

Francesco Caputo Nassetti

**CONSIDERAZIONI SULL'INTRODUZIONE
DELL'*INTERNATIONAL FOREIGN
EXCHANGE MASTER AGREEMENT*
(«IFEMA») NEI MERCATI FINANZIARI**

Estratto



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FRANCESCO CAPUTO NASSETTI

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MASTER AGREEMENT (« IFEMA »)
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1. Introduzione.

Il mercato dei cambi è considerato sotto ogni profilo il più grande mercato finanziario al mondo. In base ad una indagine condotta dalle banche centrali e dalle autorità monetarie di ventisei paesi sotto l'egida della Banca dei Regolamenti Internazionali ⁽¹⁾ il volume *giornaliero* (calcolato con riferimento al mese di aprile 1995) di contratti di cambio (compravendita di divise) si aggirava attorno a millecentonovanta miliardi di dollari.

Si tratta, inoltre, di un mercato veramente *globale*, nel senso che non solo non ha confini geografici, ma nemmeno temporali. Infatti in ogni momento del giorno sono conclusi contratti tra controparti situate in paesi e continenti diversi. La deregolamentazione valutaria avvenuta in tutti i maggiori paesi insieme all'attuale tecnologia ed i moderni strumenti di comunicazione hanno travolto il concetto di mercati separati, sebbene esistano, e continueranno ad esistere, centri dove si concentrano gli scambi (New York, Londra, Tokyo, Hong Kong, Singapore, Parigi, Francoforte ecc.) ⁽²⁾.

⁽¹⁾ Banca dei regolamenti internazionali *Central Bank Survey of Foreign exchange and derivatives market activity*, Basilea, maggio 1996.

⁽²⁾ Per un esame del mercato dei cambi vedasi C. TYGIER, *Basic handbook of foreign exchange*, II edizione, Euromoney Publications, Londra, 1988; D.R. MANDICH, *Foreign*

I principali operatori sono le banche centrali, i *brokers* ⁽³⁾, le banche commerciali e la clientela di queste ultime, che comprende gli investitori istituzionali, le società di investimento, le aziende commerciali ed industriali e qualsiasi altro soggetto.

Mentre i rapporti giuridici tra le banche commerciali e la propria clientela sono di norma regolati da contratti uniformi in uso nelle varie piazze finanziarie, i rapporti interbancari (comprendendo le banche centrali ed i *brokers*), che rappresentano di gran lunga la parte più consistente del mercato mondiale dei cambi e quella effettivamente internazionale, non sono — paradossalmente — regolati da una contrattualistica specifica. Le operazioni vengono concluse al telefono o via circuiti elettronici e le conferme scambiate sono l'unica documentazione scritta attestante i contratti.

Questa deficienza è stata fino ad ora parzialmente colmata attraverso il riferimento agli usi di mercato, che sono stati « codificati » dalla *Association Cambiste Internationale*, Parigi (« ACI »). Questa associazione raggruppa i principali operatori del mercato dei cambi e pubblica (e, quando necessario, aggiorna) un codice di condotta — *ACI Code of conduct* ⁽⁴⁾ — che raccoglie le migliori pratiche di mercato da utilizzarsi tra i *brokers* e gli operatori bancari e viene ripreso dai vari codici di condotta raccomandati sulle principali piazze finanziarie ⁽⁵⁾.

Il codice dell'ACI si rivolge non solo agli operatori del mercato dei cambi, ma anche a quelli del mercato delle opzioni sulle divise e sui tassi di interesse, degli *interest rate and currency swaps*, dei *forward rate agreements* e del mercato dei depositi interbancari. Esso non vuole essere una guida degli aspetti tecnici dei singoli strumenti finanziari, né tocca gli aspetti legali di tali fattispecie. Il codice mira essenzialmente a descrivere

exchange trading techniques and controls, American Bankers Association, Washington DC, 1976; R. WEISWEILLER, *Managing a foreign exchange department*, Quorum Books, New York, 1991; GOLDMAN SACHS, *Goldman Sachs Foreign Exchange Handbook 1994*, Euromoney Publications, Londra, 1994; CHISHOLM ROTH ASSOCIATES, *Foreign Exchange*, Euromoney Publications, Londra, 1994; BORIS ANTL, *Managing currency risk*, Euromoney Publications, Londra, 1994.

⁽³⁾ I *brokers* sono società specializzate nella raccolta della domanda e dell'offerta delle quotazioni sui cambi ed agiscono in qualità di intermediario rendendo possibile la conclusione del contratto direttamente tra le parti.

⁽⁴⁾ L'ultima versione del codice è stata pubblicata nel 1991.

⁽⁵⁾ Negli Stati Uniti d'America vigono le *Guidelines for the management of foreign exchange trading activities* pubblicato dal *New York Foreign Exchange Committee*, nel Regno Unito vige il *London Code of Conduct* pubblicato dalla *Bank of England*, in Giappone vige il *Tokyo Code of Conduct* pubblicato dalla *Foreign Exchange and Money Brokers' Association* di Tokyo, in Australia il *Code of behaviour in dealing and market terminology*, in Belgio la *Guide to market practice*, in Canada le *Guidelines to market behaviour for Canadian foreign exchange market*, in Germania la *Guide of practice for banks participating in the German foreign exchange market*, in Grecia il *Code of professional conduct*, in Irlanda il *Code of conduct for Dublin foreign exchange market*, in Lussemburgo *Le contrôle des activités des cambistes*, in Nuova Zelanda il *Foreign exchange market code of behaviour and practice*, in Singapore la *Guide to conduct and market practice in foreign exchange and currency deposit transactions*, in Svizzera il *Code of behaviour*.

le regole di comportamento che devono ispirare la condotta degli operatori al fine di preservare la professionalità, l'integrità e la trasparenza dei mercati finanziari interessati. Trattasi, in altre parole, di una sorta di codice etico e di guida pratica che, come tale, non ha valore obbligatorio tra le parti.

L'esigenza di colmare questa lacuna è da tempo sentita non soltanto dagli operatori stessi, ma anche dalle autorità di controllo e vigilanza dei mercati valutari e dagli organismi internazionali sensibili alla stabilità dei mercati monetari.

Un primo contratto *standard* fu attuato nel 1985 dal *New York Foreign Exchange Committee* (« NYFEC ») ⁽⁶⁾, ma problematiche inerenti alla scelta della legge applicabile e del foro competente ne limitarono la diffusione tra i soli operatori sul mercato di New York.

Nel 1989 la *British Bankers' Association* (« BBA ») abbandonò un tentativo di creare un simile contratto data la limitatezza degli effetti raggiungibili con una iniziativa isolata.

Nel 1992 la BBA e il NYFEC unirono le loro forze ⁽⁷⁾ allo scopo di creare un contratto *standard* per le operazioni in cambi. A loro si unì in seguito anche la Banca del Giappone.

Tale obiettivo fu raggiunto sul finire del 1993 quando venne alla luce l'*International Foreign Exchange Master Agreement* (« IFEMA ») — in appendice — che si pone come primo contratto uniforme internazionale specificamente prodotto per le operazioni in cambi.

Sempre nel 1992 l'*International Swap Derivatives Association* (« ISDA ») ⁽⁸⁾ pubblicò un contratto quadro che regola, oltre alle operazioni di *swap*, numerose altre fattispecie tra cui le operazioni in cambi. Per le ragioni che accenneremo in seguito, questo contratto — sebbene ampiamente diffuso — non sembra presentare la soluzione ottimale per le operazioni in cambi.

2. Le ragioni che hanno indotto alla creazione dell'IFEMA.

L'eliminazione dell'incertezza del quadro giuridico relativo ai contratti di compravendita di divise (o contratti di cambio) è stata una delle principali ragioni che ha indotto alla creazione dell'IFEMA.

⁽⁶⁾ Il NYFEC è un comitato formalmente indipendente — sebbene operi sotto l'egida della *Federal Reserve Bank of New York* — composto dai principali operatori bancari e *brokers* americani.

⁽⁷⁾ Nel 1992 fu pubblicato l'*International currency option master agreement* (« ICOM ») nato dalla collaborazione della BBA e NYFEC. Tale contratto stabilisce uno *standard* internazionale applicabile ai contratti di opzione sulle divise. Il successo ottenuto grazie a questa iniziativa spinse le due citate autorità alla preparazione del documento di cui si parla nel testo.

⁽⁸⁾ Per una breve panoramica sull'ISDA vedasi F. CAPUTO NASSETTI, *Interest rate swaps e interest rate and currency swaps*, in questa *Rivista*, 1990, p. 689. Per il testo integrale dell'ISDA — versione 1992 — vedasi F. CAPUTO NASSETTI, *Considerazioni in tema di swaps*, in questa *Rivista*, 1993, p. 321.

Un normale contratto di cambio (tra soggetti residenti in paesi diversi, con consegna di divise in paesi terzi) documentato da una semplice conferma contenente i dati essenziali della operazione pone diversi quesiti a cominciare dalla legge applicabile e foro competente. Le obbligazioni delle parti non sono chiaramente definite, le ipotesi di risoluzione ed i relativi metodi di calcolo degli importi da liquidarsi possono dare adito a conflitti tra le parti. Inoltre, alcuni aspetti dell'operatività del mercato dei cambi non sono chiaramente o uniformemente regolati dagli usi.

L'IFEMA colma queste carenze da un lato facendo propri i migliori usi internazionali, definendo le obbligazioni delle parti e la terminologia contrattuale secondo la prassi del mercato e dall'altro introducendo elementi nuovi e dando definizioni esaustive a termini il cui significato è incerto o usato in maniera ambivalente. Impone la scelta di una legge applicabile e di un foro competente. Elenca le ipotesi di risoluzione ed i metodi di liquidazione dei contratti in essere al momento della risoluzione. Stabilisce che le parti devono scambiarsi prontamente le conferme di ogni operazione, determina le modalità della compensazione, ecc...

In sostanza l'IFEMA introduce certezza tra le parti grazie alla regolamentazione pattizia degli aspetti fisiologici e patologici del contratto di cambio.

Oltre a questo fondamentale aspetto, l'IFEMA offre alle parti che lo adottano un ulteriore importante vantaggio: la riduzione dei rischi.

I principali rischi presenti nelle operazioni in cambi sono: il rischio sovrano ⁽⁹⁾, il rischio di mercato ⁽¹⁰⁾, il rischio creditizio ⁽¹¹⁾, il rischio di consegna ⁽¹²⁾, il rischio sistemico ⁽¹³⁾ ed il rischio di sostituzione ⁽¹⁴⁾.

⁽⁹⁾ Il rischio sovrano riflette la situazione finanziaria del paese in cui si trova la controparte e la stabilità della moneta da questa dovuta in relazione alle esistenti o potenziali norme valutarie. Il rischio si può concretare in un blocco valutario oppure in una sospensione unilaterale dei pagamenti da parte di un paese che si trova particolarmente indebitato o che agisce per motivi politici particolari.

Il rischio sovrano dipende dalla stabilità politica del paese, dalla sua *performance* economica e dalla sua storia ed in particolare dalla sua puntualità nell'adempimento delle obbligazioni finanziarie internazionali.

⁽¹⁰⁾ Il rischio di mercato riflette la relazione tra liquidità e scadenza, in altre parole più è lunga la durata dell'operazione in cambi, minore è la liquidità e maggiore è la difficoltà a coprire la posizione in caso di insolvenza della controparte. Inoltre maggiore è la durata dell'operazione maggiore è l'incertezza sui futuri livelli dei cambi.

⁽¹¹⁾ Il rischio creditizio consiste nel rischio di inadempimento delle obbligazioni della controparte a causa della sua insolvenza.

⁽¹²⁾ Il rischio di consegna consiste nel rischio che il pagamento di una divisa non venga effettuato quando dovuto per qualsiasi motivo, mentre il pagamento dell'altra divisa è stato effettuato. È normale, infatti, che lo scambio delle divise avvenga in due piazze diverse e in tempi diversi a causa dei fusi orari. Questo rischio è presente in tutti i contratti di scambio in cui le prestazioni corrispettive sono da adempiersi simultaneamente.

⁽¹³⁾ Il rischio sistemico consiste nel fatto che l'insolvenza di una parte possa causare l'insolvenza a catena di altri operatori nel mercato.

⁽¹⁴⁾ Il rischio di sostituzione è una sottospecie del rischio di mercato ed è presente in ogni contratto a termine con prestazioni corrispettive (da eseguirsi contemporaneamente).

L'adozione dell'IFEMA riduce in diverse misure alcuni dei citati rischi attraverso il meccanismo giuridico noto con il termine *netting* ⁽¹⁵⁾, che potremmo definire, in prima approssimazione, come il procedimento attuato degli accordi di compensazione (intesa in senso lato).

L'IFEMA contiene tre forme di *netting*: *netting of payments*, *netting of obligations by novation* (più comunemente noto come *netting by novation*) e *netting of obligations by close-out* (noto come *close-out netting*).

Con il primo si attua la compensazione di pagamenti dovuti nella stessa divisa e nello stesso giorno riducendo così il rischio di consegna e, conseguentemente, il rischio sistemico. Siccome, però, le obbligazioni di consegna rimangono giuridicamente in essere inalterate fino al giorno dell'esecuzione, in caso di insolvenza di una parte la compensazione di obbligazioni di consegna per date successive alla declaratoria di insolvenza non potrà aver luogo. Pertanto, gli effetti sulla diminuzione del rischio creditizio (e di sostituzione) sono assai limitati.

Il *netting by novation*, si attua attraverso la novazione delle obbligazioni di consegna reciproca della stessa divisa per la stessa data. Con la novazione si ottiene una riduzione non solo del rischio di consegna e sistemico, ma anche di quello creditizio, di sostituzione, sovrano e di mercato.

Con il *close-out netting* la « compensazione » si attua soltanto in presenza di particolari eventi descritti nel contratto, che si possono a grandi linee ricondurre a sintomi di insolvenza di una parte. Questa « compensazione », al contrario delle precedenti, comprende ogni obbligazione di pagamento indipendentemente dalla divisa e dalla data di esecuzione prevista. La riduzione del rischio creditizio, di sostituzione, sovrano e di mercato risulta ben maggiore rispetto alle altre citate forme di *netting*; peraltro, attuandosi soltanto in presenza di alcuni eventi, non comporta riduzione del rischio di consegna e sistemico.

La riduzione del rischio attraverso il *netting* comporta una conseguenza di primaria importanza per le banche: la riduzione del costo del

Consiste nel maggior costo o nel mancato guadagno che la parte solvente sopporta qualora la contro parte diventi insolvente *prima* della scadenza pattuita. In tal caso la parte *in bonis*, ovviamente, si asterrà dall'effettuare la propria consegna alla parte insolvente. Per procurarsi quanto avrebbe dovuto ricevere dalla parte insolvente in cambio della propria consegna dovrà effettuare un nuovo contratto *sostitutivo* di quello che non verrà adempiuto. Il prezzo del nuovo contratto potrà essere diverso da quello destinato ad essere inadempito e ciò può comportare una perdita od un utile.

⁽¹⁵⁾ La bibliografia essenziale sul *netting* è la seguente: BANCA DEI REGOLAMENTI INTERNAZIONALI (« BRI »), *Interbank netting schemes* (noto come Rapporto Angell), Basilea, febbraio 1989; BRI, *Interbank netting schemes - Report of the Committee on the interbank netting schemes of the Central Banks of the Group of Ten Countries* (noto come Rapporto Lamfalussy), Basilea, novembre 1990; BRI, *The prudential supervision of netting. Market risk and interest rate risk*, Basilea, aprile 1993; BRI, *The supervisory recognition of netting for capital adequacy purposes*, Basilea, aprile 1993. Per un'analisi panoramica sul *netting* vedasi F. CAPUTO NASSETTI, *Basic elements in the maze of netting*, in *Journal of international banking law*, 1995, p. 145.

capitale da allocare a fronte delle operazioni in cambi secondo la normativa stabilita dalle autorità di controllo ⁽¹⁶⁾.

Sebbene l'IFEMA rifletta gli usi di mercato applicati tra gli operatori bancari e sia stato creato principalmente per essere usato tra banche, non è preclusa l'applicazione anche a controparti diverse.

3. Breve commento alle clausole dell'IFEMA.

Il contratto ha una semplice struttura ed è composto di nove sezioni, la prima delle quali contiene le definizioni dei termini utilizzati nel testo.

Nel descrivere l'oggetto del contratto la seconda sezione offre uno spunto di riflessione. Tutte le operazioni di compravendita di divise tra le parti — afferma la clausola 2.1 — sono regolate, salvo patto contrario, dal contratto IFEMA e la clausola 8.4 stabilisce che le parti non sono obbligate a concludere dei contratti di compravendita di divise per il solo fatto di aver sottoscritto l'IFEMA. Quest'ultimo, pertanto, sembra assumere chiaramente la natura di contratto normativo (e quindi a sé stante rispetto ai contratti di compravendita che si intendono regolare in maniera uniforme). La successiva clausola afferma, invece, che le singole compravendite formano un *unico* contratto con l'IFEMA e che le parti concluderanno le compravendite esclusivamente sulla base del fatto che esse costituiscono parte di un unico contratto.

Questa (solo apparente) contraddizione, presente anche in altri contratti *standard* quali l'ISDA, trova radice nella necessità di avere un *unico contratto* affinché il meccanismo del *close out netting* funzioni dal punto di vista giuridico. Se, infatti, ogni compravendita mantenesse la propria autonomia giuridica rispetto al contratto normativo, si avrebbero, in caso di insolvenza di un contraente, una serie di *close out netting* (uno per ogni contratto di cambio), alcuni dei quali potrebbero risultare in un'obbligazione di pagamento verso il contraente insolvente ed altri in un'obbligazione di pagamento verso il contraente solvente. Il contraente solvente sarebbe tenuto ad eseguire i pagamenti dovuti, mentre riceverebbe in moneta fallimentare quanto di sua spettanza. Al contrario, se le singole compravendite fossero parte di un unico contratto, il *netting* verrebbe applicato in maniera tale da aversi sempre una sola obbligazione di pagamento

⁽¹⁶⁾ Attualmente le operazioni in cambi sono assoggettate ai coefficienti patrimoniali introdotti in base agli Accordi di Basilea del 15 luglio 1988 ed alla direttiva della Comunità Europea n. 647 del 18 dicembre 1989 (F. CAPUTO NASSETTI, *Brevi note sui coefficienti patrimoniali bancari*, ABI - Quaderni di ricerca giuridica, 1991). Questi coefficienti mirano a coprire principalmente il rischio di credito inerente alle operazioni bancarie. L'applicabilità — ai fini della riduzione dei coefficienti patrimoniali — delle varie forme di *netting* è subordinata a diversi requisiti. In aggiunta, è prevista entro il 1997 l'introduzione di coefficienti patrimoniali per la copertura del rischio di mercato.

di una parte verso l'altra, indipendentemente dal numero delle operazioni in cambi in essere. In un certo qual modo la fattispecie non è dissimile da un'estensione pattizia dell'eccezione di inadempimento a tutti i contratti regolati dallo stesso contratto normativo.

Come si vede la questione non è di poco conto e meriterebbe un approfondito esame che, peraltro, esula dai limiti dell'indagine che qui ci si propone.

La terza e quinta sezione descrivono il *netting of payments*, il *netting by novation* ed il *close-out netting*, sui quali ci siamo brevemente soffermati in precedenza.

La quarta sezione contiene dichiarazioni ed impegni *standard* relativi alla capacità delle parti.

La sesta sezione estende il meccanismo del *close-out netting* alle ipotesi di inadempimento dovuto a cause di forza maggiore, impossibilità o *actum principis*.

La settima sezione contiene un esonero di responsabilità in base al quale ogni contraente dichiara di non fare affidamento su eventuali consigli della controparte e che la decisione di concludere il contratto di cambio è autonoma.

L'ottava sezione contiene varie clausole di diverso contenuto, quali, ad esempio, la cessione del contratto, le modifiche al contratto, la risoluzione volontaria, le registrazioni telefoniche e l'efficacia delle notifiche.

L'ultima sezione regola la legge applicabile al contratto ed il foro competente per dirimere le controversie.

Come accennato in precedenza, anche il contratto *standard* preparato dall'ISDA nel 1992 regola le operazioni in cambi. Il suo utilizzo raggiunge lo stesso risultato per quanto riguarda l'eliminazione dell'incertezza del quadro giuridico tra le parti. Perplessità emergono, però, circa l'efficacia della dichiarazione di unitarietà del contratto con il conseguente dubbio sulla possibilità di ottenere il *close-out netting* tra le operazioni in cambi e fattispecie giuridiche diverse.

4. L'IFEMA tra residenti in Italia.

Esistono tre versioni, peraltro assai simili, dell'IFEMA: americana, inglese e giapponese, regolate rispettivamente dalla legge dello Stato di New York, inglese e giapponese ⁽¹⁷⁾.

⁽¹⁷⁾ Non risulta particolarmente felice la creazione di tre versioni del contratto *standard*. Le differenze sono minime e riguardano, per esempio, l'inclusione, tra le ipotesi di risoluzione, di determinate procedure tipicizzate soltanto in uno dei tre sistemi giuridici in esame (americano, inglese o giapponese). Sarebbe stata preferibile la soluzione adottata per l'ICOM (*International currency option master*) *Agreement*, pubblicato nel 1992, in quanto la struttura scelta è nel contempo più lineare e più flessibile. Quest'ultimo, infatti, esiste in

Sebbene in linea di massima l'IFEMA venga sottoscritto tra residenti in paesi diversi, nulla vieta che esso venga utilizzato tra residenti nello stesso paese. In questa ipotesi le parti possono scegliere come legge applicabile (oltre a quella inglese, americana e giapponese) quella del paese di residenza di entrambi i contraenti.

In prima approssimazione si può ritenere che, nel caso in cui due banche italiane (o, più in generale, due residenti in Italia) sottoscrivano un contratto IFEMA, sia la scelta di legge straniera che italiana siano valide. Oltre che basarsi sul principio di libertà di scelta di legge stabilito con la legge 18 dicembre 1984, n. 975 che rese esecutiva la Convenzione di Roma del 19 giugno 1990 sulla legge applicabile alle obbligazioni contrattuali, la scelta del diritto straniero è possibile solo in relazione a contratti « internazionali » e, dato che nella fattispecie dei contratti di cambio almeno una delle divise scambiate è diversa dalla lira italiana, l'elemento di « internazionalità » del contratto può ritenersi risiedere nell'oggetto dello scambio ⁽¹⁸⁾.

La scelta di legge può comportare problemi di incompatibilità di certe soluzioni giuridiche basate sul sistema della *common law* con il nostro sistema, problemi pratici dovuti alla scarsa padronanza della lingua straniera, alla necessità di traduzione in caso di azioni legali, ecc...

un'unica versione adattabile, tramite appendici, alle diverse scelte di legge effettuate dalle parti senza intaccare il testo *standard*.

⁽¹⁸⁾ Alcuni motivi di incertezza legati alla scelta di legge straniera regolatrice del rapporto tra residenti sono stati segnalati in dottrina da L. RADICATI DI BROZOLO, *Il contratto modello di swap dell'International Swap Dealer Association*, in questa *Rivista*, 1988, p. 539; F. CAPUTO NASSETTI, *Un documento di lavoro per un contratto tipo italiano di swap*, in questa *Rivista*, 1992, p. 99.

INTERNATIONAL FOREIGN EXCHANGE MASTER AGREEMENT

Master Agreement dated as of, by and between,, and

SECTION 1. — DEFINITIONS

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

« *Agreement* » has the meaning given to it in Section 2.2.

« *Base Currency* » means as to a Party the Currency agreed as such in relation to it in Part VIII of the Schedule hereto.

« *Base Currency Rate* » means as to a Party and any amount the cost (expressed as a percentage rate per annum) at which that Party would be able to fund that amount from such sources and for such periods as it may in its reasonable discretion from time to time decide, as determined in good faith by it.

« *Business Day* » means (i) a day which is a Local Banking Day for the applicable Designated Office of both Parties, or (ii) solely in relation to delivery of a Currency, a day which is a Local Banking Day in relation to that Currency.

« *Close-Out Amount* » has the meaning given to it in Section 5.1.

« *Close-Out Date* » means a day on which, pursuant to the provisions of Section 5.1, the Non-Defaulting Party closes out and liquidates Currency Obligations or such a close-out and liquidation occurs automatically.

« *Closing Gain* » means, as to the Non-Defaulting Party, the difference described as such in relation to a particular Value Date under the provisions of Section 5.1.

« *Closing Loss* » means, as to the Non-Defaulting Party, the difference described as such in relation to a particular Value Date under the provisions of Section 5.1.

« *Confirmation* » means a writing (including telex, facsimile or other electronic means from which it is possible to produce a hard copy) evidencing an FX Transaction governed by the Agreement which shall specify (i) the Parties thereto and their Designated Offices through which they are respectively acting, (ii) the amounts of the Currencies being bought or sold and by which Party, (iii) the Value Date, and (iv) any other term generally included in such a writing in accordance with the practice of the relevant foreign exchange market.

« *Credit Support Document* » means, as to a Party (the « first Party »), 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 hereunder.

« *Credit Support Provider* » has the meaning given to it in the definition of Credit Support Document.

« *Currency* » means money denominated in the lawful currency of any country or the ECU.

« *Currency obligation* » means any obligation of a Party to deliver a Currency pursuant to an FX Transaction governed by the Agreement, or pursuant to the application of Sections 3.3(a) or 3.3(b).

« *Custodian* » has the meaning given to it in the definition of Event of Default.

« *Defaulting Party* » has the meaning given to it in the definition of Event of Default.

« *Designated Office(s)* » means, as to a Party, the office(s) specified in Part II of the Schedule hereto, as such Schedule may be modified from time to time by agreement of the Parties.

« *Effective Date* » means the date of this Master Agreement.

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

(i) the Defaulting Party shall default in any payment under the Agreement to the Non-Defaulting Party with respect to any sum when due under any Currency Obligation or pursuant to the Agreement and such failure shall continue for two (2) Business Days after written notice of non-payment given by the Non-Defaulting Party to the Defaulting Party;

(ii) the Defaulting Party shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other similar relief with respect to itself or to its debts under any bankruptcy, insolvency or similar law, or seeking the appointment of a trustee, receiver, liquidator, conservator, administrator, custodian or other similar official (each, a « *Custodian* ») of it or any substantial part of its assets; or shall take any corporate action to authorize any of the foregoing;

(iii) an involuntary case or other proceeding shall be commenced against the Defaulting Party seeking liquidation, reorganization or other similar relief with respect to it or its debts under any bankruptcy, insolvency or similar law or seeking the appointment of a Custodian of it or any substantial part of its assets, and such involuntary case or other proceeding is not dismissed within five (5) days of its institution or presentation;

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

(v) the Defaulting Party or any Custodian acting on behalf of the Defaulting Party shall disaffirm, disclaim or repudiate any Currency Obligation;

(vi) (a) any representation or warranty made or deemed made by the Defaulting Party pursuant to the Agreement or pursuant to any Credit Support Document shall prove to have been false or misleading in any material respect as at the time it was made or given and one (1) Business Day has elapsed after the Non-Defaulting Party has given the Defaulting Party written notice thereof, or (b) the Defaulting Party fails to perform or comply with any obligation assumed by it under the Agreement (other than an obligation to make payment of the kind referred

to in Clause (i) of this definition of Event of Default), and such failure is continuing thirty (30) days after the Non-Defaulting Party has given the Defaulting Party written notice thereof;

(vii) the Defaulting Party consolidates or amalgamates with or merges into or transfers all or substantially all of its assets to another entity and (a) the credit-worthiness of the resulting, surviving or transferee entity is materially weaker than that of the Defaulting Party prior to such action, or (b) at the time of such consolidation, amalgamation, merger or transfer the resulting, surviving or transferee entity fails to assume all the obligations of the Defaulting Party under the Agreement by operation of law or pursuant to an agreement satisfactory to the Non-Defaulting Party;

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

(ix) 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; or

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

« *FX Transaction* » means any transaction between the Parties for the purchase by one Party of an agreed amount in one Currency against the sale by it to the other of an agreed amount in another Currency both such amounts being deliverable on the same Value Date, and in respect of which transaction the Parties

have agreed (whether orally, electronically or in writing): the Currencies involved, the amounts of such Currencies to be purchased and sold, which Party will purchase which Currency and the Value Date.

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

« *Master Agreement* » means the terms and conditions set forth in this master agreement.

« *Matched Pair Novation Netting Office(s)* » means in respect of a Party the Designated Office(s) specified in Part V of the Schedule, as such Schedule may be modified from time to time by agreement of the Parties.

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

« *Novation Netting Office(s)* » means in respect of a Party the Designated Office(s) specified in Part IV of the Schedule, as such Schedule may be modified from time to time by agreement of the Parties.

« *Parties* » means the parties to the Agreement and shall include their successors and permitted assigns (but without prejudice to the application of Clause (viii) of the definition of Event of Default); and the term « *Party* » shall mean whichever of the Parties is appropriate in the context in which such expression may be used.

« *Proceedings* » means any suit, action or other proceedings relating to the Agreement.

« *Settlement Netting Office(s)* » means, in respect of a Party, the Designated Office(s) specified in Part III of the Schedule, as such Schedule may be modified from time to time by agreement of the Parties.

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

« *Specified Transaction* » means any transaction (including an agreement with respect thereto) between one Party to the Agreement (or any Credit Support Provider of such Party) and the other Party to the Agreement (or any Credit Support Provider of such Party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity linked swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions) or any combination of any of the foregoing transactions.

« *Split Settlement* » has the meaning given to it in the definition of Value Date.

« *Threshold Amount* » means the amount specified as such for each Party in Part IX of the Schedule.

« *Value Date* » means, with respect to any FX Transaction, the Business Day (or where market practice in the relevant foreign exchange market in relation to the two Currencies involved provides for delivery of one Currency on one date

which is a Local Banking Day in relation to that Currency but not to the other Currency and for delivery of the other Currency on the next Local Banking Day in relation to that other Currency (« Split Settlement ») the two Local Banking Days in accordance with that market practice) agreed by the Parties for delivery of the Currencies to be purchased and sold pursuant to such FX Transaction, and, with respect to any Currency Obligation, the Business Day (or, in the case of Split Settlement, Local Banking Day) upon which the obligation to deliver Currency pursuant to such Currency Obligation is to be performed.

SECTION 2. — FX TRANSACTIONS

2.1. *Scope of the Agreement.* — (a) Unless otherwise agreed in writing by the Parties, each FX Transaction entered into between two Designated Offices of the Parties on or after the Effective Date shall be governed by the Agreement. (b) All FX Transactions between any two Designated Offices of the Parties outstanding on the Effective Date which are identified in Part I of the Schedule shall be FX Transactions governed by the Agreement and every obligation of the Parties thereunder to deliver a Currency shall be a Currency Obligation under the Agreement.

2.2. *Single Agreement.* — This Master Agreement, the particular terms agreed between the Parties in relation to each and every FX Transaction governed by this Master Agreement (and, insofar as such terms are recorded in a Confirmation, each such Confirmation), the Schedule to this Master Agreement 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 governed by the Agreement are entered into in reliance upon the fact that all items constitute a single agreement between the Parties.

2.3. *Confirmations.* — FX Transactions governed by the Agreement shall be promptly confirmed by the Parties by Confirmations exchanged by mail, telex, facsimile or other electronic means. The failure by a Party to issue a Confirmation shall not prejudice or invalidate the terms of any FX Transaction governed by the Agreement.

SECTION 3. — SETTLEMENT AND NETTING

3.1. *Settlement.* — Subject to Section 3.2, each Party shall deliver to the other Party the amount of the Currency to be delivered by it under each Currency Obligation on the Value Date for such Currency Obligation.

3.2. *Net Settlement/Payment Netting.* — If on any Value Date more than one delivery of a particular Currency is to be made between a pair of Settlement Netting 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.

3.3. *Novation Netting.*

(a) *By Currency.* — If the Parties enter into an FX Transaction governed by the Agreement through a pair of Novation Netting Offices giving rise to a Currency Obligation for the same Value 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 cancelled and simultaneously replaced by a new Currency Obligation for such Value Date determined as follows: the amounts of such Currency that would otherwise have been deliverable by each Party on such Value 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 Clause (a) shall not affect any other Currency Obligation of a Party to deliver any different Currency on the same Value Date.

(b) *By Matched Pair.* — If the Parties enter into an FX Transaction governed by the Agreement between a pair of Matched Pair Novation Netting Offices then the provisions of Section 3.3(a) shall apply only in respect of Currency Obligations arising by virtue of FX Transactions governed by the Agreement entered into between such pair of Matched Pair Novation Netting Offices and involving the same pair of Currencies and the same Value Date.

3.4. *General.*

(a) *Inapplicability of Sections 3.2 and 3.3.* — The provisions of Sections 3.2 and 3.3 shall not apply if a Close-Out Date has occurred or an involuntary case or other proceeding of the kind described in Clause (iii) of the definition of Event of Default has occurred without being dismissed in relation to either Party.

(b) *Failure to Record.* — The provisions of Section 3.3 shall apply notwithstanding that either Party may fail to record the new Currency Obligations in its books.

(c) *Cutoff Date and Time.* — The provisions of Section 3.3 are subject to any cut-off date and cut-off time agreed between the applicable Novation Netting Offices and Matched Pair Novation Netting 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 date of the Agreement and as of the date of each FX Transaction governed by the Agreement that: (i) it has authority to enter into the Agreement and such FX Transaction; (ii) the persons executing the Agreement and entering into such FX Transaction have been duly authorized to do so; (iii) the Agreement and the Currency Obligations created under the Agreement are binding upon it and enforceable against it in accordance with their terms (subject to the application of insolvency laws affecting creditors' rights in general and to the applicable principles of equity) and do not and will not violate the terms of any agreements to which such Party is bound; (iv) no Event of Default has occurred and is continuing with respect to it; and (v) it acts as principal in entering into each and every FX Transaction governed by the Agreement.

4.2. *Covenants.* — Each Party covenants to the other Party that: (i) it will at all times obtain and comply with the terms of and do all that is necessary to maintain in full force and effect all authorizations, approvals, licenses and consents required to enable it to lawfully perform its obligations under the Agreement; and (ii) it will promptly notify the other Party of the occurrence of any Event of Default with respect to itself or any Credit Support Provider in relation to it.

SECTION 5. — CLOSE-OUT AND LIQUIDATION

5.1. *Circumstances of Close-Out and Liquidation.* — If an Event of Default has occurred and is continuing, then the Non-Defaulting Party shall have the right to close-out and liquidate in the manner described below all, but not less than all, outstanding Currency Obligations (except to the extent that in the good faith opinion of the Non-Defaulting Party certain of such Currency Obligations may not be closed-out and liquidated under applicable law), by notice to the Defaulting Party. If « Automatic Termination » is specified as applying to a Party in Part VI of the Schedule, then, in the case of an Event of Default specified in Clauses (ii) or (iii) of the definition thereof with respect to such Party, such close-out and liquidation shall be automatic as to all outstanding Currency Obligations. Where such close-out and liquidation is to be effected, it shall be effected by:

(i) closing out each outstanding Currency Obligation (including any Currency Obligation which has not been performed and in respect of which the Value Date is on or precedes the Close-Out Date) so that each such Currency Obligation is cancelled and the Non-Defaulting Party shall calculate in good faith with respect to each such cancelled Currency Obligation, the Closing Gain or, as appropriate, the Closing Loss, as follows:

(x) for each Currency Obligation in a Currency other than the Non-Defaulting Party's Base Currency calculate a « Close-Out Amount » by converting:

(A) in the case of a Currency Obligation whose Value Date is the same as or is later than the Close-Out Date, the amount of such Currency Obligation; or

(B) in the case of a Currency Obligation whose Value Date precedes the Close-Out Date, the amount of such Currency Obligation increased, to the extent permitted by applicable law, by adding interest thereto from the Value Date to the Close-Out Date at the rate representing the cost (expressed as a percentage rate per annum) at which the Non-Defaulting Party would have been able, on such Value Date, to fund the amount of such Currency Obligation for the period from the Value Date to the Close-Out Date

into such Base Currency at the rate of exchange at which the Non-Defaulting Party can buy or sell, as appropriate, such Base Currency with or against the Currency of such Currency Obligation for delivery on the Value Date of that Currency Obligation, or if such Value Date precedes the Close-Out Date, for delivery on the Close-Out Date; and

(y) determine in relation to each Value Date: (A) the sum of all Close-Out Amounts relating to Currency Obligations under which, and of all Currency Obligations in the Non-Defaulting Party's Base Currency under which, the Non-Defaulting Party would otherwise have been obliged to deliver the relevant amount to the Defaulting Party on that Value Date, adding (to the extent permitted by applicable law), in the case of a Currency Obligation in the Non-Defaulting Party's

Base Currency whose Value Date precedes the Close-Out Date, interest for the period from the Value Date to the Close-Out Date at the Non-Defaulting Party's Base Currency Rate as at such Value Date for such period; and (B) the sum of all Close-Out Amounts relating to Currency obligations under which, and of all Currency Obligations in the Non-Defaulting Party's Base Currency under which, the Non-Defaulting Party would otherwise have been entitled to receive the relevant amount on that Value Date, adding (to the extent permitted by applicable law), in the case of a Currency Obligation in the Non-Defaulting Party's Base Currency whose Value Date precedes the Close-Out Date, interest for the period from the Value Date to the Close-Out Date at the Non-Defaulting Party's Base Currency Rate as at such Value Date for such period;

(z) if the sum determined under (y)(A) is greater than the sum determined under (y)(B), the difference shall be the Closing Loss for such Value Date; if the sum determined under (y)(A) is less than the sum determined under (y)(B), the difference shall be the Closing Gain for such Value Date;

(ii) to the extent permitted by applicable law, adjusting the Closing Gain or Closing Loss for each Value Date falling after the Close-Out Date to present value by discounting the Closing Gain or Closing Loss from the Value Date to the Close-Out Date, at the Non-Defaulting Party's Base Currency Rate, or at such other rate as may be prescribed by applicable law;

(iii) aggregating the following amounts so that all such amounts are netted into a single liquidated amount payable by or to the Non-Defaulting Party: (x) the sum of the Closing Gains for all Value Dates (discounted to present value, where appropriate, in accordance with the provisions of Clause (ii) of this Section 5.1) (which for the purposes of this aggregation shall be a positive figure) and (y) the sum of the Closing Losses for all Value Dates (discounted to present value, where appropriate, in accordance with the provisions of Clause (ii) of this Section 5.1) (which for the purposes of the aggregation shall be a negative figure); and

(iv) if the resulting net amount is positive, it shall be payable by the Defaulting Party to the Non-Defaulting Party, and if it is negative, then the absolute value of such amount shall be payable by the Non-Defaulting Party to the Defaulting Party.

5.2. *Calculation of Interest.* — Any addition of interest or discounting required under Clause (i) or (ii) of Section 5.1 shall be calculated on the basis of the actual number of days elapsed and of a year of such number of days as is customary for transactions involving the relevant Currency in the relevant foreign exchange market.

5.3 *Other FX Transactions.* — Where close-out and liquidation occurs in accordance with Section 5.1, the Non-Defaulting Party shall also be entitled to close-out and liquidate, to the extent permitted by applicable law, any other FX Transactions entered into between the Parties which are then outstanding in accordance with the provisions of Section 5.1, as if each obligation of a Party to deliver a Currency thereunder were a Currency Obligation.

5.4. *Payment and Late Interest.* — The amount payable by one Party to the other Party pursuant to the provisions of Sections 5.1 and 5.3 shall be paid by the close of business on the Business Day following such close-out and liquidation (converted as required by applicable law into any other Currency, any costs of

such conversion to be borne by, and deducted from any payment to, the Defaulting Party). To the extent permitted by applicable law, any amounts required to be paid under Sections 5.1 or 5.3 and not paid on the due date therefor, shall bear interest at the Non-Defaulting Party's Base Currency Rate plus 1% per annum (or, if conversion is required by applicable law into some other Currency, either (x) the average rate at which overnight deposits in such other Currency are offered by major banks in the London interbank market as of 11:00 a.m. (London time) plus 1% per annum or (y) such other rate as may be prescribed by such applicable law) for each day for which such amount remains unpaid.

5.5. *Suspension of Obligations.* — Without prejudice to the foregoing, so long as a Party shall be in default in payment or performance to the Non-Defaulting Party under the Agreement and so long as the Non-Defaulting Party has not exercised its rights under Section 5.1, the Non-Defaulting Party may, at its election and without penalty, suspend its obligation to perform under the Agreement.

5.6. *Expenses.* — The Defaulting Party shall reimburse the Non-Defaulting Party in respect of all out-of-pocket expenses incurred by the Non-Defaulting Party (including fees and disbursements of counsel, including attorneys who may be employees of the Non-Defaulting Party) in connection with any reasonable collection or other enforcement proceedings related to the payments required under this Section 5.

5.7. *Reasonable Pre-Estimate.* — The Parties agree that the amounts recoverable under this Section 5 are a reasonable pre-estimate of loss and not a penalty. Such amounts are payable for the loss of bargain and the loss of protection against future risks and, except as otherwise provided in the Agreement, neither Party will be entitled to recover any additional damages as a consequence of such losses.

5.8. *No Limitation of Other Rights: Set-Off.* — The Non-Defaulting Party's rights under this Section 5 shall be in addition to, and not in limitation or exclusion of, any other rights which the Non-Defaulting Party may have (whether by agreement, operation of law or otherwise). To the extent not prohibited by applicable law, the Non-Defaulting Party shall have a general right of set-off with respect to all amounts owed by each Party to the other Party, whether due and payable or not due and payable (provided that any amount not due and payable at the time of such set-off shall, if appropriate, be discounted to present value in a commercially reasonable manner by the Non-Defaulting Party). The Non-Defaulting Party's rights under this Section 5.8 are subject to Section 5.7.

SECTION 6. — ILLEGALITY, IMPOSSIBILITY AND FORCE MAJEURE

If either Party is prevented from or hindered or delayed by reason of force majeure or act of State in the delivery or receipt of any Currency in respect of a Currency Obligation or if it becomes or, in the good faith judgment of one of the Parties, may become unlawful or impossible for either Party to deliver or receive any Currency which is the subject of a Currency Obligation, then either Party may, by notice to the other Party, require the close-out and liquidation of each affected Currency Obligation in accordance with the provisions of Sections 5.1, 5.2 and 5.4 and, for the purposes of enabling the calculations prescribed by Sections 5.1,

5.2 and 5.4 to be effected, the Party unaffected by such force majeure, act of State, illegality or impossibility (or if both Parties are so affected, whichever Party gave the relevant notice) shall effect the relevant calculations as if it were the Non-Defaulting Party. Nothing in this Section 6 shall be taken as indicating that the Party treated as the Defaulting Party for the purposes of calculations required hereby has committed any breach or default.

SECTION 7. — PARTIES TO RELY ON THEIR OWN EXPERTISE

Each Party shall enter into each FX Transaction governed by the Agreement in reliance only upon its own judgment. Neither Party holds itself out as advising, or any of its employees or agents as having the authority to advise, the other Party as to whether or not it should enter into any such FX Transaction or as to any subsequent actions relating thereto or on any other commercial matters concerned with any FX Transaction governed by the Agreement, and neither Party shall have any responsibility or liability whatsoever in respect of any advice of this nature given, or views expressed, by it or any of such persons to the other Party, whether or not such advice is given or such views are expressed at the request of the other Party.

SECTION 8. — MISCELLANEOUS

8.1. *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 5 or 6, 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, 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. If the amount so purchasable shall be less than the original amount of the Currency in which such amount was due, the second Party shall, as a separate obligation and notwithstanding any judgment of any court, indemnify the first Party against any loss sustained by it. The second Party shall in any event indemnify the first Party against any costs incurred by it in making any such purchase of Currency.

8.2. *Assignments.* — Neither Party may assign, transfer or charge, or purport to assign, transfer or charge, its rights or its obligations under the Agreement or any interest therein without the prior written consent of the other Party, and any purported assignment, transfer or charge in violation of this Section 8.2 shall be void.

8.3. *Telephonic Recording.* — The Parties agree that each may electronically record all telephonic conversations between them and that any such tape recordings may be submitted in evidence in any Proceedings relating to the Agreement. In the event of any dispute between the Parties as to the terms of an FX Transaction governed by the Agreement or the Currency Obligations thereby created, the Parties may use electronic recordings between the persons who entered into such FX Transaction as the preferred evidence of the terms of such FX Transaction, notwithstanding the existence of any writing to the contrary.

8.4. *No Obligation.* Neither Party to this Agreement shall be required to enter into any FX Transaction with the other.

8.5. *Notices.* — Unless otherwise agreed, all notices, instructions and other communications to be given to a Party under the Agreement shall be given to the address, telex (if confirmed by the appropriate answerback), facsimile (confirmed if requested) or telephone number and to the individual or department specified by such Party in Part VII of the Schedule attached hereto. Unless otherwise specified, any notice, instruction or other communication given in accordance with this Section 8.5 shall be effective upon receipt.

8.6. *Termination.* — Each of the Parties hereto may terminate this Agreement at any time by seven days' prior written notice to the other Party delivered as prescribed above, 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, 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.

8.7. *Severability.* — In the event any one or more of the provisions contained in the Agreement should be held invalid, illegal or unenforceable in any respect under the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions 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.

8.8. *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.

8.9. *Master Agreement.* — Where one of the Parties to the Agreement is domiciled in the United States, the Parties intend that the Agreement shall be a master agreement, as defined in 11 U.S.C. Section 101(55)(C) and 12 U.S.C. Section 1821(e)(8)(D)(vii).

8.10. *Time of Essence.* — Time shall be of the essence in the Agreement.

8.11. *Headings.* — Headings in the Agreement are for ease of reference only.

8.12. *Wire Transfers.* — Every payment or delivery of Currency to be made by a Party under the Agreement shall be made by wire transfer, or its equivalent, of same day (or immediately available) and freely transferable funds to the bank account designated by the other Party for such purpose.

8.13. *Adequate Assurances.* — If the Parties have so agreed in Part X of the Schedule, the failure by a Party (« first 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 (« second Party ») has reasonable grounds for insecurity shall be an Event of Default under the Agreement, in which case during the pendency of a reasonable request by the second Party to the first Party for adequate assurances of the first Party's ability to

perform its obligations under the Agreement, the second Party may, at its election and without penalty, suspend its obligations under the Agreement.

8.14. *FDICIA Representation.* — If the Parties have so agreed in Part XI of the Schedule, each Party represents and warrants to the other Party that it is a financial institution under the provisions of Title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (« FDICIA »), and the Parties agree that this Agreement shall be a netting contract, as defined in FDICIA, 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 and subject to FDICIA.

8.15. *Confirmation Procedures.* — In relation to Confirmations, unless either Party objects to the terms contained in any Confirmation within three (3) Business Days of receipt thereof, or such shorter time as may be appropriate given the Value Date of the FX Transaction, the terms of such Confirmation shall be deemed correct and accepted absent manifest error, unless a corrected Confirmation is sent by a Party within such three Business Days, or shorter period, as appropriate, in which case the Party receiving such corrected Confirmation shall have three (3) Business Days, or shorter period, as appropriate, after receipt thereof to object to the terms contained in such corrected Confirmation. In the event of any conflict between the terms of a Confirmation and this Master Agreement, the terms of this Master Agreement shall prevail, and the Confirmation shall not modify the terms of this Master Agreement.

8.16. *Amendments.* — No amendment, modification or waiver of the Agreement will be effective unless in writing executed by each of the Parties.

SECTION 9. — LAW AND JURISDICTION

9.1. *Governing Law.* — The Agreement shall be governed by, and construed in accordance with the laws of the State of New York without giving effect to conflict of laws provisions.

9.2. *Consent to Jurisdiction.* — With respect to any Proceedings, each Party irrevocably (i) submits to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, and (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have jurisdiction over such Party. Nothing in the Agreement precludes either Party from bringing Proceedings in any other jurisdiction nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction.

9.3. *Waiver of Immunities.* — Each Party irrevocably waives to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use) all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any courts, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) exe-

cution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction, and irrevocably agrees to the extent permitted by applicable law that it will not claim any such immunity in any Proceedings. Each Party consents generally in respect of any Proceedings to the giving of any relief or the issue of any process in connection with such Proceedings, including, without limitation, the making, enforcement or execution against any property whatsoever of any order or judgment which may be made or given in such Proceedings.

9.4. *Waiver of Jury Trial.* — Each Party hereby irrevocably waives any and all right to trial by jury in any Proceedings.

In witness whereof, the Parties have caused the Agreement to be duly executed by their respective authorized officers as of the date first written above.