



Standard Terms and Conditions for Par/Near Par Trade Confirmations
(Published by The Loan Syndications and Trading Association, Inc.® as of February 6, 2009)

The following are the Standard Terms and Conditions for Par/Near Par Trade Confirmations (“Standard Terms and Conditions”) published by the Loan Syndications and Trading Association, Inc.® (the “LSTA”) as of February 6, 2009. Capitalized terms used and not defined in these Standard Terms and Conditions shall have the respective meanings ascribed thereto in the LSTA Par/Near Par Trade Confirmation (the “Confirmation”) which incorporates these Standard Terms and Conditions by reference. Annex I sets forth the capitalized terms defined in these Standard Terms and Conditions or in the Confirmation and the respective sections herein, if any, in which such capitalized terms are defined. As used herein, the term “Transaction” means the transaction(s) contemplated by the Confirmation.

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16. Buy-in/Sell-out: If, in the case (i) of an Assignment Only Election, (ii) where an election of “Assignment” is made in the “Form of Purchase” section of the Confirmation or (iii) where no election is made in the “Form of Purchase” section of the Confirmation, where the transfer and eligibility provisions of the Credit Agreement permit an assignment of the Purchase Amount of the Debt to Buyer, Buyer and Seller are unable to effect settlement on or prior to the BISO Trigger Date (as defined below) due to the failure of either Buyer or Seller to perform its Settlement Delivery Obligations (as defined below) on or before the BISO Trigger Date, then the performing party may send to the nonperforming party, at any time thereafter, a written notice (a “BISO Notice”) advising of the performing party’s intent to terminate its obligations under the Confirmation and to effect a cover transaction in respect of the specified Debt, unless within ten (10) Business Days following delivery of such BISO Notice (the “Cure Period”), the nonperforming party has performed its Settlement Delivery Obligations or, if the nonperforming party is Seller, the nonperforming party has performed its Upstream BISO Obligations (as defined below). Such cover transaction is a “buy in” if Buyer purchases the specified Debt from a counterparty other than the original Seller, and is a “sell out” if Seller sells the specified Debt to a counterparty other than the original Buyer. Such BISO Notice shall be substantially in the form most recently published by the LSTA and in existence on the Trade Date¹, and the nonperforming party receiving such BISO Notice shall promptly acknowledge receipt of same; provided that any failure by the nonperforming party to acknowledge the receipt of the BISO Notice sent in accordance with the provisions of Section 19, “Notices,” below shall in no way diminish the effectiveness thereof. If the nonperforming party does not perform its Settlement Delivery Obligations or, if the nonperforming party is Seller, its Upstream BISO Obligations prior to the expiration of the Cure Period, (i) except for the rights and obligations under this Section 16, Section 17, “Buy-in Damages,” below and Section 18, “Sell-out Damages,” below, and subject to the following paragraph, the obligations of the parties under the Confirmation shall be terminated; (ii) the performing party shall use reasonable commercial efforts to identify a third-party substitute counterparty and to agree to trade terms for the cover transaction with such counterparty; (iii) if such a substitute counterparty is identified and such trade terms are agreed upon, the performing party shall effect the cover transaction with such substitute counterparty, the trade date of the cover transaction (the “Close-Out Trade Date”) being the date of execution by the parties thereto of the trade confirmation for such cover transaction, which transaction shall not be conditioned upon the cover price thereunder not being disputed by the nonperforming party hereunder (the “Close-Out Confirmation”). Notice of the cover price shall be sent to

¹ Note that the form of BISO Notice, if sent by Seller, shall include a representation that Seller holds the specified Debt as of the date of delivery of such BISO Notice.

the nonperforming party within one (1) Business Day following the Close-Out Trade Date. If the nonperforming party disputes the reasonableness of the cover price, it shall send written notice to the performing party of such dispute no later than the second Business Day after receipt of notice of such cover price. **Such price dispute shall be submitted to binding arbitration pursuant to, and shall be governed in all respects by, the “Rules Governing Arbitration Between Loan Traders With Regard to Failed Trades” (the “Arbitration Rules”) in existence on the Trade Date.** Such written submission notice (the “Arbitration Notice”) shall be substantially in the form most recently published by the LSTA and in existence on the Trade Date. With respect to any arbitration conducted pursuant to the Arbitration Rules, Buyer and Seller waive any right to a hearing and acknowledge that the arbitrators shall not be required to take an oath.

Notwithstanding the foregoing, if the performing party fails to identify such a substitute counterparty or agree upon such cover transaction trade terms within ten (10) Business Days following the expiration of the Cure Period, then the performing party will promptly notify the nonperforming party in writing of such failure and (i) subject to (iii) below, the obligations of the parties under the Transaction shall remain in full force and effect, (ii) subject to (iii) below and if the Transaction under (i) cannot be settled on such basis, both parties will in good faith consider other alternatives to settle or resolve the failed trade by mutual consent and (iii) the performing party may not send any further BISO Notices or effect any further cover transaction in connection with the Transaction without the nonperforming party’s consent.

As used herein:

“BISO Trigger Date” means (a) for Early Day Trades, the date that is twenty (20) Business Days after the later of the Trade Date and the Trigger Date and (b) for all other trades, the date that is twenty (20) Business Days after the Trade Date.

“Settlement Delivery Obligations” means the obligation of Seller and Buyer, as applicable, (i) to execute and deliver to the other party the Confirmation and (ii) to execute and deliver to the other party (and for the party charged with obtaining required consents, to the administrative agent) for purposes of settling the Transaction its signature to the assignment agreement described in Section 10, “Transfer Documentation,” above.

For the avoidance of doubt:

- (1) except for the provisions of this subsection (1) itself, the provisions of this Section 16 will not apply if, prior to the Close-Out Trade Date, the parties otherwise have settled the Transaction on the basis of a mutually agreeable alternative structure or other arrangement that affords Buyer and Seller the economic equivalent of the agreed-upon trade;
- (2) the provisions of this Section 16 will not apply to a Transaction with respect to which either (A) “Participation” is elected in the “Form of Purchase” section of the Confirmation or (B) on or before the BISO Trigger Date (x) either party has given written notice to the other party that it has reasonably determined pursuant to the transfer and eligibility provisions of the Credit Agreement that, or (y) the parties have mutually agreed that, the Transaction cannot settle by assignment but must settle by participation;
- (3) the failure to obtain necessary third-party consents or acknowledgements to or other approvals for settlement of any assignment required pursuant to the transfer and eligibility provisions of the Credit Agreement shall not constitute a failure by Seller or Buyer to perform its Settlement Delivery Obligations;
- (4) the party failing to perform its Settlement Delivery Obligations in the time and manner described above is the “nonperforming party”;

(5) the party performing its Settlement Delivery Obligations in the time and manner described above is the “performing party”;

(6) the performing party may exercise, but shall be under no obligation to exercise, its rights under this Section 16, and in so exercising such rights the performing party need not establish that it acted in good faith or engaged in commercially reasonable conduct prior to its performing its Settlement Delivery Obligations in the time and manner described above and the exercise of rights by the performing party under this Section 16 shall not be subject to any defense of the nonperforming party’s having acted in good faith or having engaged in commercially reasonable conduct provided the performing party has performed its Settlement Delivery Obligations in the time and manner described above;

(7) if neither party performs its Settlement Delivery Obligations in the time and manner described above then there is no “performing party”;

(8) no exercise of rights under this Section 16 shall preclude, before consummation of a cover transaction under this Section 16 and payment of applicable damages under Section 17, “Buy-in Damages,” below or Section 18, “Sell-out Damages,” below as applicable or other settlement on the basis of a mutually agreeable alternative structure or other arrangement, the exercise of any other right or remedy provided by law;

(9) notwithstanding subsection (3) above, Seller shall not be deemed to be a performing party hereunder and its Settlement Delivery Obligations shall not be satisfied unless Seller also holds the specified Debt as of the date of its delivery of the BISO Notice;

(10) if the party charged with preparing or otherwise producing the assignment agreement described in Section 10, “Transfer Documentation,” above has not done so on or before the date that is two (2) Business Days prior to the BISO Trigger Date, and after such date but on or before the BISO Trigger Date the other party has sent written notice to such nondelivering party certifying that it is ready, willing and able to execute and deliver its signature to such assignment agreement to the nondelivering party for purposes of settling the Transaction, then the certifying party shall be (i) deemed to be a performing party hereunder and to have satisfied its Settlement Delivery Obligations by the BISO Trigger Date and (ii) entitled to exercise but not obligated to exercise its rights as a performing party under this Section 16; and

(11) if (i) Buyer is the performing party, (ii) as of the date of Seller’s receipt from Buyer of the BISO Notice Seller does not hold the specified Debt and (iii) prior to the expiration of the Cure Period Seller (A) delivers to Buyer a fully executed copy of the trade confirmation or trade confirmation(s) (with the purchase price and purchase rate thereunder redacted) which Seller has entered into to purchase not less than the principal amount of the specified Debt on terms containing the provisions set forth in this Section 16 through Section 20, “Confidentiality of Terms of Transaction,” below, and with a trade date or trade dates not later than the date that is five (5) Business Days after the Trade Date (individually and collectively, the “Upstream Confirmation”) and (B) certifies in writing to Buyer simultaneously with such delivery that (a) to the extent of the Purchase Amount of the Debt, the Upstream Confirmation has not been delivered previously and will not be delivered subsequently to satisfy obligations under another trade confirmation analogous to Upstream BISO Obligations hereunder, (b) Seller has performed or will perform by the time required under the Upstream Confirmation as the performing party thereunder all obligations under the Upstream Confirmation analogous to its Settlement Delivery Obligations hereunder, (c) if the counterparty(ies) under the Upstream Confirmation has (have) not performed or shall have not performed by the time(s) required under the Upstream Confirmation as a performing party thereunder all obligations thereunder analogous to Settlement Delivery Obligations hereunder, Seller

has delivered or will deliver to such counterparty(ies) prior to the expiration of the Cure Period, in each case as the performing party thereunder, a notice analogous to the BISO Notice hereunder in order to commence against such counterparty(ies) the exercise of its rights as a performing party analogous to those rights under this Section 16, (d) Seller will use reasonable commercial efforts to commence the buy-in(s) promptly upon the failure of such counterparty(ies) under the Upstream Confirmation to perform obligations analogous to Settlement Delivery Obligations or Upstream BISO Obligations hereunder prior to the expiration of the period thereunder analogous to the Cure Period hereunder and (e) upon Buyer's timely request, Seller will provide further written certification or other evidence that it has performed the foregoing actions and fully enforced its rights analogous to those contained in this Section 16 as a performing party under the Upstream Confirmation (such delivery and certification, "Upstream BISO Obligations"), then subject to subsection (8) above, Buyer shall not be entitled to exercise any further rights as a performing party against Seller under this Section 16 without Seller's consent.

17. **Buy-in Damages:** Seller shall pay to Buyer on the settlement date (as determined in accordance with the Close-Out Confirmation) of the buy-in cover transaction (a) if the buy-in cover price exceeds the original Purchase Price for the specified Debt, the amount of such excess², plus (b) if the specified Debt (other than any PIK Interest Loan) is fully performing, Delayed Compensation/compensation for delayed settlement for Non-LIBOR Based Loans (as applicable) with respect to the Purchase Amount for each day from (and including) the Commencement Date for the failed trade to (but excluding) the date that is the earlier of (i) the actual settlement of the buy-in cover transaction or (ii) seven (7) Business Days following the Close-Out Trade Date. If the foregoing calculations produce a negative number, Buyer shall pay the net payment to Seller.
18. **Sell-out Damages:** Buyer shall pay to Seller on the settlement date (as determined in accordance with the Close-Out Confirmation) of the sell-out cover transaction (a) if the sell-out cover price is less than the original Purchase Price for the specified Debt, the amount of such shortfall³, plus (b) Seller's Cost of Carry if the specified Debt is not fully performing or is a PIK Interest Loan for each day from (and including) the Commencement Date for the failed trade to (but excluding) the date that is the earlier of (i) the actual settlement of the sell-out cover transaction or (ii) seven (7) Business Days following the Close-Out Trade Date. If the foregoing calculations produce a negative number, Seller shall pay the net payment to Buyer.
19. **Notices:** Except for any Arbitration Notice, which shall be in writing and sent by the nonperforming party to both the performing party (at the address and facsimile number specified on the face or in the "Trade Specific Other Terms of Trade" section of the Confirmation or at such other address and facsimile number as the nonperforming party and the performing party shall agree) and the LSTA (at the address and facsimile number specified on the face of the Arbitration Notice or at such other address and facsimile number as the nonperforming party and the LSTA shall agree) (a) by hand or by certified mail and (b) by telecopier and shall be effective on such receipt thereof, all communications between Seller and Buyer in respect of, or notices, requests, directions, consents or other information sent under, the Confirmation (including without limitation all notices other than the Arbitration Notice sent under Section 16, "Buy-in/Sell-out," above) shall be in writing, hand delivered or sent by overnight courier, electronic transmission or telecopier, addressed to the relevant party at its address, electronic mail or facsimile number specified on the face or in the "Trade Specific Other Terms of Trade" section of the Confirmation or at such other address, electronic mail or facsimile number as Seller or Buyer (as applicable) may

² If the original Purchase Price for the specified Debt exceeds the buy-in cover price, then Buyer shall pay to Seller the amount of such excess.

³ If the original Purchase Price for the specified Debt is less than the sell-out cover price, then Seller shall pay to Buyer the amount of such shortfall.

subsequently request in writing. All such communications and notices shall be effective upon receipt.
