

ISDA[®]

International Swaps and Derivatives Association, Inc.

MASTER AGREEMENT

dated as of _____, 2005

_____, _____ and The Board of Regents of Higher Education for the State of Montana, for and on behalf of and as approved and accepted by The University of Montana, have entered and/or anticipate entering into one or more transactions (each a “Transaction”) that are or will be governed by this Master Agreement (the “Master Agreement”), which includes the schedule (the “Schedule”), and the documents and other confirming evidence (each a “Confirmation”) exchanged between the parties confirming those Transactions.

Accordingly, the parties agree as follows:—

1. Interpretation

- (a) **Definitions.** The terms defined in Section 12 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement.
- (b) **Inconsistency.** In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.
- (c) **Single Agreement.** All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this “Agreement”), and the parties would not otherwise enter into any Transactions.

2. Obligations

- (a) General Conditions.
 - (i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.
 - (ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.
 - (iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party

has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.

(b) **Change of Account.** Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) **Netting.** If on any date amounts would otherwise be payable:—

- (i) in the same currency; and
- (ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of branches or offices through which the parties make and receive payments or deliveries.

(d) **Default Interest; Other Amounts.** Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

3. Representations

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into) that:—

(a) **Basic Representations.**

- (i) **Status.** It is duly organized and validly existing under the laws of the jurisdiction of its organization or constitutional or statutory formation incorporation and, if relevant under such laws, in good standing;

(ii) **Powers.** It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorize such execution, delivery and performance;

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional authority or documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) **Obligations Binding.** Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) **Absence of Certain Events.** No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) **Accuracy of Specified Information.** All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—

(a) **Furnish Specified Information.** It will deliver to the other party any forms, documents or certificates specified in the Schedule or any Confirmation by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) **Maintain Authorizations.** It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

(c) **Comply with Laws.** It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.

5. Events of Default and Termination Events

(a) **Events of Default.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an “Event of Default”) with respect to such party:—

(i) **Failure to Pay or Deliver.** Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party;

(ii) **Breach of Agreement.** Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(d) or to give notice of a Termination Event) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) **Credit Support Default.**

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed;

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party; or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) **Misrepresentation.** A representation made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) **Default under Specified Transaction.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) **Cross Default.** If “Cross Default” is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period);

(vii) **Bankruptcy.** The party, any Credit Support Provider of such party or any applicable Specified Entity of such party:—

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) **Merger Without Assumption.** The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer:—

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) **Termination Events.** The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (ii) below or an Additional Termination Event if the event is specified pursuant to (iii) below:—

(i) **Illegality.** Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):—

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) **Credit Event Upon Merger.** If “Credit Event Upon Merger” is specified in the Schedule as applying to the party, such party (“X”), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party); or

(iii) **Additional Termination Event.** If any “Additional Termination Event” is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) **Event of Default and Illegality.** If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

6. Early Termination

(a) **Right to Terminate Following Event of Default.** If at any time an Event of Default with respect to a party (the “Defaulting Party”) has occurred and is then continuing, the other party (the “Non-defaulting Party”) may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, “Automatic Early Termination” is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) **Right to Terminate Following Termination Event.**

(i) **Notice.** If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) **Two Affected Parties.** If an Illegality under Section 5(b)(i)(1) occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iii) **Right to Terminate.** If:—

(1) an agreement under Section 6(b)(ii) has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i); or

(2) an Illegality other than that referred to in Section 6(b)(ii), a Credit Event Upon Merger or an Additional Termination Event occurs,

either party in the case of an Illegality, any Affected Party in the case of an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) **Effect of Designation.**

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(d) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) **Calculations.**

(i) **Statement.** On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (1) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) **Payment Date.** An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted

under applicable law) interest thereon (before as well as after judgment), from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) **Payments on Early Termination.** If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss," and a payment method, either the "First Method" or the "Second Method." If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method," as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) **Events of Default.** If the Early Termination Date results from an Event of Default:—

(1) **First Method and Market Quotation.** If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party over (B) the Unpaid Amounts owing to the Defaulting Party.

(2) **First Method and Loss.** If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) **Second Method and Market Quotation.** If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Unpaid Amounts owing to the Non-defaulting Party less (B) the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) **Second Method and Loss.** If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) **Termination Events.** If the Early Termination Date results from a Termination Event:—

(1) **One Affected Party.** If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) **Two Affected Parties.** If there are two Affected Parties:—

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the

Settlement Amount of the party with the higher Settlement Amount (“X”) and the Settlement Amount of the party with the lower Settlement Amount (“Y”) and (b) the Unpaid Amounts owing to X less (II) the Unpaid Amounts owing to Y; and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss (“X”) and the Loss of the party with the lower Loss (“Y”).

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) **Adjustment for Bankruptcy.** In circumstances where an Early Termination Date occurs because “Automatic Early Termination” applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) **Pre-Estimate.** The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

7. Transfer

Neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:—

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all of its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

8. Miscellaneous

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

(b) **Amendments.** No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

(c) **Survival of Obligations.** Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) **Counterparts and Confirmations.**

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) **Headings.** The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

9. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

10. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:—

(i) if in writing and delivered in person or by courier, on the date it is delivered;

(ii) if sent by telex, on the date the recipient's answerback is received;

(iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

- (v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) **Change of Addresses.** Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

11. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) **Jurisdiction.** With respect to any suit, action or proceedings relating to this Agreement (“Proceedings”), each party irrevocably:—

- (i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

- (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(c) **Waiver of Immunities.** Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

12. Definitions

As used in this Agreement:—

“**Additional Termination Event**” has the meaning specified in Section 5(b).

“**Affected Party**” has the meaning specified in Section 5(b).

“**Affected Transactions**” means (a) with respect to any Termination Event consisting of an Illegality, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

“Affiliate” means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

“Applicable Rate” means:—

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

“consent” includes a consent, approval, action, authorization, exemption, notice, filing, registration or exchange control consent.

“Credit Event Upon Merger” has the meaning specified in Section 5(b).

“Credit Support Document” means any agreement or instrument that is specified as such in this Agreement.

“Credit Support Provider” has the meaning specified in the Schedule.

“Default Rate” means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum.

“Defaulting Party” has the meaning specified in Section 6(a).

“Early Termination Date” means the date determined in accordance with Section 6(a) or 6(b)(iii).

“Event of Default” has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

“Illegality” has the meaning specified in Section 5(b).

“law” includes any treaty, law, rule or regulation and **“lawful”** and **“unlawful”** will be construed accordingly.

“Local Business Day” means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

“Loss” means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of

ITEM 128-1004-R0705

bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 9. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

“Market Quotation” means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the “Replacement Transaction”) that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

“Non-default Rate” means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

“Non-defaulting Party” has the meaning specified in Section 6(a).

“Potential Event of Default” means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“Reference Market-makers” means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

“Scheduled Payment Date” means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

ITEM 128-1004-R0705

“Set-off” means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

“Settlement Amount” means, with respect to a party and any Early Termination Date, the sum of:—

(a) the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party’s Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

“Specified Entity” has the meaning specified in the Schedule.

“Specified Indebtedness” means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

“Specified Transaction” means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

“Terminated Transactions” means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if “Automatic Early Termination” applies, immediately before that Early Termination Date).

“Termination Event” means an Illegality or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

“Termination Rate” means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

“Unpaid Amounts” owing to any party means, with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily

compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

THE BOARD OF REGENTS OF HIGHER EDUCATION
for the State of Montana

By: _____
Name: _____
Title: _____
Date: _____

Accepted and Approved By:

THE UNIVERSITY OF MONTANA

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Paragraph 13. Elections and Variables

(a) **Security Interest for "Obligations"**. The term "**Obligations**" as used in this Annex includes the following additional obligations: Not applicable.

(b) **Credit Support Obligations.**

(i) **Delivery Amount, Return Amount and Credit Support Amount.**

(A) "**Delivery Amount**" has the meaning specified in Paragraph 3(a).

(B) "**Return Amount**" has the meaning specified in Paragraph 3(b).

(C) "**Credit Support Amount**" has the meaning specified in Paragraph 3.

(ii) **Eligible Collateral.** The following items will qualify as "**Eligible Collateral**":

| | Valuation Percentage |
|--|---------------------------------|
| (A) Cash | 100% |
| (B) negotiable debt obligations issued by the U.S. Treasury Department having a remaining maturity of less than one year ("Treasury Bills") | 98% |
| (C) negotiable debt obligations issued by the U.S. Treasury Department having a remaining maturity of 1-10 years ("Treasury Notes") | 95% |
| (D) negotiable debt obligations issued by the U.S. Treasury Department having a remaining maturity of more than 10 years ("Treasury Bonds") | 90% |
| (E) single-class mortgage participation certificates ("FHLMC Certificates") in book-entry form backed by single-family residential mortgage loans, the full and timely payment of interest at the applicable certificate rate and the ultimate collection of principal of which are guaranteed by the Federal Home Loan Mortgage Corporation (excluding Real Estate Mortgage Investment Conduit ("REMIC") or other multi-class pass-through certificates, collateralized mortgage obligations, pass-through certificates backed by adjustable rate mortgages, securities paying interest or principal only and similar derivative securities); | 90% |
| (F) single-class mortgage pass-through certificates ("FNMA Certificates") in book-entry form backed by single-family residential mortgage loans, the full and timely | 90% |

payment of interest at the applicable certificate rate and ultimate collection of principal of which are guaranteed by the Federal National Mortgage Association (excluding REMIC or other multi-class pass-through certificates, pass-through certificates backed by adjustable rate mortgages collateralized mortgage obligations, securities paying interest or principal only and similar derivative securities);

- (G) single-class fully modified pass-through certificates (“GNMA Certificates” in book-entry form backed by single-family residential mortgage loans, the full and timely payment of principal and interest of which is guaranteed by the Government National Mortgage Association (excluding REMIC or other multi-class pass-through certificates, collateralized mortgage obligations, pass-through certificates backed by adjustable rate mortgages, securities paying interest or principal only and similar derivatives securities). 90%
- (H) Negotiable debt obligations in book-entry form issued by the following agencies: Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Home Loan Bank, Federal Farm Credit Bank, or Student Loan Marketing Association, having an original term to maturity at issuance of not more than 35 years. 90%
- (I) Negotiable debt obligations in book-entry form which are fully guaranteed as to both principal and interest by the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, (but excluding (i) interest only and principal only securities, and (ii) collateralized mortgage obligations, real estate mortgage investment conduits and similar derivative securities), having an original term to maturity at issuance of not more than 35 years. 90%
- (J) Negotiable debt obligations in book-entry form which are fully guaranteed as to both principal and interest by the Federal Home Loan Banks (excluding real estate mortgage investment conduits or other multi-class pass-through certificates, collateralized mortgage obligations, securities paying interest or principal only, and similar derivative securities), having an original term to maturity at issuance of not more than 35 years. 90%
- (K) Such other collateral as Party A and Party B may agree. As may be agreed.

(iii) **Other Eligible Support.** The following items will qualify as "**Other Eligible Support**" for the party specified: Inapplicable.

(iv) **Thresholds.**

(A) "**Independent Amount**" means with respect to Party A: Inapplicable

"Independent Amount" means with respect to Party B: Inapplicable

- (B) **"Threshold"** means with respect to Party A, the amount set forth opposite the lower of the ratings in the table set forth below in effect on any Valuation Date for the unsubordinated, unsecured, long-term debt of Party A;

provided however that if the unsubordinated, unsecured, long-term debt of Party A ceases to be rated by either Standard & Poor's Ratings Services, a division of the McGraw-Hill Companies ("S&P") or Moody's Investors Service ("Moody's"), then the rating by whichever of S&P or Moody's that has continued to rate the unsubordinated, unsecured, long-term debt of Party A shall be used as the sole rating of such entity for purposes of this table; and

provided further that, if

(x) an Event of Default, Potential Event of Default, Termination Event, Additional Termination Event or Specified Condition has occurred and is continuing with respect to Party A; or

(y) Party A has no unsubordinated, unsecured, long-term debt rated by either Standard & Poor's Corporation or Moody's,

then the Threshold of Party A shall be zero.

| <u>Rating by S&P</u> | <u>Rating by Moody's</u> | <u>Threshold in Dollars</u> |
|--------------------------|--------------------------|-----------------------------|
| AA- or above | Aa3 or above | Infinity |
| A or A+ | A1 or A2 | USD5,000,000 |
| A- or below | A3 or below | \$0 |

"Threshold" means with respect to Party B: Infinity.

- (D) **Rounding.** The Delivery Amount and the Return Amount will be rounded up and down respectively to the nearest integral multiple of \$50,000.¹

(c) **Valuation and Timing.**

- (i) **"Valuation Agent"** means: Party A
- (ii) **"Valuation Date"** means: Any Local Business Day.
- (iii) **"Valuation Time"** means:

[] the close of business in the city of the Valuation Agent on the Valuation Date or date of calculation, as applicable;

[X] the close of business on the Local Business Day before the Valuation Date or date of calculation, as applicable;

provided that the calculations of Value and Exposure will be made as of approximately the same time on the same date.

- (iv) **“Notification Time”** means 1:00pm, New York time, on a Local Business Day.
- (v) **“Exposure”** has the meaning provided in Paragraph 12 except that the proviso in the definition of “Exposure” is deleted and the following is substituted therefor: “provided, that Market Quotation will be determined by the Valuation Agent (i) in respect of any equity-based total return swap, using the closing price or last sale price (as applicable) of each stock, basket, or index (as applicable) on the relevant determination date or (ii) in respect of any other Transaction type (including, without limitation, equity-related option) using its good faith estimate at mid-market of the amounts that would be payable for Replacement Transactions (as that term is defined in the definition of “Market Quotation”).

(d) **Conditions Precedent and Secured Party's Rights and Remedies.** Each Termination Event specified below with respect to a party will be a **“Specified Condition”** for that party (the specified party being the Affected Party if a Termination Event or Additional Termination Event occurs with respect to that party):

| | |
|--|-------------------------------------|
| Illegality | <input checked="" type="checkbox"/> |
| Tax Event | <input type="checkbox"/> |
| Tax Event Upon Merger | <input type="checkbox"/> |
| Credit Event Upon Merger | <input checked="" type="checkbox"/> |
| The Additional Termination Events specified in Part 1 (other than an Elective Termination) of the Schedule to this Agreement or any event which, with the giving of notice or the lapse of time or both, would constitute an Additional Termination Event. | <input checked="" type="checkbox"/> |

(e) **Substitution.**

- (i) **“Substitution Date”** has the meaning specified in Paragraph 4(d)(ii).
- (ii) **Consent.** If specified here as applicable, then the Pledgor must obtain the Secured Party's consent for any substitution pursuant to Paragraph 4(d): Inapplicable

(f) **Dispute Resolution.**

- (i) **“Resolution Time”** means 1:00 p.m., New York time, on the Local Business Day following the date on which the notice is given that gives rise to a dispute under Paragraph 5.
- (ii) **Value.** For the purpose of Paragraphs 5(i)(C) and 5(ii), the Value of Posted Credit Support will be calculated as follows: as set forth for other purposes in Paragraph 12.
- (iii) **Alternative.** The provisions of Paragraph 5 will apply, except to the following extent: (A) pending the resolution of a dispute, Transfer of the undisputed Value of Eligible Credit Support or Posted Credit Support involved in the relevant demand will be due as provided in Paragraph 5 if the demand is given by the Notification Time, but will be due on the second Local Business Day after the demand if the demand is given after the Notification Time; and (B) the Disputing Party need not comply with the provisions of Paragraph 5(II)(2) if the amount to be Transferred does not exceed the Disputing Party’s Minimum Transfer Amount.

(g) **Holding and Using Posted Collateral.**

(i) **Eligibility to Hold Posted Collateral; Custodians.** Party B and its Custodian will be entitled to hold Posted Collateral pursuant to Paragraph 6(b); *provided* that the following conditions applicable to it are satisfied:

- (A) Party B is not a Defaulting Party.
- (B) Posted Collateral may be held only in the following jurisdictions: Posted Collateral consisting of certificated securities must be held in New York.
- (C) In the event that the Custodian holds Posted Collateral, the long-term unsubordinated unsecured debt of the Custodian is rated at least A by Standard & Poors, a division of The McGraw-Hill Companies, Inc. (or any successor thereto) and at least A2 by Moody's Investors Service, Inc. (or any successor thereto).

Initially, the **Custodian** for Party B is: to be provided in writing by Party B to Party A.

(ii) **Use of Posted Collateral.** The provisions of Paragraph 6(c) will apply to Party A.

(h) **Distributions and Interest Amount.**

(i) **Interest Rate.** The "**Interest Rate**" will be with respect to Eligible Collateral in the form of Cash, for any day, the rate opposite the caption "Federal Funds (Effective)" for such day as published for such day in Federal Reserve Publication H.15(519) or any successor publication as published by the Board of Governors of the Federal Reserve System.

(ii) **Transfer of Interest Amount.** The Transfer of the Interest Amount will be made on the first Local Business Day of each calendar month.

(iii) **Alternative to Interest Amount.** The provisions of Paragraph 6(d)(ii) will apply.

(i) **Other Eligible Support and Other Posted Support.**

(i) "**Value**" with respect to Other Eligible Support and Other Posted Support means: Inapplicable

(ii) "**Transfer**" with respect to Other Eligible Support and Other Posted Support means: Inapplicable

(j) **Demands and Notices.** All demands, specifications and notices under this Annex will be made pursuant to the Notices Section of this Agreement, unless otherwise specified here:

Party A: Attention:

Party B: Commissioner of Higher Education
2500 Broadway
Helena, MT 59620

and

Vice President for Administration and Finance
The University of Montana
University Hall, Room 129
Missoula, Montana 59812

(k) ***Addresses for Transfers***

Party A: For Cash:

For Eligible Collateral:

Fed Eligible Settlements:

DTC Eligible Settlements:

Euroclear Settlements:

Canadian Settlements:

Party B: To be provided by Party B to Party A.

(l) ***Other Provisions.***

(i) ***Limit on Secured Party's Liability.*** The Secured Party will not be liable for any losses or damages that the Pledgor may suffer as a result of any failure by the Secured Party to perform, or any delay by it in performing, any of its obligations under this Annex if the failure or delay results from circumstances beyond the reasonable control of the Secured Party or its Custodian, such as interruption or loss of computer or communication services, labor disturbance, natural disaster or local or national emergency.

(ii) ***Further Assurances.*** If the Pledgor fails (a) to execute and deliver to the Secured Party such financing statements, assignments, or other documents or (b) to do such other things relating to the Posted Collateral as the Secured Party may reasonably request in order to protect and maintain its security interest in the Posted Collateral and to protect, preserve, and realize upon the Posted Collateral, then the Secured Party is hereby authorized by the Pledgor (but not required) to complete and execute such financing statements, assignments, and other documents as the Secured Party deems appropriate for such purposes. The Pledgor hereby appoints the Secured Party, during the term of this Agreement, as the Pledgor's agent and attorney-in-fact to complete and execute such financing statements, assignments and other documents and to perform all other acts which the Secured Party may deem appropriate to protect and maintain its security interest in the Posted Collateral and to protect, preserve, and realize upon the Posted Collateral. The power-of-attorney granted herein to the Secured Party is coupled with an interest and is irrevocable during the term of this Agreement.

(ii) ***Agreement as to Single Secured Party and Pledgor.*** Party A and Party B agree that, notwithstanding anything to the contrary in the recital to this Annex, Paragraph 1(b) or Paragraph 2 or the definitions in Paragraph 12, (a) the term "*Secured Party*" as used in this Annex means only Party B, (b) the term "*Pledgor*" as used in this Annex means only Party A, (c) only Party A makes the pledge and grant in Paragraph 2, the acknowledgment in the final sentence of Paragraph 8(a) and the representations in Paragraph 9, (d) only Party A will be required to make Transfers of Eligible Credit Support hereunder and (e) Paragraph 7 shall apply to Party A only and shall not apply to Party B.

DEUTSCHE BANK AG

THE BOARD OF REGENTS OF HIGHER
EDUCATION for the State of Montana

By:
Name:
Title:

By:
Name:
Title:
Accepted and Agreed:
The University of Montana

By:
Name:
Title:

By: _____
Name: Robert Duringer
Title: Vice President for Administration and
Finance

SCHEDULE

to the

ISDA Master Agreement

dated as of _____, 2005, between

_____ a organized and existing
under the laws of _____

(“Party A”)

and

THE BOARD OF REGENTS OF HIGHER EDUCATION

for the State of Montana

a public body and instrumentality organized and existing
under the Constitution and laws of the State of Montana

(for and on behalf of and accepted, approved and agreed to by The University of Montana)

(“Party B”)

Part 1. Termination Provisions.

In this Agreement:—

(a) **“Specified Entity”** means in relation to Party A for the purpose of:—

Section 5(a)(v) (Default under Specified Transaction),

Section 5(a)(vi) (Cross Default),

Not applicable.

Section 5(a)(vii) (Bankruptcy),

Not applicable.

Section 5(b)(ii) (Credit Event Upon Merger),

Not applicable.

and in relation to Party B for the purpose of:—

Section 5(a)(v)(Default under Specified Transaction)

Not applicable.

Section 5(a)(vi) (Cross Default),

Not applicable.

Section 5(a)(vii)(Bankruptcy),

Not applicable.

Section 5(b)(ii) (Credit Event Upon Merger)

Not applicable.

(b) **“Specified Transaction”** will have the meaning specified in Section 12 of this Agreement.

- (c) The “**Cross Default**” provisions of Section 5(a)(vi) will apply to Party A and will apply to Party B.

The following provisions apply:—

“**Specified Indebtedness**” will have the meaning specified in Section 12 of this Agreement; provided, however, that Specified Indebtedness shall not include deposits received in the course of Party A’s ordinary banking business. For the purpose of Section 5(a)(vi)(1), any reference to Specified Indebtedness becoming, or becoming capable of being declared, due and payable shall not include indebtedness with respect to which such declaration (or ability to declare) is being contested in good faith by the party (or its Credit Support Provider or relevant Specified Entity) through appropriate action.

“**Threshold Amount**” means (i) with respect to Party A, the lesser of (x) USD _____ or (y) three percent (3%) of Stockholder’s Equity of Party A, and (ii) with respect to Party B, USD _____. For purposes of (i) above, Stockholder’s Equity shall be determined by reference to the relevant party’s most recent consolidated (quarterly, in the case of a U.S. incorporated party) balance sheet and shall include, in the case of a U.S. incorporated party, legal capital, paid-in capital, retained earnings and cumulative translation adjustments. Such balance sheet shall be prepared in accordance with accounting principles that are generally accepted in such party’s country of organization.

The following proviso will be inserted at the end of Section 5(a)(vi) of this Agreement:

“provided, however, that notwithstanding the foregoing, an Event of Default shall not occur under either (1) or (2) above if (a) in the event or condition referred to in (1) or the failure to pay referred to in (2) is a failure to pay caused by an error or omission of an administrative or operational nature; and (b) funds were available to such party to enable it to make the relevant payment when due; and (c) such relevant payment is made within three Business Days following receipt of written notice from an interested party of such failure to pay.”

- (d) The “**Credit Event Upon Merger**” provisions of Section 5(b)(ii) will apply to Party A and will not apply to Party B.

[For purposes of this Agreement Section 5(b)(ii) is hereby amended by:

(i) Inserting after the phrase “Section 5(a)(viii)” the phrase “or any person or entity acquires directly or indirectly the beneficial ownership of equity securities having the power to elect a majority of the Board of Directors of X, any Credit Support Provider of X or any applicable Specified Entity of X, or X, any Credit Support Provider of X or any applicable Specified Entity of X effects any substantial change in its capital structure by means of the issuance, incurrence or guarantee of debt or the issuance of preferred stock or other securities convertible into, or exchangeable for, debt or preferred stock; or X, any Credit Support Provider of X or any applicable Specified Entity of X enters into any agreement providing for any of the forgoing”,

(ii) deleting the word “or” appearing after the words “resulting, surviving” and inserting a comma in lieu thereof, and

(iii) inserting the phrase “, reorganized, burdened or recapitalized” immediately after the word “transferee” the first time it appears therein.]

- (e) The “**Automatic Early Termination**” provisions of Section 6(a) will not apply to Party A and will not apply to Party B; provided, however, that with respect to a party, where the Event of Default specified in Section 5(a)(vii)(1), (3), (4), (5), (6) or to the extent analogous thereto, (8) is governed by a system of law which does not permit termination to take place after the occurrence of the relevant Event of Default, then the Automatic Early Termination provisions of Section 6(a) will apply to such party. Notwithstanding the foregoing, with respect to any Insured Transaction, the “Automatic Early Termination” provision of Section 6(a) shall not apply to Party B unless an Additional Termination Event set forth in Part 1(j)(ix)(a) of this Schedule has occurred.
- (f) **Failure to Pay or Deliver.** Section 5(a)(i) of the Agreement is hereby amended by replacing, in the third line thereof, the word “third” with the word “fifth”.
- (g) **Payments on Early Termination.** For the purpose of Section 6(e) of this Agreement, Market Quotation and the Second Method will apply.
- (h) **Additional Termination Event** will apply. The following shall constitute an Additional Termination Event:—
- (i) Section 5(b) of the Agreement is modified by adding at the end thereof the following subsection (iv):
- (iv) **Impossibility.** Due to the occurrence of a natural or man-made disaster, armed conflict, act of terrorism, riot, labor disruption or any other circumstance beyond its control after the date on which a Transaction is entered into, it becomes impossible (other than as a result of its own misconduct) for such a party:
- (1) to perform any absolute or contingent obligation, to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or
- (2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction.
- For the purposes of Section 6, in the event of an Impossibility, both parties shall be Affected Parties.
- An Impossibility shall be treated as an Illegality for purposes of Section 5(c) of the Agreement.
- (j) **Affected Transactions.** The definition of “Affected Transactions” in Section 12 of the Agreement is hereby amended by inserting “Impossibility,” immediately after “an Illegality,”.
- (j) **Insurer Provisions.** The following provisions shall apply to any Transaction to which the Swap Insurance Policy issued by _____ (“Insurer”), as Credit Support Provider, to the account of Party B, as principal, and for the benefit of Party A, as beneficiary (the “Swap Insurance Policy”), relates (the “Insured Transactions”).
- (i) Notwithstanding anything to the contrary in Section 6(a) of this Agreement, if any:

- (A) Event of Default in respect of any Insured Transaction under Section 5(a) of this Agreement occurs with respect to Party B as the Defaulting Party, except an Event of Default under either of Sections 5(a)(vii) or 5(a)(viii) of this Agreement (but only with respect to the foregoing specified Events of Default if Party B is the Defaulting Party as a result of the occurrence of such events with respect to Insurer as Party B's Credit Support Provider); or
- (B) Termination Event in respect of any Insured Transaction under Section 5(b) of this Agreement occurs with respect to Party B as the Affected Party, except (I) a Termination Event under Section 5(b)(i)(2) of this Agreement with respect to Party B as the Affected Party (but only with respect to the foregoing Termination Event if Party B is the Affected Party as the result of the occurrence of such event with respect to Insurer as Party B's Credit Support Provider), and (II) a Termination Event set forth in Part 1(i)(ix)(a) of this Schedule.

then, in either such case, neither Party A nor Party B shall designate an Early Termination Date in respect of any such Insured Transaction unless:

- (Y) Insurer has failed to pay any payment due to Party A under the terms and conditions of the Swap Insurance Policy; or
 - (Z) Insurer has otherwise consented in writing to such designation.
- (ii) The definition of "Reference Market Makers" set forth in Section 12 of this Agreement shall be amended in its entirety to read as follows:

“Reference Market Makers” means four (4) leading dealers in the relevant swap market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among dealers having an office the greater New York metropolitan area. The rating classification assigned to any outstanding long-term senior debt securities issued by such dealers shall be at least (x) “Aa3” or higher as determined by Moody’s (2) “AA-” or higher as determined by S&P or (3) an equivalent investment grade rating determined by a nationally-recognized rating service acceptable to both parties and Insurer; provided, however, that, in any case, if Market Quotations cannot be determined by four (4) such dealers, the party making the determination of the Market Quotation may designate, with the consent of the other party and Insurer, one (1) or more leading dealer whose long-term senior debt bears a lower investment grade rating.
 - (iii) Section 8(b) of this Agreement is hereby amended by adding the phrase “and their respective Credit Support Providers” following after the word “parties” in the second line thereof.
 - (iv) No amendment, modification, supplement or waiver of this Agreement will be effective unless in writing and signed by each of the parties hereto and unless the parties hereto shall have obtained the prior written consent of Insurer.
 - (v) Notwithstanding anything in this Agreement, if any Event of Default under Section 5(a) of this Agreement occurs with respect to Party B as the Defaulting Party or any Termination Event under Section 5(b) of this Agreement occurs with respect to Party B as the Affected Party, then Insurer (unless Insurer has failed to meet its payment obligations under the Swap Insurance Policy and such failure has not been cured) shall have the right (but not the obligation) upon notice to Party A to designate an Early Termination Date with respect to Party B with the same effect as if such designation were

made by Party A. For purposes of the foregoing sentence, an Event of Default with respect to Party B shall be considered to be continuing, notwithstanding any payment by the Insurer under the Swap Insurance Policy. Party A and Party B acknowledge that, except as the Swap Policy may be otherwise endorsed, unless the Swap Insurer designates an Early Termination Date (as opposed to merely consenting to such designation by one of the parties), payments due from Party B as a result of the occurrence of an Early Termination Date will not be insured.

- (vi) Party A and Party B hereby each acknowledge and agree that Insurer shall be an express third-party beneficiary (and not merely an incidental third-party beneficiary) of this Agreement and the obligations of such party under any Insured Transaction, and as such, entitled to enforce this Agreement and the terms of any Insured Transaction against such party on its own behalf and/or on behalf of the holders of the related bonds and otherwise shall be afforded all remedies available hereunder or otherwise afforded by law against the parties hereto to redress any damage or loss incurred by Insurer including but not limited to, fees (including professional fees), costs and expenses incurred by Insurer which are related to, or resulting from any breach by such party of its obligations hereunder.
- (vii) Notwithstanding Section 7 of this Agreement, no Insured Transaction may be assigned or transferred by either Party A or Party B without the prior written consent of Insurer.
- (viii) Party A and Party B hereby acknowledge that to the extent of payments made by Insurer to Party A under the Swap Insurance Policy, Insurer shall be fully subrogated to the rights of Party A against Party B under the Insured Transaction to which such payments relate including, but not limited to, the right to receive payment from Party B, the enforcement of any remedies and the recovery of all reasonable out-of-pocket expenses, including, but not limited to, the costs of collection. Party A hereby agrees to assign to Insurer its right to receive payment from Party B under any Insured Transaction to the extent of any payment thereunder by Insurer to Party A and to execute all such instruments or agreements as Insurer deems reasonably necessary to effect such assignment. Party B hereby acknowledges and consents to the assignment by Party A to Insurer of any rights and remedies that Party A has under any Insured Transaction or any other document executed in connection herewith.
- (ix) ***Additional Termination Event*** will apply.

(a) The following shall constitute Additional Termination Events in respect of Party B (the consent of Insurer as set forth in Part 1(i)(i)(B) of this Schedule is not required in order for Party A to terminate this Agreement and each Insured Transaction entered into pursuant hereto pursuant to the following Additional Termination Events):-

- (I) Insurer fails to meet its payment obligations under the Swap Insurance Policy and such failure is continuing with respect to Insurer under the Swap Insurance Policy; provided, however, that, in any such case,
 - (X) an Event of Default has occurred or is continuing with respect to Party B as the Defaulting Party; or
 - (Y) a Termination Event has occurred or is continuing with respect to Party B; or
 - (Z) Party B has either (1) no issues of rated senior debt or (2) one or more outstanding issues of rated senior debt, but it fails to have at least one of such issues with an unenhanced rating (disregarding any insurance or

other support with respect to such debt) of at least (i) “Baa2” as determined by Moody’s, (ii) “BBB” as determined by S&P, (iii) “BBB” as determined by Fitch, or (iv) if none of Moody’s, S&P and Fitch are then rating Party B, an equivalent rating determined by a nationally-recognized ratings service acceptable to both parties.

For the purpose of the foregoing Termination Event, the Affected Party shall be Party B.

(II) Insurer fails to maintain either:

(A) a financial strength rating of at least “A3” from Moody’s; or

(B) a claims paying ability rating of at least “A-” from S&P;

provided, however, that in any such case, either

(X) an Event of Default has occurred and is continuing with respect to Party B as the Defaulting Party;

(Y) a Termination Event has occurred and is continuing with respect to Party B as the Affected Party; or

(Z) Party B has either (1) no issues of rated senior debt or (2) one or more outstanding issues of rated senior debt, but it fails to have at least one of such issues with an unenhanced rating (disregarding any insurance or other support with respect to such debt) of at least (i) “Baa2” as determined by Moody’s, (ii) “BBB” as determined by S&P, (iii) “BBB” as determined by Fitch, or (iv) if none of Moody’s, S&P and Fitch are then rating Party B, an equivalent rating determined by a nationally-recognized ratings service acceptable to both parties.

For the purpose of the foregoing Termination Event, the Affected Party shall be Party B.

(b) The following shall constitute an Additional Termination Event in respect of Party A (the consent of Insurer as set forth in Part 1(i)(i)(B) of this Schedule is required in order for Party B to terminate this Agreement pursuant to the following Additional Termination Event):—

Party A has one or more outstanding issues of rated unsecured, unenhanced senior debt and none of such issues has a rating of at least (i) _____ or higher as determined by Moody’s, (ii) “BBB” or higher as determined by S&P, (iii) _____ as determined by Fitch, or (iv) if none of Moody’s, S&P and Fitch are then rating Party A, an equivalent rating determined by a nationally-recognized ratings service acceptable to both parties.

For the purpose of the foregoing Termination Event, the Affected Party shall be Party A.

(x) Notwithstanding Section 6 of this Agreement, any designation of an Early Termination Date in respect of the Insured Transactions by Insurer or by Party A with the consent of Insurer pursuant to paragraph (i) above shall apply only to the Insured Transactions and not to any other Transaction under this Agreement, unless Party A shall designate an Early Termination Date in respect of such other Transaction. Nothing contained in this paragraph (x) shall affect the rights of Party A under this Agreement to designate an Early Termination Date in respect of any Transaction other than the Insured Transactions, which designation shall not apply to the Insured Transactions unless expressly provided in such designation and unless Insurer shall have designated, or consented to the designation by Party A of, an

Early Termination Date in respect of the Insured Transactions in accordance with paragraph (i) above.

- (xi) Notwithstanding Section 2(c) of this Agreement, in no event shall either Party A or Party B be entitled to net its payment obligations in respect of the Insured Transactions against the payment obligations of the other party in respect of other Transactions under this Agreement if such Transactions are not Insured Transactions, nor may either Party A or Party B net the payment obligations of the other party under Transactions that are not Insured Transactions against the payment obligations of such party under Insured Transactions, it being the intention of the parties that their payment obligations under Insured Transactions be treated separate and apart from all other Transactions. Section 6(e) of this Agreement shall apply to all Insured Transactions with the same effect as if the Insured Transactions constituted a single master agreement. Notwithstanding Section 6(e) of this Agreement, the amount payable under Section 6(e) of this Agreement upon the termination of any Insured Transaction shall be determined without regard to any Transactions other than the Insured Transactions, it being the intention of the parties that their payment obligations under the Insured Transactions be treated separate and apart from all other Transactions unless otherwise specified in such other Transaction and agreed to in writing by Insurer.
- (xii) None of the rights and obligations of Insurer with respect to the Insured Transactions shall affect the rights and obligations of the parties hereto pursuant to any Transaction that is not an Insured Transaction.
- (xiii) [The “Credit Event Upon Merger” provisions of Section 5(b)(ii) will apply to Party A but not to Party B or with respect to Insurer as Party B’s Credit Support Provider.]
- (xiv) Notice of any Change of Account under Section 2(b) shall be delivered or given to Insurer.
- (xv) No Transfer under Section 7 of an Insured Transaction may occur without the prior written consent of Insurer, and, in the case of transfer by Party A, such consent will not be unreasonably withheld.
- (xvi) Pursuant to Section 8(c) of this Agreement, all obligations of the parties will survive the termination of any Insured Transaction or the term of this Agreement so long as amounts owed under the Swap Insurance Policy remain outstanding.
- (xvii) ***Agreement to Deliver Documents.***

| Party required to Deliver Document | <u>Form/Document/Certificate</u> | <u>Date by which to be delivered</u> | <u>Covered by Section 3(d) Representation</u> |
|------------------------------------|---|---------------------------------------|---|
| Party B | Swap Insurance Policy | Upon the Execution of this Agreement. | No |
| Party B | Opinion of Insurer Counsel with respect to the Policy | Upon the Execution of this Agreement. | No |

- (xviii) ***Notices.*** For the purposes of Section 10(a) of this Agreement, for each Insured Transaction, a copy of all notices or communications to Party A or Party B shall also be sent to Insurer at:

Address: _____

Attention: _____

Facsimile No.: _____ Telephone No.: _____

In each case in which notice or other communication refers to an Event of Default or Termination Event, then a copy of such notice or other communication shall also be sent to the attention of the General Counsel and shall be marked to indicate "URGENT MATERIAL ENCLOSED."

- (xix) **Opinions.** All opinions delivered with respect to an Insured Transaction pursuant to Section 4(a) of this Agreement shall also be delivered to Insurer at the address set forth in Section 10(a) of this Agreement.
- (xx) Party B agrees to reimburse Insurer immediately and unconditionally upon demand for all reasonable expenses incurred by Insurer in connection with the issuance of the Swap Insurance Policy and the enforcement by Insurer of Party B's obligations under this Agreement and any other documents executed in connection with the execution and delivery of this Agreement, including, but not limited to, fees (including professional fees), costs and expenses incurred by Insurer which are related to, or resulting from any breach by Party B of its obligations hereunder.
- (xxi) Party A and Party B hereby each acknowledge and agree that Insurer's obligation with respect to Insured Transactions shall be limited to the terms of the Swap Insurance Policy. Notwithstanding Section 2(d) or any other provision of this Agreement, Insurer shall not have any obligation to pay interest on any amount payable by Party B under this Agreement.
- (xxii) Notwithstanding Section 2(a)(iii) of this Agreement, Party A shall not suspend any payments due under an Insured Transaction under Section 2(a)(iii) unless Insurer is in default in respect of any payment obligations under the Swap Insurance Policy.
- (xxiii) Each party agrees that each of its representations and agreements in this Agreement is expressly made to and for the benefit of Insurer.
- (xxiv) In no event shall either Party A or Party B be entitled to:
 - (A) set off its payment obligations in respect of an Insured Transaction against the payment obligations of the other party (whether by counterclaim or otherwise) if such obligations are not Insured Transactions, or
 - (B) net the payment obligations of the other party that are not with respect to Insured Transactions against the payment obligations of such party under Insured Transactions,it being the intention of the parties that their payment obligations under Insured Transactions be treated separate and apart from all other obligations. Notwithstanding Section 6(e) of this Agreement, the amount payable under Section 6(e) of this Agreement upon the termination of any Insured Transaction shall be determined without regard to any obligation other than those under the Insured Transactions, it being the intention of the parties that their payment obligations under the Insured Transactions be treated separate and apart from all other obligations unless otherwise specified in such other obligation and agreed to in writing by Insurer.
- (k) **Delivery of Collateral.** Each of Party A and Party B shall deliver collateral in order to secure its obligations under this Agreement and each Transaction hereunder, if required in accordance with

the terms and provisions of the ISDA Credit Support Annex attached hereto as Exhibit D and incorporated by reference herein.

Part 2. Agreement to Deliver Documents.

For the purpose of Section 4(a) of this Agreement, each party agrees to deliver the following documents, as applicable:—

| <u>Party required to deliver document</u> | <u>Form/Document/Certificate</u> | <u>Date by which to be Delivered</u> | <u>Covered by Section 3(d)</u> |
|---|---|--|--------------------------------|
| Party A | An opinion of counsel to Party A substantially in the form of Exhibit B to this Schedule. | Promptly after execution of this Agreement. | Yes |
| Party B | An opinion of counsel to Party B in the form of Exhibit C to this Schedule. | Prior to the execution of this Agreement and, with respect to each Transaction, prior to the execution of such Transaction. | Yes |
| Party B | Evidence reasonably satisfactory to Party A of the (i) authority of Party B to enter into the Agreement and any Transactions and (ii) the authority and genuine signature of the individual signing the Agreement on behalf of Party B to execute the same. | Prior to the execution of this Agreement and, with respect to each Transaction, prior to the execution of such Transaction. | Yes |
| Party B | A certified copy of the resolution or resolutions (or the equivalent thereof) of the governing body of Party B, certified by an appropriate official of Party B, pursuant to which Party B is authorized to enter into this Agreement and each Transaction. | Prior to the execution of this Agreement and, with respect to each Transaction, prior to the execution of such Transaction. | Yes |
| Party A | Party A's audited consolidated financial statements certified by independent certified public accountants for each fiscal year. Party B's Annual Bond Audit Report | As soon as available and in any event within 150 days (or as soon as practicable after becoming publicly available) after the end of each of its fiscal years. | Yes |
| Party A | Such party's unaudited consolidated financial statements, the consolidated balance sheet and related statements of income for each fiscal quarter. | As soon as available and in any event within 60 days (or as soon as practicable after becoming publicly available) after the end of each of its fiscal quarters. | Yes |

| <u>Party required to deliver document</u> | <u>Form/Document/Certificate</u> | <u>Date by which to be Delivered</u> | <u>Covered by Section 3(d)</u> |
|---|--|---|--------------------------------|
| Party B | An executed copy of the Covered Indenture. | Prior to the execution of this Agreement and, with respect to each Transaction, prior to the execution of such Transaction. | Yes |

Part 3. Miscellaneous.

- (a) **Addresses for Notices.** For the purpose of Section 10(a) to this Agreement:—

Address for notices or communications to Party A:—

Address: _____

Attention: _____

Facsimile No: _____

Telephone No.: _____

Address for notices or communications to Party B:—

Address: _____

Attention: _____

Facsimile No.: _____

Telephone No.: _____

With a copy to:

Attention: _____

Facsimile No.: _____

Telephone No.: _____

- (b) **Calculation Agent.** The Calculation Agent is Party A, unless otherwise specified in a Confirmation in relation to the relevant Transaction.

- (c) **Credit Support Document.** Details of any Credit Support Document:—

In the case of Party A, the ISDA Credit Support Annex attached hereto as Exhibit D and incorporated by reference herein.

- (d) In the case of Party B, the Covered Indenture, the Swap Insurance Policy and the ISDA Credit Support Annex attached hereto as Exhibit D and incorporated by reference herein.

- (e) **Credit Support Provider.** Credit Support Provider means in relation to Party A: not applicable. Credit Support Provider means in relation to Party B, Insurer and any successor thereto.

- (f) **Governing Law.** THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO CHOICE OF LAW DOCTRINE.
- (g) **Netting of Payments.** Subparagraph (ii) of Section 2(c) of this Agreement will not apply to all Transactions.
- (h) **"Affiliate"** will have the meaning specified in Section 12 of this Agreement, provided, however that with regard to Party A, the term "Affiliate" shall not include any entity that controls or is under common control with _____.
- (i) **"Covered Indenture"** means the Series A 1993 Restated and Supplemental Indenture of Trust, dated as of October 15, 1993, by and between Party B and U.S. Bank National Association, as amended and supplemented prior to the date hereof in accordance with the terms thereof (including by and pursuant to the Series J 2005 Eighth Supplemental Indenture of Trust) and as amended and supplemented following the date hereof in accordance with the terms hereof and thereof.
- (j) **"Covered Indenture Incorporation Date"** means the date of this Agreement.

Part 4. Other Provisions.

(a) Representations.

(i) Section 3 of this Agreement is hereby amended by adding the following subsection "(e)" thereto, which subsection shall only apply to Party B:—

"(e) **Non-Speculation.** This Agreement has been, and each Transaction hereunder will be (and, if applicable, has been), entered into for purposes of managing its borrowings or investments, hedging its underlying assets or liabilities or in connection with its line of business (including financial intermediation services) or the financing of its business and not for purposes of speculation."

(b) Agreements.

(i) The introductory clause of Section 4 of this Agreement is hereby amended to read in its entirety as follows:—

"Each party agrees with the other (or, in the case of Section 4(d) and (e), Party B agrees with Party A) that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:—".

(ii) Section 4 of this Agreement is hereby amended by adding the following subsections "(d)" and "(e)" thereto:—

"(d) **Compliance with Covered Indenture.** Party B will observe, perform and fulfill each provision in Article ___ and Article ___ of the Covered Indenture applicable to Party B in effect on the Covered Indenture Incorporation Date, as any of those provisions may be amended, supplemented or modified for purposes of this Agreement with the prior written consent of the other party hereto (the "Incorporated Provisions"), with the effect that such other party hereto will have the benefit of each of the Incorporated Provisions (including without limitation, covenants, right to consent to certain actions subject to consent under the Covered Indenture and delivery of financial statements and other notices and information); provided, however, that Party A shall not

be entitled to exercise any of the rights and remedies granted exclusively to Insurer, nor shall Party A's rights hereunder be construed to limit Insurer's rights and remedies under the Incorporated Provisions (or to require Party A's consent to any action taken by Insurer in accordance with the Incorporated Provisions). In the event the Covered Indenture ceases to be in effect prior to the termination of this Agreement, the Incorporated Provisions (other than those provisions requiring payments in respect of bonds, notes, warrants or other similar instruments issued under the Covered Indenture) will remain in full force and effect for purposes of this Agreement as though set forth herein until such date on which all of the obligations of Party B under this Agreement and any obligations of Party B or any Credit Support Provider _____ under a Credit Support Document have been fully satisfied. The Incorporated Provisions are hereby incorporated by reference and made a part of this Agreement to the same extent as if such provisions were set forth herein. For purposes of this Agreement, the Incorporated Provisions shall be construed as though (i) all references therein to any party making loans, extensions of credit or financial accommodations thereunder or commitments therefor (the "Financings") were to the other party hereto and (ii) to the extent that such Incorporated Provisions are conditioned on or relate to the existence of such Financings or Party B having any obligations in connection therewith, all references to such Financings or obligations were to the obligations of Party B under this Agreement. Any amendment, supplement, modification or waiver of any of the Incorporated Provisions without the prior written consent of the other party hereto shall have no force and effect with respect to this Agreement. Any amendment, supplement or modification for which such consent is obtained shall be part of the Incorporated Provisions for purposes of this Agreement.

(e) ***Security and Source of Payment of Party B's Obligations.*** The obligations of Party B under this Agreement and each Transaction hereunder are special, limited revenue obligations of Party B secured and payable on a parity with Outstanding Bonds (as defined and described in the Covered Indenture) solely from the Net Pledged Revenues (as defined in the Covered Indenture; provided, however, that any Termination Payment required to be paid by Party B under and pursuant to this Agreement shall be in all respect and at all times be subordinate to payment of the Debt Service Requirements (as defined in the Covered Indenture) of the Outstanding Bonds from the Net Pledged Revenues and shall be subject and subordinate to the pledge and lien of the Net Pledged Revenues pledged for payment of Outstanding Bonds. Party A's agreement to this provision shall not in any manner limit or excuse the Insurer from its obligations to Party A under the Credit Support Document.

(c) Definitions. Section 12 of this Agreement is hereby amended to add the following definitions in their appropriate alphabetical order:—

“***Covered Indenture***” has the meaning specified in the Schedule.”

“***Covered Indenture Incorporation Date***” has the meaning specified in the Schedule.”

Miscellaneous:

(d) This Agreement is hereby amended by adding the following Section “13” hereto:—

“13. Relationship Between Parties

Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):—

(a) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper

for it based upon its own judgment and upon advice from such advisors as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. It has not received from the other party any assurance or guarantee as to the expected results of that Transaction.

(b) Assessment and Understanding. It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is also capable of assuming, and assumes, the risks of that Transaction.

(c) Status of Parties. The other party is not acting as a fiduciary for or as an advisor to it in respect of that Transaction.”

(e) **Set-off.** Section 6 of the Agreement is amended by adding the following new subsection 6(f):

(f) In addition to any rights of set-off a party may have as a matter of law or otherwise, upon the occurrence of an Event of Default with respect to a party ("X") the other party ("Y") will have the right (but will not be obliged) without prior notice to X or any other person to set-off any obligation of X owing to Y (whether or not arising under this Agreement, whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation) against any obligation of Y owing to X (whether or not arising under this Agreement, whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation).

For the purpose of cross-currency set-off, Y may convert any obligation to another currency at a market rate determined by Y.

If an obligation is unascertained, Y 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 provision will be deemed to create a charge or other security interest.

(f) **Waiver of Right to Trial by Jury.** Each party hereby irrevocably waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Agreement or any Credit Support Document. Each party (i) certifies that no representative, agent or attorney of the other party or any Credit Support Provider has represented, expressly or otherwise, that such other party would not, in the event of such a suit, action or proceeding, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other party have been induced to enter into this Agreement and provide for any Credit Support Document, as applicable, by, among other things, the mutual waivers and certifications in this section.

(g) **Severability.** In the event that any one or more of the provisions contained in this Agreement should be held invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby; provided, however, that this severability provision will not be applicable if any provision of Section 1(c), 2, 5, or 6 is held to be invalid or unenforceable. The parties shall endeavor, in good faith negotiations, to replace the invalid, illegal or unenforceable provisions

with valid provisions, the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provisions.

- (h) **Additional Representations.** For purposes of Section 3 of this Agreement, the following shall be added, immediately following paragraph (e) thereof:

“(f) **No Agency.** It is entering into this Agreement, any Credit Support Document to which it is a party, each Transaction, and any other documentation relating to this Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise).

(g) **Due Execution.** The individual(s) executing and delivering this Agreement and any other documentation (including any Credit Support Document and each Confirmation) relating to this Agreement to which it is a party or that it is required to deliver are duly empowered and authorized to do so, and it has duly executed and delivered this Agreement, each Confirmation and any Credit Support Document to which it is a party.

(h) **Eligible Contract Participant.** It is an “eligible contract participant” within the meaning of Section 1a(12) of the Commodity Exchange Act, as amended.”

- (i) **Acknowledgments.** Each party acknowledges that:

(i) the proprietary trading and other activities and transactions of the other party and its Affiliates, including risk management transactions entered into or to be entered into in connection with, or in anticipation of, the establishment, maintenance or termination of a particular Transaction, may affect the level of a market price, rate or index underlying a Transaction, the price and terms on which such other party or other dealers are willing to enter into or unwind or terminate a Transaction and the valuations provided by such other party;

(ii) the “indicative” or “midmarket” valuations of a Transaction provided to it by the other party from time to time may not represent (1) the price at which a new Transaction may be entered into, (2) the price at which the Transaction may be liquidated or unwound, (3) the price at which the Transaction is or would be carried on such other party’s books; (4) the price at which a similar Transaction might be available from another dealer in the market or (5) the calculation or estimate of an amount that would be payable following the designation of an Early Termination Date under Section 6(e) or otherwise of this Agreement;

(iii) (1) absent an express written agreement to the contrary, neither party has undertaken an obligation to unwind or terminate a Transaction prior to its scheduled termination date and (2) the provision by a party of a valuation or indicative unwind price does not constitute an undertaking to unwind or terminate any Transaction at that price unless the party providing such price expressly so indicates in connection with the provision of such price;

(iv) (1) neither party has undertaken an obligation to quote a price or terms for entering into or unwinding or terminating a Transaction prior to its scheduled termination date, (2) if a party provides such a quote, the price or other terms provided may not be the most favorable price or terms available in the market and (3) except as expressly agreed in writing, the price and terms on which a Transaction is entered into or unwound or terminated have been or will be individually negotiated and no representations or warranties are given with respect to such price or terms;

(v) the parties are dealing at arm’s-length and neither party is acting as a fiduciary or financial, investment, trading or other adviser for the other party;

(vi) it assumes sole responsibility for (1) evaluating and understanding all of the terms, conditions and risks (economic and otherwise) of this Agreement, any Credit Support Document,

each Transaction and any other documentation relating to this Agreement and (2) determining (x) the suitability or appropriateness thereof in light of its circumstances, (y) the extent to which it is necessary or appropriate to consult with its own legal, regulatory, tax, business, investment, financial, and accounting advisers or to obtain additional information or analyses, and (z) whether the rates, prices or amounts and other terms of each Transaction and the indicative quotations (if any) provided by the other party are acceptable to it in light of relevant factors, including rates, prices, amounts or other terms available in the relevant market; and

(vii) each party is entering into, and determining its responsibilities in connection with, this Agreement, any Credit Support Document and each Transaction in reliance upon the accuracy of the representations and acknowledgments of the other party contained in this Agreement, any Credit Support Document, each Confirmation and any other documentation relating to this Agreement.

- (j) **Section 6(e)(iii).** Section 6(e)(iii) of this Agreement shall be amended to include the following sentences after the existing sentence:

“In addition to and notwithstanding anything to the contrary in the preceding sentence of this Section 6(e)(iii), if an Early Termination Date is deemed to have occurred under Section 6(a) as a result of Automatic Early Termination, the Defaulting Party hereby agrees to indemnify the Non-Defaulting Party on demand against all loss or damage that the Non-Defaulting Party may sustain or incur in respect of each Transaction as a result of movement in interest rates, currency exchange rates or market quotations between the Early Termination Date and the date (the “Determination Date”) upon which the Non-Defaulting Party obtains the information confirming the existence of the Event of Default leading to the deemed Early Termination Date under Section 6(a) that has been derived from reasonably reliable source of information, including publicly available information, such as Telerate, Reuters, Financial Times and The Wall Street Journal.

If the Non-Defaulting Party shall determine that it would gain or benefit from the movement in interest rates, currency exchange rates or market quotations between the Early Termination Date and the Determination Date, the amount of such gain or benefit shall be deducted from the amount payable by the Defaulting Party pursuant to Section 6(e)(i)(4).

The Determination Date shall be a date not later than the date upon which creditors generally of the Defaulting Party are notified of the occurrence of the Event of Default leading to the deemed Early Termination Date.”

- (k) **Confirmation Procedures.** For each Transaction that Party A and Party B enter into hereunder, Party A shall promptly send to Party B a Confirmation in the form of Exhibit A hereto setting forth the terms of such Transaction. Party B shall execute and return the Confirmation to Party A or request correction of any error within five Business Days of receipt. Failure of Party B to respond within such period shall not affect the validity or enforceability of such Transaction and shall be deemed to be an affirmation and acceptance of such terms.

The parties executing this Schedule have executed the Master Agreement and have agreed as to the contents of this Schedule.

By: _____

Title: _____

The Board of Regents of Higher Education
for the State of Montana

By: _____

Title: _____

Accepted and Approved:

Montana State University

By: _____

Title: _____

EXHIBIT A to Schedule
Form of Confirmation

[Date]

TRANSACTION

The Board of Regents of Higher Education
for the State of Montana
2500 Broadway
Helena, Montana 59620

The University of Montana
Office of the Vice President for Administration and Finance
University Hall, Room 129
Missoula, Montana 59812

Ladies and Gentlemen:

The purpose of this letter agreement is to set forth the terms and conditions of the Transaction entered into between us on the Trade Date specified below (the "Transaction"). This letter agreement constitutes a "Confirmation" as referred to in the Master Agreement specified below.

The definitions and provisions contained in the 1992 ISDA U.S. Municipal Counterparty Definitions (as published by the International Swaps and Derivatives Association, Inc.) (the "Definitions"), are incorporated into this Confirmation. In the event of any inconsistency between those Definitions and this Confirmation, this Confirmation will govern.

1. This Confirmation supplements, forms part of, and is subject to the Master Agreement dated as of _____, 2005 (the "Agreement") between you and us. All provisions contained in the Agreement govern this Confirmation except as expressly modified below.

2. The terms of the particular Transaction to which this Confirmation relates are as follows:—

Party A:

Party B:

[Notional Amount:]

Trade Date:

Effective Date:

Termination Date:

FIXED AMOUNTS:

Fixed Rate Payer:

[Party A/B]

[Fixed Rate Payer
Currency Amount:]

Fixed Rate Payer Payment Dates [or,
Period End Dates, if Delayed Payment
or Early Payment applies]:

[], subject to adjustment in accordance with the
[Following/Modified Payment or [Following/Preceding]
Business convention, with respect to a _____
Banking Day and a _____ Banking
Day [with No Adjustment of Period End Dates]

[Fixed Amount:]

Fixed Rate:

Fixed Rate Day Count Fraction:

FLOATING AMOUNTS:

Floating Rate Payer:

[Party B/A]

[Floating Rate Payer
Currency Amount:]

Floating Rate Payer Payment Dates [or,
Period End Dates, if Delayed Payment
or Early Payment applies]:

[], subject to adjustment in accordance with the
[Following/Modified Payment or [Following/Preceding]
Business convention, with respect to a _____
Banking Day and a _____ Banking Day [with
No Adjustment of Period End Dates]

Floating Rate for initial Calculation
Period:

Floating Rate Option:

Designated Maturity:

Floating Rate Spread: [plus/minus] % p.a.

Floating Rate Day Count Fraction:

Reset Dates:

[Rate Cut-off Dates:]

[Method of Averaging: Unweighted/Weighted Average Rate]

Compounding: Applicable/Inapplicable

[Compounding Dates:]

[Initial Exchange:

Initial Exchange Date:

Party A Initial Exchange Amount:

Party B Initial Exchange Amount:

Final Exchange:

Final Exchange Date:

Party A Final Exchange Amount:

Party B Final Exchange Amount:]

Calculation Agent:

3. Account Details

Payments to Party A

Account for payments in [first currency]: []

Account for payments in [second currency]: []

Payments to Party B

Account for payments in [first currency]: []

Account for payments in [second currency]: []

4. Offices

The Office of Party B for the Transaction is [.]

5. [Broker/Arranger:]

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing the copy of this Confirmation enclosed for that purpose and returning it to us.

Yours sincerely,

By: _____

Name: _____

Title: _____

Confirmed as of the
date first written

The University of Montana, acting for itself and
The Board of Regents of Higher Education
for the State of Montana

By: _____

Name: _____

Title: _____