



April 2007

USER'S GUIDE FOR LSTA DISTRESSED TRADING DOCUMENTATION

I. IMPORTANT NOTICES

A. The discussion of the Confirm and the PSA (together, "**Distressed Trading Documentation**") provides a general overview of such forms and is not intended to be a substitute for users' own due diligence or review of the most recently published standard documentation recommended by the Loan Syndications and Trading Association, Inc. (the "**LSTA**") for trading distressed, syndicated bank loans in the United States secondary loan markets. Terms defined in this User's Guide for LSTA Distressed Trading Documentation (this "**User's Guide**") are defined on the page indicated in the Table of Contents attached hereto as Exhibit A. This should facilitate review of this User's Guide, whether in connection with a particular topic or otherwise.

B. The Distressed Trading Documentation, related market standards and other market practice guidance are designed for use in connection with the trading of distressed, syndicated bank loans in the United States secondary loan markets. This standard documentation is developed with careful attention and consideration to loan market practice and expectation, as well as to the applicable legal and regulatory principles that govern loans and the banks, financial institutions and other firms that participate in the loan market. The LSTA does not consider the applicability or use of these documents and standards in the context of other financial markets or in connection with other financial instruments, or how such documents or standards might be modified for use in other contexts. This User's Guide does not consider the implications of any law other than New York law.

C. Nothing in this User's Guide constitutes the provision of legal, regulatory, credit, financial or other professional advice by Hunton & Williams LLP or by the LSTA to its members or any other recipient of this User's Guide. Users are responsible for forming their own view as to the accuracy of the information contained herein, which is provided without any warranty of any kind, express or implied.

D. Prepared for the LSTA by Hunton & Williams LLP.

II. PURPOSE OF THE USER'S GUIDE

- A. To explain the key terms and concepts used in Distressed Trading Documentation.
- B. To assist market participants in their usage of Distressed Trading Documentation.
- C. To enable market participants to make informed decisions when trading on LSTA terms.

III. TRADE CHRONOLOGY - IN GENERAL

This User's Guide follows a hypothetical trade (a "**Transaction**") of syndicated bank loans (the "**Debt**") under the auspices of a Confirm from its inception on the Trade Date to settlement on the Settlement Date. This is the best way to understand the form and function of Distressed Trading Documentation. The following sections describe the various milestones between Trade Date and Settlement Date and explain in detail the various provisions found in the Distressed Trading Documentation. Except as otherwise indicated, the Transaction discussed in this User's Guide is assumed to be one that will settle by Assignment without any netting arrangements, and Debt is assumed to be Debt that is trading distressed.

At the outset, it is important to explain what is meant in this User's Guide by "distressed" Debt and what it means for Debt to "trade distressed", and to introduce certain key terms relating to the Transaction. Debt that is said to be, or to trade, "distressed" is debt which, at the time of determination, is or is perceived to be in some degree of financial distress that impairs the prospects of full and timely repayment. Price is but one factor in determining whether Debt is distressed. Other relevant factors include whether the party with the direct re-payment obligation with respect to the Debt (the "**Borrower**") or any other obligor, such as a guarantor or any other party with secondary payment or performance obligations with respect to the Debt (the "**Obligor**") is in bankruptcy or reorganization, has experienced a credit rating downgrade or faces any credit-specific (*i.e.*, litigation liability, public relations concerns) or industry-wide (*i.e.*, legislation adversely affecting a particular sector) issues. In contrast, "par" Debt is indebtedness that at the time of determination is expected to be paid in full and on a timely basis. Distressed Debt conveys with significantly more documentary protection than would apply to a par trade precisely because of the distressed nature of the Debt. Ultimately, whether an asset is trading par or distressed is a business decision for the Parties to agree upon at the time of trade.

The "**Confirm**" is the LSTA Distressed Trade Confirmation in the form published by the LSTA as of December 2006. It constitutes written evidence of the material Transaction terms agreed to by a seller (the "**Seller**") and a buyer (the "**Buyer**", and together with the Seller, the "**Parties**" and each, a "**Party**"). The date of this agreement, whether oral, written or otherwise, is referred to as the "**Trade Date**". The LSTA Standard Terms and Conditions (the "**Confirm Conditions**") are incorporated by reference into the Confirm. The Confirm Conditions provide the framework for the Transaction but do not effect the actual transfer. The Confirm Conditions should not be confused with the PSA Conditions, nor should the Confirm be confused with the PSA. The "**PSA**" is the LSTA Purchase and Sale Agreement for Distressed Trades in the form published by the LSTA as of December 2006. The PSA contains, among other things, representations, warranties, covenants, agreements and indemnities made or given by the Seller

and the Buyer with respect to the Debt and effects its transfer. The PSA consists of (i) the specific terms and elections which govern the Transaction and are set forth in the transaction summary (the “**Transaction Summary**”) and Sections A through H thereof in the form published by the LSTA as of December 2006 (the “**Transaction Specific Terms**”) and (ii) the PSA Conditions. The “**PSA Conditions**” are the LSTA Standard Terms and Conditions for Purchase and Sale Agreement for Distressed Trades in the form published by the LSTA as of December 2006. Just as the Confirm incorporates by reference the Confirm Conditions, the Transaction Specific Terms incorporate by reference the PSA Conditions and together constitute the single integrated document commonly known as the PSA. The PSA supersedes the Confirm at settlement, and the date on which all of the closing conditions have been satisfied pursuant to the Distressed Trading Documentation is the “**Settlement Date**.”

The table below shows a suggested timeframe for the Parties to settle a Transaction. It is not definitive but rather serves as a recommended framework. Some trades will understandably take more or less time to settle. Nonetheless, absent a contrary indication in the Confirm, certain economic consequences arise upon failure to settle by the date that is twenty business days after the Trade Date (“**T+20**”, also referred to as the “**Commencement Date**”). As used below, the “**Responsible Party**” is the Party responsible for preparing the Confirm and related Transfer Documentation and delivering the transfer agreement(s) pursuant to which the Seller and its prior sellers (“**Prior Sellers**”) acquired the Debt. These predecessor documents are referred to as the “**Predecessor Transfer Documents/Documentation**”, or colloquially as “**Upstreams**.”¹

<u>Trade Date</u> <u>+/- Business Days</u>	<u>Stage of Trade</u>
T-/X	Parties exchange any necessary Confidentiality Agreement; Buyer begins due diligence
T+0	Trade Date
T+1	Responsible Party sends Confirm to other Party; other Party gives any fund allocations
T+2	Other Party returns signed Confirm (or requested revisions) to Responsible Party
T+6	Responsible Party sends Transfer Documentation and any applicable Predecessor Transfer Documentation to other Party
T+20	Settlement Date

¹ “**Downstreams**” are the converse of this concept. The term is often used in communication with the Seller’s own seller to preserve confidentiality rather than identify the Buyer by name. It is also used generally to refer to future parties beyond the Buyer in a given chain of title.

A. Due diligence begins (T-/X). The Buyer often begins due diligence before the Trade Date, commencing upon the execution and delivery of any necessary Confidentiality Agreement. As part of its basic due diligence, the Buyer should review the relevant credit agreement (the “**Credit Agreement**”) and all guarantees, security agreements, mortgages, deeds of trust, letters of credit, reimbursement agreements, waivers, amendments, modifications, supplements, forbearances, intercreditor agreements, subordination agreements and related documents and instruments (collectively, the “**Credit Documents**”) to ensure that the Buyer qualifies as an eligible transferee thereunder. The Buyer may fail to qualify as an eligible transferee by Assignment for reasons unique to it (*e.g.*, it lacks a sufficient credit rating to lend under the relevant facility) or unique to the trade (*e.g.*, the minimum trade or post-trade holding requirements of the Credit Agreement would not be satisfied). Such failure alone, however, will not unwind the trade. See the discussion in Section IV.C.2.a.4 below on Mandatory Other Settlement.

B. Trade Date (T+0). In most instances, a trade becomes binding at the point of telephone trade when the traders orally agree on the material terms (*i.e.*, the Borrower’s name and the name, type and amount of the Debt (the “**Borrower/Debt Terms**”), the Purchase Price and the Interest Convention). At a minimum, the following information must be provided on the face of the Confirm: (i) the Trade Date, (ii) the Parties’ names, (iii) a description of the Debt (*i.e.*, Credit Agreement, Borrower, facility and/or CUSIP number, if any), (iv) the Purchase Amount, (v) the Purchase Rate and (vi) the Interest Convention. The “**Purchase Amount**” is the amount of the Debt so specified in the Confirm, and the “**Purchase Price**” is the amount calculated in the purchase price letter between the Parties (the “**Purchase Price Letter**”), generally utilizing the purchase rate expressed as a percentage and set forth in the Confirm (the “**Purchase Rate**”) and employing the calculation found in Section 4 of the Confirm Conditions. Note that certain consequences arise when the Parties execute a Confirm. The first sentence on the face of the Confirm automatically incorporates the Confirm Conditions, although the Parties can amend them in the “Trade Specific Other Terms of Trade” section of the Confirm. The Confirm Conditions are discussed in Section IV.C.2 below in detail.

C. Confirm sent by Responsible Party; Parties give any fund allocations (T+1). The Responsible Party prepares the Confirm and sends it to the other Party. A Party that is allocating the Debt among funds should provide the fund names and allocations for each to the other Party within one business day after the Trade Date. While the T+1 milestone does not expressly apply, a Party should identify itself as a counterparty subject to the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated under it (“**ERISA**”) as soon as possible after the Trade Date. This is a material Transaction term, so standard ERISA representations contained in the PSA Conditions will apply if a Party’s alternative ERISA status is not discussed at the time of trade. See the discussion in Sections V.B.4.q and V.B.5 below on ERISA representations.

D. Confirm negotiated or issues raised (T+2). Once it receives the Confirm, the other Party should provide any comments to the Responsible Party as soon as possible.

E. Responsible Party sends Transfer Documentation and Upstreams; Seller sends any non-Agent-filed Proof of Claim (T+6). As used herein, “**Transfer Documentation**” includes (i) in the case of a transfer of both economic and legal rights and obligations underlying the Debt (an “**Assignment**”), the assignment agreement generally in the form specified in the Credit Agreement (an “**Assignment Agreement**”) and, unless otherwise specified in the Confirm, a supplemental purchase and sale agreement substantially similar to the PSA in effect as of the Trade Date, (ii) in the case of a transfer of economic but not legal rights and obligations underlying the Debt (a “**Participation**”), a reasonably acceptable participation agreement containing customary provisions for the purchase and sale of a participation in distressed loan assets, and (iii) in each case, a Purchase Price Letter and, if “Yes” is checked beside Transfer Notice in the Transaction Summary, the Transfer Notice. Note that as of the date of this User’s Guide, the LSTA is preparing a market standard distressed participation agreement (the “**LSTA Distressed Participation Agreement**”).

F. Settlement Date, Responsible Party having obtained all Required Consents (T+20). While this is only a recommended timeline, certain economics of the trade shift at T+20 absent a contrary agreement in the Confirm. See the discussion of Delayed Compensation in Section IV.C.2.b.6 below.

IV. TRADE CHRONOLOGY - IN DETAIL

A. T-/X: Due Diligence/Confidentiality Agreement

Although there is no definitive order for commencing general due diligence and entering into a confidentiality agreement (in any form described in this Section IV.A, a “**Confidentiality Agreement**”), due diligence usually begins before the Trade Date, often starting when the Parties enter into a Confidentiality Agreement, and continues beyond the Trade Date. This is not to suggest that any post-Trade Date due diligence can unwind a Transaction, provided that at time of trade there was agreement on the material Transaction terms. Perhaps the most basic due diligence the Buyer can undertake, however, is to determine whether it constitutes an “eligible assignee”, or one who can take by Assignment under the Credit Agreement. In order to obtain the Credit Documents needed to make this determination, the Buyer may be required by the terms of the Credit Agreement or by the Seller to sign a Confidentiality Agreement. Therefore, when required, the Confidentiality Agreement should be signed early in the trade process.

If required under the Credit Agreement or requested by the Seller, the Confidentiality Agreement must take the form called for in the Credit Agreement. If the Credit Agreement does not require a specific form of Confidentiality Agreement, then it should contain customary terms and be mutually acceptable to the Parties. When the Credit Agreement does not require a specific form, the Parties may consider entering into a Master Confidentiality Agreement in the form published by the LSTA as of December 2006, which is available at <http://www.lsta.org> (the “**LSTA Confidentiality Agreement**”). The LSTA Confidentiality Agreement sets forth the terms and conditions that will govern the treatment of confidential information disclosed by the Seller to the Buyer in connection with the proposed Transaction. Once the Parties have executed the LSTA Confidentiality Agreement, they need only execute a schedule setting forth a description of the documents relating to the specific Transaction to be governed by the LSTA Confidentiality Agreement. Whichever form is chosen, once executed the Confidentiality

Agreement governs and requires the Buyer to keep confidential all Syndicate Confidential Information disclosed to it, as well as the Transaction terms themselves. “**Syndicate Confidential Information**” is confidential information that the Borrower provides, typically through the Agent, to all of the members and potential members of a particular lending syndicate (individually, a “**Lender**” and collectively, “**Lenders**”). Such information can be disclosed to prospective Lenders upon compliance with any applicable confidentiality requirements.

B. T+0: The Trade Itself

A trade becomes binding when the traders reach oral agreement on the material terms of the Transaction. This usually occurs during the course of a telephone conversation or exchange of electronic messages once the traders have agreed to the Borrower/Debt Terms, the Purchase Rate and the Interest Convention. Both the Parties are obligated to preserve on the Trade Date and keep in their files a written or electronically recorded trade ticket or a similar internal record containing evidence of their agreement to the trade, including (i) the Trade Date, (ii) the Borrower/Debt Terms and the Purchase Amount, (iii) the identity of the other Party to the Transaction, (iv) the Purchase Rate and (v) the Interest Convention.

The Transaction is governed by and construed in accordance with the laws of the State of New York, without regard to any conflicts of law provisions that would require the application of the law of any other jurisdiction. The applicability of New York law is of particular relevance in connection with the enforceability of oral agreements between traders. In 2002, the State of New York passed into law legislation extending to bank debt trading an exemption from the New York Statute of Frauds, thus increasing the certainty that oral agreements relating to trades will be legally binding, provided the material trade terms discussed above have been established.

C. T+1: Confirm

1. Confirm, In General.

The Confirm sets forth the terms of a binding trade. However, at settlement the Confirm is superseded by the operative transfer document called for in the “Form of Purchase” section. Therefore, while it is a binding and enforceable contract between the Parties, the Confirm is not included within the integrated whole of Transfer Documentation effective on the Settlement Date.

The Confirm incorporates all of the Confirm Conditions, except as modified in the “Trade Specific Other Terms of Trade” section. In the case of any conflict between the terms of the Confirm and the Confirm Conditions, the Confirm governs and controls. For this reason, the Responsible Party does not need to send the Confirm Conditions to the other Party when it sends the Confirm unless the other Party requests a copy.

In keeping with loan market custom, original signatures to the Confirm are not required. Execution by telecopy, telefax, email attachment or other means of electronic transmission is deemed original execution and given full legal effect.

2. Confirm, In Detail.

a. Completing the Confirm. The face of the Confirm is divided into a number of sections, each of which should be completed by the Responsible Party. The sections are as follows:

1. Trade Date. The Trade Date is the date of oral agreement on the material trade terms (as discussed above). The economics flow from this date, subject to Interest Convention and Delayed Compensation.

2. Seller and Buyer. The full legal names of the Seller and the Buyer should be provided here. If applicable, the Parties should indicate in the Confirm (or in separate Confirms) any funds and the allocations for each.

Pursuant to Section 18 of the Confirm Conditions, the Parties must indicate if they are acting as a principal or an agent in the Transaction. If a Party indicates that it is acting as a “principal”, it is directly liable for the completion of the Transaction. If a Party indicates that it is acting as an “agent”, it is acting on behalf of one or more principals to the Transaction. Furthermore, if the Party acting as agent reveals the identity of such principal in the Confirm, such Party is not liable to the other Party for the successful completion of the Transaction and has no liability or other obligation to such other Party in connection with the Transaction, except as provided below. However, if the Party acting as agent does not disclose the identity of the principal for whom it is acting, such Party will be liable to the other Party as agent for an undisclosed principal to the extent provided under New York law. Note that a Party acting as agent for a principal, whether disclosed or undisclosed, represents to the other Party that it is authorized to bind its principal to the terms of the Transaction.

3. Credit Agreement. The description of the Credit Agreement should include sufficient details so that it is easily identifiable, including the date, the name of the Borrower and the name of the agent, administrative agent or facility agent that will, among other things, accept and register on its books and records each Assignment Agreement (however identified in the Credit Agreement, the “**Agent**”). Guard carefully against misdescription, especially when the Borrower has more than one existing credit facility (e.g., 364-day facility instead of multi-year facility) with the same Agent.

4. Form of Purchase. Unless otherwise indicated, the form of settlement of the Transaction is by Assignment. However, if the Parties are not able to effect settlement by Assignment, a valid and binding obligation still exists between them. If the Transaction cannot be settled by Assignment, then it should settle by Participation, but if that is not possible, then the Parties should settle the Transaction by a mutually agreeable alternative structure that results in the economic equivalent of

the agreed-upon trade (“**Mandatory Other Settlement**”). Note that if the Parties select that settlement will be by “Assignment Only” and such Assignment is not possible, then the Parties should not settle by Participation but by Mandatory Other Settlement. In the trading vernacular, Mandatory Other Settlement means simply that “a trade is a trade”.

5. Purchase Amount and Type of Debt. Describe the amount and type of Debt in this section. Use applicable terms from the Credit Agreement for the facility description (*e.g.*, Revolving Credit Commitment or Term A Loan). Unless otherwise indicated in the Confirm and subject to the facility description in the Credit Agreement, any Debt described as (i) term Debt is fully funded Debt with no additional funding obligations, (ii) Debt consisting of revolving credit or letter of credit facilities may be subject to further funding obligations and the Purchase Amount includes both funded principal and any unfunded commitments and (iii) Debt consisting of a claim amount is fully funded with no additional funding obligation (but may be subject to adjustment). In addition, unless otherwise indicated in the Confirm, the Buyer assumes all unfunded commitment when it purchases commitment, as well as the obligation to purchase the Debt as it may be reorganized, restructured, converted or otherwise modified. Any applicable CUSIP should be indicated in this section as well.

6. Purchase Rate. The Purchase Rate is the percentage applied to the funded principal amount of Debt being transferred. Since outstanding amounts often fluctuate between Trade Date and Settlement Date, the remainder of 100% minus the Purchase Rate is the percentage applied to any unfunded commitment and Permanent Reductions. The amount is credited to the Party entitled (*i.e.*, the Buyer who purchased at a discount, or the Seller who sold at a premium, to par) in the Purchase Price Calculation discussed in detail in Section IV.C.2.b.4 below. Non-Recurring Fees, Consent-to-Transfer Fees and Assignment Fees are allocated without reference to the Purchase Rate. Absent a contrary agreement in the Confirm, Non-Recurring Fees are for the account of the Buyer, Assignment Fees are borne equally by the Parties and Consent-to-Transfer Fees are borne by the Seller. A “**Permanent Reduction**” is a permanent repayment of principal made on or after the Trade Date; a “**Non-Recurring Fee**” is any fee other than Interest and Accruing Fees that is payable with respect to the Debt from and after the Trade Date, such as a fee payable to Lenders for granting a waiver or amendment under the Credit Agreement; a “**Consent-to-Transfer Fee**” is any transfer fee payable to any entity in connection with its consent to the assignment of a Participation granted by such entity; and an “**Assignment Fee**” is any transfer or similar fee payable to the Agent in connection with an Assignment.

7. Accrued Interest. “**Interest and Accruing Fees**” are all interest and accruing ordinary course fees payable under the Credit Documents from and after the Trade Date with respect to the Debt. They include commitment, facility, letter of credit and other similar fees that accrue by reference to a period of time, other than Adequate Protection Payments and PIK Interest. There are three general methodologies used to account for Interest and Accruing Fees in a trade (each, an “**Interest Convention**”). The two most commonly used Interest Conventions are Settled Without Accrued Interest and Trades Flat. Generally speaking, Settled Without Accrued Interest is the preferred convention for performing loans, while Trades Flat is the preferred convention for non-performing loans. The third Interest Convention, Paid On Settlement Date², is rarely used in Debt trading.

Subject to the timeliness requirement described in the following sentence and the offsetting payments described in the next following sentence, when Debt trades “**Settled Without Accrued Interest**” (often referred to as “**Settled Without Accrued**”), Interest and Accruing Fees that accrue prior to the Settlement Date belong to the Seller if and when paid, irrespective of which Party receives such payment. To be for the account of the Seller, the Interest and Accruing Fees must also be paid (i) on or before the due date thereof or the expiration of any applicable grace period, each as specified in the Credit Agreement (or, if no such grace period exists, the expiration of thirty days from such date) and (ii) before a default by the Borrower/Obligor in connection with any other payment obligation under the Credit Agreement. After application of Delayed Compensation and the offsetting credit to the Buyer on the Settlement Date of Interest and Accruing Fees that accrue during the Delay Period, the net effect of a Settled Without Accrued election is that Interest and Accruing Fees which accrue prior to T+20 and pay currently as required in (i) above and before a default as described in (ii) above (“**Pre-Settlement Date Accruals**”) belong to the Seller. Note that Adequate Protection Payments are not included within the definition of Interest and Accruing Fees. However, Adequate Protection Payments that are being made in accordance with the Adequate Protection Order are allocated as if such Adequate Protection Payments were in fact Interest and Accruing Fees. Also, because the Seller credits to the Buyer on the Settlement Date Interest and Accruing Fees and Adequate Protection Payments for the Delay Period whether or not they have been received by the Seller, it

²“**Paid On Settlement Date**” is the Interest Convention that provides that all Interest and Accruing Fees to but excluding the Settlement Date are for the account of the Seller, and an amount equal to the accrued but unpaid amount of Interest and Accruing Fees to but excluding the Settlement Date must be paid by the Buyer to the Seller on the Settlement Date. Under this Interest Convention, the Buyer pays the Seller before the Buyer has received the interest payment. If the Borrower/Obligor thereafter pays such Interest and Accruing Fees, the Buyer keeps the amount, but if the Borrower/Obligor fails to pay such Interest and Accruing Fees, the Seller is not required to reimburse the Buyer for such amount. While this Interest Convention is still defined in the Confirm Conditions and can be changed by the Parties by mutual agreement, it is rarely used and therefore is no longer a standard Interest Convention option stated on the face of the Confirm.

retains a clawback right against the Buyer with respect to any amounts that ultimately are not paid to the Seller. Such amounts are payable on the Seller's demand and bear interest for each day the Seller was without the funds at the federal funds rate. As used herein, “**Adequate Protection Payments**” are the amounts authorized and/or ordered to be paid with respect to the Debt by the applicable bankruptcy court (the “**Bankruptcy Court**”) in any bankruptcy case (the “**Bankruptcy Case**”) to Lenders as adequate protection for the obligations owed under the Credit Agreement pursuant to an order of the Bankruptcy Court, while the order itself is called the “**Adequate Protection Order.**”

“**Trades Flat**”, the preferred Interest Convention for non-performing loans, provides that all Interest and Accruing Fees unpaid as of the Trade Date, whether accruing before, on or after the Trade Date, are for the account of the Buyer.

Interest Convention election relates to Interest and Accruing Fees, not Non-Recurring Fees. Unlike Interest and Accruing Fees, Non-Recurring Fees accrue not by reference to a period of time, but by reference to the occurrence of an event. Therefore, absent contrary agreement in the Confirm, all Non-Recurring Fees payable on or after the Trade Date are for the account of the Buyer, irrespective of the applicable Interest Convention.

8. Credit Documents to be Provided by Seller. As previously discussed, the Buyer may request that the Seller deliver Credit Documents by so indicating in the Confirm, provided that the Buyer (i) was not a Lender on the Trade Date and (ii) made the request on or prior to the Trade Date, in which case the Seller must deliver the Credit Documents prior to the Settlement Date, subject to the Buyer's compliance with any confidentiality requirements.

9. LSTA Standard Other Terms of Trade. This section covers the three standardized options under which the Seller may choose to sell and the Buyer may choose to purchase the Debt:

a. The Transaction may be made subject to the Seller's successful purchase of the Purchase Amount to be sold to the Buyer.

b. The Transaction may be made subject to the Buyer's successful sale of the Purchase Amount to be purchased from the Seller.

c. A Seller that is a Riskless Principal may avail itself of Flip Representations if its purchase and related on-sale close within one business day of each other, or thereafter if the Buyer had a

reasonable opportunity to review and comment on the Seller's proposed Upstreams and the Seller was ready, willing and able to settle by the stated deadline but the Buyer was not. See the discussion in Section IV.C.2.b.11 below regarding Flip Representations.

While standardized in form, these are material trade terms that will not govern the Transaction unless agreed to at the time of trade and expressly elected by the Parties in the Confirm.

10. Trade Specific Other Terms of Trade. In this section, memorialize negotiated terms and any non-standard departures from the Confirm Conditions. The presence of this section reflects the LSTA's standardization preference that such section be used for exceptional circumstances, such as the Seller's disclosure of a non-market Upstream attribute, or unique risks not contemplated within or allocated by the terms of the PSA. Note that the fact that the trade is subject to negotiation of reasonably acceptable Distressed Trading Documentation is not a condition to enforceability. Failure to reach such agreement would lead only to Mandatory Other Settlement.

b. Incorporation and Meaning of Confirm Conditions. The Confirm incorporates the Confirm Conditions as in effect on the Trade Date, with any special terms set forth on the face of the Confirm governing any conflict with the Confirm Conditions. Modifications to the Confirm Conditions bind the Parties only to the extent that they agreed to the changes at the time of trade and memorialized them on the face of the Confirm. The Confirm Conditions are as follows:

1. Target Settlement Date/Settlement Date/Transfer of Debt. The Confirm calls for settlement as soon as practicable after the Trade Date. By setting the goal of settling by T+20, the Confirm encourages settlement within a time frame considered reasonable by loan market consensus and creates economic consequences for the Parties' failure to do the same. Delayed Compensation is a no-fault concept. Absent a contrary agreement in the Confirm it simply begins to accrue on T+20.

2. Purchase Amount/Type of Debt. See the discussion in Section IV.C.2.a.5 above regarding the Purchase Amount.

3. Permanent Reductions. The Buyer purchasing the Debt at a discount to par receives the benefit of any Permanent Reductions made on or after the Trade Date, meaning that it receives a credit for any permanent reduction in the applicable commitment or outstanding loans that results in a permanent *pro rata* reduction of each Lender's position under the relevant facility under the Credit Agreement. See the discussion immediately below regarding the calculation of the Purchase Price.

4. Purchase Price Calculation. The calculation used to determine the Purchase Price is as follows: (a) the Purchase Rate multiplied by the funded principal amount of such Purchase Amount as of the Settlement Date minus (b) (100% minus the Purchase Rate) multiplied by any unfunded commitments, which includes the face amount of any issued but undrawn letter of credit, assumed by the Buyer as of the Settlement Date minus (c) (100% minus the Purchase Rate) multiplied by any Permanent Reduction which occurs on or after the Trade Date and on or before the Settlement Date minus (d) any Non-Recurring Fees received by the Seller on or after the Trade Date and on or before the Settlement Date. Subparts (b) and (c) above preserve the economic benefit of the bargain agreed to on the Trade Date by the Parties, since outstanding amounts and funded and unfunded obligations often fluctuate between the Trade Date and the Settlement Date. Also, the methodology applies with respect to the Debt when denominated in a currency other than United States dollars and the Debt as reorganized, restructured, converted or otherwise modified, with necessary mechanical adjustments to account for the foreign currency and the modified nature of the asset, respectively. Note that a credit to the Purchase Price is a credit in an absolute sense: a Permanent Reduction on funded Debt purchased at a premium to par would result in a credit to the Seller. The Purchase Price is subject to adjustment for Delayed Compensation, Assignment Fees and Consent-to-Transfer Fees, as applicable. Like the treatment of credits in the calculation, so too the payment of the total Purchase Price is an absolute obligation: the Seller pays the Buyer if the calculation produces a negative number.

5. Interest Payments and Fees. Interest and Accruing Fees are calculated at the contractual rates applicable under the Credit Agreement. As described above, Non-Recurring Fees are for the account of the Buyer, unless otherwise specified in the Confirm.

Paid-in-kind interest (“**PIK Interest**”) is interest that is not paid in cash on the relevant payment date but instead is added to the principal amount (*i.e.*, is paid-in-kind) of the Debt outstanding on that date. Treatment of PIK Interest depends on when it capitalized, and it is expressly excluded from the definitions of Interest and Accruing Fees and Adequate Protection Payments. PIK Interest that capitalized before the Trade Date is included in the principal amount of the Debt and therefore has the Purchase Rate applied to it. PIK Interest accruals that have not capitalized as of the Trade Date are allocated on a Trades Flat basis, regardless of whether an alternative Interest Convention is applicable to Interest and Accruing Fees (*i.e.*, even if the Debt is trading Settled Without Accrued). PIK Interest that capitalized after the Trade Date, whether before or after the Settlement Date, is allocated on a Trades Flat basis and delivered to the Buyer free, meaning that it is not included in the calculation of the

Purchase Price. These rules also apply to credit facilities that have traditional cash interest and PIK Interest features.

As discussed above, if Settled Without Accrued Interest is elected and Adequate Protection Payments are being made in connection with an Adequate Protection Order, Adequate Protection Payments are allocated on such basis, regardless of whether (i) the Adequate Protection Order is in effect on the Trade Date, (ii) the Adequate Protection Order covers the period before the Adequate Protection Order was effective, (iii) the Adequate Protection Payments include catch-up payments, (iv) the Adequate Protection Payments match the rates or amounts payable under the Credit Agreement or (v) there had been a prior default by the Borrower/Obligor in connection with a payment obligation under the Credit Agreement.

At times, a Party may receive funds to which the other Party is entitled. When this occurs, the Party that has received funds to which the other Party is entitled must pay over such funds to the other Party (i) on the Settlement Date, if such funds were received on or prior to the Settlement Date, by way of a credit to the other Party in the Purchase Price calculation, or (ii) on or before the date that is two business days after receipt, if such funds were received after the Settlement Date.

6. Delayed Compensation. Absent a contrary agreement in the Confirm, a Transaction that does not settle by T+20, also known as the Commencement Date, is subject to compensation payable to the Party that was entitled to receive the Purchase Price on such date (“**Compensation for Delayed Settlement**” or “**Delayed Compensation**”). The application of Delayed Compensation is a hallmark of trading Debt under the auspices of the LSTA. The theory behind Delayed Compensation is to put the Parties in the same economic position they would have been in if the Transaction had closed by the Commencement Date. Thus, on the Settlement Date the Buyer receives the benefit of Interest and Accruing Fees paid in respect of the Debt for the period from T+20 onward in a Settled Without Accrued Interest trade, and the Trade Date onward in a Trades Flat trade. To the extent the Debt is non-performing at the time of trade and therefore Trades Flat was elected as the Interest Convention, the payment of Interest and Accruing Fees is less likely than in the performing context, and the trade presumably is priced accordingly. Conversely, on the Settlement Date the Party with the Delayed Compensation payment obligation (generally the Buyer) pays the other Party interest on the funded amount of the Debt (as of T+20) multiplied by the Purchase Rate at the Average LIBO Rate for each day during the Delay Period. Had the Transaction settled on the Commencement Date, the Party entitled would have received the Purchase Price as calculated in Section IV.C.2.b.4 above. Payment of Delayed Compensation, therefore, covers such Party’s

cost of carry, or expenses incurred or deemed incurred from nonpayment of the Purchase Price by the Commencement Date. Because in a Settled Without Accrued trade the Seller must credit to the Buyer on the Settlement Date Interest and Accruing Fees allocable to the Delay Period, the interest coupon and cost of carry payments are simply netted against each other (or in each instance paid by the Seller to the Buyer when the Seller would have had the Purchase Price payment obligation as of the Commencement Date) as part of the Purchase Price calculation. The “**Average LIBO Rate**” is, for the Delay Period, (i) the sum of all the individual LIBO Rates for each day in the Delay Period (ii) divided by the total number of days in the Delay Period.³ The “**LIBO Rate**” is, for any day, the 1-month London Interbank Offered Rate for deposits in the applicable currency as set by the British Bankers Association (“**BBA**”) and published by the BBA at approximately 11:00 a.m. London time on such day. For any day that is not a business day, the LIBO Rate for such day is the rate published by the BBA on the immediately preceding business day. The “**Delay Period**” is the period from and including the Commencement Date to but excluding the Settlement Date.

Note that if the Purchase Price calculated as of the Settlement Date has increased or decreased more than 25% from the Purchase Price calculated as of the Commencement Date, then such payment must be calculated based on the Purchase Price so calculated on each day during the Delay Period. Note also that in trades in which the Borrower is in bankruptcy, Delayed Compensation continues to accrue after the effective date of any reorganization, restructuring or conversion with respect to the Debt, regardless of the type or nature of the proceeds or other distributions received by the Seller in connection with the Debt pursuant to such reorganization, restructuring, conversion or other modification. Stated differently, the obligation to pay Delayed Compensation continues through such restructuring just as the obligation to purchase and sell the Debt itself continues through such restructuring. Like Mandatory Other Settlement, these are further manifestations of the LSTA’s defining philosophy that “a trade is a trade”.

7. Breakfunding. Unless otherwise specified in the Confirm, breakfunding compensation is not paid for settlement of a trade on a day other than on an interest payment date in respect of the Debt.⁴

³ As of the date of this User’s Guide, the Average LIBO Rate for any period may be accessed on a third-party website, <https://www.averagelibor.com>.

⁴ Breakfunding compensation is based on the premise that the Party that extended the Debt to the Borrower has match-funded (*i.e.*, effectively borrowed the principal amount of the Debt in the interbank market for the duration of the relevant interest period). It aims to compensate the Party for the difference between the interest it would have received from the Borrower had the Debt remained outstanding for the entire current interest period and the interest it would have to pay for the borrowing it has made in the interbank market. The payment is calculated by taking the difference between the interbank offered rate for the period from the Settlement Date to the next interest period roll-over date and the relevant funding rate for the Debt during the current interest period. The product that results when this remainder (expressed as a
(continued...)

8. Assignment Fees and Consent-to-Transfer Fees. As discussed above, unless otherwise specified in the Confirm, Assignment Fees are shared equally by the Parties, while the Seller is responsible for any Consent-to-Transfer Fees.

9. Costs and Expenses. Each Party is responsible for its respective costs and expenses incurred in connection with the Transaction. The Seller is responsible for all costs, fees and expenses chargeable to Lenders under the terms of the Credit Documents, such as fees and expenses of the Agent (“**Agent Expenses**”) that are attributable to any period prior to but excluding the Settlement Date, and the Buyer is responsible for all costs, fees and expenses that are attributable to any period from and after the Settlement Date. This allocation of costs and expenses applies irrespective of the Interest Convention elected by the Parties.

10. Transfer Documentation. Unless otherwise agreed, the Seller prepares the Transfer Documentation and obtains any consent, acknowledgment or notice required by the Credit Documents to transfer the Transferred Rights (“**Required Consents**”). If the Confirm calls for the Transaction to settle by Assignment, then the Parties are obligated to execute an Assignment Agreement and a supplemental PSA. If the Transaction is to settle by Participation, then the Parties are obligated to execute a reasonably acceptable participation agreement containing customary provisions for the purchase and sale of a participation in distressed Debt. As noted earlier, as of the date of this User’s Guide, it is expected that the LSTA Distressed Participation Agreement will soon be published for use by market participants. In either case, the Transfer Documentation should take into consideration any Predecessor Transfer Documentation and potentially the resulting need for non-standard provisions.

11. Flip Representations. “**Flip Representations**” may be used by a Riskless Principal when such Party acquires the Debt and sells it to another Party, generally within one business day. For Flip Representations to be available to the Seller, it first must qualify as a Riskless Principal. The Seller is a “**Riskless Principal**” if (i) it is so specified as a matter of right in the Confirm, provided the Seller has agreed with the Buyer on or prior to the Trade Date that its obligation to complete the Transaction is subject to successful completion of the purchase from a third party of the Debt specified in the Confirm and (ii) such third party purchase and sale to the Buyer close within one business day of one another, or thereafter if the Buyer had a reasonable

percentage) is multiplied by (i) the outstanding Debt amount and further multiplied by (ii) a fraction, the numerator of which is the number of days from the Settlement Date to the next interest period roll-over date and the denominator of which is 360 is the breakfunding compensation amount.

opportunity to review and comment on the delivered Upstreams and the Seller was ready, willing and able to settle by the stated deadline but the Buyer was not. Once qualified in this fashion, these representations are said to be “**Flipped**”, while the standard representations the Seller otherwise gives are referred to as “**Flat Representations**”. The use of Flip Representations limits the Riskless Principal’s exposure by making certain representations and warranties subject to the Riskless Principal’s receipt of the same representation as to good title on purchase, and subject to the truth and accuracy of the representations as to principal amount, funding obligations and status of any proof of claim (a “**Proof of Claim**”) filed in the Bankruptcy Case with respect to the Debt that the Riskless Principal received on purchase.

12. Step-Up Provisions. The Buyer may request what are referred to as “**Step-Up Provisions**” when it believes that the Seller has not obtained the appropriate definitions, representations, warranties, indemnities or distribution provisions in the Upstreams. To understand Step-Up Provisions, it is important to recall the difference between par and distressed Debt discussed above. Unlike Debt that is distressed, par Debt is expected to be paid in full on a timely basis. As a result, Debt that trades at or near par generally is transferred on a mere Assignment Agreement. By contrast, Debt that trades distressed obligates the Seller to deliver to the Buyer the PSA in addition to the Assignment Agreement. The date on which this shift in market convention occurs, from a par to a distressed documentation basis, is called the “**Shift Date**.”⁵

Step-Up Provisions can be given on a complete basis, such as when the Seller or a Prior Seller bought the Debt on par documents on or after the Shift Date (and therefore during that period, distressed provisions are missing in their entirety), or on a partial basis, such as when there is a missing or materially deficient distressed provision in the Upstreams. Except as otherwise indicated, Step-Up Provisions discussed in this User’s Guide are assumed to be complete, not partial, provisions. If affirmatively elected in the Transaction Summary, and assuming the Shift Date and Covered Prior Seller definitions have been properly completed in the Transaction Summary and Transaction Specific Terms, respectively, Step-Up Provisions make the Seller’s representations, warranties, indemnities and other covered provisions speak not only as to the Seller’s own status, action or inaction but also to the status, action or inaction of each Covered Prior Seller as of the Settlement Date. Specifically, when Step-Up

⁵ Once agreed between the Parties, the Shift Date is stated in the Transaction Summary. If the Parties are unable to agree on a specific Shift Date, they may refer to published results of an anonymous LSTA poll among disinterested dealers as to such dealers’ views regarding the date on which such market convention shifted or, if results have not been published with respect to a particular Credit Agreement, either Party may send a written request to the LSTA asking that it conduct such a poll. The results of such LSTA polls are intended to facilitate discussion only and do not bind the Parties.

Provisions apply, the definition of “Retained Obligations” is Stepped-Up, along with the following representations and warranties (followed by relevant PSA Section number): proceedings (4.1(e)), future funding (4.1(g)), acts and omissions (4.1(h)), performance of obligations (4.1(i)), setoff (4.1(l)), consents and waivers (4.1(t)), and other documents (4.1(u)), each of which is discussed more fully below. In addition, the disgorgement/reimbursement indemnity contained in Section 6.1 of the PSA is Stepped-Up, as are the Seller’s delivery obligations with respect to distributions received on or after the Trade Date, as provided for in Section 8 of the PSA. The idea behind Step-Up Provisions is simple: put the Buyer in the same position it would have been had it received an uninterrupted chain of distressed Upstreams on market terms from the Shift Date onward. Had the Debt properly been trading distressed from the Shift Date, there would be nothing for which the Seller was required to Step-Up in order to give the Buyer marketable Upstreams. Note, however, that to effect partial Step-Up Provisions, the Parties should include specific modifications in Section H (Further Provisions) of the Transaction Specific Terms. As of the date of this User’s Guide, the LSTA is preparing a third alternative to the complete and partial Step-Up Provisions discussed above. It is envisioned that this market standard form of PSA will be employed when the Parties have agreed at the time of trade (and memorialized in the Confirm) that Upstreams (and rights against Prior Sellers thereunder) will neither be disclosed nor conveyed to the Buyer.

13. ERISA Representation. Unless the Confirm otherwise indicates, the Parties agree that the Transfer Documentation will not contain the alternative ERISA representation that appears in footnotes to Sections 4.1(q) and 5.1(j) of the PSA. See the discussion regarding ERISA representations in Sections V.B.4.q and V.B.5 below.

14. Credit Documents; Confidentiality Agreement. See the discussion on Confidentiality Agreements in Section IV.A above.

15. Participations. If the Transaction settles by Participation and the Confirm does not indicate otherwise, (i) the Seller grants voting rights to the Buyer on and after the Settlement Date (subject, of course, to the terms of the Credit Agreement), and (ii) the Buyer is not obligated to post cash collateral for any unfunded commitment in which it participates. It is understood with respect to voting that the Seller will vote in accordance with the Majority Holders, which may include the Seller. The need to vote with the majority (including the Seller) might arise, for instance, when the Seller has multiple Participations outstanding with respect to portions of the Debt, or the Seller has not participated its entire position in the Debt. Parties are encouraged to discuss at the time of trade if something other than this allocation of rights and obligations is desired, as these are particularly sensitive issues for many market participants and

care must be exercised to ensure that, for instance, the Transaction complies with an institution's internal credit compliance requirements.

16. Syndicate Confidential Information. The Buyer represents to the Seller that (i) it is sophisticated, understands the nature and importance of Syndicate Confidential Information and the way such information can be obtained and has requested such information from the Seller in connection with the Transaction, if desired and (ii) if it has not requested such information, it has otherwise obtained such information to enable it to make an informed decision regarding the Transaction without relying on the Seller. If the Buyer has requested Syndicate Confidential Information and the Seller has agreed to deliver it, the Seller represents that it has used reasonable efforts to keep current Syndicate Confidential Information and that it has disclosed to the Buyer all material Syndicate Confidential Information that it has as of the Trade Date. The Buyer further acknowledges to the Seller that (i) such Syndicate Confidential Information has been disclosed to it, (ii) such information may be incomplete because the Seller may not have retained all such information and (iii) the Buyer has done what it deemed necessary under the circumstances to ensure that it has the information appropriate to enable it to make an informed decision regarding the Transaction.

If agreed that the Seller will deliver Syndicate Confidential Information, the Seller must use commercially reasonable efforts to provide to the Buyer (if it is not a Lender as of the Trade Date) notice of all amendments and waivers under the Credit Documents between the Trade Date and the Settlement Date. Note, however, that the Seller need not solicit a vote from the Buyer with respect to any such amendment or waiver. Indeed, under certain Credit Agreements, no one but the record owner of the Debt can control the vote. Nevertheless, to the extent there is no prohibition, contractual or otherwise, to relinquishing control of the vote, it is not uncommon for the Seller to solicit the Buyer's preference prior to voting on the amendment or waiver. If the Buyer's direction is consistent with the Seller's own economic interest, there is little incentive not to accommodate the Buyer, who desires to purchase Debt on the Settlement Date that is not materially different from that traded on the Trade Date. Note also that the Buyer agrees to keep all Syndicate Confidential Information confidential in accordance with the terms of the Credit Agreement and acknowledges that (i) Syndicate Confidential Information may include material non-public information concerning the Borrower or any Obligor, or the securities of the Borrower or any Obligor, (ii) it has compliance procedures regarding the use of material non-public information and (iii) it will handle such material non-public information in accordance with applicable law.

On October 16, 2006, the LSTA issued a comprehensive set of principles designed to help market participants handle Syndicate Confidential

Information, since many are active in the Borrower's public securities as well as its private Debt. These principles, which are designed to prevent any material non-public information gathered in due diligence activities relating to the Debt from being used in such securities market activities, are available at <http://www.lsta.org>.

17. Standstill. The Seller has a "no-shop" duty with respect to the Purchase Amount, meaning that it must stop all discussions with other purchasers and decline all other offers in connection with the Purchase Amount.

18. Principal/Agency Status. See the discussion in Section IV.C.2.a.2 above regarding a Party's liability as a principal or agent.

19. Bankruptcy Proceedings. When there are bankruptcy proceedings involving the Borrower or any Obligor under the Credit Agreement, (i) the Seller is to use commercially reasonable efforts to deliver to the Buyer within six business days after the Trade Date copies of any Proofs of Claim that were filed by the Seller or any Prior Seller (but not those filed by the Agent under the Credit Agreement on behalf of the entire present and future syndicate members, as often is the case with syndicated Debt) and (ii) the Buyer is responsible for preparing and filing any applicable Transfer Notice relating to such Proof(s) of Claim. By inference, the Seller that must provide a Proof of Claim filed by the immediate Prior Seller must also provide the applicable filed Transfer Notices showing continuous title to it. A "**Transfer Notice**" is any notice and evidence of transfer with respect to the Debt filed in the Bankruptcy Case in accordance with the Federal Rules of Bankruptcy Procedure (and any corresponding or other local rules of the Bankruptcy Court in which the Bankruptcy Case was filed), including Bankruptcy Rule 3001(e).

20. Nonreliance. The Buyer and the Seller represent and warrant to each other as follows:

- a. it is a sophisticated Party with respect to the Transaction;
- b. it has or has access to such information as it deems appropriate concerning the Borrower/Obligor's business and financial condition to make an informed decision regarding the transfer of the Debt;
- c. it has independently and without reliance on the other Party, and based on such information as it has deemed appropriate, made its own analysis and decision to enter into the Transaction (except that each has relied on the express representations, warranties, covenants, agreements and indemnities made by the other in the Confirm); and

d. it has not given any investment advice or opinion as to whether the Transaction is prudent.

The Buyer and the Seller further acknowledge to one another as follows:

a. the other Party may have or come into possession of information regarding the Debt or the Borrower/Obligor that is not known to it and may be material to a decision to enter into the Transaction (“**Excluded Information**”);

b. it has decided to enter into the Transaction notwithstanding its lack of knowledge of the Excluded Information;

c. the other Party will not have liability to it, and it waives and releases any claims it may have against the other Party with respect to the nondisclosure of the Excluded Information.

The Buyer further acknowledges that it has not relied and will not rely on the Seller to furnish or make available any documents or other information regarding the credit, affairs, financial condition or business of the Borrower/Obligor or any other matter concerning the Borrower/Obligor, except as otherwise provided in the Confirm.

In these so-called “big-boy” representations, each Party mutually agrees that the other Party may have Excluded Information that it is not disclosing in connection with the Transaction and waives any claims against the other Party arising from the nondisclosure of the Excluded Information. As additional, mutual protection, each Party affirms its nonreliance on the other Party, with the intention of making it difficult for the Party without the Excluded Information to show reasonable reliance on the Excluded Information never disclosed to it.

21. Confidentiality of Terms of Transaction. The Confirm requires both Parties to maintain the confidentiality of the terms of the Transaction unless otherwise required by law or regulatory authority, or other legal process, except that the Parties can disclose the terms of the Transaction to their respective affiliates, attorneys, accountants and other professionals and in connection with their enforcement of their respective rights and obligations thereunder. The Buyer can make disclosures to prospective purchasers regarding the terms of the Transaction (other than the Purchase Rate or the Purchase Price), so long as such purchasers are subject to substantially the same confidentiality restrictions.

22. Binding Effect. By executing the Confirm, each Party agrees to be legally bound to any other trade between them (whether entered into before or after the Trade Date) with respect to any transfer on distressed terms upon reaching agreement to the terms thereof (whether by

telephone, exchange of electronic messages or otherwise, directly or through their respective agents, and whether the subject of a Confirm), subject to all other terms and conditions set forth in any Confirm relating to such transaction or otherwise agreed. The Parties further agree that any such Transaction will be governed by and construed in accordance with New York law.

23. Governing Law; Confirm Controls. New York law governs the Confirm and the Confirm Conditions, and the Confirm controls to the extent of any conflict between the terms of the Confirm and the Confirm Conditions.

24. Execution by Electronic Transmission. Acceptable means of execution and delivery include telecopy, telefax, email attachment or other means of electronic transmission, and all such electronically transmitted Transfer Documentation and the signatures thereto constitute duplicate originals.

25. Electronic Records and Signature. The Parties intend that the use of electronic signatures and the keeping of electronic records be granted the same legal effect as a signature affixed by hand or the use of a paper-based record keeping system to the extent and as provided for under applicable law.

V. T+6: PSA

While the Confirm sets forth the terms of a binding trade and is an enforceable contract between the Parties, it is superseded at settlement by the PSA. The PSA consists of the Transaction Specific Terms (including the Annex to Purchase and Sale Agreement (the “**Annex**”) attached thereto) and the PSA Conditions. The Transaction Specific Terms incorporate by reference the PSA Conditions, and together they constitute the single integrated document commonly known as the PSA.

A. Completing the Transaction Specific Terms.

1. Complete the Transaction Summary. Much of the information called for in the Transaction Summary can be found in the Confirm (*i.e.*, Trade Date, Seller, Buyer, Credit Agreement, Borrower, Interest Convention, Delivery of Credit Documents and Flip Representations). While the Transaction Summary is fairly self-explanatory, note the following:

a. If applicable, indicate the Seller’s or the Buyer’s agency status. See the discussion in Section IV.C.2.a.2 above regarding a Party’s liability as a principal or agent.

b. In describing the traded facility and tranche, use the applicable definitions from the Credit Agreement (*e.g.*, Revolving Credit Commitment or Term A Loans), since capitalized terms used and undefined in the PSA have the respective meanings given in the Credit Agreement.

c. If the Seller was an original party to the Credit Agreement or bought the Debt in connection with the original syndication, then “Original Assignment” should be indicated under “Type of Assignment.” Otherwise, “Secondary Assignment” applies.

d. If required by the Confirm, Flip Representations apply only if the Seller is acting as a Riskless Principal and settlement with the Buyer occurs within one business day after the Seller completed its purchase of the Debt, or thereafter (assuming the Buyer had a reasonable opportunity to review and comment on the proposed Upstreams and the Seller was ready, willing and able to settle by the stated deadline but the Buyer was not). As discussed above, Flip Representations limit the scope of certain of the Seller’s representations made in connection with the sale Transaction.

e. If Step-Up Provisions are applicable, then the Shift Date should be indicated. As discussed above, the Shift Date is the date that the Parties agree is the closest possible approximation for when the market convention for transferring the Debt shifted from par to distressed documentation. Note that if Step-Up Provisions are applicable, the Transaction necessarily is a “Secondary Assignment”, not an “Original Assignment”.

f. As noted above, the Buyer is responsible for preparing and filing any necessary Transfer Notice.

2. Complete the Transaction Specific Terms.

a. In Section A, complete the definitions by providing the information called for in brackets and indicate which definitions apply by checking the appropriate box. A number of the definitions may not apply, depending on whether, for example, the Borrower is in bankruptcy, or netting arrangements apply. Note that the definition of “Covered Prior Seller” applies only if Step-Up Provisions are elected. Recall that the standard situation in which Step-Up Provisions are elected is when the proposed Upstreams include a trade that settled on par documentation on or after the Shift Date. This flawed Upstream, however, may well be followed by a trade that properly settled on distressed documentation. The term “**Covered Prior Seller**”, therefore, includes each Prior Seller that transferred the Debt on or after the Shift Date but excludes such second Prior Seller and any other subsequent Prior Seller that also properly sold the Debt on distressed documentation. This exclusion is not to suggest that Covered Prior Seller consists only of the Prior Seller that settled on par documentation on or after the Shift Date that happens to be listed in the Annex. Rather, the definition includes any Prior Seller (whether listed on the Annex or otherwise) that sold the Debt on par documentation on or after the Shift Date. Only when Covered Prior Seller is so defined is the Buyer put in the same position it would have been had it received from the Seller an uninterrupted chain of distressed Upstreams on market terms from the Shift Date onward. The PSA should define “Covered Prior Seller” if the Parties have agreed by indicating in the Transaction Summary that Step-Up Provisions apply. In that event, the Parties also should include the Shift Date in the Transaction Summary.

b. Section B covers the Seller’s representations and warranties. If “No” is checked beside Flip Representations and Step-Up Provisions in the Transaction Summary, Flat Representations apply, meaning that the Seller gives representations as to itself only as of the

Settlement Date, and such representations are not qualified to any extent with respect to representations it received from its immediate Prior Seller. If Flip Representations and Step-Up Provisions apply, the Parties must include appropriate modifications in Section H (Further Provisions).

The elections for the other representations in these sections define the scope of the Seller's representations as to the Predecessor Transfer Documentation (PSA Section 4.1(r)), Proof of Claim status (PSA Section 4.1(s)) and the existence of other documents (PSA Section 4.1(u)) set forth in the PSA Conditions. For example, only particular provisions of the representation found in Section 4.1(r) apply if the Seller indicates that it acquired the Debt from its immediate Prior Seller pursuant to Predecessor Transfer Documentation relating to par/near par Debt.

c. In Section C, the Buyer indicates its status as a Lender, Lender affiliate or approved fund under the Credit Agreement (using proper Credit Agreement terminology) for purposes of determining Required Consents, minimum transfer requirements and Assignment Fee requirements. Note that while the Buyer does not represent to the sufficiency of the Required Consents in its "due organization/no consents" representation, the Seller relies on the Buyer's status representation in attesting to the sufficiency of the Required Consents in its "due organization/no consents" representation.

d. Section D addresses the Seller's indemnities. If Step-Up Provisions apply, the Seller gives a disgorgement and reimbursement indemnity that speaks to itself and to Covered Prior Sellers. Step-Up Provisions are required because the Seller has not delivered to the Buyer chain of title from and after the Shift Date in which the Debt from Prior Sellers was transferred continuously on a distressed documentation basis. Partial Step-Up Provisions are required when the Seller has delivered such a continuous distressed chain of title, but one such Prior Seller failed to give this particular indemnity. In each instance, the Seller's duties with respect to the Buyer's disgorgement or reimbursement obligations (or those of the Buyer's Downstream) must apply whenever it or any such Prior Seller received the payment that is the subject of disgorgement or reimbursement. The same analysis applies when Step-Up Provisions are required because Upstreams (and rights against Prior Sellers thereunder) are neither disclosed nor conveyed to the Buyer.

e. Section E indicates which Party is responsible for paying any Assignment Fee and describes any applicable adjustment to the Purchase Price therefor.

f. Section F indicates whether Stepped-Up distribution provisions apply. If such provisions do apply, the Seller is responsible for delivering distributions it or any Covered Prior Seller received from and after the Trade Date. The reasoning is the same as discussed above in connection with the Seller's indemnity obligations following a Downstream's reimbursement or disgorgement obligation: the Seller must Step-Up with respect to any distribution received by it or by any undisclosed or deficiently disclosed Prior Seller during the period the Debt properly traded distressed.

g. Section G sets forth notice and delivery addresses and related information for each Party.

h. Section H is the Further Provisions section, which is the place to note any additional provisions or modifications to existing provisions.

3. Complete the Annex. There are six sections to be completed in the Annex.

a. Regarding the list of Upstreams in Section 1 of the Annex, note that each Predecessor Transfer Document should be described as par or distressed, as such description defines the scope of the Seller's representation in PSA Section 4.1(r). Note that no par Upstream listed as an immediate Prior Seller on a May 2003, May 2005 or December 2006 PSA need be delivered, but all par Upstreams should be described in the Annex. Par Upstreams listed as an immediate Prior Seller on a pre-May 2003 PSA should be delivered to the Buyer and described in the Annex because these predecessor forms of PSA did not include a representation that the Assignment Agreement was substantially in the form required by the Credit Agreement and that such transfer was effected in accordance with the terms of the Credit Agreement.

b. In Section 2 of the Annex, the Seller should provide a complete list of any Credit Documents delivered to the Buyer. The Seller is not obligated to deliver Credit Documents to the Buyer unless the Confirm so requires.

c. Section 3 of the Annex calls for the description of any Proof of Claim. Although the Proof of Claim should be described specifically in the Annex, the definition of "Proof of Claim" in the PSA Conditions covers any Proof of Claim, regardless of whether it is in fact listed in the Annex.

d. Section 4 of the Annex provides for the description of any Adequate Protection Order. As with the Proof of Claim definition, while any applicable Adequate Protection Order should be described in Section 4, the Adequate Protection Order definition in fact operates to cover any Adequate Protection Order, regardless of whether it is listed in the Annex. Note that there will not be an Adequate Protection Order to list here if "No" is checked beside "Borrower in Bankruptcy" in the Transaction Summary.

e. In order that it might accurately state its representation in PSA Section 4.1(w), the Seller should include any exceptions to its representation regarding receipt of written notice of impairment in Section 5 of the Annex.

f. Section 6 of the Annex covers post-Trade Date capitalized PIK Interest. If applicable, the Seller should again be complete in its description so as to state accurately its related representation in PSA Section 4.1(f).

B. Meaning of the PSA Conditions.

1. Section 1 - Definitions. Certain key terms defined in Section 1 of the PSA are defined for use in this User's Guide. Such definitions can be found in this User's Guide on the page indicated in the Table of Contents attached hereto as Exhibit A.

2. Section 2 - Assignment and Assumption. This Section contains the language by which the Seller sells the Debt to the Buyer and the Buyer purchases the Debt from the Seller. In reality, more than the Debt conveys. Specifically, with it runs some, but not all, of the rights and

obligations associated with the Debt. On the Settlement Date the Seller sells the Transferred Rights to the Buyer and retains the Retained Obligations, and the Buyer purchases the Transferred Rights from the Seller and assumes the Assumed Obligations. The purchase and sale, however, are subject to the satisfaction or waiver of the conditions set forth in Section 3. As used herein, “Transferred Rights”, “Retained Obligations” and “Assumed Obligations” have the following respective meanings:

“**Transferred Rights**” include any and all of the Seller’s right, title, and interest in, to and under the Debt and, to the extent related thereto, the following (excluding, however, the Seller’s entitlements in respect of Pre-Settlement Date Accruals or Adequate Protection Payments if the Interest Convention is Settled Without Accrued):

- (i) all other amounts (including any PIK Interest) funded by or payable to the Seller or any Prior Seller (if any) under the Credit Documents, and all obligations owed to the Seller or any Prior Seller in connection with the Debt;
- (ii) the Credit Documents;
- (iii) the Proof of Claim (if any);
- (iv) the Predecessor Transfer Documentation (if any) (but only to the extent related to the Debt as set forth therein);
- (v) all claims (including “claims” as defined in Bankruptcy Code § 101(5) of the Bankruptcy Reform Act of 1978, 11 U.S.C. § 101 *et seq.*, as amended, and the rules and regulations promulgated under it (the “**Bankruptcy Code**”)), suits, causes of action, and any other right of the Seller or any Prior Seller, whether known or unknown, against the Borrower/Obligor, or any of their respective affiliates, agents, representatives, contractors, advisors, or any other entity that in any way is based upon, arises out of or is related to any of the foregoing, including, to the extent permitted to be assigned under applicable law, all claims (including contract claims, tort claims, malpractice claims, and claims under any law governing the purchase and sale of, or indentures for, securities), suits, causes of action, and any other right of the Seller or any Prior Seller against any attorney, accountant, financial advisor, or other entity arising under or in connection with the Credit Documents or the transactions related thereto or contemplated thereby;
- (vi) all guarantees and all collateral and security of any kind for or in respect of the foregoing;
- (vii) all cash, securities, or other property, and all setoffs and recoupments, received, applied, or effected by or for the account of the Seller or any Prior Seller under the Debt and other extensions of credit under the Credit Documents (whether for principal, interest, fees, reimbursement

obligations, or otherwise) from and after the Trade Date (unless excluded pursuant to Section 8.1 of the PSA), including all distributions obtained by or through redemption, consummation of a plan of reorganization, restructuring, liquidation, or otherwise of the Borrower/Obligor or the Credit Documents, and all cash, securities, interest, dividends, and other property that may be exchanged for, or distributed or collected with respect to, any of the foregoing;

- (viii) the economic benefit of Permanent Reductions, permanent repayments of principal and Non-Recurring Fees received by the Seller or any Prior Seller from and after the Trade Date; and
- (ix) all proceeds of the foregoing.

“**Assumed Obligations**” are all obligations and liabilities of the Seller with respect to, or in connection with, the Transferred Rights resulting from facts, events or circumstances arising or occurring on or after the Settlement Date; excluding, however, the Retained Obligations.

“**Retained Obligations**” are all obligations and liabilities of the Seller relating to the Transferred Rights that (i) result from facts, events or circumstances arising or occurring prior to the Settlement Date, (ii) result from the Seller’s breach of its representations, warranties, covenants, or agreements under the PSA, the Credit Documents or the Predecessor Transfer Documentation, (iii) result from the Seller’s bad faith, gross negligence, or willful misconduct or (iv) are attributable to the Seller’s actions or obligations in any capacity other than as a Lender under the Credit Documents. If Step-Up Provisions apply, subsection (ii) above is Stepped-Up (with respect to Credit Documents and Predecessor Transfer Documentation) for Covered Prior Sellers, and subsections (iii) and (iv) above are Stepped-Up fully for Covered Prior Sellers.

3. Section 3 - Conditions Precedent. Certain conditions must be satisfied or waived before the Parties’ respective assignment and assumption obligations in Section 2 accrue. The Seller’s and the Buyer’s representations and warranties must be true and correct as of the Settlement Date, and each Party must be in compliance with its respective covenants given therein. In addition, each Party must have delivered to the other Party the signed Transaction Specific Terms, the Assignment Agreement and the Purchase Price Letter. The Seller must also have received the Purchase Price from the Buyer. These conditions may be modified when non-standard deliverables (*e.g.*, documents associated with the transfer of equity stapled to the Debt) are a condition to closing.

4. Section 4 - Seller’s Representations and Warranties. In general, the Seller’s representations and warranties contained in Section 4 of the PSA bolster the Buyer’s due diligence on the Debt. Upon breach they provide recourse to the Buyer by a contract action for damages. The representations and warranties can be subdivided into those that primarily concern the Seller itself (a “**Party Rep**”) and those that primarily concern the Debt (an “**Asset Rep**”). The representations and warranties can be subdivided further into those that can be Stepped-Up (at the Buyer’s demand, when circumstances warrant) and those that can be Flipped (at the Seller’s prerogative, provided it has abided by its timely settlement obligations). Those representations and warranties that are Stepped-Up are by definition the representations and

warranties the absence or inadequacy of which can affect the Downstreams and therefore concern more than the Parties to the trade. As discussed above, Flip Representations are those representations that the loan market has by consensus determined a Riskless Principal may qualify on sale given its limited role in the related purchase and sale of the Debt. The representations and warranties are made as of the Settlement Date, or, where indicated, the date of the PSA, which often is the same as the Settlement Date given the widespread practice of dating the PSA as of the Settlement Date. Absent Step-Up Provisions, the representations and warranties in the PSA are made by the Seller only with respect to itself and as of the Settlement Date. Only the party in breach retains liability, because in acquiring the Transferred Rights, the Buyer attains rights against the party in breach, whether the Seller under the PSA or a Prior Seller under the Predecessor Transfer Documentation.

The particular representations and warranties that the Seller gives are as follows:

a. Organization, good standing and authority (Party Rep). The Seller attests to its due organization, valid existence, good standing and authority to execute the Transfer Documentation, the Credit Documents and the Predecessor Transfer Documentation (collectively, the “**Transaction Documents**”) to which it is or will be a party and perform its obligations thereunder.

b. No violation (Party Rep). The Seller states that the execution, delivery and performance of the Transaction Documents to which it is or will be a party will not result in a violation of its organizational documents, any applicable law or any contract or other document to which the Seller is a party or by which it is or its assets are bound.

c. Due execution, binding obligations, no consents (Party Rep). The Seller affirms that all Transaction Documents to which it is party has been duly and validly authorized, executed and delivered and is a legal, valid and binding obligation against it, subject to standard bankruptcy exceptions to enforceability. The Seller also confirms that other than the Required Consents, there are no additional third party consents necessary for the Seller to effect the Transaction. In order to make this representation, the Seller relies on the Buyer’s status under the Credit Agreement as set forth in PSA Section 5.1(n). Note that the representation contemplates the need for the Buyer to file a Transfer Notice in situations where “Yes” is indicated in the Transaction Summary beside “Borrower in Bankruptcy” and the Transaction Specific Terms indicate that a Proof of Claim has been filed by the Seller or a Prior Seller.

d. Title (Party and Asset Rep, Flip). The Seller represents that it is the sole owner of and has good title to the Debt and the other Transferred Rights. It also affirms that the Transferred Rights are not subject to any encumbrance (which includes prior transfers), which means that the Seller has not previously sold the Transferred Rights other than pursuant to the Predecessor Transfer Documentation.

e. Proceedings (Party and Asset Rep, Step-Up). The Seller states that there are no proceedings (other than the Bankruptcy Case, if applicable) that will materially and adversely affect the Transferred Rights or any action taken or to be taken by the Seller under the PSA. This representation offers the Buyer protection that no third party challenges to the

validity of the Seller's interest in the Transferred Rights are pending, or to the best of the Seller's knowledge, threatened.

f. Principal amount (Asset Rep, Flip). This representation speaks to the (i) outstanding principal amount of the Debt as of the Settlement Date, (ii) post-Trade Date PIK Interest accretions (which trade free) and the proportional nature of the same and (iii) the Seller's passing on (for purchase) all post-acquisition, pre-Trade Date accreted PIK Interest. This representation also itemizes any PIK Interest that accreted to the principal amount of the Debt after the Trade Date but on or prior to the Settlement Date and states that such amounts constitute the Seller's proportionate share of PIK Interest that accreted during such period to all of the Seller's loans of the same tranche as the Debt.

g. Future funding (Asset Rep, Flip, Step-Up). This representation states the total amount of unfunded obligations being purchased and confirms the accuracy of the principal amount thereof. It gives the Buyer recourse if after the Settlement Date the Buyer faces a funding obligation with respect to the Debt other than any stated commitment (if the Borrower is not in bankruptcy), unfunded commitment (if the Borrower is in bankruptcy) or Agent Expenses.

h. Acts and omissions (Party Rep, Step-Up). Among the most important of the Seller's representations from the Buyer's perspective is the "acts and omissions" representation. The matters addressed in this representation are ones within the Seller's knowledge alone and are not matters that could be verified independently by the Agent. This representation protects the Buyer from any action or inaction by the Seller that would not be ascertainable from a review of the Credit Documents. In addition, it is a catch-all provision, designed to protect the Buyer from any action or inaction by the Seller that would result in the Buyer, as owner of the Debt, being treated less favorably than other Lenders holding interests of the same tranche, class or type as the Debt.

i. Performance of obligations (Party Rep, Step-Up). In this representation, the Seller represents to the Buyer that it is in compliance with, has performed all obligations under and has not breached any term of the Credit Documents or the Predecessor Transfer Documentation. It thus serves to give the Buyer comfort that, with respect to the Debt, all obligations have been performed and liabilities paid under the Credit Documents (thereby bolstering the "future funding" representation) and the Predecessor Transfer Documentation and that the Seller is not in breach of any provision of the Credit Documents or the Predecessor Transfer Documentation.

j. Broker's commission (Party Rep). This representation states that there are no broker, finder or other fees or commissions chargeable by anyone acting under the authority of the Seller or any of its affiliates for which the Buyer could be responsible. Thus, it specifically bolsters the "future funding" and "performance of obligations" representations.

k. Purchase Price (Party Rep). The Seller represents that the amounts used in calculating the Purchase Price as specified in the Purchase Price Letter are true and correct as of each applicable date and that the Purchase Price has been calculated in accordance with the Confirm. In this representation, the Confirm survives the merger clause in Section 17.1 of the PSA.

l. Setoff (Party Rep, Step-Up). This representation specifically bolsters the “acts and omissions” representation by stating that the Seller has not effected or received the benefit of any setoff against the Borrower/Obligor on account of the Transferred Rights.

m. Different distribution (Party Rep). The Seller acknowledges that the consideration paid by the Buyer for the Transferred Rights and Assumed Obligations may differ from any distribution.

n. Sophisticated entity (Party Rep). The Seller represents that it (i) is a sophisticated entity with respect to the Transaction, (ii) has adequate information about the Borrower to make an informed decision concerning the Transferred Rights, (iii) has made its own independent decision to enter into the Transaction (although it expressly relies on the Buyer’s representations and indemnities) and (iv) has not received any investment advice from the Buyer.

o. Excluded information (Party Rep). This representation states that (i) the Seller acknowledges that the Buyer may have superior information regarding the Transferred Rights and the Borrower, (ii) the Seller has determined to proceed with the Transaction notwithstanding and (iii) the Seller releases the Buyer from any liability for nondisclosure of such information in connection with the Transaction. Like its counterpart under the Confirm, this representation is often referred to as the “big-boy” representation, and each of these acknowledgments is limited to the extent contradictory to any of the Buyer’s representations or warranties set forth in Section 4.2 of the PSA.

p. Accredited investor (Party Rep). The Seller represents that it is an “accredited investor” as defined under applicable securities laws and that it has not made any offer to sell the Transferred Rights in violation of any applicable securities laws.

q. ERISA (Party Rep). The Seller represents that it either (i) is not selling by or on behalf of a Benefit Plan or (ii) is selling pursuant to one of the exemptions from the prohibited transactions rules. A “**Benefit Plan**” is an “employee benefit plan” (as defined in ERISA) that is subject to Title I of ERISA, a “plan” as defined in Section 4975 of the Internal Revenue Code or any entity whose assets include (for purposes of U.S. Department of Labor Regulations Section 2510.3-101 or otherwise for purposes of Title I of ERISA or Section 4975 of the Internal Revenue Code) the assets of any such “employee benefit plan” or “plan.” A breach of this representation (or the corresponding Buyer’s representation) could result in the unwinding of the Transaction and the incurrence of a prohibited transaction excise tax pursuant to Internal Revenue Code Section 4975 (or, if such Section 4975 is not applicable, a comparable penalty under ERISA Section 502(i)). Occasionally, the Seller desires to make the alternative ERISA representation.⁶ This is a more limited representation regarding ERISA compliance than the standard ERISA representation, and this variation and any variation from the standard ERISA

⁶ The “alternative” ERISA representation available to the Seller states as follows: the Transferred Rights are being sold by the Seller from a fund managed by a Qualified Professional Asset Manager (the “Manager”) within the meaning of Part V of PTE 84-14, the Manager made the investment decision on behalf of Seller to sell the Transferred Rights to the Buyer as contemplated by the PSA, and the sale of the Transferred Rights under the PSA satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14, and the individual making the investment decision to transfer the Transferred Rights on behalf of the Seller has no actual knowledge (without duty of inquiry or investigation) that the requirements of subsection (a) of Part I of PTE 84-14 are not satisfied.

representation by the Seller should be discussed at the time of trade and, if agreed to by the Parties, memorialized in the Confirm.

r. Predecessor Transfer Documentation (Asset Rep). In the “original lender” component of this representation, the Seller states that it is an original Lender and originally made the loans (of which the Debt is part), either on the closing date set forth in the Credit Agreement or in connection with the primary syndication thereof. In the “secondary lender” component of this representation, the Seller confirms that, with respect to distressed Upstreams, it has provided to the Buyer (i) true, correct and complete copies of each Predecessor Transfer Document to which the Seller is a party and (ii) to the extent and in the form received by the Seller from the immediate Prior Seller, any other Predecessor Transfer Documentation. The Seller also states that a true and complete list of such Predecessor Transfer Documentation is set forth in the Annex. With respect to any portion of the Transferred Rights that the Seller acquired directly on par Upstreams, the Seller affirms that it acquired such portion from the immediate Prior Seller pursuant to documentation substantially in the form specified in the Credit Agreement for an assignment of the Debt, which effected the transfer in accordance with the terms of the Credit Agreement. As with distressed Upstreams, this representation further provides that a true and complete list of such par Upstreams is set forth in the Annex. By properly completing the Transaction Summary, the Seller indicates which component of this representation applies.

As mentioned above, on the strength of the “secondary lender” representation applicable to par Upstreams, such Upstreams when listed as an immediate Prior Seller on the May 2003 PSA, the May 2005 PSA or the December 2006 PSA generally are not delivered by the Seller to the Buyer, though they are listed in Section 1 of the Annex.

s. Credit Documents, Proof of Claim (Party Rep, Step-Up). This representation sets forth the Seller’s obligations with respect to delivery before the Settlement Date of any non-Agent filed Proof of Claim and, if “Yes” is checked beside “Delivery of Credit Documents” in the Transaction Summary, material Credit Documents and other requested and scheduled Credit Documents. The Seller must provide in the Annex a true and complete list of all such Credit Documents that it delivers.

t. Consents and waivers (Party Rep). This representation bolsters the “other documents” representation discussed immediately below by assuring the Buyer that nothing has been consented to or waived by the Seller other than pursuant to and in accordance with the Credit Agreement.

u. Other documents (Party Rep, Step-Up). The Seller represents that it is not a party to or bound by any agreement that could materially and adversely affect the Transferred Rights, other than (i) as disclosed to the Buyer in Section B of the Transaction Specific Terms, (ii) the Predecessor Transfer Documentation and (iii) the various other Credit Documents, orders entered in any Bankruptcy Case and other documents to which the Lenders generally are party or by which they are bound. This representation gives the Buyer comfort that the Seller has not entered into any agreements affecting the Transferred Rights except those entered into by the Lenders generally, which bolsters the “consents and waivers” representation and the Buyer’s own due diligence on the Credit Documents.

v. Proof of Claim (Asset Rep, Flip). This representation simply refers to the representation made in Section B of the Transaction Specific Terms.

w. Notice of impairment (Party Rep). In this representation, the Seller states that except as set forth in the Annex, it has received no written notice of impairment or invalidity of the Transferred Rights. It is not a legal conclusion that no impairment exists, but rather a factual conclusion that there has been no receipt of written notice that an impairment exists.

5. Section 5 - Buyer's Representations and Warranties. Unlike the Seller's representations, which consist of Party Reps and Asset Reps, all of the Buyer's representations are Party Reps because the Buyer does not own the Debt until the purchase and sale on the Settlement Date. A number of the Buyer's representations are reciprocal representations, such as: "organization", "good standing and authority"; "no violation"; "due execution", "binding obligations", "no consents"; "accredited investor" (though further transfers are expressly permitted if in compliance with Section 10 of the PSA); "different distribution"; "sophisticated entity"; "excluded information"; "broker's commission"; "ERISA"; and "proceedings". Note that in the Participation context, it is not uncommon for the Seller to demand additional language in the Buyer's ERISA representation stating that at no time during the Participation will the Participation constitute "plan assets" under Department of Labor Regulation 2510.3-101(f). Such language is designed to shield the Seller from exposure to ERISA liability not discussed at the time of trade but created by virtue of settling the Transaction by Participation. Note also that the Buyer's alternative ERISA representation is a more limited representation regarding ERISA compliance than the Buyer's standard ERISA representation.⁷ For instance, only the standard ERISA representation of the Buyer continues to apply throughout the period that the Transferred Rights are held by the Buyer. Thus, the Buyer's alternative ERISA representation provides no protection in the event of a subsequent change to the Buyer or otherwise that could result in a prohibited transaction under ERISA. Accordingly, this variation and any variation from the standard ERISA representation by the Buyer should be discussed at the time of trade and, if agreed to by the Parties, memorialized in the Confirm.

The other representations in PSA Section 5 are Buyer-only representations. Section 5.1(g) sets forth nonreliance on any additional information to be provided by the Seller beyond what is in the PSA. Section 5.1(k) confirms the Buyer's receipt of any Predecessor Transfer Documentation and Credit Documents scheduled on the Annex (and the assumption of risk with respect thereto except as stated by the Seller in the PSA, Credit Documents and Predecessor Transfer Documentation). Section 5.1(n) states the Buyer's status as a Lender, an affiliate of a Lender or an approved fund as applicable under the Credit Agreement. The Seller relies on the information conveyed in this representation in making the no consents representation contained in PSA Section 4.1(c)(ii).

⁷ The "alternative" ERISA representation available to the Buyer states as follows: the funds being used by the Buyer to purchase the Transferred Rights are from a fund managed by a Qualified Professional Asset Manager (the "Manager") within the meaning of Part V of PTE 84-14, the Manager made the investment decision on behalf of the Buyer to purchase the Transferred Rights from the Seller as contemplated by the PSA, and the purchase of the Transferred Rights under the PSA satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14, and the individual making the investment decision to transfer the Transferred Rights on behalf of the Buyer has no actual knowledge (without duty of inquiry or investigation) that the requirements of subsection (a) of Part I of PTE 84-14 are not satisfied.

6. Section 6 - Indemnification. The provisions of Section 6 of the PSA provide for the following indemnification obligations of the Seller and the Buyer:

a. The Seller indemnifies the Buyer for (i) the Seller's breach of any provision of the PSA, (ii) any disgorgement or reimbursement obligation of any entity (*i.e.*, the Buyer or any Downstream) with respect to any amount received, applied or effected by or for the account of the Seller and not distributed or credited to the Buyer or (iii) any loss incurred or less favorable treatment sustained by the Buyer compared to similarly situated Lenders as a result of the Seller's status as an insider or affiliate of the Borrower/Obligor or its membership or participation on any creditor's committee or other similar committee.

If Step-Up Provisions are applicable, then the disgorgement/reimbursement indemnity in clause (ii) above applies to amounts or property so received, applied or effected by or for the account of not only the Seller but also any Covered Prior Seller. Review of Section 6.1 of the PSA is therefore an important component of Upstream due diligence. Unless the terms of trade, and presumably pricing, reflect a contrary understanding, no "stick" (here an indemnification right) from the "bundle of rights" should be removed as the Transferred Rights move Downstream. Because the Prior Seller is either unknown to the Buyer or insufficient with respect to this provision, the Seller's duties with respect to the Buyer's disgorgement/reimbursement obligations must apply whenever it or any such Prior Seller received the payment that is the subject of disgorgement or reimbursement.

This section makes clear, however, that the risk that Adequate Protection Payments will be recharacterized by the Bankruptcy Court other than as payments of interest or fees under the Credit Agreement or the Adequate Protection Order is a risk incident to ownership and therefore a risk the Buyer assumes upon purchase of the Transferred Rights.

b. The Buyer indemnifies the Seller for (i) the Buyer's breach of the PSA and (ii) the Seller's liability from action or inaction pursuant to the Buyer's instruction or the Majority Holders' instruction.

7. Section 7 - Costs and Expenses. Each Party bears its own Transaction-related costs and expenses. Note that irrespective of the chosen Interest Convention, Agent Expenses that are attributable to any period prior to but excluding the Settlement Date remain the Seller's obligation and Agent Expenses that are attributable to any period from and after the Settlement Date are the Buyer's obligation. If one Party pays the other Party's costs and expenses, the non-paying Party must reimburse the paying Party upon its written request.

8. Section 8 - Distributions. Just as a missing or materially deficient indemnification obligation from a Prior Seller can unacceptably impair the Transferred Rights, so too can a missing or materially deficient distributions covenant from a Prior Seller adversely affect the rights of a Downstream purchaser, and the PSA and each Upstream must be analyzed accordingly.

a. In the distributions section, the Seller covenants to hold for and deliver promptly to the Buyer (subject to any applicable withholding or deduction, and the Buyer is obligated to provide documentation reasonably requested by the Seller to evidence the Buyer's

exemption from such withholding) any distribution belonging to the Buyer that the Seller receives after the Trade Date, together with any necessary endorsements in the case of securities and certain other non-cash distributions. Such delivery is to be made (i) on the Settlement Date with respect to such cash distributions received before the Settlement Date and (ii) within two Business Days after receipt with respect to such cash distributions received after the Settlement Date, with interest accruing at the federal funds rate if these delivery deadlines are not met. If after such delivery the Seller must return or disgorge any such distribution, the Buyer must return the same with all related interest and charges. If Step-Up Provisions apply, all of the Seller's delivery obligations must be performed (or caused to be performed) with respect to such distributions received by the Seller or any Covered Prior Seller.

b. The Buyer gives the Seller a substantially identical covenant with respect to distributions of the Seller that it receives after the Settlement Date, though of course these provisions are never Stepped-Up.

c. If the Borrower fails to pay on or prior to the scheduled payment date (taking into account any applicable grace period) any Interest and Accruing Fees or Adequate Protection Payments that were paid or credited to the Buyer on the Settlement Date pursuant to Section 6(b) of the Confirm (regarding Delayed Compensation/Settled Without Accrued Interest), the Buyer shall, at the Seller's demand, pay the Seller an amount equal to the portion of such Interest and Accruing Fees or Adequate Protection Payments that were not paid to the Seller, plus interest that would accrue for each day on such amounts at the federal funds rate.

9. Section 9 - Notices. All communications between the Parties with respect to the Transaction should be in writing and may be hand delivered, sent by overnight courier or delivered electronically to the address given for such Party in Section G of the Transaction Specific Terms. All such communications are deemed effective upon receipt.

10. Section 10 - Further Transfers. The rights of the Seller and the Buyer against each other in relation to a trade are freely assignable, subject in the case of a transfer by the Buyer of its rights against the Seller and Prior Sellers to (i) the Downstream transfer complying with the PSA and applicable law and (ii) the Downstream transferee giving one of the ERISA representations provided for in Section 10.1 of the PSA. Notwithstanding the foregoing, unless the Seller otherwise consents in writing (which consent cannot be unreasonably withheld or delayed), the Buyer's obligations to the Seller under the PSA remain in full force and effect until fully paid, performed and satisfied, and the Seller must continue to deal solely and directly with the Buyer in connection with such obligations. While the Seller may assign its rights against the Buyer under the PSA without the Buyer's prior written consent, the Seller may not delegate its obligations under the PSA without the Buyer's prior written consent.

11. Section 11 - Voting.

a. Section 11 gives the Buyer sole authority to make, grant and exercise (or refrain from making, granting or exercising) all votes, and to exercise (or refrain from exercising) all other rights and remedies with respect to the Transferred Rights and Assumed Obligations.

b. Because at times the Seller remains entitled to exercise such rights after the Settlement Date (*e.g.*, when the Seller still owned the Transferred Rights as of the record date for the applicable vote), Section 11 further provides that, subject to paragraph (c) below, the Seller (i) shall not take (or refrain from taking) any such action other than in accordance with the prior written instructions of the Buyer and (ii) shall take (or refrain from taking) any such action in accordance with the prior written instructions of the Buyer. The Seller is not obligated when (A) prohibited under applicable law, rule, order or the Credit Documents or (B) if following such instructions might (in the Seller's reasonable determination) expose the Seller to any obligation or expense that in the Seller's reasonable judgment is material and for which the Seller has not been provided adequate indemnity.

c. When the vote or other action involved is not divisible in respect of the Transferred Rights and Assumed Obligations (or relevant portion thereof) and any other claim against the Borrower or any other entity (whether or not included in the Transferred Rights), then the Seller must take or refrain from taking such action in accordance with instructions received by the Seller and believed by the Seller in good faith to have been given by the then current holders (including, as the case may be, the Seller) of more than 50% of the aggregate principal amount of the claims then outstanding in respect of which such action is to be taken by the Seller (the "**Majority Holders**") that direct the Seller to take action with respect thereto. Note that in determining the Majority Holders, the claims described in the foregoing sentence may be claims held by holders of (i) indebtedness of the same tranche as the Debt, (ii) indebtedness of the same tranche as the Debt and all or any other indebtedness under the Credit Agreement or (iii) all rights, under the Credit Agreement or otherwise, against the Borrower. Who must be consulted by the Seller in determining the Majority Holders depends on the divisibility of the vote in question.

d. As the last sentence of Section 11 makes clear, in ascertaining the Majority Holders, the Seller need only obtain instructions relating to any action to be taken in respect of the Transferred Rights and the Assumed Obligations from (i) the Buyer or (ii) if the Seller has consented to transfers of the Transferred Rights or any portion thereof pursuant to Section 10.1(b) of the PSA, the then current holders of the aggregate principal amount of the claims outstanding in respect of which such action is to be taken by the Seller.

12. Section 12 - Exercise of Rights and Remedies. All amendments to and waivers regarding the PSA must be in writing and signed by the Parties. A Party's failure to exercise, or a delay in exercising, its rights or remedies under the PSA does not create a waiver by such Party. The rights and remedies afforded to the Parties in the PSA are not exclusive of any remedies available at law and are not conditional or contingent on any attempt by such Party to exercise any of its rights or remedies under any other related document or against the other Party or any other entity.

13. Section 13 - Survival; Successors and Assigns. All representations, warranties, covenants, indemnities and other provisions in the PSA survive the execution, delivery and performance of the PSA and the other Transfer Documentation. The PSA inures to the benefit of and is binding on and enforceable by and against the Parties and their respective successors and permitted assigns.

14. Section 14 - Further Assurances. Each Party agrees to (i) execute and deliver all such other agreements, documents and instruments and (ii) take all such other actions as the other Party reasonably requests to effectuate the intents and purposes of the PSA, including the procurement of the Required Consents. Like Section 3, when the Transaction contemplates non-standard deliverables (e.g., equity stapled to the Debt) or specific post-closing activities, this Section is often amended to account for such activities or deliverables.

15. Section 15 - Disclosure. The disclosure provisions in Section 15 of the PSA expressly permit disclosure in connection with the enforcement of a Party's rights and obligations in relation to the Transaction and (excluding the Purchase Price Letter or the contents thereof) to any proposed transferee of the Buyer in respect of all or any part of the Transferred Rights. This section also obligates the Buyer to comply with the requirements of the Credit Documents regarding confidentiality.

16. Section 16 - Parties' Relationships. Each Party and its affiliates may engage in any kind of lawful business or other relationship with the Borrower, any Obligor or any of their respective affiliates without liability to the other Party or any duty to disclose such business or relationship to the other Party.

17. Section 17 - Entire Agreement; Conflict. The PSA and the other Transfer Documentation constitute the entire agreement of the Parties with respect to the Transaction and all previous and contemporaneous agreements and negotiations in respect thereof are merged and finally integrated into the PSA and the other Transfer Documentation. The PSA governs if there is any inconsistency with the Assignment Agreement or the Purchase Price Letter.

18. Section 18 - Counterparts; Telecopies. The PSA and other Transfer Documentation can be executed in multiple counterparts, each of which when taken together is deemed to constitute the same instrument. Delivery by electronic transmission of an executed counterpart constitutes sufficient delivery, and each such fully executed counterpart is deemed a duplicate original.

19. Section 19 - Relationship between Buyer and Seller. The relationship between the Buyer and the Seller is just that, meaning that neither is an agent of the other or owes the other any fiduciary obligation.

20. Section 20 - Severability. The illegality, invalidity or unenforceability of any provision of the PSA does not affect the legality, validity or enforceability of any other provision therein.

21. Section 21 - Governing Law. New York law governs the Transaction and any matter arising therefrom, without regard to any conflicts of law provision that would require the application of the laws of any other jurisdictions. Deviations from these terms, particularly in cross-border trades or trades with foreign counterparties, should be discussed at the time of trade.

22. Section 22 - Waiver of Trial by Jury. Each Party waives its right to trial by jury for any proceeding arising out of the Transaction.

23. Section 23 - Jurisdiction. The Parties submit to exclusive jurisdiction in the United States District Court for the Southern District of New York. The Parties also waive any objection to that venue, claim of inconvenient forum or lack of personal jurisdiction. Deviations from these terms, particularly in cross-border trades or in trades with foreign counterparties, should also be discussed at the time of trade.

24. Section 24 - Subrogation; Reimbursement Claims. If the Buyer enforces any claim for indemnification or otherwise against the Seller under the PSA and receives payment or another remedy from the Seller, the Seller is subrogated to the rights of the Buyer against any other entity with respect to such right, claim or remedy to the extent that the Buyer receives such payment or other remedy from the Seller.

The December 2006 PSA (as well as the May 2005 PSA) more adequately protects the Seller's Reimbursement Claims than did predecessor PSAs. A "**Reimbursement Claim**" consists of any claim of the Seller arising in connection with the return, disgorgement or reimbursement by the Seller to the Borrower or any other entity of all or any portion of any payment or transfer received by the Seller on account of the Transferred Rights prior to the Settlement Date, including any claims arising under Bankruptcy Code § 502(h). The concern was that, in assigning away all claims as part of the Transferred Rights, the Seller with a claim against a party to which it was required to disgorge a payment would find itself without the ability to assert the Reimbursement Claim, all claims having been conveyed to the Buyer as a component of the Transferred Rights. The PSA now specifically reserves the Seller's Reimbursement Claims in the above context so that the Seller steps into the Buyer's shoes once the Seller fully indemnifies the Buyer with respect to such disgorgement. Rather than carve such Reimbursement Claims out of Transferred Rights, the concept is treated analogously to subrogation rights.

25. Section 25 - Interpretation. The PSA includes the Annex and any other annexes, schedules or other documents attached to or incorporated by reference therein. The PSA also is deemed to have been drafted jointly by the Parties.

26. Section 26 - Additional Provisions. Any additional provisions set forth in Section H of the Transaction Specific Terms apply.

27. Section 27 - Transfer Notice. If "Yes" is checked beside Transfer Notice in the Transaction Summary, Transfer Notice provisions apply that require the Parties to execute and deliver, and the Buyer to file promptly with the Bankruptcy Court, a Transfer Notice to reflect the assignment of the Transferred Rights to the Buyer under Bankruptcy Rule 3001(e).

EXHIBIT A

TABLE OF CONTENTS

LOCATION OF TERMS DEFINED IN USER'S GUIDE

Adequate Protection Order.....	10
Adequate Protection Payments.....	10
Agent.....	7
Agent Expenses.....	15
Annex.....	22
Asset Rep.....	27
Assignment.....	5
Assignment Agreement.....	5
Assignment Fee.....	9
Assumed Obligations.....	26
Average LIBO Rate.....	14
Bankruptcy Case.....	10
Bankruptcy Code.....	26
Bankruptcy Court.....	10
BBA.....	14
Benefit Plan.....	30
Borrower.....	2
Borrower/Debt Terms.....	4
Buyer.....	2
Commencement Date.....	3
Compensation for Delayed Settlement.....	13
Confidentiality Agreement.....	5
Confirm.....	2
Confirm Conditions.....	2
Consent-to-Transfer Fee.....	9
Covered Prior Seller.....	23
Credit Agreement.....	4
Credit Documents.....	4
Debt.....	2
Delay Period.....	14
Delayed Compensation.....	14
Distressed Trading Documentation.....	1
Downstreams.....	3
ERISA.....	4
Excluded Information.....	20
Flat Representations.....	16
Flip Representations.....	16
Flipped.....	16
Interest and Accruing Fees.....	9
Interest Convention.....	9
Lender.....	6

Lenders	6
LIBO Rate	14
LSTA	1
LSTA Confidentiality Agreement	6
LSTA Distressed Participation Agreement	5
Majority Holders	34
Mandatory Other Settlement	8
Non-Recurring Fee	9
Obligor	2
Paid On Settlement Date	9
Participation	5
Parties	2
Party	2
Party Rep	27
PIK Interest	13
Predecessor Transfer Documents/Documentation	3
Pre-Settlement Date Accruals	10
Prior Sellers	3
Proof of Claim	16
PSA	3
PSA Conditions	3
Purchase Amount	4
Purchase Price	4
Purchase Price Letter	4
Purchase Rate	4
Reimbursement Claim	36
Required Consents	15
Responsible Party	3
Retained Obligations	26
Riskless Principal	16
Seller	2
Settled Without Accrued	9
Settled Without Accrued Interest	9
Settlement Date	3
Shift Date	17
Step-Up Provisions	16
Syndicate Confidential Information	6
T+20	3
Trade Date	2
Trades Flat	10
Transaction	2
Transaction Documents	27
Transaction Specific Terms	3
Transaction Summary	3
Transfer Documentation	5
Transfer Notice	20

Transferred Rights	25
Upstreams	3
User's Guide	1

