

assets at least equal to USD 45,000,000. Party B is prepared to bear, and will be capable of bearing (financially and otherwise) all risks associated with that Transaction and all other Transactions and has sufficient financial wherewithal to incur any loss associated with entering into and performing its obligations under that Transaction and all other Transactions.

(vi) Party B's entrance into this Agreement and that Transaction complied and will comply in all respects with all applicable laws, rules, regulations, interpretations, guidelines, and governmental and regulatory authorities affecting Party B.

(vii) The financial information of Party B heretofore furnished to Party A fairly presents the financial condition of Party B on the dates and for the periods covered thereby. As of the date of this Agreement, Party B does not have any material liability or contingent obligation not shown on such statements. Since the date of such financial information there has been no material adverse change in the financial condition, operations, assets, and prospects of Party B.

(e) **Set Off.** Section 6(f) of this Agreement is deleted in its entirety and replaced with the following:

"(f) Upon the designation of any Early Termination Date, the party that is not the Defaulting Party or Affected Party ("X") may, without prior notice to the Defaulting or Affected Party ("Y"), set off any sum or obligation (whether or not arising under this Agreement, whether matured or unmatured, whether or not contingent and irrespective of the currency, place of payment or booking office of the sum or obligation) owed by Y to X or any Affiliate of X (the "**X Set Off Amount**") against any sum or obligation (whether or not arising under this Agreement, whether matured or unmatured, whether or not contingent and irrespective of the currency, place of payment or booking office of the sum or obligation) owed by X or any Affiliate of X to Y (the "**Y Set Off Amount**"). X will give notice to the other party of any set off effected under this Section 6(f).

For this purpose, either the X Set Off Amount or the Y Set Off Amount (or the relevant portion of such set off amounts) may be converted by X into the currency in which the other set off amount is denominated at the rate of exchange at which X would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency.

If a sum or obligation is unascertained, X may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained.

Nothing in this Section 6(f) shall be effective to create a charge or other security interest. This Section 6(f) shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other rights to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise)."

(f) **Escrow.** On any date on which both parties are required to make payments hereunder, either party may at its option and in its sole discretion notify the other party that payments on that date are to be made in escrow. In this case deposit of the payment due earlier on that date shall be made by 2:00 p.m. (local time at the place for the earlier payment if there is a time difference between the cities in which payments are to be made) on that date with an escrow agent selected by the party giving the notice and reasonably acceptable to the other party, accompanied by irrevocable payment instructions (i) to release the deposited payment to the intended recipient