

THE FOREIGN EXCHANGE COMMITTEE  
in association with  
THE BRITISH BANKERS' ASSOCIATION  
and  
THE CANADIAN FOREIGN EXCHANGE COMMITTEE  
and  
THE TOKYO FOREIGN EXCHANGE MARKET PRACTICES COMMITTEE

THE 1997  
INTERNATIONAL CURRENCY OPTIONS MARKET (ICOM)  
MASTER AGREEMENT

# International Currency Options Market Master Agreement (1997)

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INTERNATIONAL CURRENCY OPTIONS MARKET (ICOM)  
MASTER AGREEMENT

MASTER AGREEMENT dated as of \_\_\_\_\_, \_\_\_\_\_, by and between  
\_\_\_\_\_,  
a \_\_\_\_\_, and  
\_\_\_\_\_,  
a \_\_\_\_\_.

SECTION 1. DEFINITIONS

Unless otherwise required by the context, the following terms shall have the following meanings in the Agreement:

"Agreement" has the meaning given to it in Section 2.2.

"American Style Option" means an Option which may be exercised on any Business Day up to and including the Expiration Time.

"Base Currency", as to a Party, means the Currency agreed to as such in relation to it in Part VII of the Schedule.

"Business Day" means for purposes of: (i) Section 3.2, a day which is a Local Banking Day for the applicable Designated Office of the Buyer; (ii) Section 5.1 and the definition of American Style Option, a day which is a Local Banking Day for the applicable Designated Office of the Seller; (iii) clauses (i), (viii) and (xii) of the definition of Event of Default, a day which is a Local Banking Day for the Non-Defaulting Party; (iv) solely in relation to delivery of a Currency, a day which is a Local Banking Day in relation to that Currency; and (v) any other provision of the Agreement, a day which is a Local Banking Day for the applicable Designated Offices of both Parties; provided, however, that neither Saturday nor Sunday shall be considered a Business Day for any purpose.

"Buyer" means the owner of an Option.

"Call" means an Option entitling, but not obligating (except upon exercise), the Buyer to purchase from the Seller at the Strike Price a specified quantity of the Call Currency.

"Call Currency" means the Currency agreed to as such at the time an Option is entered into, as evidenced in a Confirmation.

"Close-Out Date" means a day on which, pursuant to the provisions of Section 8.1, the Non-Defaulting Party closes out Options or such close-out occurs automatically.

"Confirmation" means a writing (including telex, facsimile or other electronic means from

which it is possible to produce a hard copy) evidencing an Option, and specifying:

- (i) the Parties thereto and the Designated Offices through which they are respectively acting,
- (ii) whether the Option is a Call or a Put,
- (iii) the Call Currency and the Put Currency that are the subject of the Option and their respective quantities,
- (iv) which Party is the Seller and which is the Buyer,
- (v) the Strike Price,
- (vi) the Premium and the Premium Payment Date,
- (vii) the Expiration Date,
- (viii) the Expiration Time,
- (ix) whether the Option is an American Style Option or a European Style Option, and
- (x) such other matters, if any, as the Parties may agree.

"Credit Support" has the meaning given to it in Section 8.2.

"Credit Support Document", as to a Party (the "first Party"), means a guaranty, hypothecation agreement, margin or security agreement or document, or any other document containing an obligation of a third party ("Credit Support Provider") or of the first Party in favor of the other Party supporting any obligations of the first Party under the Agreement.

"Credit Support Provider" has the meaning given to it in the definition of Credit Support Document.

"Currency" means money denominated in the lawful currency of any country or the Ecu.

"Currency Pair" means the two Currencies which potentially may be exchanged upon the exercise of an Option, one of which shall be the Put Currency and the other the Call Currency.

"Custodian" has the meaning given to it in the definition of Insolvency Proceeding.

"Defaulting Party" has the meaning given to it in the definition of Event of Default.

"Designated Office(s)", as to a Party, means the office or offices specified in Part II of the Schedule.

"Effective Date" means the date of this Master Agreement.

"European Style Option" means an Option for which Notice of Exercise may be given only on the Option's Expiration Date up to and including the Expiration Time, unless otherwise agreed.

"Event of Default" means the occurrence of any of the following with respect to a Party (the "Defaulting Party", the other Party being the "Non-Defaulting Party"):

(i) the Defaulting Party shall (A) default in any payment when due under the Agreement (including, but not limited to, a Premium payment) to the Non-Defaulting Party with respect to any Option and such failure shall continue for two (2) Business Days after the Non-Defaulting Party has given the Defaulting Party written notice of non-payment, or (B) fail to perform or comply with any other obligation assumed by it under the Agreement and such failure is continuing thirty (30) days after the Non-Defaulting Party has given the Defaulting Party written notice thereof;

(ii) the Defaulting Party shall commence a voluntary Insolvency Proceeding or shall take any corporate action to authorize any such Insolvency Proceeding;

(iii) a governmental authority or self-regulatory organization having jurisdiction over either the Defaulting Party or its assets in the country of its organization or principal office (A) shall commence an Insolvency Proceeding with respect to the Defaulting Party or its assets or (B) shall take any action under any bankruptcy, insolvency or other similar law or any banking, insurance or similar law or regulation governing the operation of the Defaulting Party which may prevent the Defaulting Party from performing its obligations under the Agreement as and when due;

(iv) an involuntary Insolvency Proceeding shall be commenced with respect to the Defaulting Party or its assets by a person other than a governmental authority or self-regulatory organization having jurisdiction over either the Defaulting Party or its assets in the country of its organization or principal office and such Insolvency Proceeding (A) results in the appointment of a Custodian or a judgment of insolvency or bankruptcy or the entry of an order for winding-up, liquidation, reorganization or other similar relief, or (B) is not dismissed within five (5) days of its institution or presentation;

(v) the Defaulting Party is bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to it;

(vi) the Defaulting Party fails, or shall otherwise be unable, to pay its debts as they become due;

(vii) the Defaulting Party or any Custodian acting on behalf of the Defaulting Party shall disaffirm, disclaim or repudiate any Option;

(viii) any representation or warranty made or given or deemed made or given by the Defaulting Party pursuant to the Agreement or any Credit Support Document shall prove to have been false or misleading in any material respect as at the time it was made or given or deemed made or given and one (1) Business Day has elapsed after the Non-Defaulting Party has given the Defaulting Party written notice thereof;

(ix) the Defaulting Party consolidates or amalgamates with or merges into or transfers all or substantially all its assets to another entity and (A) the creditworthiness of the resulting, surviving or

transferee entity is materially weaker than that of the Defaulting Party prior to such action, or (B) at the time of such consolidation, amalgamation, merger or transfer the resulting, surviving or transferee entity fails to assume all the obligations of the Defaulting Party under the Agreement by operation of law or pursuant to an agreement satisfactory to the Non-Defaulting Party;

(x) by reason of any default, or event of default or other similar condition or event, any Specified Indebtedness (being Specified Indebtedness of an amount which, when expressed in the Currency of the Threshold Amount, is in aggregate equal to or in excess of the Threshold Amount) of the Defaulting Party or any Credit Support Provider in relation to it: (A) is not paid on the due date therefor and remains unpaid after any applicable grace period has elapsed, or (B) becomes, or becomes capable at any time of being declared, due and payable under agreements or instruments evidencing such Specified Indebtedness before it would otherwise have been due and payable;

(xi) the Defaulting Party is in breach of or default under any Specified Transaction and any applicable grace period has elapsed, and there occurs any liquidation or early termination of, or acceleration of obligations under, that Specified Transaction or the Defaulting Party (or any Custodian on its behalf) disaffirms, disclaims or repudiates the whole or any part of a Specified Transaction;

(xii) (A) any Credit Support Provider of the Defaulting Party or the Defaulting Party itself fails to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with the applicable Credit Support Document and such failure is continuing after any applicable grace period has elapsed; (B) any Credit Support Document relating to the Defaulting Party expires or ceases to be in full force and effect prior to the satisfaction of all obligations of the Defaulting Party under the Agreement, unless otherwise agreed in writing by the Non-Defaulting Party; (C) the Defaulting Party or any Credit Support Provider of the Defaulting Party (or, in either case, any Custodian acting on its behalf) disaffirms, disclaims or repudiates, in whole or in part, or challenges the validity of, any Credit Support Document; (D) any representation or warranty made or given or deemed made or given by any Credit Support Provider of the Defaulting Party pursuant to any Credit Support Document shall prove to have been false or misleading in any material respect as at the time it was made or given or deemed made or given and one (1) Business Day has elapsed after the Non-Defaulting Party has given the Defaulting Party written notice thereof; or (E) any event set out in (ii) to (vii) or (ix) to (xi) above occurs in respect of any Credit Support Provider of the Defaulting Party; or

(xiii) any other condition or event specified in Part IX of the Schedule or in Section 11.14 if made applicable to the Agreement in Part XI of the Schedule.

"Exercise Date", in respect of any Option, means the day on which a Notice of Exercise received by the applicable Designated Office of the Seller becomes effective pursuant to Section 5.1.

"Expiration Date", in respect of any Option, means the date agreed to as such at the time the Option is entered into, as evidenced in a Confirmation.

"Expiration Time", in respect of any Option, means the latest time on the Expiration Date on

which the Seller must accept a Notice of Exercise as agreed to at the time the Option is entered into, as evidenced in a Confirmation.

"In-the-Money Amount" means (i) in the case of a Call, the excess of the Spot Price over the Strike Price, multiplied by the aggregate amount of the Call Currency to be purchased under the Call, where both prices are quoted in terms of the amount of the Put Currency to be paid for one unit of the Call Currency; and (ii) in the case of a Put, the excess of the Strike Price over the Spot Price, multiplied by the aggregate amount of the Put Currency to be sold under the Put, where both prices are quoted in terms of the amount of the Call Currency to be paid for one unit of the Put Currency.

"Insolvency Proceeding" means a case or proceeding seeking a judgment of or arrangement for insolvency, bankruptcy, composition, rehabilitation, reorganization, administration, winding-up, liquidation or other similar relief with respect to the Defaulting Party or its debts or assets, or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian or other similar official (each, a "Custodian") of the Defaulting Party or any substantial part of its assets, under any bankruptcy, insolvency or other similar law or any banking, insurance or similar law governing the operation of the Defaulting Party.

"LIBOR", with respect to any Currency and date, means the average rate at which deposits in the Currency for the relevant amount and time period are offered by major banks in the London interbank market as of 11:00 a.m. (London time) on such date, or, if major banks do not offer deposits in such Currency in the London interbank market on such date, the average rate at which deposits in the Currency for the relevant amount and time period are offered by major banks in the relevant foreign exchange market at such time on such date as may be determined by the Party making the determination.

"Local Banking Day" means (i) for any Currency, a day on which commercial banks effect deliveries of that Currency in accordance with the market practice of the relevant foreign exchange market, and (ii) for any Party, a day in the location of the applicable Designated Office of such Party on which commercial banks in that location are not authorized or required by law to close.

"Master Agreement" means the terms and conditions set forth in this Master Agreement, including the Schedule.

"Non-Defaulting Party" has the meaning given to it in the definition of Event of Default.

"Notice of Exercise" means telex, telephonic or other electronic notification (excluding facsimile transmission) providing assurance of receipt, given by the Buyer prior to or at the Expiration Time, of the exercise of an Option, which notification shall be irrevocable.

"Option" means a currency option which is or shall become subject to the Agreement.

"Parties" means the parties to the Agreement, including their successors and permitted assigns (but without prejudice to the application of clause (ix) of the definition of Event of Default); and the term "Party" shall mean whichever of the Parties is appropriate in the context in which such



expression may be used.

"Premium", in respect of any Option, means the purchase price of the Option as agreed upon by the Parties, and payable by the Buyer to the Seller thereof.

"Premium Payment Date", in respect of any Option, means the date on which the Premium is due and payable, as agreed to at the time the Option is entered into, as evidenced in a Confirmation.

"Proceedings" means any suit, action or other proceedings relating to the Agreement or any Option.

"Put" means an Option entitling, but not obligating (except upon exercise), the Buyer to sell to the Seller at the Strike Price a specified quantity of the Put Currency.

"Put Currency" means the Currency agreed to as such at the time an Option is entered into, as evidenced in a Confirmation.

"Schedule" means the Schedule attached to and part of this Master Agreement, as it may be amended from time to time by agreement of the Parties.

"Seller" means the Party granting an Option.

"Settlement Date" means, in respect of: (i) an American Style Option, the Spot Date of the Currency Pair on the Exercise Date of such Option, and (ii) a European Style Option, the Spot Date of the Currency Pair on the Expiration Date of such Option; and, where market practice in the relevant foreign exchange market in relation to the two Currencies involved provides for delivery of one Currency on one date which is a Local Banking Day in relation to that Currency but not to the other Currency and for delivery of the other Currency on the next Local Banking Day in relation to that other Currency, "Settlement Date" means such two (2) Local Banking Days.

"Specified Indebtedness" means any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money, other than in respect of deposits received.

"Specified Transaction" means any transaction (including an agreement with respect thereto) between one Party to the Agreement (or any Credit Support Provider of such Party) and the other Party to the Agreement (or any Credit Support Provider of such Party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity linked 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) or any combination of any of the foregoing.

"Spot Date" means the spot delivery day for the relevant Currency Pair as generally used by the relevant foreign exchange market.

"Spot Price" means the rate of exchange at the time at which such price is to be determined for foreign exchange transactions in the relevant Currency Pair for value on the Spot Date, as determined in good faith: (i) by the Seller, for purposes of Section 5, and (ii) by the Non-Defaulting Party, for purposes of Section 8.

"Strike Price", in respect of any Option, means the price at which the Currency Pair may be exchanged, as agreed to at the time the Option is entered into, as evidenced in a Confirmation.

"Threshold Amount" means the amount specified as such for each Party in Part VIII of the Schedule.

## SECTION 2. OPTIONS

2.1 Scope of the Agreement. The Parties (through their respective Designated Offices) may enter into Options for such Premiums, with such Expiration Dates, at such Strike Prices and for the purchase or sale of such quantities of such Currencies, as may be agreed subject to the terms of the Agreement; provided that neither Party shall be required to enter into any Option with the other Party (other than in connection with an exercised Option). Unless otherwise agreed in writing by the Parties, each Option entered into between Designated Offices of the Parties on or after the Effective Date shall be governed by the Agreement. Each Option between any two Designated Offices of the Parties outstanding on the Effective Date which is identified in Part I of the Schedule shall also be governed by the Agreement.

2.2 Single Agreement. This Master Agreement, the terms agreed between the Parties with respect to each Option (and, to the extent recorded in a Confirmation, each such Confirmation), and all amendments to any of such items shall together form the agreement between the Parties (the "Agreement") and shall together constitute a single agreement between the Parties. The Parties acknowledge that all Options are entered into in reliance upon such fact, it being understood that the Parties would not otherwise enter into any Option.

2.3 Confirmations. Options shall be promptly confirmed by the Parties by Confirmations exchanged by mail, telex, facsimile or other electronic means from which it is possible to produce a hard copy. The failure by a Party to issue a Confirmation shall not prejudice or invalidate the terms of any Option.

2.4 Inconsistencies. In the event of any inconsistency between the provisions of the Schedule and the other provisions of the Agreement, the Schedule will prevail. In the event of any inconsistency between the terms of a Confirmation and the other provisions of the Agreement, the terms of the Confirmation shall prevail, and the other terms of the Agreement shall be deemed modified with respect to such Option, except for the manner of confirmation under Section 2.3 and, if applicable, discharge of Options under Section 4.

## SECTION 3. OPTION PREMIUM

3.1 Payment of Premium. Unless otherwise agreed in writing by the Parties, the Buyer shall be obligated to pay the Premium related to an Option no later than its Premium Payment Date.

3.2 Late Payment or Non-Payment of Premium. If any Premium is not received on or before the Premium Payment Date, the Seller may elect: (i) to accept a late payment of such Premium; (ii) to give written notice of such non-payment and, if such payment shall not be received within two (2) Business Days of such notice, treat the related Option as void; or (iii) to give written notice of such non-payment and, if such payment shall not be received within two (2) Business Days of such notice, treat such non-payment as an Event of Default under clause (i) of the definition of Event of Default. If the Seller elects to act under either clause (i) or (ii) of the preceding sentence, the Buyer shall pay all out-of-pocket costs and actual damages incurred in connection with such unpaid or late Premium or void Option, including, without limitation, interest on such Premium from and including the Premium Payment Date to but excluding the late payment date in the same Currency as such Premium at overnight LIBOR and any other losses, costs or expenses incurred by the Seller in connection with such terminated Option, for the loss of its bargain, its cost of funding, or the loss incurred as a result of terminating, liquidating, obtaining or re-establishing a delta hedge or related trading position with respect to such Option.

#### SECTION 4. DISCHARGE AND TERMINATION OF OPTIONS

If agreed in Part V of the Schedule, any Call or any Put written by a Party will automatically be discharged and terminated, in whole or in part, as applicable, against a Call or a Put, respectively, written by the other Party, such discharge and termination to occur automatically upon the payment in full of the last Premium payable in respect of such Options; provided that such discharge and termination may only occur in respect of Options:

- (i) each being with respect to the same Put Currency and the same Call Currency;
- (ii) each having the same Expiration Date and Expiration Time;
- (iii) each being of the same style, i.e. either both being American Style Options or both being European Style Options;
- (iv) each having the same Strike Price;
- (v) each being transacted by the same pair of Designated Offices of Buyer and Seller; and
- (vi) neither of which shall have been exercised by delivery of a Notice of Exercise;

and, upon the occurrence of such discharge and termination, neither Party shall have any further obligation to the other Party in respect of the relevant Options or, as the case may be, parts thereof so discharged and terminated. Such discharge and termination shall be effective notwithstanding that either Party may fail to record such discharge and termination in its books. In the case of a partial discharge and termination (i.e., where the relevant Options are for different amounts of the Currency Pair), the remaining portion of the Option which is partially discharged and terminated shall continue to be an Option for all purposes of the Agreement, including this Section 4.

## SECTION 5. EXERCISE AND SETTLEMENT OF OPTIONS

5.1 Exercise of Options. The Buyer may exercise an Option by delivery to the Seller of a Notice of Exercise. Subject to Section 5.3, if a Notice of Exercise with respect to an Option has not been received by the Seller prior to or at the Expiration Time, the Option shall expire and become void and of no effect. Any Notice of Exercise shall (unless otherwise agreed):

(i) in respect of an American Style Option, (A) if received at or prior to 3:00 p.m. on a Business Day, be effective upon receipt thereof by the Seller, and (B) if received after 3:00 p.m. on a Business Day, be effective only as of the opening of business of the Seller on the first Business Day subsequent to its receipt; and

(ii) in respect of a European Style Option, if received on or, if the parties have so agreed, before the Expiration Date, prior to or at the Expiration Time, be effective upon receipt thereof by the Seller.

5.2 No Partial Exercise. Unless otherwise agreed by the Parties, an Option may be exercised only in whole.

5.3 Automatic Exercise. Unless otherwise agreed in Part VI of the Schedule or unless the Seller is otherwise instructed by the Buyer, if an Option has an In-the-Money Amount at its Expiration Time that equals or exceeds the product of (x) 1% of the Strike Price (or such other percentage or amount as may have been agreed by the Parties) and (y) the amount of the Call Currency or Put Currency, as appropriate, then the Option shall be deemed automatically exercised. In such case, the Seller may elect to settle such Option either in accordance with Section 5.4 or by payment to the Buyer on the Settlement Date for such Option of the In-the-Money Amount, as determined at the Expiration Time or as soon thereafter as practicable. In the latter case, the sole obligations of the Parties with respect to settlement of such Option shall be to deliver or receive the In-the-Money Amount of such Option on the Settlement Date. The Seller shall notify the Buyer of its election of the method of settlement of an automatically exercised Option as soon as practicable after the Expiration Time.

5.4 Settlement of Exercised Options. An exercised Option shall settle on its Settlement Date. Subject to Section 5.3 and 5.5, on the Settlement Date, the Buyer shall pay the Put Currency to the Seller for value on the Settlement Date and the Seller shall pay the Call Currency to the Buyer for value on the Settlement Date.

5.5 Settlement at In-the-Money Amount. An Option shall be settled at its In-the-Money Amount if so agreed by the Parties at the time such Option is entered into. In such case, the In-the-Money Amount shall be determined based upon the Spot Price at the time of exercise or as soon thereafter as practicable. The sole obligations of the Parties with respect to settlement of such Option shall be to deliver or receive the In-the-Money Amount of such Option on the Settlement Date.

## SECTION 6. PAYMENT NETTING

6.1 Netting of Premiums. If agreed in Part V of the Schedule and if, on any date, Premiums would otherwise be payable under the Agreement in the same Currency between the same respective Designated Offices of the Parties, then, on such date, each Party's obligation to make payment of any such Premium will be automatically satisfied and discharged and, if the aggregate Premium(s) that would otherwise have been payable by such Designated Office of one Party exceeds the aggregate Premium(s) that would otherwise have been payable by such Designated Office of the other Party, replaced by an obligation upon the Party by whom the larger aggregate Premium(s) would have been payable to pay the other Party the excess of the larger aggregate Premium(s) over the smaller aggregate Premium(s) and, if the aggregate Premiums are equal, no payment shall be made.

6.2 Netting of Other Amounts. If agreed in Part V of the Schedule and, on any date, amounts other than Premium payments would otherwise be payable under the Agreement in the same Currency between the same respective Designated Offices of the Parties, 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 such Designated Office of one Party exceeds the aggregate amount that would otherwise have been payable by such Designated Office of the other Party, replaced by an obligation upon the Party by whom the larger aggregate amount would have been payable to pay the other Party the excess of the larger aggregate amount over the smaller aggregate amount.

## SECTION 7. REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1 Representations and Warranties. Each Party represents and warrants to the other Party as of the Effective Date and as of the date of each Option that: (i) it has authority to enter into the Agreement (including such Option); (ii) the persons entering into the Agreement (including such Option) on its behalf have been duly authorized to do so; (iii) the Agreement (including such Option) is binding upon it and enforceable against it in accordance with its terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and applicable principles of equity) and does not and will not violate the terms of any agreements to which such Party is bound; (iv) no Event of Default, or event which, with notice or lapse of time or both, would constitute an Event of Default, has occurred and is continuing with respect to it; (v) it acts as principal in entering into and exercising each and every Option; and (vi) if the Parties have so specified in Part XV of the Schedule, it makes the representations and warranties set forth in such Part XV.

7.2 Covenants. Each Party covenants to the other Party that: (i) it will at all times obtain and comply with the terms of and do all that is necessary to maintain in full force and effect all authorizations, approvals, licenses and consents required to enable it lawfully to perform its obligations under the Agreement; (ii) it will promptly notify the other Party of the occurrence of any Event of Default with respect to itself or any Credit Support Provider in relation to it; and (iii) if the Parties have set forth additional covenants in Part XVI of the Schedule, it makes the covenants set forth in such Part XVI.

## SECTION 8. CLOSE-OUT AND LIQUIDATION

8.1 Manner of Close-Out and Liquidation. (a) Close-Out of Options. If an Event of Default has occurred and is continuing, then the Non-Defaulting Party shall have the right to close out all, but not less than all, outstanding Options, except to the extent that in the good faith opinion of the Non-Defaulting Party certain of such Options may not be closed out under applicable law. Such close-out shall be effective upon receipt by the Defaulting Party of notice that the Non-Defaulting Party is terminating such Options. Notwithstanding the foregoing, unless otherwise agreed by the Parties in Part X of the Schedule, in the case of an Event of Default in clause (ii), (iii) or (iv) of the definition thereof with respect to a Party and, if agreed by the Parties in Part IX of the Schedule, in the case of any other Event of Default specified and so agreed in Part IX with respect to a Party, close-out shall be automatic as to all outstanding Options, as of the time immediately preceding the institution of the relevant Insolvency Proceeding or action. The Non-Defaulting Party shall have the right to liquidate such closed-out Options as provided below.

(b) Liquidation of Options. Liquidation of Options terminated by close-out shall be effected as follows:

- (i) the Non-Defaulting Party shall calculate in good faith with respect to each such terminated Option, except to the extent that in the good faith opinion of the Non-Defaulting Party certain of such Options may not be liquidated as provided herein under applicable law, as of the Close-Out Date or as soon as reasonably practicable thereafter a settlement amount for each Party equal to the aggregate of:
  - (A) with respect to each Option purchased by such Party, and which the other Party has not elected to treat as void pursuant to Section 3.2(ii) for lack of payment of the Premium, the current market premium for such Option;
  - (B) with respect to each Option sold by such Party and which such Party has not elected to treat as void pursuant to Section 3.2(ii) for lack of payment of the Premium, any unpaid Premium, provided that, if the Close-Out Date occurs before the Premium Payment Date, such amount shall be discounted from and including the Premium Payment Date to but excluding the Close-Out Date at a rate equal to LIBOR on the Close-Out Date and, if the Close-Out Date occurs after the Premium Payment Date, to the extent permitted by applicable law, the settlement amount shall include interest on any unpaid Premium from and including the Premium Payment Date to but excluding the Close-Out Date in the same Currency as such Premium at overnight LIBOR;
  - (C) with respect to any exercised Option (whether or not the Close-Out Date occurs before the Settlement Date for such Option), any unpaid amount due to such Party in settlement of such Option and, if the Close-Out Date occurs after the Settlement Date for such Option, to the extent permitted by applicable law, interest thereon from and including the applicable Settlement Date to but excluding the Close-Out Date at overnight LIBOR; and

- (D) without duplication, the amount that the Non-Defaulting Party reasonably determines in good faith, as of the Close-Out Date or as of the earliest date thereafter that is reasonably practicable, to be its additional losses, costs and expenses in connection with such terminated Option, for the loss of its bargain, its cost of funding, or the loss incurred as a result of terminating, liquidating, obtaining or re-establishing a delta hedge or related trading position with respect to such Option;
- (ii) converting any settlement amount calculated in accordance with clause (i) above in a Currency other than the Non-Defaulting Party's Base Currency into such Base Currency at the Spot Price at which, at the time of the calculation, the Non-Defaulting Party could enter into a contract in the foreign exchange market to buy the Non-Defaulting Party's Base Currency in exchange for such Currency (or, if such Spot Price is not available, conversion shall be accomplished by the Non-Defaulting Party using any commercially reasonable method); and
- (iii) netting such settlement amounts with respect to each Party so that all such amounts are netted to a single liquidated amount payable by one Party to the other Party as a settlement payment.

8.2 Set-Off Against Credit Support. Where close-out and liquidation occurs in accordance with Section 8.1, the Non-Defaulting Party shall also be entitled (i) to set off the net payment calculated in accordance with Section 8.1(b)(iii) which the Non-Defaulting Party owes to the Defaulting Party, if any, against any credit support or other collateral ("Credit Support") held by the Defaulting Party pursuant to a Credit Support Document or otherwise (including the liquidated value of any non-cash Credit Support) in respect of the Non-Defaulting Party's obligations under the Agreement or (ii) to set off the net payment calculated in accordance with Section 8.1(b)(iii) which the Defaulting Party owes to the Non-Defaulting Party, if any, against any Credit Support held by the Non-Defaulting Party (including the liquidated value of any non-cash Credit Support) in respect of the Defaulting Party's obligations under the Agreement; provided that, for purposes of either such set-off, any Credit Support denominated in a Currency other than the Non-Defaulting Party's Base Currency shall be converted into such Base Currency at the rate specified in Section 8.1(b)(ii).

8.3 Other Currency Options. Where close-out and liquidation occurs in accordance with Section 8.1, the Non-Defaulting Party shall also be entitled to close-out and liquidate, to the extent permitted by applicable law, any other currency option entered into between the Parties which is then outstanding (including exercised options not fully performed) in accordance with the provisions of Section 8.1, as if each option were an Option under the Agreement.

8.4 Payment and Late Interest. The net amount payable by one Party to the other Party pursuant to the provisions of Sections 8.1 and 8.3 above shall be paid by the close of business on the Business Day following the receipt by the Defaulting Party of notice of the Non-Defaulting Party's settlement calculation, with interest at overnight LIBOR from and including the Close-Out Date to but excluding such Business Day (and converted as required by applicable law into any other

Currency, any costs of conversion to be borne by, and deducted from any payment to, the Defaulting Party). To the extent permitted by applicable law, any amounts owed but not paid when due under this Section 8 shall bear interest at overnight LIBOR (or, if conversion is required by applicable law into some other Currency, either overnight LIBOR with respect to such other Currency or such other rate as may be prescribed by such applicable law) for each day for which such amount remains unpaid. Any addition of interest or discounting required under this Section 8 shall be calculated on the basis of a year of such number of days as is customary for transactions involving the relevant Currency in the relevant foreign exchange market.

8.5 Suspension of Obligations. Without prejudice to the foregoing, so long as a Party shall be in default in payment or performance to the other Party under the Agreement and the other Party has not exercised its rights under this Section 8, or, if "Adequate Assurances" is specified as applying to the Agreement in Part XI of the Schedule, during the pendency of a reasonable request to a Party for adequate assurances of its ability to perform its obligations under the Agreement, the other Party may, at its election and without penalty, suspend its obligation to perform under the Agreement.

8.6 Expenses. The Defaulting Party shall reimburse the Non-Defaulting Party in respect of all out-of-pocket expenses incurred by the Non-Defaulting Party (including fees and disbursements of counsel, including attorneys who may be employees of the Non-Defaulting Party) in connection with any reasonable collection or other enforcement proceedings related to the payments required under the Agreement.

8.7 Reasonable Pre-Estimate. The Parties agree that the amounts recoverable under this Section 8 are a reasonable pre-estimate of loss and not a penalty. Such amounts are payable for the loss of bargain and the loss of protection against future risks and, except as otherwise provided in the Agreement, neither Party will be entitled to recover any additional damages as a consequence of such losses.

8.8 No Limitation of Other Rights; Set-Off. The Non-Defaulting Party's rights under this Section 8 shall be in addition to, and not in limitation or exclusion of, any other rights which the Non-Defaulting Party may have (whether by agreement, operation of law or otherwise), and, to the extent not prohibited by law, the Non-Defaulting Party shall have a general right of set-off with respect to all amounts owed by each Party to the other Party, whether due and payable or not due and payable (provided that any amount not due and payable at the time of such set-off shall, if appropriate, be discounted to present value in a commercially reasonable manner by the Non-Defaulting Party). The Non-Defaulting Party's rights under this Section 8.8 are subject to Section 8.7.

## SECTION 9. FORCE MAJEURE, ACT OF STATE, ILLEGALITY AND IMPOSSIBILITY

9.1 Force Majeure, Act of State, Illegality and Impossibility. If either Party is prevented from or hindered or delayed by reason of force majeure or act of state in the delivery or receipt of any Currency in respect of an Option or if it becomes or, in the good faith judgment of one of the Parties,



may become unlawful or impossible for either Party to make or receive any payment in respect of an Option, then the Party for whom such performance has been prevented, hindered or delayed or has become illegal or impossible shall promptly give notice thereof to the other Party and either Party may, by notice to the other Party, require the close-out and liquidation of each affected Option in accordance with the provisions of Section 8.1 and, for such purposes, the Party unaffected by such force majeure, act of state, illegality or impossibility (or, if both Parties are so affected, whichever Party gave the relevant notice) shall perform the calculation required under Section 8.1 as if it were the Non-Defaulting Party. Nothing in this Section 9.1 shall be taken as indicating that the Party treated as the Defaulting Party for the purpose of calculations required by Section 8.1 has committed any breach or default.

9.2 Transfer to Avoid Force Majeure, Act of State, Illegality or Impossibility. If Section 9.1 becomes applicable, unless prohibited by law, the Party which has been prevented, hindered or delayed from performing shall, as a condition to its right to designate a close-out and liquidation of any affected Option, use all reasonable efforts (which will not require such Party to incur a loss, excluding immaterial, incidental expenses) to transfer as soon as practicable, and in any event before the earlier to occur of the expiration date of the affected Options or twenty (20) days after it gives notice under Section 9.1, all its rights and obligations under the Agreement in respect of the affected Options to another of its Designated Offices so that such force majeure, act of state, illegality or impossibility ceases to exist. Any such transfer will be subject to the prior written consent of the other Party, which consent will not be withheld if such other Party's policies in effect at such time would permit it to enter into transactions with the transferee Designated Office on the terms proposed, unless such transfer would cause the other Party to incur a material tax or other cost.

## SECTION 10. PARTIES TO RELY ON THEIR OWN EXPERTISE

Each Party will be deemed to represent to the other Party on the date on which it enters into an Option that (absent a written agreement between the Parties that expressly imposes affirmative obligations to the contrary for that Option): (i)(A) it is acting for its own account, and it has made its own independent decisions to enter into that Option and as to whether that Option is appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary; (B) 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 Option, it being understood that information and explanations related to the terms and conditions of an Option shall not be considered investment advice or a recommendation to enter into that Option; and (C) it has not received from the other Party any assurance or guarantee as to the expected results of that Option; (ii) it is capable of evaluating and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Option; and (iii) the other Party is not acting as a fiduciary or an advisor for it in respect of that Option.

## SECTION 11. MISCELLANEOUS

11.1 Currency Indemnity. The receipt or recovery by either Party (the "first Party") of

any amount in respect of an obligation of the other Party (the "second Party") in a Currency other than that in which such amount was due, whether pursuant to a judgment of any court or pursuant to Section 8 or 9, shall discharge such obligation only to the extent that, on the first day on which the first Party is open for business immediately following such receipt or recovery, the first Party shall be able, in accordance with normal banking practice, to purchase the Currency in which such amount was due with the Currency received or recovered. If the amount so purchasable shall be less than the original amount of the Currency in which such amount was due, the second Party shall, as a separate obligation and notwithstanding any judgment of any court, indemnify the first Party against any loss sustained by it. The second Party shall in any event indemnify the first Party against any costs incurred by it in making any such purchase of Currency.

11.2 Assignment. Neither Party may assign, transfer or charge or purport to assign, transfer or charge its rights or obligations under the Agreement to a third party without the prior written consent of the other Party and any purported assignment, transfer or charge in violation of this Section 11.2 shall be void.

11.3 Telephonic Recording. The Parties agree that each may electronically record all telephonic conversations between them and that any such recordings may be submitted in evidence to any court or in any Proceedings for the purpose of establishing any matters pertinent to the Agreement.

11.4 Notices. Unless otherwise agreed, all notices, instructions and other communications to be given to a Party under the Agreement shall be given to the address, telex (if confirmed by the appropriate answerback), facsimile (confirmed if requested) or telephone number and to the individual or department specified by such Party in Part III of the Schedule. Unless otherwise specified, any notice, instruction or other communication given in accordance with this Section 11.4 shall be effective upon receipt.

11.5 Termination. Each of the Parties may terminate the Agreement at any time by seven (7) days' prior written notice to the other Party delivered as prescribed in Section 11.4, and termination shall be effective at the end of such seventh day; provided, however, that any such termination shall not affect any outstanding Options, and the provisions of the Agreement shall continue to apply until all the obligations of each Party to the other under the Agreement have been fully performed.

11.6 Severability. In the event any one or more of the provisions contained in the Agreement should be held invalid, illegal or unenforceable in any respect under the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions contained in the Agreement under the law of such jurisdiction, and the validity, legality and enforceability of such and any other provisions under the law of any other jurisdiction shall not in any way be affected or impaired thereby. 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.

11.7 No Waiver. No indulgence or concession granted by a Party and no omission or

delay on the part of a Party in exercising any right, power or privilege under the Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11.8 Master Agreement. Where one of the Parties to the Agreement is domiciled in the United States, the Parties intend that the Agreement shall be a master agreement, as referred to in 11 U.S.C. Section 101(53B)(C) and 12 U.S.C. Section 1821(e)(8)(D)(vii).

11.9 Time of Essence, Etc. Time shall be of the essence in the Agreement. Unless otherwise agreed, the times referred to in the Agreement shall in each case refer to the local time of the relevant Designated Office of the Seller of the relevant Option.

11.10 Headings. Headings in the Agreement are for ease of reference only.

11.11 Payments Generally. All payments to be made under the Agreement shall be made in same day (or immediately available) and freely transferable funds and, unless otherwise specified, shall be delivered to such office of such bank, and in favor of such account as shall be specified by the Party entitled to receive such payment in Part IV of the Schedule or in a notice given in accordance with Section 11.4.

11.12 Amendments. No amendment, modification or waiver of the Agreement will be effective unless in writing executed by each of the Parties; provided that the Parties may agree in a Confirmation that complies with Section 2.3 to amend the Agreement solely with respect to the Option that is the subject of the Confirmation.

11.13 Credit Support. A Credit Support Document between the Parties may apply to obligations governed by the Agreement. If the Parties have executed a Credit Support Document, such Credit Support Document shall be subject to the terms of the Agreement and is hereby incorporated by reference in the Agreement. In the event of any conflict between a Credit Support Document and the Agreement, the Agreement shall prevail, except for any provision in such Credit Support Document in respect of governing law.

11.14 Adequate Assurances. If the Parties have so agreed in Part XI of the Schedule, the failure by a Party to give adequate assurances of its ability to perform any of its obligations under the Agreement within two (2) Business Days of a written request to do so when the other Party has reasonable grounds for insecurity shall be an Event of Default under the Agreement.

11.15 Correction of Confirmations. Unless either Party objects to the terms contained in any Confirmation sent by the other Party or sends a corrected Confirmation within three (3) Business Days of receipt of such Confirmation, the terms of such Confirmation shall be deemed correct and accepted absent manifest error. If the Party receiving a Confirmation sends a corrected Confirmation within such three (3) Business Days, then the Party receiving such corrected Confirmation shall have three (3) Business Days after receipt thereof to object to the terms contained in such corrected Confirmation.

## SECTION 12. LAW AND JURISDICTION

12.1 Governing Law. The Agreement shall be governed by, and construed in accordance with, the laws of the jurisdiction set forth in Part XII of the Schedule without giving effect to conflict of laws principles.

12.2 Consent to Jurisdiction. (a) With respect to any Proceedings, each Party irrevocably (i) submits to the non-exclusive jurisdiction of the courts of the jurisdiction set forth in Part XIII of the Schedule 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 jurisdiction over such Party. Nothing in the Agreement precludes either Party from bringing Proceedings in any other jurisdiction nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

(b) Each Party irrevocably appoints the agent for service of process (if any) specified with respect to it in Part XIV of the Schedule. If for any reason any Party's process agent is unable to act as such, such Party will promptly notify the other Party and within thirty (30) days will appoint a substitute process agent acceptable to the other Party.

12.3 Waiver of Jury Trial. Each Party irrevocably waives any and all right to trial by jury in any Proceedings.

12.4 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.

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By \_\_\_\_\_  
Name:  
Title:

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By \_\_\_\_\_  
Name:  
Title: