

**It is expected that users of this Annex will produce this Annex I on their word processor and simply attach it to a photocopy of the 2000 GMRA.**

**ANNEX I  
Supplemental Terms and Conditions**

Paragraph references are to the paragraphs in the Agreement.

1. The following elections shall apply:

- (a)<sup>30</sup> Paragraph 1(c)(i): Buy/Sell Back Transactions may be effected under this Agreement, and accordingly the Buy/Sell Back Annex shall apply.
- (b)<sup>31</sup> Paragraph 1(c)(ii): Transactions in Net Paying Securities [may/may not] be effected under this Agreement, and accordingly the provisions of sub-paragraphs (i) and (ii) below [shall/shall not] apply.
- (i) The phrase “other than equities and Net Paying Securities” shall be replaced by the phrase “other than equities”.
- (ii) In the Buy/Sell Back Annex the following words shall be added to the end of the definition of the expression “IR”:
- “and for the avoidance of doubt the reference to the amount of Income for these purposes shall be to an amount paid without withholding or deduction for or on account of taxes or duties notwithstanding that a payment of such Income made in certain circumstances may be subject to such a withholding or deduction”.
- (c)<sup>32</sup> Paragraph 1(d): Agency Transactions [may][may not] be effected under this Agreement, and accordingly the Agency Annex [shall/shall not] apply.

<sup>30</sup> This election allows Buy/Sell Back transactions. If Buy/Sell Back transactions are to be allowed, then a Buy/Sell Back Annex in the form of the TBMA/ISMA Global Master Repurchase Agreement (2000 Version) Buy/Sell Back Annex should be attached to the 2000 GMRA.

<sup>31</sup> Unlike the 1995 GMRA, the 2000 GMRA allows parties the option of entering into transactions in respect of Net Paying Securities. Should parties wish to allow transactions in respect of Net Paying Securities they should strike out the words “may not” and “shall not”. Parties proposing to use the Agreement with net paying securities, including net paying margin securities, should first investigate and satisfy themselves as to the suitability of the Agreement in the context of the transactions proposed to be entered into by them as well as to any further or other amendments that they should include.

<sup>32</sup> Alternative provisions have been provided for parties that do or do not intend to allow Agency transactions under the Agreement. If Agency transactions are to be allowed, then an Agency Annex in the form of the TBMA/ISMA Global Master Repurchase Agreement (2000 Version) Agency Annex could be attached to the 2000 GMRA. Paragraph 2(o) should be inserted if multiple principal transactions are not to be allowed. Paragraph 2(p) of this

(d) <sup>33</sup>	Paragraph 2(d):	The Base Currency shall be: <ul style="list-style-type: none"> <li>(i) for the purpose of paragraph 10, where the relevant Event of Default is the event set out in paragraph 10(a)(vi) and an amount is due and payable by the Defaulting Party to the non-Defaulting Party in accordance with paragraph 10(c)(ii), the currency of the jurisdiction in which the Defaulting Party is incorporated;</li> <li>(ii) in all other cases, Australian Dollars.</li> </ul>
(c) <sup>34</sup>	Paragraph 2(cc):	The pricing source for calculation of the Market Value shall be the relevant page of Bloomberg or, if that page is not published for the relevant day, any other pricing source as reasonably agreed between the parties.
(f) <sup>35</sup>	Paragraph 3(b):	Both Seller and Buyer to deliver Confirmation.
(g) <sup>36</sup>	Paragraph 4(f):	Interest rate on Cash Margin to be the Cash Rate. Simple interest to be accumulated daily and payable as agreed between the parties or, failing agreement, monthly.
(h) <sup>37</sup>	Paragraph 4(g):	Delivery period for margin calls to be: <ul style="list-style-type: none"> <li>(i) if a margin call is made on or before 11.00am [Sydney] time on a Business Day, on that Business Day; or</li> <li>(ii) if a margin call is made after 11.00am [Sydney] time on a Business Day, on the next Business Day.</li> </ul>
[(i) <sup>38</sup>	Paragraph 6(j):	Paragraph 6(j) shall apply and the events specified in paragraph 10(a) identified for the purposes of paragraph 6(j) shall be those set out in sub-paragraphs [ ] of paragraph 10(a) of the Agreement.]

Annex contains amendments to the Agency Annex consequent on the 2000 GMRA being governed by the laws of New South Wales.

**Care!** If multiple principal transactions are to be allowed, consideration should be given to using the Investment Manager Supplement (see part 21 of this guide) instead of the Agency Annex.

<sup>33</sup> The Base Currency is defined to be Australian dollars. The exception in sub-paragraph 1(d)(i) covers the currency of payments by the Defaulting Party to the non-Defaulting Party when Acts of Insolvency occur with respect to the Defaulting Party. In this event, the currency of the payment is that of the jurisdiction in which the Defaulting Party is incorporated. In some insolvency jurisdictions we believe this can facilitate payment from an insolvent Defaulting Party. In all other cases of default, the Base Currency will be Australian dollars. Sub-paragraph (i) will be of relevance only to transactions involving offshore counterparties.

<sup>34</sup> Defines the pricing source for the calculation of Market Value as the relevant page of Bloomberg or, failing that, as reasonably agreed between the parties.

<sup>35</sup> This specifies that both Buyer and Seller must deliver Confirmations.

<sup>36</sup> This provision provides a method to determine the interest rate on the Cash Margin, being simple interest calculated daily. The date for the payment of interest is to be as agreed between the parties or, should the parties be unable to agree, monthly.

<sup>37</sup> This paragraph provides for the delivery period for margin calls with a distinction drawn between margin calls made before and after 11.00am.

<sup>38</sup> This provision provides that each obligation of a party under the Agreement is subject to a condition precedent that none of the selected paragraph 10(a) events has occurred and is continuing with respect to the other party. Parties

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- [(j)<sup>39</sup> Paragraph 10(a)(ii): Paragraph 10(a)(ii) shall apply.]
- (k) Paragraph 14: For the purposes of paragraph 14 of this Agreement:
- (i) Address for notices and other communications for Party A:  
Address:  
Attention:  
Telephone:  
Facsimile:  
Telex:  
Answerback:  
Other:
  - (ii) Address for notices and other communications for Party B:  
Address:  
Attention:  
Telephone:  
Facsimile:  
Telex:  
Answerback:  
Other:

2.<sup>40</sup> The Agreement is amended as follows:

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should specify which sub-paragraphs of paragraph 10(a) are to constitute conditions precedent. This is not exactly the same approach as that taken in the 2002 ISDA Master Agreement. However, the 2002 ISDA Master Agreement deals with different types of products to the 2000 GMRA and there is no legal requirement that the same approach be used if a party has both a 2002 ISDA Master Agreement and a 2000 GMRA with a counterparty (although it may be useful from an operational perspective). If a party desires that the relevant events be consistent with the Events of Default which would trigger the similar provision in Section 2(a)(iii)(1) of the 2002 ISDA Master Agreement, then sub-paragraphs (i) to (viii) and (x) should be selected. However, this will not be perfectly consistent as the Events of Default in each of the 2002 ISDA Master Agreement and the 2000 GMRA are different. Also, Section 2(a)(iii)(1) of the ISDA Master Agreement applies to both Events of Default and Potential Events of Default. The 2000 GMRA provision applies only to Events of Default.

<sup>39</sup> Paragraph 10(a)(ii) provides that an event of default occurs if the Seller fails to deliver Purchased Securities on the Purchase Date or the Buyer fails to deliver Equivalent Securities on the Repurchase Date, and the non-Defaulting Party serves a Default Notice on the Defaulting Party. Paragraph 10(a)(ii) applies only if the parties agree in Annex I that it applies. It is for the counterparties to determine whether it is appropriate. By way of background, the Guidance Notes published with the 2000 GMRA state that:

“In the discussions leading up to the inclusion of this provision, it was recognised that “settlement fails” do frequently occur in the market, and that their occurrence is not generally an indicator of credit deterioration or indeed impending insolvency of the non delivering party. For that reason, a number of market participants were reluctant to include this new event of default. Those favouring the inclusion of the new wording believed strongly that there could be circumstances in which a failure to deliver is in fact a first indicator of credit deterioration or impending insolvency, although they recognised that this would not generally be the context in which a failure to deliver occurred. They wished, however, to be able to act upon the occurrence of a failure to deliver where they saw it as occurring in a credit deterioration or impending insolvency context.”

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(a) <sup>41</sup>	Paragraph 2(a)(vi):	Insert “or equivalent Australian legislation” after “1986”.
(b) <sup>42</sup>	Paragraph 2(fa):	<p>Insert a new paragraph 2(fa) as follows:</p> <p>““Cash Rate”, the interbank overnight cash rate calculated by the Reserve Bank of Australia, as displayed on Reuters Screen RBA30 or any other widely published electronic page. If no such rate is available from Reuters Screen RBA30 or any other widely published electronic page, the rate shall be another rate reasonably agreed between the parties except that if the parties cannot agree, the rate shall be equal to the best bid rate reasonably obtainable by [Party A] in the market for overnight unsecured Australian dollar cash deposits in the relevant currency (as certified by [Party A] such certificate to be conclusive in the absence of manifest error)”.</p>
(c) <sup>43</sup>	Paragraph 2(y):	Delete the definition of “LIBOR”.
(d) <sup>44</sup>	Paragraph 2(ii):	Replace “on a 360 day basis or 365 day basis in accordance with the applicable ISMA convention, unless otherwise agreed between the parties for the Transaction” with “on a 365 day basis”.
(e) <sup>45</sup>	Paragraph 3(b):	After “(“Confirmation”).”, insert “Confirmations may be in writing or sent by telex, electronic messaging system or other means agreed between the parties.”
(f) <sup>46</sup>	Paragraph 3(e):	Insert “A demand for Termination must be given no later than 11.00am [Sydney] time on a Business Day if Termination is to occur on that Business Day” at the end of the paragraph.
(g) <sup>47</sup>	Paragraph 4(a):	<p>Replace with:</p> <p>“If at any time either party has a Net Exposure in respect of the other party, it may by notice to the other party require that Net Exposure to be eliminated by the repricing of Transactions under sub-paragraph (j) below. The Transactions to be repriced shall be agreed between the parties before the close of business on the day on which such notice is received or, if agreement has not been reached by</p>

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<sup>40</sup> These sub-paragraphs set out a number of amendments to the 2000 GMRA, some being consequent on the 2000 GMRA being used in an Australian context.

<sup>41</sup> This amendment is included to clarify that Australian insolvency legislation is intended to apply.

<sup>42</sup> Paragraphs 2(b) and (c) replace the use of LIBOR with a source for the Cash Rate which is more relevant to Australian transactions. The paragraph uses the daily reference rate for overnight unsecured cash as published on Reuters Monitor System Page RBA30 or, failing that, the best bid rate reasonably obtainable by a designated party to the transaction. Participants are reminded that using this definition of Cash Rate requires the agreement of the parties as to which will be the designated party. A consequential amendment to paragraph 10(f) is mentioned below (see footnote on 2(k)).

<sup>43</sup> See footnote on 2(b).

<sup>44</sup> This amendment applies a “365 day basis” for the Pricing Rate, in accordance with Australian market practice.

<sup>45</sup> This amendment allows the parties to use other agreed methods of Confirmations, such as telex or electronic messaging system.

<sup>46</sup> This amendment clarifies the procedure for Termination demands.

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		that time, shall be as determined by the party with the Net Exposure.”
	Paragraph 4(g):	Replace “sub-paragraph (a) above” with “sub-paragraph (i) below.”
	Paragraph 4(i):	Replace with:  “The parties may agree that a particular Net Exposure which may arise shall be eliminated not by a repricing in sub-paragraph (j) below but by:-  (i) the making of a Margin Transfer to the party having the Net Exposure of an aggregate amount or value at least equal to that Net Exposure; or  (ii) the adjustment of Transactions under sub-paragraph (k) below; or  (iii) by a combination of both these methods.”
(h) <sup>48</sup>	Paragraph 6(h):	Replace “shall be combined in a single calculation of a net sum” with “may be combined, if agreed by the parties, in a single calculation of a net sum”.
(i) <sup>49</sup>	Paragraph 6(i):	Replace “shall be combined in a single calculation of a net quantity of Securities” with “may be combined, if agreed by the parties, in a single calculation of a net quantity of Securities”.
(j) <sup>50</sup>	Paragraph 9(i):	Insert a new paragraph 9(i) as follows:  “the paying and collecting arrangements applied in relation to any Securities prior to their transfer from that party to the other under this Agreement will not have resulted in the payment of any income in respect of such Securities to the party transferring such Securities under deduction or withholding for or on account of Australian tax”.
(k) <sup>51</sup>	Paragraph 10(f):	Replace “LIBOR” with “the Cash Rate”
(l) <sup>52</sup>	Paragraph 12:	Replace “LIBOR on a 360 day basis or 365 day basis in accordance with the applicable ISMA convention” with “the Cash Rate on a 365 day basis”.

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<sup>47</sup> These provisions amend paragraph 4 of the Agreement. The Agreement, when unamended, gives either party the right, when it has a Net Exposure, to make a call for a Margin Transfer. It then further provides that if they so agree, they can either reprice the transaction or reset it. These provisions change this emphasis by making repricing or resetting the standard with margining an option which can be agreed on.

<sup>48</sup> Paragraphs 2(h) and (i) amend the payments netting and securities netting provisions so that they operate only if the parties agree.

<sup>49</sup> See footnote on 2(h).

<sup>50</sup> This paragraph is necessary because the representation that previously appeared in paragraph 9(i) of the 1995 GMRA has been deleted to reflect UK tax changes but is still considered relevant under Australian law.

<sup>51</sup> See footnote on 2(b).

<sup>52</sup> See footnote on 2(b).

(m) <sup>53</sup>	Paragraph 17:	Replace with: "This agreement is governed by the law in force in New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction."
(n)	Paragraph 19:	Replace "England" with "New South Wales".
(o) <sup>54</sup>	Agency Annex, paragraph 1(d):	Delete.
[(p) <sup>55</sup>	Agency Annex paragraph 4(b)(ii):	Replace: <ul style="list-style-type: none"> <li>(i) the words "Great Britain" with "New South Wales";</li> <li>(ii) the word "England" with "New South Wales";</li> <li>(iii) the words "the United Kingdom" with "New South Wales".]</li></ul>

3. The following supplemental terms and conditions shall apply to all Transactions:

- (a)<sup>56</sup> All transactions entered into between the parties prior to the date of this Agreement having the characteristics of a Repurchase Transaction or Buy/Sell Back Transaction, and whether or not entered into under the terms of a master agreement shall be deemed to have been entered into under the terms and conditions set forth in this Agreement, and shall be governed by such terms and conditions hereafter.
- (b)<sup>57</sup> Neither party may require the repricing of a Transaction under paragraph 4(a) or a Margin Transfer to it under paragraph 4(i) if its Net Exposure in respect of the other party is less than A\$[            ].
- (c)<sup>58</sup> If there is any inconsistency between the terms of this Annex and the terms of the printed form TBMA/ISMA Global Master Repurchase Agreement (2000 Version), then the terms of this Annex prevail.

<sup>53</sup> This paragraph alters the governing law of the Agreement to that of New South Wales.

<sup>54</sup> See footnote on 1(c).

<sup>55</sup> See footnote on 1(c).

<sup>56</sup> **Prior transactions.** This provides that previous transactions between the parties with the characteristics of a sale and reciprocal purchase are deemed to have been entered into under the terms and conditions of the 2000 GMRA. Should the parties want to exclude a particular Transaction or group of Transactions from the operation of this provision, then it is suggested that the following additional wording be used: "The following Transactions are excluded from the application of this provision and are not governed by the terms of this Agreement: [describe transactions, eg by deal number]".

<sup>57</sup> **Repricing threshold.** This clause allows the parties to specify a minimum Margin Transfer amount. The parties must agree on an actual dollar amount to include in the clause.

<sup>58</sup> **Inconsistency.** An interpretation provision.

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(d)<sup>59</sup> For the purpose of paragraph 2(p) Designated Offices are as follows:

Party A: [Sydney][any] office.

Party B: [Sydney][any] office.

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<sup>59</sup> **Nomination of Designated Offices.** This enables parties to enter into transactions only through branches or offices in jurisdictions in respect of which they have obtained legal opinions as to the efficacy of the netting provisions of the Agreement. If parties do not wish to restrict the offices through which repos can be transacted, then the option of “any office” should be included.

<sup>60</sup> Although the Events of Default in the 2000 GMRA are generally similar to the Events of Default in the 2002 ISDA Master Agreement, there is at least one Event of Default in the 2000 GMRA which is materially different from the 2002 ISDA equivalent. It is paragraph (iv) of “Act of Insolvency” which relates to the institution of insolvency proceedings against a party. In the 2002 ISDA the institution of insolvency proceedings does not result in an Event of Default if the proceedings are “dismissed, discharged, stayed or restrained” within 15 days. In the 2000 GMRA, the Event of Default occurs immediately on a petition for winding up being presented.

We suggest that parties consider amending paragraph (iv) to provide that the Event of Default does not occur if the proceedings are stayed or dismissed within 15 days. Of course this is a credit issue and the desirability of having these words to protect a participant from frivolous claims must be weighed against the desirability of having the ability to close out quickly when it is the other party who is the defaulting party. At the very least participants should appreciate the different treatment of these issues in the 2000 GMRA and ISDA.

To effect the amendment, you would simply delete the third set of bracketed words in paragraph (iv) of the “Act of Insolvency” definition.

It should also be noted that the 2002 ISDA Master Agreement provides 1 Local Business Day grace for a failure to make a payment or delivery under a transaction. No such grace period is included in the 2000 GMRA.

<sup>61</sup> If parties require a contractual obligation for the other party to provide evidence of its authority to execute the Agreement then a clause of the following nature can be added:

“On its execution of this Agreement, each party agrees to deliver evidence of its authority to execute this Agreement to the other.”

<sup>62</sup> **Previous ISDA Agreement.** If parties want to agree to amend any previously entered ISDA Master Agreement by deleting the September 1992 Australian Addendum No. 9 to ensure that there is no confusion about which master agreement governs this clause should be inserted:

“If the parties have previously entered into an ISDA Master Agreement (published by International Swaps and Derivatives Association Inc.) with each other, that Agreement is amended by the deletion of the September 1992 Australian Addendum No. 9 - Reciprocal Purchase Agreements, if that addendum forms part of that Agreement and, despite anything in that Agreement, nothing in that Agreement means that a particular Transaction is governed by that Master Agreement rather than this Agreement.”

The clause also provides that where an earlier Agreement specifically states that a particular Transaction is governed by that Agreement, then the parties agree that the Transaction in question is now governed by this Agreement.

Where the parties have previously entered into the AFMA published “Reciprocal Purchase Agreements Memorandum of Agreed Terms and Conditions” and want it to be overridden by the new 2000 GMRA, a similar clause should be inserted to ensure that the 2000 GMRA governs all Transactions between the parties.

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[26.23] **Mallesons Supplemental Opinion on AFMA Annex I to the 1995 and 2000 GMRA**

This is a supplementary opinion on both the AFMA Annex I to the 1995 GMRA (“1995 Annex I”) and the AFMA Annex I to the 2000 GMRA (“2000 AFMA Annex I”). It relates to the laws of the Commonwealth of Australia, New South Wales, Victoria, Queensland, Western Australia and the Australian Capital Territory (together, the “**Relevant Jurisdictions**”).

We have assumed that the blanks in the 1995 AFMA Annex I and 2000 AFMA Annex I will be completed simply by making one of the variable elections or filling in blanks - ie no additional text is added beyond that clearly contemplated by those annexes.

We note that we have given an opinion dated 28 March 2003 on the 1995 GMRA and 2000 GMRA (“**Main Opinion**”).

This opinion is:

- (a) confined to matters of the laws of the Relevant Jurisdiction and we express no opinion with regard to any system of law other than the laws of the Relevant Jurisdictions; and
- (b) subject to the same assumptions and qualifications as the Main Opinion.

Subject to the above, we are of the opinion that as at the date of the Main Opinion under the laws of the Relevant Jurisdictions:

- (i) the provisions in the 1995 AFMA Annex I and 2000 AFMA Annex I would be enforceable in accordance with their terms; and
- (ii) none of the provisions affects or detracts from the advice contained in the Main Opinion.

**It is necessary for participants to determine in each case the suitability of a 1995 AFMA Annex 1 or a 2000 AFMA Annex I to the particular circumstances applicable to that case. This analysis is not intended to be an opinion on which participants can rely in actual transactions. Instead, it is intended as an aid in understanding issues which arise under Australian laws when participants want to enter into netting arrangements. Accordingly, while every care has been taken in preparing this analysis, Mallesons do not accept responsibility for any losses suffered by contracting in the manner recommended in this analysis or arising from any error or omission in this analysis.**