

ANNEXES

The model agreements set in the following annexes are designed to assist users in drafting contracts incorporating the URF and are provided for their convenience without any assumption of liability. They should not be used without first carefully considering the requirements of the particular transaction being contemplated and the governing law of the document. Legal, tax and accounting advice must be taken as necessary. The model agreements may not be suitable for all structures and instruments and may not be enforceable under, or breach, a chosen governing law.

The agreements are designed for use in the following circumstances:

Annex 1 - Master Forfaiting Agreement

To be used as a master or framework agreement in the primary market where it is desired to establish the terms and conditions on which sales and purchases can be concluded in the future if and when a specific transaction has been identified. A “Forfaiting Agreement” will then be entered into to record that transaction in the form attached in the Appendix to the Master Agreement.

Annex 2 - Forfaiting Agreement

To be used in the primary market where the transaction(s) which the parties wish to enter into has or have already been identified.

Annex 3 – Specific Transaction SWIFT version

As for Annex 2 but to be used where the transaction is being concluded by SWIFT.

Annex 4 – Forfeiting Confirmation

A confirmation for use in the secondary market to record sales and purchases.

ANNEX 1

MASTER FORFAITING AGREEMENT

THIS MASTER FORFAITING AGREEMENT

(the “**Master Agreement**”) is
made on [day] [month] 20[]

BETWEEN

- (1) [], a company incorporated in [],(the “seller”);
and
(2) [], a company incorporated in [], (the “buyer”).

If the seller offers to the buyer a forfaiting transaction and the buyer accepts such offer under the provisions of this Master Agreement the terms set out below shall apply to such forfaiting transaction.

BACKGROUND

- (A) The seller may wish, from time to time, to offer payment claims for sale to the buyer and the buyer may agree to purchase payment claims arising under:
- a. documentary credits in which the seller is the beneficiary;
 - b. bills of exchange or promissory notes, avalized or secured by guarantees;
 - c. loan and facility agreements;
 - d. book receivables with or without guarantees;
and

e. any other instruments or agreements decided upon by the parties.¹

(B) The seller is an initial seller and the buyer is a primary forfaiter.

[(C) add any other necessary or useful information if desired]

SELLER AND BUYER AGREE AS FOLLOWS:

1. INCORPORATION OF THE UNIFORM RULES FOR FORFAITING

1.1 This Master Agreement and any forfaiting transaction concluded under it is subject to the Uniform Rules for Forfaiting (ICC publication no.800E) (the “URF”).

1.2 Words not defined in this Master Agreement shall have the same meaning as in the URF.

2. NATURE OF AGREEMENT

2.1 The seller is under no obligation to offer any payment claims for sale to the buyer and the buyer is under no obligation to purchase any payment claims offered to him by the seller.

[2.2 The total face value of payment claims purchased and outstanding at any time under this Master Agreement may not exceed [insert amount].]²

1 These are given by way of example only and other types of underlying transactions can be made subject to this agreement.

2 Only use if a limit has been agreed.

3. FORFAITING AGREEMENTS

- 3.1 Either the seller or the buyer may offer to, respectively, sell or purchase a payment claim to or from the other party by sending to that party a forfeiting agreement substantially in the form of the Appendix to this Master Agreement.
- 3.2 A forfeiting agreement shall be created when the receiving party signs and returns the forfeiting agreement to the sending party by the expiry date, if any, referred to in the forfeiting agreement. However, any changes to the original forfeiting agreement made by a party shall only be binding if the other party agrees to the change.
- 3.3 This Master Agreement and all forfeiting agreements created under it shall constitute a single agreement between the parties.
- 3.4 In the event of any inconsistency between the terms of this Master Agreement and a forfeiting agreement, the terms of the forfeiting agreement shall prevail.

4. REQUIRED DOCUMENTS AND OTHER CONDITIONS

- 4.1 The required documents to be delivered by the seller to the buyer on or before the availability date in relation to a forfeiting transaction shall be [agreed in the relevant forfeiting agreement.]³
[as follows:

3 Use where it is not possible to be aware which documents will be required in advance. In such a case they will be set out in the forfeiting agreement.

- (i) *(describe the document or instrument evidencing the payment claim).*
- (ii) *(describe any document or instrument which is known by the seller to be required to transfer ownership of a payment claim or to be presented when enforcing or otherwise exercising rights to receive payment on the relevant payment date in relation to a payment claim or a credit support documents.)*
- (iii) *(describe any credit support document.)*
- (iv) *(describe any other document required by the buyer)]⁴*

4.2 The list of documents set out in a forfaiting agreement is not final and does not affect the buyer's rights to request additional documents in accordance with article 7e. URF.

5. PURCHASE PRICE AND PAYMENT

5.1 The purchase price for any payment claim shall be calculated⁵ by discounting the face value of the payment claim on a [set out discount method used e.g. discount to yield] basis⁶ for the period from the settlement date to the due date of the relevant payment claim [plus [] days of grace]⁷ using [the buyer's cost

4 Insert where most of the required documents for each transaction are known in advance. (Note that there is still an ability to call for further documents in the relevant forfaiting agreement.)

5 Use this option where pricing has to be calculated using an interest rate. The rates used may either be cost of funds or published screen rates.

6 Select method.

7 Use where days of grace are to be added to the period over which the discount is calculated.

of funds as conclusively notified by it to the seller]⁸[the London Interbank Offered Rate (LIBOR)⁹ being the [choose interest rate tenor e.g. 3 months] interest rate for the relevant currency as published on page [insert page reference] of the [Reuters]¹⁰ screen at or around 11.00 a.m. on [date]¹¹ plus [insert margin] OR [a margin to be agreed].

- 5.2 Payment will be made for each forfaiting transaction which the buyer has agreed to purchase on the applicable settlement date to the following account: [set out seller's account details].

6. LIABILITIES OF THE PARTIES

- 6.1¹² The seller shall have the liabilities imposed on it by articles 13a. and 13b. URF [with such exceptions, additions or modifications as may, in relation to a forfaiting transaction, be agreed in a forfaiting agreement.]¹³[with the following changes: set out changes to article 13 of URF]¹⁴.

8 Use where the buyer's internal or actual funding rates are to be used and not a public screen rate.

9 This can be replaced with a reference to EURIBOR or any other inter-bank rate as agreed.

10 Or other screen.

11 Insert date on which the screen rate is to be read. This is often two business days before the settlement date.

12 Please note that an additional alternative for 6.1 is set out below under "Alternative Clause 6.1".

13 Use where changes from article 13 of the URF are to be set out in a forfaiting agreement. Where no changes are to be made do not use this wording.

14 Use where changes to article 13 of the URF are to be set out in the Master Agreement. Where no changes are to be made do not use this wording.

6.2 The buyer shall have the liabilities imposed on it by article 13a. URF with [such exceptions, additions or modifications as may, in relation to a forfaiting transaction, be agreed in a forfaiting agreement.] [with the following changes: set out changes to article 13 of the URF]

6.3¹⁵ [The seller agrees that any liability it may have to the buyer in respect of the matters set out in articles 13a. and 13b. URF [shall benefit future buyers of the payment claim other than the buyer] [may be assigned by the buyer to future buyers and by such future buyers to any further buyers] [*provide for other legally effective means whereby future buyers may take the benefit of the seller's liabilities*]].

7. TERMINATION

This Master Agreement shall continue in full force and effect until terminated by either party by not less than [number of days] written notice by the terminating party to the other.

Termination shall not affect the rights and liabilities of either party in relation to any forfaiting transactions concluded prior to the date of termination and this Master Agreement shall continue to govern such transaction.

15 Use where it is desired to permit future buyers to take action direct against the initial seller. 6.3 sets out three possible ways by which this could be achieved. The option in the first set of brackets depends on the governing law recognising third party rights. This may require additional language to be inserted (see the optional clause for English law agreements set out below). The second option relies on assignment of rights. The effectiveness of the precise language to be used will depend on the requirements of the relevant governing law. The third option is a place holder for any alternative method that the parties may wish to use.

8. NOTICES

For the purposes of article 14 URF the following contact numbers and addresses shall apply:

- (i) If sent to the seller:

Address:

Attention:

Facsimile:

[contact details for any agreed means of electronic communication]

- (ii) If sent to the buyer:

Address:

Attention:

Facsimile:

[contact details for any agreed means of electronic communication]

9. GOVERNING LAW AND JURISDICTION

9.1 This Master Agreement is governed by [country of jurisdiction] law.

9.2¹⁶ [The parties submit to the [exclusive] [non-exclusive]¹⁷ jurisdiction of the [name of jurisdiction] courts] [The parties agree to settle all disputes under the rules of arbitration of [name of arbitral body]¹⁸.]

¹⁶ Use the first option where disputes are to be submitted to a court and the second where arbitration is chosen.

¹⁷ Choose exclusive jurisdiction where only the stated courts may hear a dispute and choose non-exclusive jurisdiction where the possibility of using courts other than the stated court is to be retained.

¹⁸ Insert name of chosen arbitral body. If ICC arbitration is to be used then the following language can be used: "The parties agree to settle all disputes under the rules of arbitration of the International Chamber of Commerce. There shall be [] arbitrator[s]. The arbitration shall be held in [name of city] and will be conducted in the [name of language] language." Note that the IFA also has an arbitration function.

OPTIONAL CLAUSES

[]. **ADDITIONAL DOCUMENTATION**

The seller shall [at its cost][at the cost of the buyer] take such further action and execute any further documents as the buyer may, following the settlement date, request in order to give effect to a forfaiting transaction which is the subject of a forfaiting agreement.

[]. **SEVERABILITY**

[].1 The invalidity, unenforceability or illegality of any provision (or part of a provision) of this Master Agreement and any relevant forfaiting agreement under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions.

[].2 If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification as is necessary to give effect to the commercial intention of the parties.

[]. **ENTIRE AGREEMENT**

This Master Agreement together with the relevant forfaiting agreement, constitute the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no

remedies in respect of, and shall not make any claim for, any representation or warranty (whether made innocently or negligently) that is not set out either in this Master Agreement or any relevant forfaiting agreement.

[]. COUNTERPARTS

This Master Agreement and any relevant forfaiting agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

[]. ASSIGNMENTS AND TRANSFERS

This Master Agreement is personal to the parties and neither party shall assign, transfer, mortgage, pledge, charge, subcontract or deal in any other manner with any of its rights and obligations under this Master Agreement without the prior written consent of the other party [(such consent not to be unreasonably withheld or delayed)].

[]. KNOWLEDGE OF PARTIES AND NON-RELIANCE

Each party acknowledges to the other that:

- (a) is fully aware of the legal, regulatory and commercial aspects of the forfaiting transactions it may enter into;
- (b) has obtained such information concerning a forfaiting transaction as it deems appropriate to make an informed decision to enter into the forfaiting transaction; and

- (c) is solely responsible for making its own independent appraisal and investigations of all risks arising under or in connection with a forfaiting transaction and without reliance on the other party

ALTERNATIVE CLAUSE 6.1 ¹⁹

The seller shall have the liabilities imposed on it by article 13 a. URF and instead of the liabilities imposed on it by article 13 b URF the seller represents and warrants by way of an independent and separate guarantee undertaking to the buyer that in relation to the payment claim and the seller's rights, title and interest under the credit support documents (collectively hereinafter "claims")

- a. at the time of transfer of the claims to the buyer:
 - (i) the seller is the sole legal and beneficial owner of the claims; and
 - (ii) the claims have not been transferred, pledged to third parties or otherwise disposed of by the seller; and
 - (iii) the transfer of the claims is legal, valid, binding and effective (also against any third party) according to applicable law; and

¹⁹ Article 13 b. URF may not cover practice for forfaiting agreements in some markets. Where it is common market practice for the seller to give a guarantee as to the existence and legal enforceability of the payment claim this option for clause 6.1 may be considered. If this Alternative Clause to 6.1 is used it will replace in full the wording set out in the model agreement and neither of the alternatives suggested for that clause should be used.

- b. that until final payment of the payment claim:
- (i) there are no third-party rights to the claims and no such rights are being [conclusively] asserted; and
 - (ii) the claims constitute legal, valid, binding and enforceable obligations of the respective obligor and are free and clear of any exceptions or objections (including, but not limited, to any right of retention, avoidance, reduction, rescission, rectification) or of any availability of any right of set-off or counter claims and no such exceptions, objections, rights or counterclaims are [conclusively] asserted by the respective obligor; and
 - (iii) the documents evidencing the underlying transaction and their performance as well as the credit support documents and their performance do not contravene any applicable mandatory law in the seller's country; and
 - (iv) all necessary authorisations required under the laws of [*country of respective obligor(s)*] for concluding and performing the rights and obligations under the credit support documents and under the underlying transaction have been granted; and
 - (v) the conclusion and performance of the underlying transaction have been approved by the competent authorities in [*country of seller*] or are not subject to such approval

FOR USE IN ENGLISH LAW AGREEMENTS ONLY

[]. THIRD PARTIES ACT

- [].1 [Except as expressly provided [in [Article][Clause] 6.3,]²⁰ [A] [a] person who is not a party to this Master Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Master Agreement.
- [].2 [The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Master Agreement are not subject to the consent of any other person.]

²⁰ Use where the first option in 6.3 is chosen in order to pass on the benefit of liabilities to future Buyers.

APPENDIX TO ANNEX 1

FORFAITING AGREEMENT

From: [name of seller or buyer]

To: [seller or buyer]

Date:

We refer to the master agreement dated [] 20[] between you and us (the “Master Agreement”).

This is a forfaiting agreement as referred to in the Master Agreement.

1. The seller is [describe seller’s involvement in the underlying transaction e.g. as an exporter of goods and drawer of a bill of exchange on the primary obligor]
2. [The seller hereby offers for sale] [The buyer hereby offers to purchase] the following payment claim:
 - (i) primary obligor:
 - (ii) amount and currency:
 - (iii) due date
 - (iv) form of payment claim:
[add any other information felt desirable e.g. details of underlying transaction.]

[The details of the credit support documents are as follows:

- (ii) primary obligor:
- (ii) amount and currency:
- (iii) due date:
- (iv) form of credit support document:]

3. [The seller will deliver [the originals] [certified copies] of the following required documents on or before the availability date:

- (i) (describe the document or instrument evidencing a payment claim.)
- (ii) (describe any document or instrument which is known by the seller to be required to transfer ownership of a payment claim or to be presented when enforcing or otherwise exercising rights to receive payment on the relevant payment date in relation to a payment claim or a credit support documents.)
- (iii) (describe any credit support document.)
- [(iv) (describe any other document required by the buyer.)]²¹

[The seller will deliver [the originals] [certified copies] of the following required documents on or before the availability date:

- (i) (describe any other required document in addition to those required under the Master Agreement)]²²

²¹ Use where the first option in 4.1 is used

²² Use where the second option in 4.1 is used

4. The availability date is [].
5. [The estimated settlement date is []].
6. The seller shall transfer ownership of the payment claim by [set out method of transfer e.g. endorsement, assignment etc.].
- [7. Fees and margin if not agreed in Master Agreement].
- [8.²³ Payment of the purchase price will be made under reserve and for such purposes:
 - (i) The points of reserve are: [].
 - (ii) The reserve date is: [].
 - [(iii) The repurchase terms are: [].]²⁴
- [9. Set out any additional conditions e.g. any additional duties to be performed by the seller]
- [10. The liabilities imposed on the seller by articles 13a. and 13b. URF shall be modified as follows:²⁵
- [11. The liabilities imposed on buyer by article 13a. URF shall be modified as follows:²⁶
- [12. Any other terms.]

23 Use where it is agreed to make payment under reserve. Note that even if this is not agreed upfront, it can be agreed at a later date e.g. after examination of required documents.

24 The URF provides that the original all-in discount rate will be used in the absence of agreement on different terms.

25 Use where the first option in 6.1 is used.

26 Use where the first option in 6.2 is used.

Please let us know [by no later than [] after which date this offer will expire (the “expiry date”)] whether or not you agree to accept our offer and [purchase] [sell] the above payment claim.

[Name of seller or buyer and signatures]

We accept to [purchase] [sell] the payment claim referred to above on the terms of this forfaiting agreement.

[Name of buyer or seller and signatures]

ANNEX 2

FORFEITING AGREEMENT

THIS FORFEITING AGREEMENT is made
on [day][month] 20[]

BETWEEN

- (1) [], a company incorporated in [], (the “seller”);
and
- (2) [], a company incorporated in [], (the “buyer”).

BACKGROUND

- (A) The seller is [describe seller’s involvement in the underlying transaction e.g. as an exporter of goods and drawer of a bill of exchange on the primary obligor].
- (B) The parties wish to enter into a forfaiting transaction in which the seller sells and the buyer purchases the payment claim on the terms set out in this forfaiting agreement.
- (C) The seller is an initial seller and the buyer is a primary forfaiter.
- [(D) add any other necessary or useful information if desired].

**THE SELLER AND THE BUYER AGREE
AS FOLLOWS:**

**1. INCORPORATION OF THE UNIFORM RULES
FOR FORFAITING**

- 1.1 This forfaiting agreement is subject to the Uniform Rules for Forfaiting (ICC publication no.800E) (the “URF”).
- 1.2 Words not defined in this forfaiting agreement shall have the same meaning as in the URF.

**2. AGREEMENT TO PURCHASE WITHOUT
RECOURSE**

- 2.1 The buyer agrees to purchase the payment claim from the seller [for the price of []]²⁷ [at a price calculated²⁸ by discounting the face value of the payment claim on a [set out discount method used e.g. discount to yield]²⁹ for the period from the settlement date to the due date of the payment claim [plus [] days of grace]³⁰ using [the buyer’s cost of funds as conclusively notified by it to the seller]³¹ [the London Interbank Offered Rate (LIBOR)³² being the

27 Use where the price is known in advance and does not need to be calculated.

28 Use this option where pricing has to be calculated by discounting the face value of an instrument using an interest rate. The rates used may either be cost of funds or published screen rate.

29 Select method.

30 Use where days of grace are to be added to the period over which the discount is calculated.

31 Use where the Buyer’s internal or actual funding rates are to be used and not a public screen rate.

32 This can be replaced with a reference to EURIBOR or any other inter-bank rate as agreed .

[choose interest rate tenor e.g. 3 months] interest rate for [currency] as published on page [insert page reference] of the [Reuters]³³ screen at or around 11.00 a.m. on [date]³⁴ plus [insert margin].

2.2 Payment on the settlement date [which is anticipated to be []]³⁵ must be made to the following account: [set out seller's account details].

[2.3 Fees (if any)]

³⁶[2.4 Payment of the purchase price will be made under reserve and for such purposes:

- (i) The points of reserve are: [].
- (ii) The reserve date is [].
- [(iii) The repurchase terms are: [].³⁷]

3. THE PAYMENT CLAIM

The details of the payment claim are as follows:

- (i) primary obligor:
- (i) amount and currency:
- (ii) due date:
- (iii) form of payment claim:

[add any other information felt desirable e.g. details of underlying transaction]

³³ Or other screen.

³⁴ Insert date on which the screen rate is to be read. This is often two business days before the settlement date.

³⁵ Insert the anticipated settlement date if this known.

³⁶ Use where it is agreed to make payment under reserve. Note that even if this is not agreed upfront, it can be agreed at a later date e.g. after examination of required documents.

³⁷ The URF provides that the original sale terms will be used in the absence of agreement on different terms;

[The details of the credit support documents are as follows:

- (i) obligor:
- (iv) amount and currency:
- (v) due date:
- (vi) form of credit support document:]

4. REQUIRED DOCUMENTS [AND OTHER CONDITIONS]³⁸

4.1 The seller shall deliver [the originals] [certified copies] of the following required documents on or before the availability date:

- (i) [describe the document or instrument evidencing the payment claim together with any document issued by the primary obligor supplementing or accompanying the payment claim].
- (ii) [describe any document or instrument which is known by the seller, as at the settlement date, to be required to transfer ownership of the payment claim or to be presented when enforcing or otherwise exercising rights to receive payment on the relevant payment date in relation to the payment claim or the credit support documents.
- (iii) [describe any credit support document].
- [(iv) describe any other document required by the buyer]

³⁸ Use words in brackets if it is desired to add extra conditions in addition to the delivery of required documents (which is always a condition).

- 4.2 The availability date is [insert date].
- 4.2 The list of documents set out in [Article] [Clause]³⁹ 4.1 is not final and does not affect the buyer's rights to request additional documents in accordance with article 7e. URF.
- 4.3 The seller shall transfer ownership of the payment claim by [set out method of transfer e.g. endorsement, assignment etc.].
- [4.5 Set out any additional conditions e.g. any additional duties to be performed by the seller.]

5. LIABILITIES OF THE PARTIES

- 5.1 The seller shall have the liabilities imposed on it by articles 13a. and 13b. URF [with the following changes:
set out changes to article 13 URF]⁴⁰
- 5.2 The buyer shall have the liabilities imposed on it by article 13a. URF [with the following changes:
set out changes to article 13 URF].
- [5.3 The seller agrees that any liability it may have to the buyer in respect of the matters set out in article 13 URF and this forfeiting agreement [shall benefit future buyers of the payment claim other than the buyer] [may be assigned by the buyer to future buyers and

³⁹ Choose the option appropriate to the chosen governing law/local custom in the place of jurisdiction of the agreement.

⁴⁰ Only use the wording in brackets in 5.1 and 5.2 when changes are to be made to the liabilities set out in Article 13 of the URF.

by such future buyers to any further buyers] [provide for other legally effective means whereby future buyers may take the benefit of the seller's liabilities]⁴¹.

6. NOTICES

For the purposes of article 14 of the URF the following contact numbers and addresses shall apply:

- (i) If sent to the seller:
 - Address:
 - Attention:
 - Facsimile:
 - [contact details for any means of electronic communication]
- (ii) If sent to the buyer:
 - Address:
 - Attention:
 - Facsimile:
 - [contact details for any means of electronic communication].

⁴¹ Use where it is desired to permit future buyers to take action direct against the initial seller. 5.3 sets out three possible ways by which this could be achieved. The option in the first set of brackets depends on the governing law recognizing third party rights. This may require additional language to be inserted (see the optional clause for English law agreements set out below). The second option relies on assignment of rights. The effectiveness of the precise language to be used will depend on the requirements of the relevant governing law. The third option is a place holder for any alternative method that the parties may wish to use.

7. GOVERNING LAW AND JURISDICTION

7.1 This forfaiting agreement is governed by [country of jurisdiction] law.

7.2⁴² [The parties submit to the [exclusive] [nonexclusive]⁴³ jurisdiction of the [name of jurisdiction] courts] [The parties agree to settle all disputes under the rules of arbitration of [name of arbitral body]⁴⁴.]

42 Use the first option where disputes are to be submitted to a court and the second where arbitration is chosen.

43 Choose exclusive jurisdiction where only the stated courts may hear a dispute and choose non-exclusive jurisdiction where the possibility of using courts other than the stated court is to be retained.

44 Insert name of chosen arbitral body. If ICC arbitration is to be used then the following language can be used : “The parties agree to settle all disputes under the rules of arbitration of the International Chamber of Commerce. There shall be [] arbitrator[s]. The arbitration shall be held in [name of city] and will be conducted in the [name of language] language.” Note that the IFA also has an arbitration function.

OPTIONAL CLAUSES

[]. **ADDITIONAL DOCUMENTATION**

The seller shall [at its cost][at the cost of the buyer]take such further action and execute any further documents as the buyer may, following the settlement date, request in order to give effect to this forfaiting agreement.

[]. **SEVERABILITY**

[].1 The invalidity, unenforceability or illegality of any provision (or part of a provision) of this agreement under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions.

[].2 If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification as is necessary to give effect to the commercial intention of the parties.

[]. **ENTIRE AGREEMENT**

This forfaiting agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of, and shall not make any claim for, any representation or warranty (whether made innocently or negligently) that is not set out in this forfaiting agreement

[]. **COUNTERPARTS**

This forfaiting agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

[]. **ASSIGNMENTS AND TRANSFERS**

This agreement is personal to the parties and neither party shall assign, transfer, mortgage, pledge, charge, subcontract, [declare a trust of] or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the other party [(such consent not to be unreasonably withheld or delayed)].

[]. **KNOWLEDGE OF PARTIES AND NON-RELIANCE**

Each party acknowledges to the other that it:

- (a) is fully aware of the legal, regulatory and commercial aspects of the forfaiting transaction it is entering into;
- (b) has obtained such information concerning the forfaiting transaction as it deems appropriate to make an informed decision to enter into the forfaiting agreement; and

(c) is solely responsible for making its own independent appraisal and investigations of all risks arising under or in connection with the forfaiting transaction and without reliance on the other party.

FOR USE IN ENGLISH LAW AGREEMENTS ONLY

[]. THIRD PARTIES ACT

[].1 [Except as expressly provided [in [article] [clause] 5.3]⁴⁵ [A] [a] person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

[].2 [The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.]

⁴⁵ Use where the first option in 5.3 is chosen in order to pass on the benefit of liabilities to future buyers.

ANNEX 3

FORFAITING AGREEMENT IN SWIFT FORMAT

INSTANCE TYPE AND TRANSMISSION

COPY RECEIVED FROM SWIFT

PRIORITY: []

MESSAGE OUTPUT REFERENCE: []

CORRESPONDENT INPUT REFERENCE: []

MESSAGE HEADER

SWIFT OUTPUT: FIN 799 FREE FORMAT MESSAGE

SENDER: [SELLER'S SWIFT REGISTRATION]

RECEIVER: [BUYER'S SWIFT REGISTRATION]

MESSAGE TEXT

20: TRANSACTION REFERENCE NUMBER:

21: RELATED REFERENCE:

79: NARRATIVE

BACKGROUND

- (A) THE SENDER (THE "SELLER") IS [DESCRIBE SELLER'S INVOLVEMENT IN THE UNDERLYING TRANSACTION E.G. AS AN EXPORTER OF GOODS AND DRAWER OF A BILL OF EXCHANGE ON THE PRIMARY OBLIGOR OR AS THE ISSUER OF A PROMISSORY NOTE]

- (B) THE PARTIES WISH TO ENTER INTO A FORFAITING TRANSACTION IN WHICH THE SELLER SELLS AND THE RECEIVER (THE "BUYER") PURCHASES THE PAYMENT CLAIM ON THE TERMS SET OUT IN THIS FORFAITING AGREEMENT.

- (C) THE SELLER IS AN INITIAL SELLER AND THE BUYER IS A PRIMARY FORFAITER.

[(D) ADD ANY OTHER NECESSARY OR USEFUL INFORMATION IF DESIRED]

1. INCORPORATION OF THE UNIFORM RULES FOR FORFAITING

1.1 THIS FORFAITING AGREEMENT IS SUBJECT TO THE UNIFORM RULES FOR FORFAITING (ICC PUBLICATION NO.800) (THE 'URF').

1.2 WORDS NOT DEFINED IN THIS FORFAITING AGREEMENT SHALL HAVE THE SAME MEANING AS IN THE URF.

2. AGREEMENT TO PURCHASE WITHOUT RECOURSE

2.1 THE BUYER IS REQUESTED TO AGREE TO PURCHASE THE PAYMENT CLAIM FROM THE SELLER [FOR THE PRICE OF []]⁴⁶[AT A PRICE CALCULATED⁴⁷ BY DISCOUNTING THE FACE VALUE OF THE PAYMENT CLAIM ON A [SET OUT DISCOUNT METHOD USED E.G. DISCOUNT TO YIELD]⁴⁸ FOR THE PERIOD FROM THE SETTLEMENT DATE TO THE DUE DATE OF THE PAYMENT CLAIM [PLUS [] DAYS OF GRACE]⁴⁹ USING [THE BUYER'S COST OF FUNDS AS CONCLUSIVELY

NOTIFIED BY IT TO THE SELLER]⁵⁰[THE LONDON INTERBANK OFFERED RATE (LIBOR)⁵¹ BEING THE [CHOOSE INTEREST RATE TENOR E.G. 3 MONTHS] INTEREST RATE FOR [CURRENCY] AS PUBLISHED ON PAGE [INSERT PAGE REFERENCE] OF THE [REUTERS]⁵² SCREEN AT OR AROUND 11.00 A.M. ON [DATE]⁵³ PLUS

46 Use where the price is known in advance and does not need to be calculated.

47 Use this option where pricing has to be calculated using an interest rate. The rates used may either be cost of funds or published screen rates.

48 Select method.

49 Use where days of grace are to be added to the period over which the discount is calculated

50 Use where the buyer's internal or actual funding rates are to be used and not a public screen rate.

51 This can be replaced with a reference to EURIBOR or any other inter-bank rate as agreed.

52 Or other screen.

53 Insert date on which the screen rate is to be read. This is often two business days before the settlement date.

[INSERT MARGIN].THE BUYER'S ACCEPTANCE OF THIS REQUEST TO PURCHASE AND AGREEMENT TO THIS FORFAITING AGREEMENT WILL BE IN THE FORM OF AN ACKNOWLEDGEMENT TO THIS MESSAGE BY SWIFT MT799 OR BY PAYMENT OF THE PRICE REQUESTED.

2.2 PAYMENT ON SETTLEMENT DATE [WHICH IS ANTICIPATED TO BE []]⁵⁴ MUST BE MADE TO THE FOLLOWING ACCOUNT: [SET OUT SELLER'S ACCOUNT DETAILS].

[2.3 FEES (IF ANY).]

⁵⁵[2.4 PAYMENT OF THE PURCHASE PRICE WILL BE MADE UNDER RESERVE AND FOR SUCH PURPOSES:

(i) THE POINTS OF RESERVE ARE:[].

(ii) THE RESERVE DATE IS: []

[(iii) THE REPURCHASE TERMS ARE: []].⁵⁶

3. THE PAYMENT CLAIM

THE DETAILS OF THE PAYMENT CLAIM ARE AS FOLLOWS:

- (i) PRIMARY OBLIGOR:
- (ii) AMOUNT AND CURRENCY:
- (iii) DUE DATE:
- (iv) FORM OF PAYMENT CLAIM:

⁵⁴ Insert the estimated settlement date if this known.

⁵⁵ Use where it is agreed to make payment under reserve. Note that even if this is not agreed upfront, it can be agreed at a later date e.g. after examination of required documents.

⁵⁶ The URF provides that the original sale terms will be used in the absence of agreement on different terms.

[ADD ANY OTHER INFORMATION FELT DESIRABLE
E.G. DETAILS OF UNDERLYING TRANSACTION.]

THE DETAILS OF THE CREDIT SUPPORT DOCUMENTS
ARE AS FOLLOWS:

- (i) OBLIGOR:
- (ii) AMOUNT AND CURRENCY:
- (iii) DUE DATE:
- (iv) FORM OF CREDIT SUPPORT DOCUMENT:

4. REQUIRED DOCUMENTS [AND OTHER CONDITIONS]⁵⁷

4.1 THE SELLER SHALL DELIVER [THE ORIGINALS]
[CERTIFIED COPIES] OF THE FOLLOWING REQUIRED
DOCUMENTS TO THE BUYER:

- (i) [DESCRIBE THE DOCUMENT OR INSTRUMENT
EVIDENCING THE PAYMENT CLAIM TOGETHER
WITH ANY DOCUMENT ISSUED BY THE
PRIMARY OBLIGOR SUPPLEMENTING OR
ACCOMPANYING THE PAYMENT CLAIM].
- (ii) [DESCRIBE ANY DOCUMENT OR INSTRUMENT
WHICH IS KNOWN BY THE SELLER, AS AT
THE SETTLEMENT DATE, TO BE REQUIRED
TO TRANSFER OWNERSHIP OF THE PAYMENT
CLAIM OR TO BE PRESENTED WHEN
ENFORCING OR OTHERWISE EXERCISING
RIGHTS TO RECEIVE PAYMENT ON THE
RELEVANT DUE DATE IN RELATION TO THE
PAYMENT CLAIM OR THE CREDIT SUPPORT
DOCUMENTS].
- (iii) [DESCRIBE ANY CREDIT SUPPORT
DOCUMENT].

⁵⁷ Use words in brackets if it is desired to add extra conditions in addition to the delivery of Required Documents (which is always a Condition).

[(IV) DESCRIBE ANY OTHER DOCUMENT REQUIRED BY THE BUYER]

4.2 THE AVAILABILITY DATE IS [INSERT DATE]

4.3 THE LIST OF DOCUMENTS SET OUT IN [ARTICLE] [CLAUSE]⁵⁸ 4.1 IS NOT FINAL AND DOES NOT AFFECT THE BUYER'S RIGHTS TO REQUEST ADDITIONAL DOCUMENTS IN ACCORDANCE WITH ARTICLE 7E. URF.

4.4 THE SELLER SHALL TRANSFER OWNERSHIP OF THE PAYMENT CLAIM BY [SET OUT METHOD OF TRANSFER E.G. ENDORSEMENT, ASSIGNMENT ETC.].

[4.5 SET OUT ANY ADDITIONAL CONDITIONS E.G. ANY ADDITIONAL DUTIES TO BE PERFORMED BY THE SELLER.]

5. LIABILITIES OF THE PARTIES

5.1 THE SELLER SHALL HAVE THE LIABILITIES IMPOSED ON IT BY ARTICLES 13A. AND 13B. URF [WITH THE FOLLOWING CHANGES:
SET OUT CHANGES TO ARTICLE 13 URF]⁵⁹

5.2 THE BUYER SHALL HAVE THE LIABILITIES IMPOSED ON IT BY ARTICLE 13 A. URF [WITH THE FOLLOWING CHANGES:
SET OUT CHANGES TO ARTICLE 13 URF].

[5.3 THE SELLER AGREES THAT ANY LIABILITY IT MAY HAVE TO THE BUYER IN RESPECT OF THE MATTERS SET OUT IN ARTICLE 12 URF AND THIS FORFEITING

58 Choose the option appropriate to the chosen governing law/local custom in the place of jurisdiction of the Forfeiting Agreement.

59 Only use the wording in brackets in 5.1 and 5.2 when changes are to be made to the liabilities set out in article 13 of the URF

AGREEMENT [SHALL BENEFIT SUBSEQUENT BUYERS OF THE PAYMENT CLAIM OTHER THAN THE BUYER] [MAY BE ASSIGNED BY THE BUYER TO SUBSEQUENT BUYERS AND BY SUCH SUBSEQUENT BUYERS TO ANY OTHER SUBSEQUENT BUYERS] [SET OUT ANY OTHER MECHANISM WHEREBY LIABILITIES CAN BE TRANSFERRED TO SUBSEQUENT BUYERS]⁶⁰.

6. NOTICES

FOR THE PURPOSES OF ARTICLE 14 URF THE FOLLOWING CONTACT NUMBERS AND ADDRESSES SHALL APPLY:

- (v) IF SENT TO THE SELLER:
ADDRESS:

ATTENTION:

FACSIMILIE:

[CONTACT DETAILS FOR ANY
AGREED MEANS OF ELECTRONIC
COMMUNICATION]

- (vi) IF SENT TO THE BUYER:
ADDRESS:
ATTENTION:
FACSIMILIE:
[CONTACT DETAILS FOR ANY MEANS OF
ELECTRONIC COMMUNICATION]

⁶⁰ Use if the Seller agrees to be liable to subsequent Buyers. The URF provides that this can be done either by the Seller agreeing to be liable to subsequent Buyers or by allowing the Buyer to assign the liabilities or by any other “legally effective means”. The correct and effective method to use will depend on the governing law of this Forfeiting Agreement and advice will need to be taken. Note the point made in relation to the optional Third Parties clause for English law agreements.

7. GOVERNING LAW AND JURISDICTION

7.1 THIS FORFEITING AGREEMENT IS GOVERNED BY [COUNTRY OF JURISDICTION] LAW.

7.2⁶¹ [THE PARTIES SUBMIT TO THE [EXCLUSIVE] [NON-EXCLUSIVE]⁶² JURISDICTION OF THE [NAME OF JURISDICTION] COURTS] [THE PARTIES AGREE TO SETTLE ALL DISPUTES UNDER THE RULES OF ARBITRATION OF [NAME OF ARBITRAL BODY]⁶³.

61 Use the first option where disputes are to be submitted to a court and the second where arbitration is chosen.

62 Choose exclusive jurisdiction where only the stated courts may hear a dispute and choose non-exclusive jurisdiction where the possibility of using courts other than the stated court is to be retained.

63 INSERT NAME OF CHOSEN ARBITRAL BODY. IF ICC ARBITRATION IS TO BE USED THEN THE FOLLOWING LANGUAGE CAN BE USED: "THE PARTIES AGREE TO SETTLE ALL DISPUTES UNDER THE RULES OF ARBITRATION OF THE INTERNATIONAL CHAMBER OF COMMERCE. THERE SHALL BE [] ARBITRATOR[S]. THE ARBITRATION SHALL BE HELD IN [NAME OF CITY] AND WILL BE CONDUCTED IN THE [NAME OF LANGUAGE] LANGUAGE." NOTE THAT THE IFA ALSO HAS AN ARBITRATION FUNCTION.

OPTIONAL CLAUSES

[]. ADDITIONAL DOCUMENTATION

THE SELLER SHALL [AT ITS COST][AT THE COST OF THE BUYER]TAKE SUCH FURTHER ACTION AND EXECUTE ANY FURTHER DOCUMENTS AS THE BUYER MAY, FOLLOWING THE SETTLEMENT DATE, REQUEST IN ORDER TO GIVE EFFECT TO THIS FORFAITING AGREEMENT

[]. SEVERABILITY

[].1 THE INVALIDITY, UNENFORCEABILITY OR ILLEGALITY OF ANY PROVISION (OR PART OF A PROVISION) OF THIS AGREEMENT UNDER THE LAWS OF ANY JURISDICTION SHALL NOT AFFECT THE VALIDITY, ENFORCEABILITY OR LEGALITY OF THE OTHER PROVISIONS.

[].2 IF ANY INVALID, UNENFORCEABLE OR ILLEGAL PROVISION WOULD BE VALID, ENFORCEABLE AND LEGAL IF SOME PART OF IT WERE DELETED, THE PROVISION SHALL APPLY WITH WHATEVER MODIFICATION AS IS NECESSARY TO GIVE EFFECT TO THE COMMERCIAL INTENTION OF THE PARTIES.

[]. ENTIRE AGREEMENT

THIS FORFAITING AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES AND SUPERSEDES AND EXTINGUISHES ALL PREVIOUS DRAFTS, AGREEMENTS, ARRANGEMENTS AND UNDERSTANDINGS BETWEEN THEM, WHETHER

WRITTEN OR ORAL, RELATING TO ITS SUBJECT MATTER. EACH PARTY AGREES THAT IT SHALL HAVE NO REMEDIES IN RESPECT OF, AND SHALL NOT MAKE ANY CLAIM FOR, ANY REPRESENTATION OR WARRANTY (WHETHER MADE INNOCENTLY OR NEGLIGENTLY) THAT IS NOT SET OUT IN THIS FORFAITING AGREEMENT.

[]. COUNTERPARTS

THIS FORFAITING AGREEMENT MAY BE EXECUTED IN ANY NUMBER OF COUNTERPARTS, EACH OF WHICH WHEN EXECUTED SHALL CONSTITUTE A DUPLICATE ORIGINAL, BUT ALL THE COUNTERPARTS SHALL TOGETHER CONSTITUTE THE ONE AGREEMENT.

[]. ASSIGNMENTS AND TRANSFERS

THIS AGREEMENT IS PERSONAL TO THE PARTIES AND NEITHER PARTY SHALL ASSIGN, TRANSFER, MORTGAGE, PLEDGE, CHARGE, SUBCONTRACT, [DECLARE A TRUST OF] OR DEAL IN ANY OTHER MANNER WITH ANY OF ITS RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT WITHOUT THE PRIOR WRITTEN CONSENT OF THE OTHER PARTY [(SUCH CONSENT NOT TO BE UNREASONABLY WITHHELD OR DELAYED)].

[]. KNOWLEDGE OF PARTIES AND NON-RELIANCE

EACH PARTY ACKNOWLEDGES TO THE OTHER THAT IT:

- (A) IS FULLY AWARE OF THE LEGAL, REGULATORY AND COMMERCIAL ASPECTS OF THE FORFAITING TRANSACTION IT IS ENTERING INTO;

(B) HAS OBTAINED SUCH INFORMATION CONCERNING THE FORFAITING TRANSACTION AS IT DEEMS APPROPRIATE TO MAKE AN INFORMED DECISION TO ENTER INTO THE FORFAITING AGREEMENT; AND

(C) IS SOLELY RESPONSIBLE FOR MAKING ITS OWN INDEPENDENT APPRAISAL AND INVESTIGATIONS OF ALL RISKS ARISING UNDER OR IN CONNECTION WITH THE FORFAITING TRANSACTION AND WITHOUT RELIANCE ON THE OTHER PARTY.

**FOR USE IN ENGLISH LAW
AGREEMENTS ONLY**

[]. THIRD PARTIES ACT

[].1 [EXCEPT AS EXPRESSLY PROVIDED [IN [ARTICLE] [CLAUSE] 5.3]⁶⁴ [A] [A] PERSON WHO IS NOT A PARTY TO THIS AGREEMENT SHALL NOT HAVE ANY RIGHTS UNDER THE CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999 TO ENFORCE ANY TERM OF THIS AGREEMENT.

[].2 [THE RIGHTS OF THE PARTIES TO TERMINATE, RESCIND OR AGREE ANY VARIATION, WAIVER OR SETTLEMENT UNDER THIS AGREEMENT ARE NOT SUBJECT TO THE CONSENT OF ANY OTHER PERSON.]

⁶⁴ Use where the first option in 5.3 is chosen in order to pass on the benefit of liabilities to future buyers.

ANNEX 4

FORFEITING CONFIRMATION

To: [Name of buyer]
[Address of buyer]
[SWIFT/Fax number of buyer]
[Attention]

From: [Name of seller]
[Address of seller]
[SWIFT/Fax number of seller]
[Contact person]

Date: 20[]

Reference Number:

[INSERT FINANCING DETAILS]

We are pleased to confirm to you the secondary sale terms on which we have agreed to sell to you and you have agreed to purchase from us the payment claim(s) (referred to below) on a without recourse basis.

1. Trade Date:
2. Details of payment claim:
3. Details of credit support documents:
4. Primary Obligor:
5. Other obligors:
6. Details of underlying transaction:

7. Required Documentation to be delivered by seller:
8. Availability Date(s):
9. Purchase Price:
10. Anticipated settlement date(s):
11. Conditions (if any) to be satisfied on or prior to the relevant availability date(s):
12. Governing law and jurisdiction:
14. Additional provisions (if any):

This forfaiting confirmation is subject to the Uniform Rules for Forfaiting (ICC Publication No.800E) (the “URF”).

This forfaiting confirmation may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart shall constitute an original of this forfaiting confirmation and together the counterparts shall constitute one document.

Please sign and return this forfaiting confirmation below by [date]⁶⁵.

For and on behalf of seller

⁶⁵ Under Article 8b. URF the buyer has two business days in which to sign the confirmation.

We hereby accept these secondary sale terms on which you will sell and we will purchase the payment claim(s) (referred to above) on a without recourse basis as set out in this forfeiting confirmation.

For and on behalf of buyer

Schedule for Points of Reserve

Date: []

We agree to vary the forfeiting confirmation dated [] on the following basis:

1. Points of Reserve:

2. Reserve Date(s):

4. Repurchase Terms:

This variation may be executed in any number of counterparts and by the Parties on separate counterparts. Each counterpart shall constitute an original of this variation, but together the counterparts shall constitute one document.

For and on behalf of seller

For and on behalf of buyer