

IFXCO

International Foreign Exchange and Currency Option Master Agreement

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by the Foreign Exchange Committee

**in association with the British Bankers' Association,
the Canadian Foreign Exchange Committee, and the
Japanese Bankers Association**



IFXCO

International Foreign Exchange and Currency Option Master Agreement

Terms

Parties may adhere to these IFXCO Terms (the “Terms”) and be bound by their terms by completing and exchanging with each other an agreement that these Terms shall govern FX Transactions and Currency Option Transactions between them substantially in the form of the IFXCO Adherence Agreement published with these Terms (the “Adherence Agreement”).

Capitalized terms used herein have the meanings given to them in the *1998 FX and Currency Option Definitions*, published by the International Swaps and Derivatives Association, Inc., EMTA, Inc., and the Foreign Exchange Committee, as amended as of the date of the Adherence Agreement (the “Definitions”), unless another meaning has been given in Annex 1. References herein to Sections, Annexes, and the like are references to Sections, Annexes, and the like of these Terms unless otherwise provided.

Section 1.

FX Transactions and Currency Option Transactions

1.1. Scope of the Agreement; Offices.

- (a) The Parties may enter into (i) FX Transactions for such quantities of such Currencies as may be agreed upon subject to the terms of the Agreement; and (ii) Currency Option Transactions 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 upon subject to the terms of the Agreement; provided that neither Party shall be required to enter into any FX Transaction or Currency Option Transaction with the other Party (other than in connection with an exercised Currency Option Transaction). Unless otherwise agreed to in writing by the Parties, each FX



Transaction and Currency Option Transaction entered into between Offices (as defined below) of the Parties on or after the Effective Date shall be governed by the Agreement. Each FX Transaction and Currency Option Transaction between any two Offices of the Parties outstanding on the Effective Date shall also be governed by the Agreement unless otherwise specified in Part I of the Adherence Agreement.

- (b) The office through which a Party enters into an FX Transaction or Currency Option Transaction (an “Office”) shall be one of the Offices for that Party in Part II of the Adherence Agreement, as specified for a particular transaction in the relevant Confirmation or as otherwise agreed to by the Parties in writing, and, if an Office for that Party is not specified in the Confirmation or otherwise agreed to by the Parties in writing (and regardless of such specification in such Part II), its head or home office. Each Party that enters into an FX Transaction or Currency Option Transaction through an Office other than its head or home office represents to and agrees with the other Party that, notwithstanding the place of booking or its jurisdiction of incorporation or organization, its obligations are the same in terms of recourse against it as if it had entered into the FX Transaction or Currency Option Transaction through its head or home office, except that a Party shall not have recourse to the head or home office of the other Party in respect of any payment or delivery deferred pursuant to Section 7.3 for so long as the payment or delivery is so deferred. This representation and agreement shall be deemed to be repeated by each Party on each date on which the Parties enter into an FX Transaction or Currency Option Transaction.

1.2. Single Agreement.

These Terms, as adopted through and in the Adherence Agreement (the Terms and the Adherence Agreement being the “Master Agreement”), the terms agreed to between the Parties with respect to each FX Transaction and Currency Option Transaction (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 FX Transactions and Currency Option Transactions are entered into in reliance upon such fact, it being understood that the Parties would not otherwise enter into any FX Transaction or Currency Option Transaction.

1.3. Confirmations.

FX Transactions and Currency Option Transactions 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 FX Transaction or Currency Option Transaction. For avoidance of doubt, if the Parties send instructions for the settlement of a Transaction through CLS Bank, or for execution of a Transaction through any electronic trading platform, and either Party does not send its own Confirmation of such Transaction to the other Party (“nonsending Party”), the CLS or electronic trading platform matching notification shall constitute a Confirmation of such Transaction by any such nonsending Party.



1.4. Inconsistencies.

In the event of any inconsistency between the provisions of the Adherence Agreement and the provisions of the Terms, the Adherence Agreement shall prevail. In the event of any inconsistency between the terms of a Confirmation and the provisions of the Master Agreement, (a) in the case of an FX Transaction, the provisions of the Master Agreement shall prevail, and the Confirmation shall not modify the provisions of the Master Agreement; and (b) in the case of a Currency Option Transaction, the agreed upon terms of the Confirmation shall prevail as to such Currency Option Transaction, and the other terms of the Master Agreement shall be deemed modified with respect to such Currency Option Transaction, except for the manner of confirmation under Section 1.3. A Confirmation amending the terms of a Transaction according to Section 9.11 shall be deemed consistent with the provisions of the Master Agreement.

Section 2.

Exercise of Currency Option Transactions

Currency Option Transactions shall be exercised as provided in the Definitions, provided that Notice of Exercise may not be given by facsimile transmission.

Section 3.

Settlement and Netting of Transactions

3.1. Settlement of Transactions.

- (a) Each Transaction shall be settled as provided in the Definitions and the Confirmation related to such Transaction. For avoidance

of doubt, settlement by submission of instructions with respect to any Transaction through the Continuous Linked Settlement System of CLS Bank shall constitute settlement of such Transaction when the settlement thereunder is final and, in the case of partial settlement, to the extent thereof.

- (b) In the event a Party shall not make delivery of a Currency under a Transaction when due, it shall compensate the other Party for each day overdue at a rate per annum equal to such other Party's cost of funds as reasonably determined by such other Party.

3.2. Settlement Netting.

- (a) Notwithstanding the foregoing, if the Parties agree in Part III of the Adherence Agreement that this Section 3.2 is applicable, and if, on any date, more than one delivery of a particular Currency under Currency Obligations is to be made between a pair of Offices, then each Party shall aggregate the amounts of such Currency deliverable by it and only the difference between these aggregate amounts shall be delivered by the Party owing the larger aggregate amount to the other Party, and, if the aggregate amounts are equal, no delivery of the Currency shall be made.
- (b) The provisions of this Section 3.2 shall not apply if a Closeout Date has occurred, or a voluntary or involuntary Insolvency Proceeding or action of the kind described in Section 5(b), (c), or (d) has occurred, without being dismissed in relation to either Party.
- (c) The provisions of this Section 3.2 shall apply notwithstanding that either Party may fail to record the new Currency Obligation in its books.



- (d) The provisions of this Section 3.2 are subject to any cutoff date and cutoff time agreed upon between the applicable Offices of the Parties.

Section 4.

Representations, Warranties, and Covenants

4.1. Representations and Warranties.

Each Party represents and warrants to the other Party as of the Effective Date and as of the date of each FX Transaction and each Currency Option Transaction that: (a) it has authority to enter into the Agreement (including such FX Transaction or Currency Option Transaction, as the case may be); (b) the persons entering into the Agreement (including such FX Transaction or Currency Option Transaction, as the case may be) on its behalf have been duly authorized to do so; (c) the Agreement (including such FX Transaction or Currency Option Transaction, as the case may be) 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 shall not violate the terms of any agreements to which such Party is bound; (d) 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; (e) it acts as principal in entering into each FX Transaction and Currency Option Transaction and exercising each and every Currency Option Transaction; and (f) if the Parties have so specified in Part IV of the Adherence Agreement, it makes the representations and warranties set forth in such Part IV.

4.2. Covenants.

Each Party covenants to the other Party that: (a) it shall 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; (b) it shall 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 (c) if the Parties have set forth additional undertakings or covenants in Part IV or Part V of the Adherence Agreement, it makes the undertakings or covenants set forth in such Parts.

Section 5.

Events of Default

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

- (a) the Defaulting Party (i) defaults in any payment when due under the Agreement (including, but not limited to, a Premium payment) to the Nondefaulting Party, with respect to any Currency Obligation or Currency Option Transaction, and such failure continues for one (1) Business Day after the Nondefaulting Party has given the Defaulting Party written notice of nonpayment; or (ii) fails to perform or comply with any other obligation assumed by it under the Agreement and such failure is continuing thirty (30) days after the Nondefaulting Party has given the Defaulting Party written notice thereof;



- (b) the Defaulting Party commences a voluntary Insolvency Proceeding or takes any corporate action to authorize any such Insolvency Proceeding;
- (c) 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 (i) commences an Insolvency Proceeding with respect to the Defaulting Party or its assets, or (ii) takes 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 that may prevent the Defaulting Party from performing its obligations under the Agreement as and when due;
- (d) an involuntary Insolvency Proceeding is 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 (i) 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 (ii) is not dismissed within fifteen (15) days of its institution or presentation;
- (e) the Defaulting Party is bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to it;
- (f) the Defaulting Party fails, or otherwise is unable or admits in writing that it is unable, to pay its debts as they become due;
- (g) the Defaulting Party or any Custodian acting on behalf of the Defaulting Party disaffirms, disclaims, or repudiates any Currency Obligation or Currency Option Transaction;
- (h) 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 proves to have been false or misleading in any material respect as at the time it was made or given or deemed made or given;
- (i) the Defaulting Party consolidates, or amalgamates with, or merges into, or transfers all or substantially all its assets to another entity and (i) the creditworthiness of the resulting, surviving, or transferee entity is materially weaker than that of the Defaulting Party prior to such action; or (ii) 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 Nondefaulting Party;
- (j) (i) a default, event of default, or other similar condition or event (however described), in respect of such Party or any Credit Support Provider of such Party under one or more agreements or instruments relating to Specified Indebtedness of either of them (individually or collectively), where the aggregate principal amount of such agreements or instruments, either alone or together with the amount, if any, referred to in clause (j)(ii) below, is not less than the applicable Threshold Amount (as specified



in Part VI of the Adherence Agreement) that 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 (ii) a default by such Party or such Credit Support Provider (individually or collectively) in making one or more payments under such agreements or instruments on the due date for payment (after giving effect to any applicable notice requirement or grace period) in an aggregate amount, either alone or together with the amount, if any, referred to in clause (j)(i) above, of not less than the applicable Threshold Amount;

- (k) 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;
- (l) (i) 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; (ii) 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 to in writing by the Nondefaulting Party; (iii) 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; (iv) 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 proves to have been false or misleading in any material respect as at the time it was made or given or deemed made or given; or (v) any event set out in subparagraphs (b) to (g) or subparagraphs (i) to (k) above occurs in respect of any Credit Support Provider of the Defaulting Party; or

- (m) any other condition or event specified in Part VII of the Adherence Agreement.

Section 6.

Closeout and Liquidation

6.1. Manner of Closeout and Liquidation.

- (a) Closeout. If an Event of Default has occurred and is continuing, then the Nondefaulting Party shall have the right to close out all, but not less than all, outstanding Currency Obligations (including any Currency Obligation that has not been performed and in respect of which the Settlement Date is on or precedes the Closeout Date) and Currency Option Transactions, except to the extent that in the good faith opinion of the Nondefaulting Party certain of such Currency Obligations or Currency Option Transactions may not be closed out under applicable law. Such closeout shall be effective upon receipt by the Defaulting Party of notice that the Nondefaulting Party is terminating such Currency Obligations and Currency Option



Transactions. Notwithstanding the foregoing, unless otherwise agreed to by the Parties in Part VIII of the Adherence Agreement, in the case of an Event of Default in Section 5 (b), (c), or (d) with respect to a Party and, if agreed to by the Parties in Part VII of the Adherence Agreement, in the case of any other Event of Default specified and so agreed to in Part VII with respect to a Party, closeout shall be automatic as to all outstanding Currency Obligations and Currency Option Transactions, as of the time immediately preceding the institution of the relevant Insolvency Proceeding or action. The Nondefaulting Party shall have the right to liquidate such closed-out Currency Obligations and Currency Option Transactions, as provided below.

(b) Liquidation of Currency Obligations. Liquidation of Currency Obligations terminated by closeout shall be effected as follows:

(i) Calculating Closing Gain or Loss. The Nondefaulting Party shall calculate in good faith, with respect to each such terminated Currency Obligation, except to the extent that in the good faith opinion of the Nondefaulting Party certain of such Currency Obligations may not be liquidated as provided herein under applicable law, as of the Closeout Date or as soon thereafter as reasonably practicable, the Closing Gain, or, as appropriate, the Closing Loss, as follows:

(A) for each Currency Obligation calculate a "Closeout Amount" as follows:

- (1) in the case of a Currency Obligation whose Settlement Date is the same as or is later than the Closeout Date, the amount of such Currency Obligation; or
- (2) in the case of a Currency Obligation whose Settlement Date precedes the Closeout Date, the amount of such Currency Obligation increased, to the extent permitted by applicable law, by adding interest thereto from and including the Settlement Date to but excluding the Closeout Date at overnight LIBOR; and
- (3) for each such amount in a Currency other than the Nondefaulting Party's Termination Currency, convert such amount into the Nondefaulting Party's Termination Currency at the rate of exchange at which, at the time of the calculation, the Nondefaulting Party can buy such Termination Currency with or against the Currency of the relevant Currency Obligation for delivery (x) if the Settlement Date of such Currency Obligation is on or after the Spot Date as of such time of calculation for the Termination Currency, on the Settlement Date of that Currency Obligation; or (y) if such Settlement Date precedes such Spot Date, for delivery on such Spot Date (or, in either case, if such rate of exchange is not available,



conversion shall be accomplished by the Nondefaulting Party using any commercially reasonable method); and

- (B) determine in relation to each Settlement Date: (1) the sum of all Closeout Amounts relating to Currency Obligations under which the Nondefaulting Party would otherwise have been entitled to receive the relevant amount on that Settlement Date; and (2) the sum of all Closeout Amounts relating to Currency Obligations under which the Nondefaulting Party would otherwise have been obliged to deliver the relevant amount to the Defaulting Party on that Settlement Date; and
- (C) if the sum determined under (B)(1) is greater than the sum determined under (B)(2), the difference shall be the Closing Gain for such Settlement Date; if the sum determined under (B)(1) is less than the sum determined under (B)(2), the difference shall be the Closing Loss for such Settlement Date.
- (ii) Determining Present Value. To the extent permitted by applicable law, the Nondefaulting Party shall adjust the Closing Gain or Closing Loss for each Settlement Date falling after the Closeout Date to present value by discounting the Closing Gain or Closing Loss from and including the Settlement Date to but excluding the Closeout Date, at LIBOR, with respect to the Nondefaulting Party's Termination Currency as at the Closeout Date

or at such other rate as may be prescribed by applicable law.

- (iii) Netting. The Nondefaulting Party shall aggregate the following amounts so that all such amounts are netted into a single liquidated amount payable to or by the Nondefaulting Party: (A) the sum of the Closing Gains for all Settlement Dates (discounted to present value, where appropriate, in accordance with the provisions of Section 6.1(b)(ii)) (which for the purposes of the aggregation shall be a positive figure); and (B) the sum of the Closing Losses for all Settlement Dates (discounted to present value, where appropriate, in accordance with the provisions of Section 6.1(b)(ii)) (which for the purposes of the aggregation shall be a negative figure).
- (c) Liquidation of Currency Option Transactions. To liquidate unexercised Currency Option Transactions and exercised Currency Option Transactions to be settled at their In-the-Money Amounts that have been terminated by closeout, the Nondefaulting Party shall:
 - (i) Calculating Settlement Amount. Calculate in good faith with respect to each such terminated Currency Option Transaction, except to the extent that in the good faith opinion of the Nondefaulting Party certain of such Currency Option Transactions may not be liquidated as provided herein under applicable law, as of the Closeout Date or as soon as reasonably practicable thereafter, a settlement amount for each Party equal to the aggregate of:



- (A) with respect to each Currency Option Transaction purchased by such Party, the current market premium for such Currency Option Transaction;
- (B) with respect to each Currency Option Transaction sold by such Party, any unpaid Premium, provided that, if the Closeout Date occurs before the Premium Payment Date, such amount shall be discounted from and including the Premium Payment Date to but excluding the Closeout Date at a rate equal to LIBOR on the Closeout Date and, if the Closeout 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 Closeout Date in the same Currency as such Premium at overnight LIBOR;
- (C) with respect to any exercised Currency Option Transaction to be settled at its In-the-Money Amount (whether or not the Closeout Date occurs before the Settlement Date for such Currency Option Transaction), any unpaid amount due to such Party in settlement of such Currency Option Transaction and, if the Closeout Date occurs after the Settlement Date for such Currency Option Transaction, to the extent permitted by applicable law, interest thereon from and including the applicable Settlement Date to but excluding the Closeout Date at a rate equal to LIBOR; and
- (D) without duplication, the amount that the Nondefaulting Party reasonably determines in good faith, as of the Closeout 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 Currency Option Transaction, for the loss of its bargain, its cost of funding, or the loss incurred as a result of terminating, liquidating, obtaining, or reestablishing a delta hedge or related trading position with respect to such Currency Option Transaction;
- (ii) Converting to Termination Currency. Convert any settlement amount calculated in accordance with clause (i) above in a Currency other than the Nondefaulting Party's Termination Currency into such Termination Currency at the Spot Rate determined by the Nondefaulting Party at which, at the time of the calculation, the Nondefaulting Party could enter into a contract in the foreign exchange market to buy the Nondefaulting Party's Termination Currency in exchange for such Currency (or, if such Spot Rate is not available, conversion shall be accomplished by the Nondefaulting Party using any commercially reasonable method); and
- (iii) Netting. Net 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.

- (d) Final Netting. The Nondefaulting Party shall net (or, if both liquidated amounts are payable by one Party, add) the liquidated amounts payable under Sections 6.1(b) and 6.1(c) with respect to each Party so that such amounts are netted (or added) to a single liquidated amount payable by one Party to the other Party as a settlement payment.

6.2. Setoff Against Credit Support.

Where closeout and liquidation occur in accordance with Section 6.1, the Nondefaulting Party shall also be entitled (a) to set off the net payment calculated in accordance with Section 6.1(d), which the Nondefaulting 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 noncash Credit Support), in respect of the Nondefaulting Party's obligations under the Agreement; or (b) to set off the net payment calculated in accordance with Section 6.1(d), which the Defaulting Party owes to the Nondefaulting Party, if any, against any Credit Support held by the Nondefaulting Party (including the liquidated value of any noncash Credit Support), in respect of the Defaulting Party's obligations under the Agreement; provided that, for purposes of either such setoff, any Credit Support denominated in a Currency other than the Nondefaulting Party's Termination Currency shall be converted into such Termination Currency at the rate specified in Section 6.1(c)(ii).

6.3. Other Transactions.

Where closeout and liquidation occur in accordance with Section 6.1, the Nondefaulting Party shall also be entitled to close out and liquidate, to the extent permitted by applicable law, any other foreign exchange transaction or currency option transaction entered into between the Parties, which is then outstanding in accordance with the provisions of Section 6.1, with each obligation of a Party to deliver a Currency under such a foreign exchange transaction being treated as if it were a Currency Obligation (including exercised currency option transactions, provided that cash-settled currency option transactions shall be treated analogously to currency option transactions to be settled at their In-the-Money Amount) and each unexercised currency option transaction being treated as if it were a Currency Option Transaction under the Agreement.

6.4. Payment and Late Interest.

The net amount payable by one Party to the other Party, pursuant to the provisions of Sections 6.1 and 6.3 above, shall be paid by the close of business on the Business Day following the receipt by the Defaulting Party of notice of the Nondefaulting Party's settlement calculation, with interest at overnight LIBOR from and including the Closeout 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 6 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 6 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.

6.5. 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 6, the other Party may, at its election and without penalty, suspend its obligation to perform under the Agreement.

6.6. Expenses.

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

6.7. Reasonable Pre-estimate.

The Parties agree that the amounts recoverable under this Section 6 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 shall be entitled to recover any additional damages as a consequence of such losses.

6.8. No Limitation of Other Rights; Setoff.

The Nondefaulting Party's rights under this Section 6 shall be in addition to, and not in limitation or exclusion of, any other rights that the Nondefaulting Party may have (whether by agreement, operation of law, or otherwise), and, to the extent not prohibited by law, the Nondefaulting Party shall have a general right of setoff 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 setoff shall, if appropriate, be discounted to present value in a commercially reasonable manner by the Nondefaulting Party). The Nondefaulting Party's rights under this Section 6.8 are subject to Section 6.7.

Section 7.

Force Majeure, Act of State, and Illegality

7.1. Definitions.

- (a) "Force Majeure Event," on any day determined as if such day were a Settlement Date of an FX Transaction or the Settlement Date of a Currency Option Transaction (even if it is not), after giving effect to any applicable provision, disruption fallback, or remedy specified in, or pursuant to, the relevant Confirmation, means:



- (i) it is unlawful for (A) the Office through which a Party (which shall be the “Affected Party”) is acting to deliver or receive a payment of any Currency in respect of a Currency Obligation or Currency Option Transaction; or (B) a Party or a Credit Support Provider with respect to the obligations of such Party (which shall be the “Affected Party”) to perform any absolute or contingent obligation to make payment or delivery, which such Party or Credit Support Provider has under a Credit Support Document relating to such FX Transaction or Currency Option Transaction, to receive a payment or delivery under such Credit Support Document, or to comply with any other material provision of such Credit Support Document; or
- (ii) by reason of force majeure or act of state, (A) the Office through which a Party (which shall be the “Affected Party”) is acting is prevented from, or hindered, or delayed in delivering or receiving, or it is impossible or impracticable to deliver or receive, any Currency in respect of a Currency Obligation or Currency Option Transaction, and which event is beyond the control of such Party and which such Party, with reasonable diligence, cannot overcome; or (B) a Party or a Credit Support Provider of such Party (which shall be the “Affected Party”) is prevented from performing any absolute or contingent obligation to make payment or delivery, which such Party or Credit Support Provider has under any Credit Support Document relating to such FX Transaction or Currency Option Transaction, from

receiving a payment or delivery under such Credit Support Document, or from complying with any other material provision of such Credit Support Document (or would be so prevented if such payment, delivery, or compliance were required on that day), or it becomes impossible or impracticable for such Party or Credit Support Provider so to perform, receive, or comply (or it would be impossible or impracticable for such Party or Credit Support Provider so to perform, receive, or comply if such payment, delivery, or compliance were required on that day).

An FX Transaction or Currency Option Transaction (1) under which performance has been made unlawful, impossible, or impracticable, or would be so prevented, hindered, or delayed; or (2) in respect of which the performance of such Party or the Credit Support Provider of such Party under a Credit Support Document is made unlawful, impossible, or impracticable, or is so prevented, is an “Affected Transaction.”

- (b) “Waiting Period” means, in respect of a Force Majeure Event as defined in Section 7.1(a)(i), the first three (3) days after such event occurs that are Business Days or that, but for such event, would have been Business Days, and, in respect of a Force Majeure Event as defined in Section 7.1(a)(ii), the first eight (8) days after such event occurs that are Business Days or that, but for such event, would have been Business Days.

7.2. Liquidation Rights.

If a Force Majeure Event occurs and is still in effect, then (but subject to Section 7.3) either



Party may, by notice to the other Party on any day or days after the Waiting Period expires, require the closeout and liquidation of the Currency Obligations under any or all of the Affected Transactions in accordance with the provisions of Section 6.1 and, for such purposes, the Party unaffected by such Force Majeure Event shall perform the calculation required under Section 6.1 as if it were the Non-defaulting Party (or, if both Parties are Affected Parties, both Parties shall so calculate in respect of all Affected Transactions, which either Party determines to liquidate, and the average of the amounts so determined shall be the relevant amount in respect of each Affected Transaction, except that if a Party fails so to determine an amount, the amount determined by the other Party shall govern). If a Party elects so to liquidate less than all Affected Transactions, it may liquidate additional Affected Transactions on a later day or days if the relevant Force Majeure Event is still in effect.

7.3. Waiting Period.

If the Settlement Date of an FX Transaction or a Currency Option Transaction, which is an Affected Transaction under Section 7.2, falls during the Waiting Period of the relevant Force Majeure Event, then such Settlement Date or Settlement Dates (as applicable) shall be deferred to the first Business Day (or the first day that, but for such event, would have been a Business Day) after the end of that Waiting Period. Compensation for this deferral shall be at then current market rates as determined in a commercially reasonable manner by the calculating Party or Parties under Section 6.

7.4. Notice by Affected Party.

If a Force Majeure Event has occurred, an Affected Party shall promptly give notice thereof to the other Party.

7.5. Force Majeure Event and Event of Default.

Nothing in this Section 7 shall be taken as indicating that the Party treated as the Defaulting Party for the purpose of calculations required by Section 7.1 has committed any breach or default. If an event occurs that would otherwise constitute both a Force Majeure Event and an Event of Default, that event shall be treated as a Force Majeure Event and shall not constitute an Event of Default.

7.6. Inability of Head or Home Office to Perform Obligations of Branch.

If (a) a Force Majeure Event occurs and the relevant Office is not the Affected Party's head or home office, (b) the other Party seeks performance of the relevant obligation or compliance with the relevant provision by the Affected Party's head or home office, and (c) the Affected Party's head or home office fails so to perform or comply due to the occurrence of an event or circumstance that would, if that head or home office were the Office through which the Affected Party makes and receives payments and deliveries with respect to the relevant FX Transaction or Currency Option Transaction, constitute or give rise to a Force Majeure Event, and such failure would otherwise constitute an Event of Default under Section 6.1 with respect to such



Party, then, for so long as the relevant event or circumstance continues to exist with respect to both such Office and the Affected Party's head or home office, such failure shall not constitute an Event of Default under Section 6.1.

Section 8.

Parties to Rely on Their Own Expertise

Each Party shall be deemed to represent to the other Party on the date on which it enters into an FX Transaction or Currency Option Transaction that (absent a written agreement between the Parties that expressly imposes affirmative obligations to the contrary for that FX Transaction or Currency Option Transaction): (a)(i) it is acting for its own account, and it has made its own independent decisions to enter into that FX Transaction or Currency Option Transaction and as to whether that FX Transaction or Currency Option Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisors as it has deemed necessary; (ii) 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 FX Transaction or Currency Option Transaction, it being understood that information and explanations related to the terms and conditions of an FX Transaction or Currency Option Transaction shall not be considered investment advice or a recommendation to enter into that FX Transaction or Currency Option Transaction; and (iii) it has not received from the other Party any assurance or guarantee as to the expected results of that FX Transaction or Currency Option Transaction; (b) it is capable of evaluating and understand-

ing (on its own behalf or through independent professional advice), and understands and accepts the terms, conditions, and risks of that FX Transaction or Currency Option Transaction; and (c) the other Party is not acting as a fiduciary or an advisor for it in respect of that FX Transaction or Currency Option Transaction.

Section 9.

Miscellaneous

9.1. 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 6 or 7, 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 the Currency.

9.2. 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 9.2 shall be void.

9.3. 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.

9.4. Notices.

- (a) Any notice or other communication in respect of this Agreement may be given in any manner described below (except that a notice or other communication under Section 5, 6, or 7 may not be given by electronic messaging system or e-mail) to the address or number or in accordance with the electronic messaging system or e-mail details provided in Part IX of the Adherence Agreement and shall 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 answer-back is received; (iii) if sent by facsimile transmission, on the date it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt shall be on the sender and shall 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 it is delivered or its delivery is

attempted; (v) if sent by electronic messaging system, on the date it is received; or (vi) if sent by e-mail, on the date it is delivered; unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Banking Day.

- (b) Either Party may by notice to the other change the address, telex or facsimile number, or electronic messaging system or e-mail details at which notices or other communications are to be given to it.

9.5. 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 9.4, and termination shall be effective at the end of such seventh day; provided, however, that any such termination shall not affect any outstanding Currency Obligations or Currency Option Transactions, 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.

9.6. 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 pro-



visions 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.

9.7. 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.

9.8. Time of Essence, Times.

Time shall be of the essence in the Agreement. Unless otherwise agreed, the times referred to in the Agreement with respect to Currency Option Transactions shall in each case refer to the local time of the relevant Office of the Seller of the relevant Currency Option Transaction.

9.9. Headings.

Headings in the Agreement are for ease of reference only.

9.10. 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 X of the Adherence Agreement or in a notice given in accordance with Section 9.4.

9.11. Amendments.

No amendment, modification, or waiver of the Agreement shall be effective unless in writing executed by each of the Parties, provided that the Parties may agree in a Confirmation that complies with Section 1.3 to amend the Agreement solely with respect to a Non-Deliverable FX Transaction or a Currency Option Transaction that is the subject of the Confirmation; and provided, further, the Parties may agree in a Confirmation that complies with Section 1.3 to amend the Agreement solely with respect to a Deliverable FX Transaction that is the subject of the Confirmation if either the Confirmation explicitly states that it shall so prevail and has been signed by both Parties or Confirmations so stating have been exchanged as provided in Section 1.3.

9.12. Credit Support.

A Credit Support Document between the Parties may apply to obligations governed by the Agreement, including but not limited to



any Credit Support Document specified in Part XI of the Adherence 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.

9.13. Counterparts.

The Agreement (and each amendment, modification, and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile and by electronic messaging system), each of which shall be deemed an original.

Section 10.

Law and Jurisdiction

10.1. 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 Adherence Agreement, without giving effect to conflict of laws principles.

10.2. Consent to Jurisdiction.

- (a) With respect to any Proceedings, each Party irrevocably (i) submits to the nonexclusive jurisdiction of the courts of the jurisdiction set forth in Part XIII of the Adherence Agreement, and (ii) waives any objection that 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 shall 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 Adherence Agreement. If for any reason any Party's process agent is unable to act as such, such Party shall promptly notify the other Party and within thirty (30) days shall appoint a substitute process agent acceptable to the other Party.

10.3. Waiver of Jury Trial.

Each Party irrevocably waives any and all right to trial by jury in any Proceedings.

10.4. 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 (a) suit; (b) jurisdiction of any court; (c) relief by way of injunction, order for specific performance or for recovery of property; (d) attachment of its assets (whether before or after judgment); and (e) 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 shall not claim any such immunity in any Proceedings.



Annex I

Definitions

“Adherence Agreement” has the meaning given to it in the preamble to these Terms.

“Affected Party” has the meaning given to it in Section 7.1.

“Affected Transaction” has the meaning given to it in Section 7.1.

“Agreement” has the meaning given to it in Section 1.2.

“Business Day” means for purposes of: (a) any matter specified in the Definitions, as defined therein; (b) Section 5(a), a day on which settlement systems necessary to accomplish the relevant payment are generally open for business so that the payment is capable of being accomplished in accordance with customary market practice, in the place specified in the relevant Confirmation, or if not so specified, in a location as determined in accordance with customary market practice for the relevant delivery; and (c) any other provision of the Agreement, a day that is a Local Banking Day for the applicable Offices of both Parties; provided, however, that neither Saturday nor Sunday shall be considered a Business Day for any purpose.

“Closeout Amount” has the meaning given to it in Section 6.1.

“Closeout Date” means a day on which, pursuant to the provisions of Section 6.1, the Nondefaulting Party closes out Currency

Obligations and/or Currency Option Transactions or such closeout occurs automatically.

“Closing Gain,” as to the Nondefaulting Party, means the difference described as such in relation to a particular Settlement Date under the provisions of Section 6.1.

“Closing Loss,” as to the Nondefaulting Party, means the difference described as such in relation to a particular Settlement Date under the provisions of Section 6.1.

“Credit Support” has the meaning given to it in Section 6.2.

“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, and in any event includes any document specified as such in Part XI of the Adherence 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.

“Currency Obligation” means any obligation of a Party to deliver a Currency pursuant to an FX Transaction (including a Non-Deliverable FX Transaction for which the Settlement Currency Amount has been fixed), or an exercised Currency Option Transaction. For the purposes of Section 6.1 only: (a) the amount of the



Currency Obligation of a Non-Deliverable FX Transaction for which the Settlement Currency Amount has not been fixed on or prior to the Closeout Date shall be as determined by the Nondefaulting Party in good faith and in a commercially reasonable manner; and (b) the term “Currency Obligation” shall not include a Currency Option Transaction that is to be settled at its In-the-Money Amount.

“*Custodian*” has the meaning given to it in the definition of Insolvency Proceeding.

“*Defaulting Party*” has the meaning given to it in Section 5.

“*Definitions*” has the meaning given to it in the preamble to these Terms.

“*Effective Date*” means the date specified as such in the Adherence Agreement, provided that if no such date is specified it shall be the date of the Adherence Agreement.

“*Event of Default*” has the meaning given to it in Section 5.

“*Force Majeure Event*” has the meaning given to it in Section 7.1.

“*Insolvency Proceeding*” means (a) 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; or (b) the Defaulting Party causes or is subject to any event with respect to it that, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in this paragraph.

“*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 (a) 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 (b) for any Party, a day in the location of the applicable Office of such Party on which commercial banks in that location are not authorized or required by law to close.

“*Master Agreement*” has the meaning given to it in Section 1.2.



“Nondefaulting Party” has the meaning given to it in Section 5.

“Office(s),” as to a Party, has the meaning given to it in Section 1.1.

“Parties” means the parties to the Agreement as set forth in the Adherence Agreement, including their successors and permitted assigns (but without prejudice to the application of Section 5(i)); and the term *“Party”* shall mean whichever of the Parties is appropriate in the context in which such expression may be used.

“Proceedings” means any suit, action, or other proceedings relating to the Agreement, any FX Transaction, or any Currency Option Transaction.

“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 (a) any transaction (including an agreement with respect to any such transaction) now existing or hereafter entered into between one Party to this Agreement (or any Credit Support Provider of such Party) and the other Party to this Agreement (or any Credit Support Provider of such other Party) that is not a Transaction under this Agreement but (i) that is a rate swap transaction, swap option, 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, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, repurchase transaction, reverse repurchase transaction, buy/sell-back transaction, securities lending transaction, weather index transaction, or forward purchase or sale of a security, commodity, or other financial instrument or interest (including any option with respect to any of these transactions); or (ii) that is a type of transaction that is similar to any transaction referred to in clause (i) above that is currently, or in the future becomes, recurrently entered into in the financial markets (including terms and conditions incorporated by reference in such agreement) and which is a forward, swap, future, option, or other derivative on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, or other benchmarks against which payments or deliveries are to be made; (b) any combination of these transactions; and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant Confirmation.

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

“Spot Rate” has the meaning given to it in the Definitions, provided that the *“Settlement Rate Option”* referred to therein shall be deemed to be unspecified and the reference therein to



“Calculation Agent” shall be deemed a reference to the Nondefaulting Party.

“*Termination Currency*,” as to a Party, means the Currency of the country in which such Party’s home or head office is located, or if another Currency is specified in the Adherence Agreement as to a Party, that Currency.

“*Threshold Amount*” means zero (\$0), unless the Parties otherwise specify as such for each Party in Part VI of the Adherence Agreement.

“*Waiting Period*” has the meaning given to it in Section 7.1.



Annex 2A

U.S. Regulatory Representations

A. The following FDICIA representation shall apply if the Parties have so elected in the Adherence Agreement:

1. Each Party represents and warrants that it qualifies as a “financial institution” within the meaning of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) by virtue of being either a:
 - (a) broker or dealer within the meaning of FDICIA,
 - (b) depository institution within the meaning of FDICIA,
 - (c) futures commission merchant within the meaning of FDICIA, or
 - (d) “financial institution” within the meaning of Regulation EE (see below).
2. A Party representing that it is a “financial institution,” as that term is defined in 12 C.F.R. Section 231.3 of Regulation EE issued by the Board of Governors of the Federal Reserve System (“Regulation EE”), represents that:
 - (a) it is willing to enter into “financial contracts” as a counterparty on both sides of one or more “financial markets,” as those terms are used in Section 231.2 of Regulation EE; and
 - (b) during the fifteen (15)-month period immediately preceding the date it

makes or is deemed to make this representation, it has had on at least one (1) day during such period, with counterparties that are not its affiliates (as defined in Section 231.2(b) of Regulation EE) either:

- (i) one or more financial contracts of a total gross notional principal amount of \$1 billion outstanding, or
 - (ii) total gross mark-to-market positions (aggregated across counterparties) of \$100 million; and
 - (c) agrees that it shall notify the other Party if it no longer meets the requirements for status as a financial institution under Regulation EE.
3. If both Parties are financial institutions in accordance with the above, the Parties agree that the Agreement shall be a netting contract, as defined in 12 U.S.C. Section 4402(14), and each receipt or payment or delivery obligation under the Agreement shall be a covered contractual payment entitlement or covered contractual payment obligation, respectively, as defined in FDICIA.

B. The following ERISA representation shall apply if the Parties have so elected in the Adherence Agreement:

Each Party represents and warrants that it is neither (1) an “employee benefit plan,” as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974,



which is subject to Part 4 of Subtitle B of Title I of such Act; (2) a “plan” as defined in Section 4975(e)(1) of the Internal Revenue Code of 1986; nor (3) an entity the assets of which are deemed to be assets of any such “employee benefit plan” or “plan” by reason of the U.S. Department of Labor’s plan asset regulation, 29 C.F.R. Section 2510.3-101.

- C. The following CFTC trade option representation shall apply if the Parties have so elected in the Adherence Agreement:

Each Party represents and warrants that it is a commercial user of or a merchant handling the Currencies subject to each Currency Option Transaction and was offered or entered into each Currency Option Transaction solely for purposes related to its business as such.

- D. The following Commodities Exchange Act representation shall apply if the Parties have so elected in the Adherence Agreement:

Each Party represents and warrants that (1) it is an “eligible contract participant” within the meaning of Section 1a(12) of the Commodity Exchange Act, as amended; (2) this Agreement and each Transaction is subject to individual negotiation by such Party; and (3) neither this Agreement nor any Transaction will be executed or traded on a “trading facility” within the meaning of Section 1a(33) of the Commodity Exchange Act, as amended.

- E. The following Master Agreement representation shall apply if the Parties have so elected in the Adherence Agreement:

The Parties intend that the Agreement shall be a “master agreement” and a “master netting agreement,” as referred to in Chapter 1 of the Bankruptcy Code, and a “master agreement,” as referred to in Chapter 16 of the Federal Deposit Insurance Act, or any successor provisions.



Annex 2B

Canadian Regulatory Representations and Local Law Provisions

- A. The following disclosure provision shall apply if the Parties have so elected in the Adherence Agreement:

Equivalency Clause. For the purpose of disclosure pursuant to the Interest Act (Canada), the yearly rate of interest to which any rate of interest payable under the Agreement that is calculated on any basis other than a full calendar year is equivalent may be determined by multiplying such rate by a fraction the numerator of which is the actual number of days in the calendar year in which such yearly rate of interest is to be ascertained and the denominator of which is the number of days comprising such other basis.

- B. The following representation shall apply if the Parties have so elected in the Adherence Agreement:

Qualified Party Representation. This representation applies to the extent that any securities act, rule, decree, or regulation applies to a Transaction or any act in furtherance of a Transaction. Each Party represents to the other Party that it meets the eligibility criteria that would render the Transaction, act, or other Party exempt from any registration, offering document, or other requirement to the extent the securities act, rule, decree, or regulations provide such an exemption. Each Party is deemed to repeat this representation on each date on which a Transaction is entered into. Each Party may rely on this

representation from the other Party in making this representation.

- C. The following acknowledgement shall apply if the Parties have so elected in the Adherence Agreement:

English Language. The Parties hereto acknowledge that it is their express wish that this Agreement be drawn in the English language only. Les Parties reconnaissent qu'il est de leur volonté que la présente entente soit rédigée en langue anglaise seulement.

- D. The following amendment shall apply if the Parties have so elected in the Adherence Agreement:

Section 7.1(a)(ii) shall be amended (1) to delete in the first line, the words "force majeure or act of state" and to insert in lieu thereof "any event or circumstance, including without limitation, any natural, technological, political, or governmental (which for greater certainty includes an act of state), or similar event or circumstance"; and (2) in subsection (A) thereof, to insert the words "or circumstance" after "and which event."



Annex 3

Provisions Applicable When a Party Is Represented by a Third Party Intermediary

A. The following provisions shall apply when a Party is represented by a third party intermediary, such as an investment adviser, investment manager, or similar person (an “Intermediary,” the Party represented being, for the purpose of this Annex 3, a “Client,” the other Party being the “Counterparty”) and if the Parties have so elected (including through such Intermediary) in the Adherence Agreement:

1. The Intermediary shall provide the Counterparty with a list of the Clients. The Intermediary shall, upon request of the Counterparty from time to time, provide the Counterparty with the approximate market value of assets under management for each such Client.
2. The rights and obligations of the Party under this Agreement shall accrue to each Client, unless the context clearly requires otherwise. This Agreement shall be deemed a separate agreement between the Counterparty and each such Client (provided that the Intermediary shall be liable to the extent that any representation or warranty made by it as to itself or on behalf of a Client 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).
3. The Intermediary hereby represents and warrants to the Counterparty that

(a) the Intermediary is conducting its business in compliance with all applicable laws and regulations, including applicable anti-money-laundering laws and regulations; (b) each Client has granted the Intermediary, in writing, investment management discretion (or the Intermediary’s employees are authorized to act on behalf of such Client as employees of such Client) with respect to a portfolio of assets having an approximate market value as set forth on such list, including full discretionary authority to enter into Transactions for such Client’s account and risk and to enter into the Agreement on such Client’s behalf, and the right to use such Client’s funds to satisfy obligations incurred by the Intermediary on such Client’s behalf and sell such Client’s securities to raise the funds necessary to satisfy such obligations; and (c) after reasonable inquiry into the financial condition, investment experience, investment objectives of each Client, and other relevant information concerning each Client, the Intermediary has determined that each Client shall be able to meet all of its financial and contractual commitments, which may arise from or with respect to Transactions and that Transactions are appropriate for each Client and within such Client’s legal capacity.

B. The Intermediary agrees to indemnify and hold harmless the Counterparty for any breach of the representations and warranties in this Annex.



IFXCO

International Foreign Exchange and Currency Option Master Agreement

Adherence Agreement

This is to confirm the agreement of _____ (“Party A”)
and _____ (“Party B”)

(collectively, the “Parties”), as of [Insert Date], to the IFXCO Master Agreement Terms, published in June 2005 by the Foreign Exchange Committee in association with the British Bankers’ Association, the Canadian Foreign Exchange Committee, and the Japanese Bankers Association, as amended as of the date of this agreement (the “Terms”). This agreement constitutes an Adherence Agreement, as referred to in the Terms.

The definitions and provisions contained in the Terms are hereby incorporated into this Adherence Agreement.

Part I.

Scope of the Agreement as to Outstanding Transactions

Date of this Adherence Agreement: _____

The Terms shall apply to all FX Transactions outstanding between any two Offices of the Parties on the Effective Date unless otherwise specified in this Part I.

The Terms shall apply to all Currency Option Transactions outstanding between any two Offices of the Parties on the Effective Date unless otherwise specified in this Part I.

The Effective Date shall be the date of this Adherence Agreement unless otherwise specified in this Part I.



Part II. **Offices**

Each office of Party A and Party B shall be an Office unless otherwise specified in this Part II.

Part III. **Settlement Netting**

The settlement netting provisions of Section 3.2 of the Terms shall not be effective unless otherwise specified in this Part III.

[If such provisions are effective, the following Offices shall form the relevant branch pairs for the purposes thereof:

Party A: _____

Party B: _____

And such provisions shall be effective as of [the Effective Date].]

Part IV. **Certain Regulatory Representations and/or Local Law Provisions**

[The representations, warranties, and undertakings in Annex 2A to the Terms shall apply.]

[The representations, warranties, and undertakings in Annex 2B to the Terms shall apply.]

[The representations, warranties, and undertakings in Annex 3 to the Terms shall apply.]

Part V. **Additional Covenants**

The following covenant(s) shall apply:

Promptly upon execution of the Adherence Agreement, each Party shall deliver to the other documents certifying (a) the authority of its signatory, including a resolution of its board of directors or governing body, if applicable; and (b) incumbency and signature.

From time to time, each Party shall deliver financial statements or other documentation reasonably requested by the other Party (unless already in possession of the requesting Party).

Part VI. **Threshold Amount**

For purposes of Section 5(j) of the Terms:

Party A's Threshold Amount is zero (\$0) unless otherwise specified in this Part VI.

Party B's Threshold Amount is zero (\$0) unless otherwise specified in this Part VI.

Part VII. **Additional Events of Default**

The following provisions, which are checked, shall constitute additional Events of Default:

- ☒ (a) 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.
- ☒ (b) occurrence of garnishment or provisional garnishment against a claim against the Nondefaulting Party acquired by the Defaulting Party. The automatic termination provision of Section 6.1 [shall][shall not] apply to either Party that is a Defaulting Party in respect of this Event of Default.
- ☒ (c) suspension of payment by the Defaulting Party or any Credit Support Provider in accordance with the Bankruptcy Law or the Corporate Reorganization Law in Japan. The automatic termination provision of Section 6.1 [shall][shall not] apply to either Party that is a Defaulting Party in respect of this Event of Default.
- ☒ (d) disqualification of the Defaulting Party or any Credit Support Provider by any relevant bill clearing house located in Japan. The automatic



termination provision of Section 6.1 [shall][shall not] apply to either Party that is a Defaulting Party in respect of this Event of Default.

Part VIII.

Automatic Termination

The automatic termination provision of Section 6.1 of the Terms [shall][shall not] apply to Party A as Defaulting Party in respect of clause (b), (c), or (d) of the definition of Event of Default.

The automatic termination provision of Section 6.1 of the Terms [shall][shall not] apply to Party B as Defaulting Party in respect of clause (b), (c), or (d) of the definition of Event of Default.

Part IX.

Notices

If sent to Party A:

Address: _____

Telephone number: _____

Telex number: _____

Facsimile number: _____

Name of individual or department to whom notices are to be sent: _____

If sent to Party B:

Address: _____

Telephone number: _____

Telex number: _____

Facsimile number: _____

Name of individual or department to whom notices are to be sent: _____

Part X.

Payment Instructions

With respect to each Party, as may be set forth in such Standard Settlement Instructions as may be specified by such Party, or as may be otherwise specified by such Party, in a notice given in accordance with Section 9.4 of the Terms.

Part XI.

Credit Support

For avoidance of doubt, a Credit Support Document shall include any agreement or document of the type mentioned in the definition of such term whether or not specifically mentioned in this Part or elsewhere, and a Credit Support Provider includes any third party of the type mentioned in the definition of such latter term whether or not specifically mentioned in this Part or elsewhere.

[In accordance with Section 9.13 of the Terms and without limitation of the definition of Credit Support Document in Annex 1 of the Terms, the following shall be a Credit Support Document:

The *1999 Collateral Annex* (the “Collateral Annex”) as published by the Foreign Exchange Committee, the terms of which are hereby incorporated herein, with the following variables having the following meanings:

Pledgor: _____

Secured Party: _____

Date of Collateral Annex: _____

Master Agreement: the Master Agreement (the Terms and this Adherence Agreement)

Collateral Percentages of Eligible Collateral:

Transfer of Other Eligible Collateral:

Securities Intermediary: _____

Independent Amount: _____



Threshold Amount: _____

Collateral Annex Events of Default: _____

Cutoff Time: _____

Minimum Delivery/Return Amounts: _____

Rounding Convention: _____

Substitutions/Use of Collateral: _____

Section 5.1 of the Collateral Annex
[shall][shall not] apply.

Section 5.2 of the Collateral Annex
[shall][shall not] apply.

U.S. Dollar Collateral: _____

Collateral Management Offices: _____

Net Exposure: _____

Other Provisions: _____]

Part XII.

Governing Law

In accordance with Section 10.1 of the Terms, the Agreement shall be governed by the laws of:

- ☐ the State of New York; and provided that the exclusion of conflict of laws principles in Section 10.1 of the Terms shall exclude only those principles or rules that would result in the application of the laws of another jurisdiction.
- ☐ England and Wales.
- ☐ Japan.

Part XIII.

Consent to Jurisdiction

In accordance with Section 10.2 of the Terms, each Party irrevocably submits to the nonexclusive 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.
- ☐ the courts of England.
- ☐ the Tokyo District Court.

Part XIV.

Agent for Service of Process

[Not applicable.]

[Party A appoints the following as its agent for service of process in any Proceedings in [the State of New York][England and Wales] [Japan]:
_____.]

[Party B appoints the following as its agent for service of process in any Proceedings in [the State of New York][England and Wales] [Japan]:
_____.]

BY EXECUTING THIS ADHERENCE AGREEMENT, EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS RECEIVED A COPY OF, AND UNDERSTANDS AND CONSENTS TO, THE TERMS AND PROVISIONS OF THE TERMS REFERENCED IN THE HEADING OF THIS ADHERENCE AGREEMENT.¹

ACCEPTED AND AGREED:

PARTY A: _____

By _____

Name: _____

Title: _____

PARTY B: _____

By _____

Name: _____

Title: _____

¹Although not required, some parties may prefer to attach and/or execute a copy of the Terms.



IFXCO

International Foreign Exchange and Currency Option Master Agreement

Guide to Changes to the FXC Master Agreements

Disclaimer

This Guide and the related forms of documentation do not necessarily reflect the views of the Federal Reserve Bank of New York or any other component of the Federal Reserve System, or of the Foreign Exchange Committee, the Financial Markets Lawyers Group, or any of their members. This Guide and such documentation do not purport to be legal advice with respect to a particular transaction or situation. If legal advice or other expert assistance is required, the services of a qualified professional should be obtained.



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I. Introduction

The publication of IFXCO by the Foreign Exchange Committee (FX Committee)¹ and other sponsoring industry groups in the United Kingdom, Canada, and Japan is the result of a project undertaken by the Financial Markets Lawyers Group (FMLG).² In 2003, the FMLG commenced a study to determine whether the existing master agreements published by the FX Committee (individually, the International Foreign Exchange Master Agreement (IFEMA), the International Currency Options Market Master Agreement (ICOM Master Agreement), and the International Foreign Exchange and Options Master Agreement (FEOMA), and collectively, the “FXC Master Agreements”) should be updated in light of developments since their last publication in 1997.

One such development occurred in 1999, when in response to several disruptions in the foreign exchange markets (notably in Asia), the FX Committee published new force majeure provisions that could be adopted by parties as an amendment or supplement to the FXC Master Agreements. Another occurred in 2002, when the International Swaps and Derivatives Association, Inc. (ISDA) published a new ISDA Master Agreement that included extensive revisions to the 1992 ISDA Master Agreement. Thus in 2003, the FMLG undertook a project to update the FXC Master Agreements.

At that time, the continued viability of the FXC Master Agreements came into

consideration. Since the FXC Master Agreements were first published, the vast majority of master agreements involving foreign exchange and currency option transactions have been documented under the ISDA Master Agreement, a process that was accelerated by the joint publication of the *1998 FX and Currency Option Definitions* by ISDA, EMTA, Inc., and the FX Committee (the “1998 Definitions”). However, a survey revealed that the FXC Master Agreements, in particular IFEMA and FEOMA, are still in use, either because they had been executed some time ago and have not been replaced, or because counterparties, such as hedge funds, that intend only to enter into foreign exchange transactions or currency options, or both, are using the FXC Master Agreements because they prefer a simpler master agreement for these transactions. Accordingly, the decision was made to update the FXC Master Agreements with the objective of simplifying them for use by these counterparties.

Concurrently, the Global Documentation Steering Committee (GDSC) issued recommendations to improve all types of master agreements for derivative transactions. The GDSC considered such improvements primarily in response to the Long-Term Capital Management (LTCM) insolvency in 1998, in which differences among master agreements for different products created difficulties for market participants that desired to terminate, close out, and liquidate transactions with

¹The Foreign Exchange Committee is an advisory committee sponsored by, but independent of, the Federal Reserve Bank of New York. The FX Committee includes representatives of major financial institutions engaged in foreign currency trading in the United States.

²The FMLG is a key legal and policy advisory group for the Foreign Exchange Committee.



LTCM at that time. The GDSC has published a number of specific recommendations on its website,³ which were explicitly considered and adopted, with certain modifications, in the 2002 ISDA Master Agreement. The FMLG decided to include the GDSC recommendations, as adapted by the 2002 ISDA Master Agreement, in the update of the FXC Master Agreements.

Finally, it was noted that the 1998 Definitions had been published after the last publication of the FXC Master Agreements in 1997. It was decided that the FXC Master Agreements could be enhanced and shortened by incorporating the Definitions.

The International Foreign Exchange and Currency Option (IFXCO⁴) Master Agreement is the result of the work done by the FMLG to achieve these goals. The IFXCO Master Agreement, or IFXCO, includes: (a) updated force majeure provisions, (b) provisions recommended by the GDSC, and (c) terminology coordinated with the *1998 FX and Currency Option Definitions*. In addition, certain other changes (noted below) have been made. The core provisions concerning contract execution, confirmations, payment netting, and closeout netting, however, are virtually the same as those in the other FXC Master Agreements.

Most notably, the IFXCO Master Agreement has been published in two parts—the “Terms,” which constitute the core “boilerplate” provisions, and the “Adherence Agreement,” which takes the place of the

Schedule to the FXC Master Agreements and provides for the selection of variables that must be specifically agreed upon by the parties. The separation of the two documents is a major step to enhance ease of execution because the Adherence Agreement, a document of five pages (not including the cover page) that incorporates the Terms by reference, can be executed on a stand-alone basis. The Terms are published on the websites of the FX Committee, the FMLG, and the other sponsoring organizations.

Thus, as market participants become familiar with IFXCO, it is hoped that the simplicity of the Adherence Agreement will enhance the speed and efficiency of the negotiation process. The FMLG and the FX Committee have received opinions from counsel in more than thirty jurisdictions to the effect that this procedure is enforceable. Of course, if parties wish to attach the Terms to an Adherence Agreement, they are free to do so.

This Guide in no way constitutes part of, or should be interpreted as modifying, any contractual term contained in the IFXCO Master Agreement. Nevertheless, although IFXCO does, and is intended to, stand on its own as a legal document, the Guide provides important commentary on current market practice and IFXCO. The following sections of this Guide explain the various changes to the FXC Master Agreements represented in IFXCO. Capitalized terms used in this Summary have the meanings given to them in IFXCO, unless otherwise provided herein.

³<www.newyorkfed.org/globaldoc>

⁴IFXCO is pronounced “EYE-FEX-COH.”



II. Changes to the FXC Master Agreements

A. Coordination with the 1998 FX and Currency Option Definitions

The 1998 Definitions use the terms “FX Transaction” and “Currency Option Transaction,” whereas the FXC Master Agreements use “FX Transaction” and “Currency Option.” IFXCO uses the terms of the 1998 Definitions.

The 1998 Definitions use the term “Settlement Date” for both FX Transactions and Currency Option Transactions, whereas the FXC Master Agreements use the traditional term “Value Date” for FX Transactions. IFXCO follows the 1998 Definitions in using the term “Settlement Date” for both.

Note that, in general, any term used in the 1998 Definitions that is not otherwise defined in IFXCO has the meaning given to it in the 1998 Definitions. Accordingly, the following terms are no longer separately defined in IFXCO, as they (or their analogs) are already defined in the 1998 Definitions: “American Style Option,” “Buyer,” “Call,” “Call Currency,” “Confirmation,” “Currency Pair,” “European Style Option,” “Exercise Date,” “Expiration Date,” “Expiration Time,” “In-the-Money Amount,” “Notice of Exercise,” “Premium,” “Premium Payment Date,” “Put,” “Put Currency,” “Seller,” “Spot Price,” and “Strike Price.” The definition of “Business Day” has been revised to conform to that of the 1998 Definitions, although it also includes special provisions for two situations that arise under IFXCO (see Annex 1).

Furthermore, numerous provisions of the FXC Master Agreements were deemed unnecessary for IFXCO because their analogs are included in the 1998 Definitions and incorporated by reference in IFXCO. These include the provisions for payment of the Premium on a Currency Option Transaction, exercise and settlement of Currency Option Transactions, and settlement of FX Transactions.

B. Recommendations of the Global Documentation Steering Committee

As noted above, a primary objective was to update the FXC Master Agreements in light of the GDSC recommendations. These changes are outlined below.

1. Cross-Default

In a document dated November 29, 2000, the GDSC recommended a specific cross-default provision covering defaults under (a) indebtedness and (b) trading transactions. The FXC Master Agreements define the former to be “indebtedness for borrowed money,” so it does not ordinarily include trading transactions, which are usually off-balance-sheet transactions. Thus, if a party to an FXC Master Agreement defaulted in trading transactions with a third party (as opposed to the other party to the Master Agreement), there would be no default under the FXC Master Agreements. The situation is similar in the 1992 ISDA Master Agreement.

This recommendation was carefully considered in the drafting of the 2002 ISDA Master Agreement; after extensive discussions, it was not adopted. Weighing



against legitimate credit concerns about a counterparty defaulting on trading transactions with third parties was the concern that such a provision might be used against a party unfairly—for example, defaults in trading transactions can occur for operational or administrative reasons and might lead to the termination and closeout of an agreement against the defaulting party by numerous counterparties, causing a liquidity crisis for the defaulter. Given the careful consideration of this issue by the ISDA drafters, it was determined that IFXCO would adopt a similar approach.

2. Involuntary Bankruptcy Default

Another document of the GDSC, also dated November 29, 2000, recommended that the grace period before an involuntary bankruptcy becomes an Event of Default be shortened to five (5) business days. The FXC Master Agreements already have this provision. The 2002 ISDA Master Agreement shortened its grace period for this provision from thirty (30) days to fifteen (15) days, however, because some participants were concerned that five (5) days is not enough time to achieve the dismissal of a frivolous filing. Accordingly, for the sake of consistency across master agreements, IFXCO has adopted a fifteen (15)-day grace period for its own involuntary bankruptcy Event of Default.

3. Adequate Assurances

In a document dated June 12, 2001, the GDSC recommended that master agreements provide for an optional adequate assurances Event of Default. The FXC Master Agreements already have this provision. IFXCO gives the parties the option

of adopting this provision as an additional Event of Default in the Adherence Agreement.

4. Force Majeure

As noted above, a major reason for revising the FXC Master Agreements was to update its force majeure provisions. Since the publication of FEOMA in 1997, the crises in the currency markets noted above have led participants to believe that provisions in the master agreements at that time might not provide the best outcome for all parties.

The GDSC recommendation of June 12, 2001, states that there should be a uniform definition of force majeure and that force majeure should not result in a global closeout of a party's transactions following an event of default. We believe that this issue arose in response to the fact that the 1992 ISDA Master Agreement had provisions dealing with illegality but not impossibility. Impossibility is now covered in the FXC Master Agreements, the 2002 ISDA Master Agreement, and, of course, IFXCO. The FXC Master Agreements have always specified that a force majeure event is not the basis for nonperformance, while at the same time recognizing that it is not the fault of either party, restricting termination and closeout to transactions affected by the force majeure event.

The more pressing need was to update the FXC Master Agreements in light of the 1999 force majeure provisions published by the FX Committee and the subsequent learning brought about in drafting new force majeure provisions in the 2002 ISDA Master Agreement. The GDSC announced on October 29, 2003, its support of the approach that ISDA adopted in drafting its 2002 Master Agreement.



Developing an improved approach to force majeure became a question of adopting the proper balance in a grace period before transactions could be closed out. It was recognized that a thirty (30)-day grace period (which was then market standard) was too long of a grace period and that a requirement to transfer affected transactions before termination was undesirable. At the same time, it was believed that the grace period warranted for events based on illegality should differ from the grace period for events based on impossibility. For this reason, Section 7.1 of the IFXCO Terms adopts a three (3)-day grace period for illegality and an eight (8)-day grace period for impossibility, as was done for the 2002 ISDA Master Agreement. This concept appears in the definition “Waiting Period” in Section 7.1.(b) of the Terms.

Parties should also take note of Section 7.6 of the Terms. This provision is similar to a provision in the 2002 ISDA Master Agreement that states the circumstances under which the head office of a party may be expected to perform when a branch cannot perform because of a force majeure event. This provision should be read together with new Section 1.1(b) of the Terms, which specifies that the head office of a party is responsible for the obligations of its branch, subject to the exceptions provided in Section 7 relating to force majeure.

5. Notice Provisions

The GDSC document of August 6, 2002, recommended standard notice provisions dealing with (a) effectiveness given modern forms of communication, (b) special default certifications when the existence

of an event of default depends on giving notice but notice cannot be given, and (c) changes of address. The notice provisions in Section 9.4 of the Terms have been drafted to conform to this recommendation.

6. Default Notices

This GDSC recommendation of January 24, 2003, stated that parties should endeavor to adopt standard notices to be sent to a counterparty if that counterparty is a defaulting party. The FMLG and the FX Committee support this recommendation; however, it is not a part of IFXCO itself. Recommended templates for such notices, which can be adapted for use with the FXC Master Agreements and IFXCO, are published on the GDSC website.

7. Bankruptcy Events of Default Generally

This GDSC recommendation of August 21, 2003, encouraged adoption of a “catchall” provision that covers any form of bankruptcy not already covered in the enumeration of bankruptcy/insolvency events. The definition of Insolvency Proceeding in Annex 1 of the Terms has been amended through the addition of clause (b) to include such a provision.

8. Harmonization of Time Frames

The GDSC recommended that the non-defaulting party should have the right to declare an event of default no later than one (1) local business day after notice of any nonpayment. The FXC Master Agreements already have this provision. Section 5(a) of the IFXCO Terms does as well.



C. Miscellaneous Changes

1. Terms

Given the structure of the Terms and the Adherence Agreement, some provisions from the FXC Master Agreements that were retained for IFXCO appear in different positions. The definitions have been placed in Annex 1 at the end of the Terms. With this long list of terms, which are meaningless out of context, moved to the Annex, the reader will not be distracted from the core purpose of the Terms, which is to evidence procedures for entering into, confirming, and settling FX Transactions and Currency Option Transactions, and for closing them out after default.

Similarly, the Events of Default have been listed in a section immediately before the provisions dealing with termination and closeout after default, instead of in the definitions.

A sentence has been added to Section 1.3 of the Terms to make it clear that the Parties may eliminate any MT-300 or other messages between them and rely on reports provided by CLS Bank or any electronic trading platform as Confirmations.

Provisions dealing with certain regulatory issues that may arise under U.S. law (Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) status of parties, Employee Retirement Income Security Act of 1974 (ERISA) representations, Commodity Futures Trading Commission (CFTC) representations, and Master Agreement representations) are presented in Annex 2A of the Terms rather than in the Adherence Agreement. This permits the Adherence Agreement, in which the parties decide whether these

regulatory provisions do or do not apply, to be shorter. A similar Annex 2B covers Canadian counterparties. If, in the future, regulatory issues surface for other jurisdictions, consideration will be given to whether analogous Annexes for those jurisdictions should be added.

Annex 3 of the Terms is a new provision dealing with some basic issues that arise when transactions are entered into through investment advisers or other intermediaries. The FXC Master Agreements did not have such provisions, and it is believed that their addition through the IFXCO Terms will greatly assist counterparties wishing to enter into master agreements with parties represented by such intermediaries.

2. Adherence Agreement

As noted above, the Adherence Agreement is analogous to the Schedule of the FXC Master Agreements, which allows parties to agree that the Terms shall apply to them as a master agreement and to select or vary the provisions of the Terms. The Adherence Agreement is much the same as the previous Schedule. The Adherence Agreement contains parts that allow the parties to specify scope, offices, and whether or not settlement netting shall apply.

As for other forms of netting, note that the “novation” netting provisions of the FXC Master Agreements have been eliminated from the Terms because closeout settlement netting is sufficient to accomplish the goals of parties wishing to reduce credit and settlement exposure. However, some market participants continue to receive requests from counterparties to enter into such arrangements, related to a



desire not only to settle transactions on a net basis, but also to cancel (novate) transactions at the time they enter into an offsetting transaction. For this reason, Appendix A provides standard language to accomplish this novation netting, both for FX Transactions and for Currency Option Transactions. This language, which may be added to the Adherence Agreement as Parts XV and XVI, is the same as that in the FXC Master Agreements, updated to take the 1998 Definitions into account.

Other parts in the Adherence Agreement allow the parties to specify whether the regulatory representations and local law provisions of Annexes 2A or 2B shall apply, as well as any additional covenants and (for the purposes of the cross-default Event of Default) the Threshold Amount. Unlike the FXC Master Agreements, however, the Adherence Agreement stipulates that if the parties do not specify a different Threshold Amount, that amount is deemed to be zero (\$0).

As in the case of the Schedules to the FXC Master Agreements, there are parts of the Adherence Agreement that allow the parties to specify whether or not Automatic Termination shall apply and to agree upon details for notices, payment instructions, and provisions relating to governing law and jurisdiction.

In addition, Part XI of the Adherence Agreement allows the parties to specify any Credit Support Documents that apply. Unlike the FXC Master Agreements, however, Part XI has provisions allowing the parties to agree (or stipulate) that the terms of the *1999 Collateral Annex* published by the FX Committee shall apply. These provisions are felt to be an important

improvement because increasingly, transactions are collateralized in the effort to reduce credit risk.

Also notable are the provisions of the FXC Master Agreements that have not been continued under IFXCO. These include the novation netting provisions mentioned above, the provisions for discharge and termination of offsetting Currency Option Transactions, and the provision relating to nonpayment of Premiums that allows a party, upon nonpayment of a Premium for a Currency Option Transaction, to effectively “void” only that transaction without closing out all transactions under the Master Agreement. It was felt that this last provision is often negotiated out of the FXC Master Agreements; further, it does not appear in the 2002 ISDA Master Agreement. Parties may, of course, include this as an additional provision in the Adherence Agreement.

III. Ideas for the Future

If anything is clear from the past fifteen years in the effort to adopt industry-standard master agreements, it is that the agreements must be sufficiently flexible to adapt to new situations and learning. As the market learns from court cases, changes in law, market disruptions, changes in technology, and evolving practices, it becomes desirable from time to time to adapt master agreements for the changing times. We believe that the structure of IFXCO is uniquely positioned to allow for this.

Because IFXCO is published in the form of Terms, the FX Committee can more easily publish enhancements, amendments, or



supplements that take market developments into account. Such changes would be prospective in operation, so that existing Adherence Agreements would not be affected. If parties wished to incorporate a change, they could do so by exchanging a simple amendment to the Adherence Agreement.

Some of the possible supplements have already been noted—there may be particular representations or covenants that are desirable in particular jurisdictions from a regulatory point of view. Alternatively, new types of transactions may come to be recognized. A new Annex could be published to apply to the dealings in such transactions.

Thought will soon be given to whether a form of standard default notice or an update to the *1999 Collateral Annex* is desirable.

One particular question concerns what relationship IFXCO will have to changes to the 1998 Definitions. Although there have been few, if any, changes to the main body of the 1998 Definitions, there have been several updates to the rate source definitions in Annex A to the 1998 Definitions. The Terms provide that the 1998 Definitions, as amended up to the date of the Adherence Agreement, shall be incorporated into the Terms. This provision would address changes to Annex A that take place after publication of the Terms, but would preclude revisions to the 1998 Definitions from automatically governing the relationship between the parties after the date they executed the Adherence Agreement. This approach is consistent with that

taken to amendments to Annex A, which are applied as of their date of publication but not retroactively to outstanding trades (unless the parties otherwise agree). It is anticipated that, if the 1998 Definitions are updated in the future in a more substantive way, the Terms will be reviewed in light of these changes. It should also be noted that Section 9.1 of the Terms allows the parties to adopt amendments to the Terms that would apply to individual transactions. Accordingly, changes to the 1998 Definitions could be applied to individual transactions by amending the relevant confirmations. (In the case of Deliverable FX Transactions that are produced by straight-through processing, the confirmation must be signed by both parties.)

Attached as Appendix B is a chart summarizing the architecture of the IFXCO documentation.

Appendix A

Suggested Novation Netting Provisions

Part XV.

Novation Netting of FX Transactions

(a) By Currency.

If the Parties enter into an FX Transaction through a pair of Novation Netting Offices (specified below), giving rise to a Currency Obligation for the same Settlement Date and in the same Currency as a then-existing Currency Obligation between the same pair of Novation Netting Offices, then immediately upon entering into such FX Transaction, each such Currency Obligation



shall automatically and without further action be individually canceled and simultaneously replaced by a new Currency Obligation for such Settlement Date determined as follows: the amounts of such Currency that would otherwise have been deliverable by each Party on such Settlement Date shall be aggregated, and the Party with the larger aggregate amount shall have a new Currency Obligation to deliver to the other Party the amount of such Currency by which its aggregate amount exceeds the other Party's aggregate amount, provided that if the aggregate amounts are equal, no new Currency Obligation shall arise. This Part XV(a) shall not affect any other Currency Obligation of a Party to deliver any different Currency on the same Settlement Date.

Novation Netting Office(s) of Party A:

Novation Netting Office(s) of Party B:

(b) By Matched Pair.

If the Parties enter into an FX Transaction between a pair of Matched Pair Novation Netting Offices (specified below) then the provisions of Part XV(a) shall apply only in respect of Currency Obligations arising by virtue of FX Transactions entered into between such pair of Matched Pair Novation Netting Offices and involving the same pair of Currencies and the same Settlement Date.

Matched Pair Novation Netting Offices of Party A:

Matched Pair Novation Netting Offices of Party B:

(c) Inapplicability of Parts XV(a) and (b).

The provisions of Parts XV(a) and (b) shall not apply if a Closeout Date has occurred or a voluntary or involuntary Insolvency Proceeding or action of the kind described in Section (b), (c), or (d) of Section 5 of the Terms has occurred without being dismissed in relation to either Party.

(d) Failure to Record.

The provisions of Parts XV(a) and (b) shall apply notwithstanding that either Party may fail to record the new Currency Obligation in its books.

(e) Cutoff Date and Time.

The provisions of Parts XV(a) and (b) are subject to any cutoff date and cutoff time agreed upon by the applicable Novation Netting Offices and Matched Pair Novation Netting Offices of the Parties.

Part XVI.

**Discharge and Termination of
Currency Option Transactions;
Netting of Premiums**

(a) Discharge and Termination.

Any Call or any Put written by a Party shall 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 Currency Option Transactions; provided that such discharge and termination may only occur in respect of Currency Option Transactions:

- (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, that is, both being American or both being European;
- (iv) each having the same Strike Price;
- (v) each being transacted by the same pair of Offices of Buyer and Seller;
- (vi) neither of which shall have been exercised by delivery of a Notice of Exercise; and
- (vii) any other fundamental features are the same (for example, both are "vanilla" or both are "barriers," both are "binaries," and so forth);

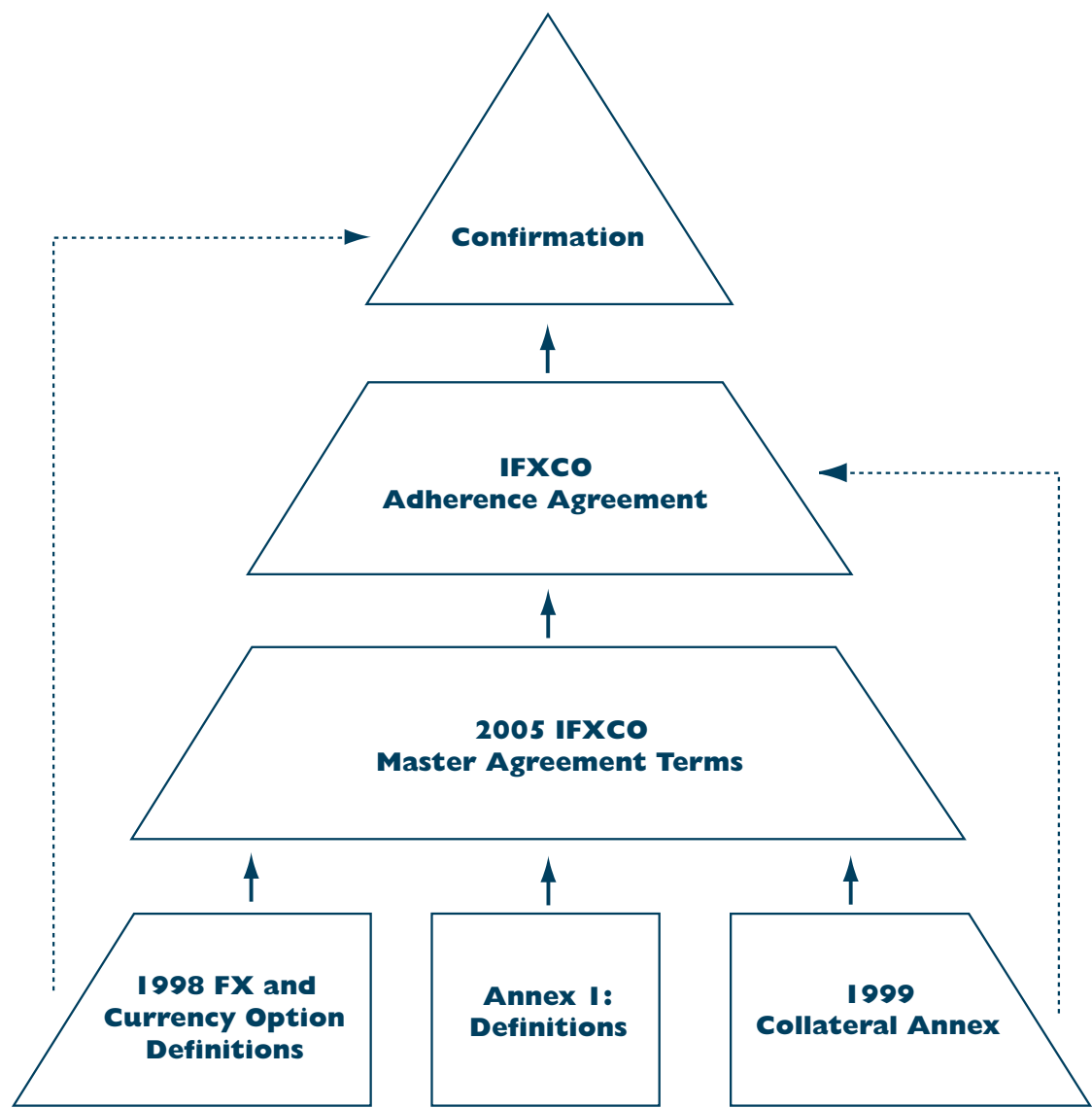
and, upon the occurrence of such discharge and termination, neither Party shall have any further obligation to the other Party in respect of the relevant Currency Option Transactions or, as the case may be, parts thereof so discharged and terminated. Such discharge and termination shall be effective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

(b) Netting of Option Premiums.

If, on any date, Premiums would otherwise be payable under the Agreement in the same Currency between the same respective Offices of the Parties, then, on such date, each Party's obligation to make payment of any such Premium shall be automatically satisfied and discharged and, if the aggregate Premium(s) that would otherwise have been payable by such Office of one Party exceeds the aggregate Premium(s) that would otherwise have been payable by such 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.



Appendix B
The Architecture of IFCO



↑ indicates the basis or foundation for the agreements in the upper tier.



IFXCO

International Foreign Exchange and Currency Option Master Agreement

List of Opinions Concluding That the IFXCO Master Agreement Is Enforceable

Copies of these opinions are available to FX Committee/FMLG members upon request.

Australia	Germany	Scotland
Austria	Hong Kong	Singapore
Bahamas	Ireland	South Africa
Belgium	Japan	South Korea
Bermuda	Luxembourg	Spain
British Virgin Islands	Malaysia	Sweden
Canada	Netherlands	Switzerland
Cayman Islands	Netherlands Antilles	Taiwan
Denmark	New Zealand	Thailand
England	Norway	United States
Finland	Philippines	
France	Portugal	

