

## GLOBAL DOCUMENTATION STEERING COMMITTEE

### CONFIDENTIALITY TERMS (2004)

Parties may agree to apply the terms set forth below (the **Terms**) to information being made available by or on behalf of one party (the **Provider**) to the other party (the **Recipient**) or its Representatives by entering into a Confirmation in the form attached hereto or in another form (a **Confirmation**). In these Terms:

**Confidential Information** means oral or written information that is made available by or on behalf of the Provider to the Recipient (or, at the direction of the Recipient, to a Representative) in connection with the Permitted Use and is either (i) specified in a Confirmation, or (ii) identified as confidential at or prior to the time it is made available, and in either case any documents or records prepared by Recipient or its Representatives reflecting such information.

**Permitted Use** means the use specified in a Confirmation.

**Proposed Transaction** means any proposed transaction described in a Confirmation in connection with which Confidential Information is furnished under the terms hereof.

**Representatives** means the Recipient's affiliates and the partners, directors, officers, employees, and external legal, investment or other professional advisers of the Recipient and its affiliates, subject to any limitations specified in a Confirmation.

In consideration of the disclosure of Confidential Information by the Provider to the Recipient, each agrees and undertakes to the other as follows:

#### 1. **Duty of Confidentiality**

- 1.1 Confidential Information will be used solely for the Permitted Use. The Recipient will hold the Confidential Information in strict confidence and will not (a) copy or reproduce it except to the extent necessary for a Permitted Use or (b) disclose or distribute any of it to any person other than to its Representatives, to the extent they need access to Confidential Information for the Permitted Use.
- 1.2 The Recipient will ensure that any Representative who receives any Confidential Information is aware of these Terms and will require such Representative to comply with these Terms. The Recipient will be responsible if such Representative fails to comply with these Terms.

#### 2. **Exceptions**

- 2.1 The term "**Confidential Information**" does not include any information that (a) is in the public domain or comes into the public domain other than through breach of these Terms; (b) already is or subsequently comes into the possession of the Recipient from a third party who is not known by the Recipient to owe the Provider an obligation of confidence in relation to it; or (c) is developed by the Recipient independently of, and without reference to, any Confidential Information received hereunder.
- 2.2 In the event that any Confidential Information is legally required to be disclosed, the Recipient shall give to the Provider, to the extent practicable and if lawfully permitted to do so, prompt prior written notice of such requirement so that the Provider may seek a protective order or other remedy. In the event that such protective order or other remedy has not been obtained and the Recipient is advised, in the opinion of counsel, that it is legally compelled to disclose any of the Confidential Information, the Recipient may, without liability hereunder, disclose only such Confidential Information so advised to be disclosed.
- 2.3 In the event that access to or delivery of any Confidential Information is requested of the Recipient by a regulatory, self-regulatory or supervisory authority having appropriate

jurisdiction, the Recipient shall give to the Provider, to the extent practicable and if lawfully permitted to do so, prompt written notice of such request, but may comply with such request.

### **3. Return/Destruction of Confidential Information**

If (a) a Proposed Transaction is not consummated or (b) Confidential Information is provided for the purpose of development of a transaction proposal and a transaction is not consummated, then (i) upon the written request of the Provider and (ii) to the extent practicable, lawful and consistent with its internal record retention procedures, the Recipient (x) shall return to the Provider or destroy all documents (and any information stored in any electronic or other medium) containing Confidential Information received from the Provider, and (y) shall deliver to the Provider a confirmation that the obligations contained in this paragraph have been complied with.

### **4. General**

- 4.1 Without affecting any other rights or remedies, Provider and Recipient acknowledge that the Provider may be irreparably harmed by any breach of these Terms and that damages alone may not be an adequate remedy. Accordingly, the Provider will be entitled to the remedies of injunction, specific performance and other equitable relief, or any combination of these remedies, for any threatened or actual breach of these Terms, and no proof of special damages will be necessary to enforce these Terms.
- 4.2 Provider and Recipient acknowledge and agree that the disclosure of Confidential Information hereunder shall not affect Provider's property rights in that Confidential Information. Provider represents to Recipient that Provider has the right to disclose any Confidential Information to Recipient.
- 4.3 These Terms, as adopted in a Confirmation, may not be varied or terminated without the prior written consent of Provider and Recipient.
- 4.4 These Terms will be governed by and construed in accordance with the laws of New York (without reference to choice of law doctrine).
- 4.5 The obligations of the Recipient under a Confirmation will expire on the earlier of (a) the Termination Date specified in that Confirmation or (b) the entry into definitive agreements with respect to any Proposed Transaction specified in that Confirmation; provided, however, that Sections 3 and 4 shall survive any such expiration.
- 4.6 A Confirmation may be signed in counterparts and may be delivered by facsimile or other electronic medium.
- 4.7 A failure or delay in exercising any right, power or privilege under these Terms or a partial exercise thereof will not be presumed to preclude any subsequent or further exercise thereof.

## CONFIRMATION

[date]

This will confirm that Recipient will afford confidential treatment to Confidential Information in accordance with the Global Documentation Steering Committee Confidentiality Terms (2004) (the "Terms"), except as modified hereby, as specified below:

**Confidential Information:**

Information identified as confidential at or prior to the time it is made available

As specified below:

\_\_\_\_\_

**Permitted Use:**

Evaluation of Proposed Transaction (describe briefly):

\_\_\_\_\_

Development of transaction proposal

Initial or ongoing credit evaluation

Other \_\_\_\_\_

**Limitation on Disclosure to Representatives:**

Describe limitations on disclosure of Confidential Information to any Representatives:

\_\_\_\_\_

**Termination Date:**

[[\_\_\_\_\_] from the date hereof]

[Other: \_\_\_\_\_]

**Governing Law:**

Section 4.4 of the Terms is replaced with the following new Section 4.4:

"4.4 These Terms will be governed by and construed in accordance with the laws of [ ] (without reference to choice of law doctrine)."

Very truly yours:

**Provider:** \_\_\_\_\_

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

Agreed and acknowledged:

**Recipient:** \_\_\_\_\_

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