations and warranties and to consider their inclusion.

Section 10(b). Security Interest Representation Deletion Option

Unless deleted, the purpose of this provision is to complement a Party's selection under the Security Interest Deletion Option and the Negative Encumbrance Option by confirming that the counterparty has not granted any security interest in the Pledged Collateral. See the discussions relating to Security Interest Deletion Option, *supra*, and Negative Encumbrance Option, *infra*.

Section 10(c). FDICIA Representation Option

If both counterparties to the Master Netting Agreement are “financial institutions” as defined in the FDIC Improvement Act of 1991 (“FDICIA”), they will want to select this option. As more fully described in the Legal Landscape, the FDICIA provides that a bilateral “netting contract” between two “financial institutions” is enforceable in accordance with such netting contract notwithstanding the financial failure of one of the financial institutions.

Section 11(a). Financial Statements Option

This option, if selected, provides a party with the right to obtain financial information which is not publicly available from its counterparty's Guarantor or, if none from its counterparty in the event that such rights are not already provided under an Underlying Master

Agreement. This provision, if selected, supersedes any similar provision in the Underlying Master Agreements, except to the extent an Underlying Master Agreement requires delivery of financial information in respect of a Person not the counterparty or the counterparty's Guarantor.

Section 11(b). Negative Encumbrance Option

This option is related to the Security Interest Deletion Option and should be selected unless the Security Interest Deletion Option is selected. Doing so provides a covenant that backstops the priority of the lien granted in Section 5(i). Moreover, even if the Security Interest Deletion Option is selected because, e.g., of the existence of similar negative pledge covenants in a user's or a user's parent company's credit agreement(s) or indenture(s), but some protection is desired by a user for its cross-product netting rights, this option may provide it.

As this provision is a covenant against liens (negative pledge) with respect to, *inter alia*, Underlying Master Agreement receivables, it should be selected only after careful consideration and consultation with a user's general counsel and the general counsel of a user's ultimate parent company.

See the discussion relating to Security Interest Deletion Option, *supra*.

Section 11(c). Adequate Assurances Option

Selection of this option provides the user with a general adequate assurances right in addition to the collateral security it may have obtained or obtain pursuant to the Collateral Annex. Adequate assurances may or may not, under applicable law, including UCC 2-609, consist of Eligible Collateral. If adequate assurances are provided in the form of Eligible Collateral, it is to be considered and treated as Eligible Collateral pursuant to certain provisions of the Collateral Annex relating to its use, administration and application. It is not, however, to be treated as Eligible Collateral or Performance Assurance for purposes of a Party's calculation of its Exposure or for purposes of the collateral return and calculation dispute provisions of the Collateral Annex.

Section 12(b). Adequate Assurance Waiver Option

In recognition that some users may want to standardize the potentially varying adequate assurance rights that may exist under their Underlying Master Agreements or by operation of law, this option, if selected, limits the scope of adequate assurance rights exclusively to those set forth in the Master Netting Agreement.

Section 13. Credit Event Deletion Option

Selecting this option deletes from all of a user's Underlying Master Agreements every provision (a "Credit Event Clause") that permits or requires termination of or creates any obligation under any Transaction or any Underlying Master Agreement on the occurrence of a credit rating downgrade, loss of shareholder equity, financial covenant test failure or other similar provision related to a Party's financial condition (a "Credit Event"). By virtue of the proviso at the end of Section 13, selection of this option does not affect any right of a user under any Underlying Master Agreement to request adequate assurance, whether pursuant to a

provision of an Underlying Master Agreement or applicable law, so long as such request is not conditioned upon the occurrence of a Credit Event.

This option to delete from all of the Underlying Master Agreements all Credit Event Clauses is offered in recognition of the fact that some users may be using the Master Netting Agreement comprehensively to establish a new relationship for credit purposes. That new relationship would be as defined by the Master Netting Agreement and the related Collateral Annex and the options selected in both documents. The Collateral Annex effectively enables the Parties to replace their Credit Event Clauses with the margining mechanics specified and selected in the Collateral Annex. Users should ensure that provisions in Underlying Master Agreements do not conflict with the operation of the Collateral Annex.

As examples of results under the Credit Event Deletion Option, users selecting the Section 13 Credit Event Deletion Option that have specified as applicable the Downgrade Event option provided for in Section 8.1(d) or Section 8.2(d) of the EEI Agreement will be effectively removing that protection, and care should be taken to ensure that comparable protection, if desired, is provided for by a Party's selected options in the Collateral Annex.

Moreover, the Credit Event Deletion Option is related at least tangentially to the Adequate Assurances Option (See discussion, *supra*, at Section 11(c)) and the Adequate Assurances Waiver Option (See discussion, *supra*, at Section 12(b)). Users considering the selection of these options should review the adequate assurance provisions of their Underlying Master Agreements. Standard adequate assurance provisions, such as that in Section 10.1 of the GISB/NAESB Base Contract for Sale and Purchase of Natural Gas or Sections 8.1(b) or 8.2(b) of the EEI Agreement will remain unaffected if the Adequate Assurances Option is selected. That will not be the case, however, for those provisions and other adequate assurance provisions in Underlying Master Agreements that are triggered by Credit Events if the Credit Event Deletion Option is selected and the Adequate Assurances Option is not selected.

Users selecting the Credit Event Deletion Option should do so with care, and ONLY after a review of the Credit Event Clauses in all Underlying Master Agreements. Selecting this option will delete all Credit Event Clauses, including those that relate to the level of performance assurance required to be posted and those that are immediate events of default or termination events.

Section 14. Interpretation

The drafters intended by the inclusion of Section 14 to maximize the extent to which Parties, in the exercise of their Close-Out, netting and setoff rights, will be exempt from the automatic stay in the event of a counterparty bankruptcy and otherwise qualify for the special protections afforded with respect to forward contracts, communication contracts, securities contracts, repurchase agreements and swap agreements.

Section 18. Assignment

Users should note that the provisions of Section 18 are not optional, and that they supersede and replace in their entirety the assignment provisions of all Underlying Master Agreements. Under the Master Netting Agreement, all assignments of the Master Netting

Agreement, any Underlying Master Agreement, any Confirmation or any Transaction without the consent of the other Party are void, other than those made as collateral security or in connection with the monetization or financing of a Party's receivables, or those occurring by operation of law in connection with a merger or similar transaction. In any case, a permitted assignment is always subject to the netting and setoff rights provided in the Master Netting Agreement and to any prior security interest if the Security Interest Deletion Option shall not have been selected.

As this provision is not an option to be selected, care should be taken to insure that existing permitted assignments under any Underlying Master Agreement are not inadvertently converted into defaults that would be MNA Defaults which would trigger total Close-Out of all Transactions under all Underlying Master Agreements. Users should also insure that any permitted assignment does not violate any credit agreements, indentures or other material contracts.

Users should understand and be aware that, even though Section 18 permits assignments as collateral security, such assignments for security purposes present the same considerations and risks as do the inclusion in the Master Netting Agreement of Sections 5(i) and 5(j). See the discussion relating to Security Interest Deletion Option, *supra*.

Lastly, after an Early Termination Date the Non-Defaulting Party may assign the Master Netting Agreement, the Underlying Master Agreements, the Confirmations or Transactions without obtaining the prior consent of the Defaulting Party.

Section 21. Conflicts and Inconsistencies

If a provision of the Master Netting Agreement conflicts with a provision of an Underlying Master Agreement, it is intended that "concerning the matters set forth in this [Master Netting] Agreement," the provisions of the Master Netting Agreement shall govern. This is a necessary corollary to the integration of all Underlying Master Agreements "for the purposes [t]herein," in Section 1.

Individual Transaction terms that are inconsistent with the Master Netting Agreement shall control for purposes of the individual Transaction.

If the Adequate Assurances Option is not selected, the presence in an Underlying Master Agreement of an adequate assurances clause shall not be deemed a conflict or inconsistency and shall not be amended out. Similarly, UMA Defaults and their associated covenants and grace periods that are not superseded by virtue of a Party's selection of MNA Default Option A are not to be considered conflicting or inconsistent with the provisions of the Master Netting Agreement. See, for example, the discussion relating to Definitions: Comparable Provision, *supra*.

Section 22. Confidentiality Option

The selection of this option by a user imposes a confidentiality obligation with respect to the Master Netting Agreement, all Underlying Master Agreements, all Confirmations and all Transactions, subject to customary exceptions. This provision, if selected, supplements and does not supersede confidentiality provisions in Underlying Master Agreements. Users whose

Underlying Master Agreements are not uniform with respect to confidentiality provisions should review all existing provisions to determine whether the scope of, and exceptions in, Section 22 are appropriate to their needs, or whether, e.g., further exceptions may be necessary or appropriate.

Section 23. Continuation of Master Agreements and Severability

Section 23(c) is intended to operate as a savings clause in the event the netting of Exposures and setoff of UMA Settlement Amounts as contemplated by the Master Netting Agreement and the Collateral Annex are determined to be in whole or in part invalid or unenforceable. The secured party is provided with the right to apportion the Performance Assurance posted to it to each Underlying Master Agreement in its sole discretion and the remedies of a Non-defaulting Party under each Underlying Master Agreement are reinstated, as are the collateral provisions under each Underlying Master Agreement. A secured party's right to demand additional collateral and the time period within which it is to be transferred as set forth in the Underlying Master Agreements are also reinstated. The intent of these savings provisions is to reinstate the positions of the Parties and their rights with respect to collateral as they existed immediately before execution and delivery of the Master Netting Agreement. Users should understand, however, that inasmuch as the most likely circumstance in which the validity or enforceability of the netting and setoff provisions of the Master Netting Agreement will be challenged in the bankruptcy of a counterparty, the effectiveness of Section 23(c) as a savings clause is uncertain.

Section 25. Jurisdiction and Venue

Section 25 of the Master Netting Agreement provides for the non-exclusive jurisdiction of state and federal courts in New York, New York over any proceedings relating to the Master Netting Agreement or any Underlying Master Agreement, and provides for a waiver of jury trial with respect to any such proceeding.

Section 28. Waiver of Damages

Section 28 of the Master Netting Agreement provides for a waiver of consequential damages in broad form. Users should note that the Section 28 limitation of liability is limited to liability under the Master Netting Agreement. Any liability of the Parties to each other otherwise than arising under the Master Netting Agreement is not intended to be affected.