SwissBanking

# Swiss Master Agreement for

# OVER-THE-COUNTER (OTC) derivative instruments *

**dated** ______________________________

**between** ______________________________

**(thereafter "Party A")**

**and** ______________________________

**(thereafter "Party B")**

## 0. Scope

This Swiss Master Agreement and its annexes (together the "**Master Agreement**") shall govern the OTC derivative transactions entered into, or to be entered into, by the parties (the "**Transactions**").

This Master Agreement shall govern the types of Transactions that are set out in the annexes to this Master Agreement and any Transaction where the confirmation for such Transaction refers to this Master Agreement.

In the event of any inconsistency between sections 0 to 15 of this Master Agreement and the product-specific provisions of any of its annexes, the provisions of such annex shall prevail.

## 1. Closure of Transactions

All Transactions under this Master Agreement are entered into subject to the condition that this Master Agreement and all confirmations documenting specific Transactions form a single agreement between the parties (the "**Agreement**").

---

* Version dated June 12, 2003.

The execution of this Master Agreement does not constitute an obligation to enter into a Transaction.

The parties may enter into a Transaction without any formalities. After a Transaction has been entered into, the Calculation Agent will prepare a confirmation. In the event of any inconsistency between the Master Agreement and a confirmation, the confirmation shall prevail. The parties may modify this provision in the confirmation.

## 2. Powers, non-reliance and risk disclosure

2.1 Each party represents to the other party that:

a) it has the power to enter into the Transactions and in particular that it has complied with any provision of its constitutional documents and any other legal or regulatory obligations applicable to it;

b) where necessary, the execution of this Master Agreement and the individual Transactions has been duly authorised by the competent persons or bodies;

c) if it is an entity subject to public law and its assets are segregated into financial assets (*Finanzvermögen*) and administrative assets (*Verwaltungsvermögen*), its invested assets form part of its financial assets (*Finanzvermögen*) and not of its administrative assets (*Verwaltungsvermögen*).

2.2 Fund management companies, pension funds, health insurance companies, insurance companies, entities and institutions subject to public law and any other parties may be subject to specific investment regulations which limit or prohibit the use of certain, or all, derivative transactions. Where such investment regulations apply to one of the parties to this Master Agreement, it represents to the other party that it understands the regulations applicable to it and it undertakes to use best efforts to comply with such regulations. Such party further represents that it will keep its responsible employees informed of the applicable regulations and that it will monitor compliance with such regulations. Such party undertakes to compensate the other party in full for any loss which it may suffer as a result of any breach of such investment regulations.

2.3 By signing this Master Agreement each party represents to the other party that it understands the types of transactions covered by this Master Agreement and the risks of such transactions. Legal duties of disclosure, if applicable to the parties, shall be reserved.

## 3. Payments

3.1 Each party shall discharge its payment obligations and other obligations owed to the other party no later than on the due dates specified in the confirmation.

3.2 All payments shall be made in the currency specified in the confirmation free of any charge, in such manner as is customary for payments in that currency, in funds that are freely transferable on the due date.

3.3 If both parties have to make payments in respect of the same Transaction on the same day and in the same currency, the party owing the higher amount shall pay the difference between the two amounts owed. The Calculation Agent shall give timely notice to such party of the difference payable to the other party prior to the due date for the payment.

3.4 If any party is, or becomes obligated to deduct or withhold any tax or levy from its payments that is not recoverable from the other party, such party shall pay to the other party such additional amounts as are necessary to ensure that the net amount received by the other party after such deduction or withholding equals the amount that would have been received by the other party in the absence of such deduction or withholding.

## 4. Due dates

If any of the agreed due dates falls on a date that is not a Banking Day, the payment shall be made on the first following day that is a Banking Day unless that day falls in the next calendar month, in which case that date will be the first preceding day that is a Banking Day.

## 5. Events of default

5.1 Except as provided below, where an event of default occurs, the provisions of the Swiss Code of Obligations and the rules of the Reference Stock Exchange for Underlying Obligations, if any, shall apply.

5.2 A party that fails to make a payment on the due date, will be required to pay interest on the overdue amount at a rate of 1% above the rate of interest that is payable for overnight deposits made by prime banks at the relevant place of payment, in the relevant currency.

If a party fails to deliver a certain number of Underlying Obligations on the due date, the other party is entitled to stock up on a corresponding amount of Underlying Obligations, for instance by entering into a securities lending transaction. The defaulting party will be obliged to reimburse the other party for all the costs and the direct loss resulting therefrom. The direct loss shall be determined from the cost of the non-defaulting party entering into replacement transactions, irrespective of whether such party actually enters into any replacement transactions.

5.3 If any one of the following events occurs with respect to a party, the other party may terminate the Agreement:

a) failure by a party to make, when due, any payment obligation under this Agreement, or to deliver an Underlying Obligation or, if applicable, to provide collateral, if such failure is not remedied on or before the third Banking Day after written notice of such failure is given to the defaulting party;

b) failure by a party to perform any other obligation under this Agreement if such failure is not remedied on or before the twentieth Banking Day after written notice of such failure is given to the defaulting party;

c) failure by a party to perform any obligation under any other agreement entered into between the parties if such failure is not remedied on or before the twentieth Banking Day after written notice of such failure is given to the defaulting party;

d) failure by a party to perform any obligation under any other agreement entered into between such party and a third party in an aggregate amount of not less than the threshold amount as specified in section 15(a) of this Master Agreement. This provision does not apply if the parties fail to specify a threshold amount in section 15(a);

e) a party becomes insolvent, or a regulatory authority or court withdraws a party's licence or prohibits such party to carry on its business;

f) legal or economic restructuring of a party (including, but not limited to, merger, take-over, in whole or in part, spin-off) which results in a material deterioration of its creditworthiness.

5.4 If an event of default as specified in section 5.3 has occurred with respect to a party and such default has not been remedied, the non-defaulting party may terminate the Agreement by written notice. Such notice shall either have immediate effect or shall be effective as of the date specified by the non-defaulting party in the notice. If notice to terminate the Agreement is given, any payment obligations, deliveries of Underlying Obligations or posting of collateral, that would have become due on or after the termination date are no longer required to be made. These obligations shall be replaced by the obligations contained in section 5.6.

5.5 If a party is declared bankrupt or is granted a payment moratorium or if reorganization measures are approved or if any other insolvency-related event with similar effect occurs in respect of a party, the Agreement is deemed to be terminated immediately prior to the occurrence of such event.

If an application is made for the institution of bankruptcy proceedings, the granting of a payment moratorium, the approval of reorganisation measures, or for the institution of any other similar insolvency-related proceedings, the other party may terminate the Agreement.

5.6 In case of early termination in accordance with section 5.4 and 5.5 above, all obligations that become due on or after the designated termination date shall be replaced by an obligation to pay a liquidation value in Swiss Francs.

The party entitled to terminate the Agreement, being the party that is not subject to an event of default as specified in section 5.4 or 5.5, (hereafter "**X**"), shall calculate the liquidation value of the affected Transactions. Such amount shall be an amount equal to:

(a) the amount of gains that would be realised by X, less the amount of costs that would be incurred by X if X were to enter into replacement transactions on the termination date.

A replacement transaction means a Transaction that has the same economic effects for X as the terminated Transaction;

(b) plus any amounts that became due and payable to X prior to the termination date;

(c) less any amounts that became due and payable to the other party prior to the termination date.

Any amount determined pursuant to section 5.6(a) to (c) denominated in a currency other than Swiss Francs shall be converted into Swiss Francs at the rate equal to the spot exchange rate prevailing at 11:00 a.m. (Swiss time) on the termination date.

The resulting amount (liquidation value) must be paid within five Banking Days after written notice has been served on the other party.

5.7 If an event occurs which entitles a party to terminate the Master Agreement subject to the service of notice or the expiration of a time-limit in accordance with sections 5.3 to 5.5 of this Master Agreement, such party may cease to perform its obligations under this Agreement prior to the service of notice or the expiration of a time-limit.

## 6. Right of set off

The parties may set off the liquidation value of the outstanding amounts due to them (section 5.6 of this Master Agreement), against outstanding amounts arising under any other agreements, whether or not matured, irrespective of any collateral that may exist (section 7 of this Master Agreement).

## 7. Collateral

The granting of collateral, if any, shall be agreed separately (for example, in the confirmation of a Transaction).

## 8. Transfer of rights and obligations

A party may only transfer its rights and obligations under this Agreement to a third party with the other party's written consent.

## 9. Partial invalidity, subsequent impossibility, introduction of new taxes or charges applicable to a Transaction

If, at any time after the execution of this Master Agreement, any provision of this Master Agreement becomes subsequently invalid based on any cause in law, this shall not affect the validity of the remaining provisions. The invalid provision shall be deemed to be replaced by a provision that corresponds as closely as possible with the spirit and purpose of the invalid provision and that of the whole agreement, taking into account the principle of good faith, as well as the customs and practices used in similar business dealings.

If, at any time after the execution of this Master Agreement, any provision of this Master Agreement, or any Transaction under this Master Agreement (paragraph 2 of section 0 of this Master Agreement), or the performance of any obligation in respect of a Transaction becomes illegal or impossible, the value of such illegal or impossible obligation shall be determined (applying a method analogous to that set out in section 5.6 of this Master Agreement) and an amount equal to such determined value shall be paid to the party entitled to receive it.

The same applies by analogy, if, at any time after this Master Agreement is entered into, a tax or any other levy is imposed in respect of a Transaction such that the parties would not have entered into the Transaction had they known about the imposition of such tax or levy.

## 10. Amendments and additions

No amendments of, or additions to, this Master Agreement will be effective unless in writing and validly executed by the parties.

## 11. Recording of telephone conversations

Each party acknowledges and consents to the recording of telephone conversations in connection with Transactions under this Master Agreement.

## 12. Notices

Any notice or other communication may be given by facsimile, telex etc. and shall be followed by written letter to the relevant address for notices as specified in the annex.

Paragraph 3 of section 1 of this Master Agreement shall apply to all confirmations documenting specific Transactions.

Options may be exercised orally.

## 13. Place of performance, jurisdiction, applicable law

**Zurich 1** shall be place of performance and special domicile for all obligations under this Master Agreement and the Transactions entered into under this Master Agreement.

This Master Agreement and all Transactions entered into pursuant to the terms of this Master Agreement shall be governed by Swiss law and the ordinary courts of the **Canton of Zurich** shall have jurisdiction. The parties shall not, however, be precluded from bringing proceedings in the place of domicile of the other party or in any other competent court or debt collection office.

## 14. Definitions

- "**American option**" means an option which may be exercised on any day up to and including the Expiration Day.

- "**Banking Day**" means a day on which the banks in the principal markets for the Underlying Obligations or currencies affected by a Transaction are open, in particular, for foreign exchange transactions and settlement of foreign currencies.

- "**Calculation Agent**" means the party that makes the determinations and adjustments necessary under this Master Agreement.

- "**Call Option**" means the right, but not the obligation of the buyer of such option, to purchase from the seller of the option a certain number of Underlying Obligations at a certain price (Exercise Price) before a certain date (Expiration Date) against payment of an option price (Premium). Upon payment of the Premium the seller of the option undertakes to deliver to the buyer of such option the Underlying Obligation at the Exercise Price.

- "**Cash Settlement**" in respect of an option will be calculated as follows:

  (a) in respect of Call Options relating to an Underlying Obligation: the closing price of the Underlying Obligation on the Reference Stock Exchange for Underlying Obligations on the Exercise Date less the Exercise Price, multiplied by the number of Underlying Obligations in respect of which an option has been exercised;

  (b) in respect of a Put Option relating to an Underlying Obligation: the Exercise Price less the closing price of the Underlying Obligation at the close of business on the Reference Stock Exchange for Underlying Obligations on the Exercise Date, multiplied by the number of Underlying Obligations in respect of which an option has been exercised;

(c) in respect of a Call Option relating to an Index: the level of the Index determined by the index sponsor at the close of business on the Reference Stock Exchange for Underlying Obligations on the Exercise Date less the Exercise Price;

(d) in respect of a Put Option relating to an Index: the Exercise Price less level of index determined by the index sponsor at the close of business on the Reference Stock Exchange for Underlying Obligations on the Exercise Date.

If the Exercise Date under c) or d) falls on an Expiration Date of a stock exchange traded option, then the level of Index as determined at the close of business in the above calculation will be replaced by the closing price used by the index sponsor for this product, provided that this is stated in the confirmation or a Swiss index applies.

- "**European option**" means an option which is exercisable only on the Expiration Date.

- "**Exercise Date**" means the Banking Day on which an option is deemed to have been exercised.

- "**Exercise Price**" means the price agreed in the confirmation for each Underlying Obligation or for the Index, at which the Underlying Obligation or Index may be purchased or sold or otherwise settled upon exercise of the relevant option. In respect of fixed income instruments (*Zinsinstrumente*) any accrued interest shall be added in accordance with the calculation rules applicable to the Underlying Obligation.

- "**Expiration Date**" means the (last) day on which an option may be exercised. If the Expiration Date is not a Banking Day, the Expiration Date will be the first following day that is a Banking Day.

- "**Foreign Exchange Transaction**" means an agreement between the parties providing for the purchase by one party of an agreed amount in one currency in exchange for the sale by it of an agreed amount in another currency to the other party for settlement on the same due date.

- "**Foreign Exchange Spot Transaction**" means a Foreign Exchange Transaction which the parties describe as a "cash or spot transaction" and which is generally settled on the second Banking Day after the date on which such transaction is entered into.

- "**Foreign Exchange Swap Transaction**" means a transaction whereby the parties agree to simultaneously enter into either a Foreign Exchange Spot Transaction and a Forward Foreign Exchange Transaction or two Forward Foreign Exchange Transactions with different due dates. Where the parties enter into two Forward Foreign Exchange Transactions with different due dates, the parties agree that the amount in one currency that was purchased by one party under the Foreign Exchange Transaction with the earlier due date will be re-sold to the other party under the Foreign Exchange Transaction with the later due date and the amount in one currency that was sold by one party under the Foreign Exchange Transaction with the earlier due date will be re-purchased by the other party.

- "**Forward Foreign Exchange Transaction**" means a Foreign Exchange Transaction whereby the parties agree that a specified future date shall be the due date.

- "**Expiration Time**" is the latest time at which an option may be exercised on the Expiration Date.

  If an option is exercised on the Expiration Date but after the Expiration Time, such option will be deemed to have been exercised on the following Banking Day.

- "**Forward Precious Metal Transaction**" means a Precious Metal Transaction whereby the parties agree that a specified future date shall be the due date.

- "**Index**" means each index that is specified in the confirmation.

- "**In-the-money**" transactions mean transactions with a positive Intrinsic Value.

- "**Intrinsic Value**" of an option means the amount, by which the market price of the Underlying Obligation as listed on the Reference Stock Exchange for Underlying Obligations exceeds the Exercise Price (in the case of Call Option), or is less than the Exercise Price (in the case of a Put Option). A transaction's "Aggregate Intrinsic Value" means the Intrinsic Value multiplied by the number of Underlying Obligations covered by such transaction.

- "**Non-Deliverable Forward**" means a Forward Foreign Exchange Transaction that is Cash Settled.

- "**Precious Metal Transaction**" means a transaction for the sale of a certain amount of precious metal for settlement on a certain Settlement Date.

- "**Precious Metal Spot Transaction**" means a precious metal transaction which the parties describe as "cash, spot or comptant transaction" and which is generally settled on the second Banking Day after the date on which such transaction is entered into.

- "**Precious Metal Swap Transaction**" means a transaction whereby the parties agree to simultaneously enter into either a Precious Metal Spot Transaction and a Forward Precious Metal Transaction or two Forward Precious Metal Transactions with different due dates. Where the parties enter into two Forward Precious Metal Transactions with different due dates, the parties agree that the amount of precious metal that was purchased by one party under the Forward Precious Metal Transaction with the earlier due date will be re-sold to the other party under the Forward Precious Metal Transaction with the later due date.

- "**Premium**" means the purchase price of an option. The Premium becomes due two Banking Days after the Transaction has been entered into.

- "**Put Option**" means the right but not the obligation of the buyer of such option, in return for the payment of the option price (the Premium), to sell to the seller of the option a certain number of Underlying Obligations at a certain price (Exercise Price) before a certain date (Expiration Date). Upon payment of the Premium the seller of the option undertakes to receive the Underlying Obligation at the Exercise Price.

- "**Reference Price**" means the price for each Underlying Obligation as determined by reference to the agreed price source on the Valuation Date at the valuation time.

- "**Reference Stock Exchange for Underlying Obligations**" means the stock exchange whose rules have been specified by the parties in the relevant confirmation for the determination and publication of the Index for the purpose of trading in the Underlying Obligations. Where Underlying Obligations are not listed on a stock exchange, the relevant rules (settlement, determination of the closing price etc.) will be agreed separately in the confirmation.

- "**Reference Stock Exchange for Adjustments**" means the stock exchange whose rules have been specified by the parties in the relevant confirmation to apply to adjustments (dilution, stock split, merger, capital restructuring, market disruption etc.).

- "**Settlement Date**" means the Banking Day on which the delivery of the Underlying Obligation in return for payment or the payment of the Cash Settlement amount becomes due.

- "**Underlying Obligation**" means

  (a) the instrument listed on the Reference Stock Exchange for Underlying Obligations from which a Transaction derives its value, in particular, certificated or non-certificated registered shares, bearer shares, participation certificates, profit sharing certificates, shares in co-operatives, bonds, convertible bonds, bonds with warrants attached thereto, interest rate derivatives etc.;

  (b) the bond from which a Transaction derives its value, irrespective of whether or not it is listed;

  (c) the swap from which a Transaction derives its value;

  (d) the Index from which a Transaction derives its value;

  (e) the precious metal from which a Transaction derives its value.

- "**Valuation Date**" means the date specified as such in the confirmation and, in respect of an option, the Exercise Date.

## 15. Possible Elections

a) Threshold amount pursuant to section 5.3(d) of this Master Agreement

For Party A ______________________
(currency and amount)

For Party B ______________________
(currency and amount)

b) Calculation Agent pursuant to paragraph 3 of section 1 and section 3.3 of this Master Agreement:

______________________

If no Calculation Agent is specified, Party A will be deemed to be the Calculation Agent.

| **Partei A** | | **Partei B** | |
|---|---|---|---|
| Name: | ____________________ | Name: | ____________________ |
| Position: | ____________________ | Position: | ____________________ |
| Date: | ____________________ | Date: | ____________________ |
| Signature: | ____________________ | Signature: | ____________________ |
| Name: | ____________________ | Name: | ____________________ |
| Position: | ____________________ | Position: | ____________________ |
| Date: | ____________________ | Date: | ____________________ |
| Signature: | ____________________ | Signature: | ____________________ |

## Annex A

to the Swiss Master Agreement for OTC-derivatives instruments

### Special provisions for options on shares, share baskets ("Baskets"), indices and fixed income instruments (***Zinsinstrumente***)

# General

## A 0. Exercise of options

**A 0.1** A European Option is only exercisable on the Expiration Date up to and including the Expiration Time.

An American Option is exercisable on the Expiration Date up to and including the Expiration Time and on any other Banking Day during the exercise period before close of business on the Reference Stock Exchange for Underlying Obligations. Options that are exercised after close of business of the Reference Stock Exchange for Underlying Obligations will be deemed to have been exercised on the following Banking Day. If the relevant confirmation does not specify the commencement of the exercise period, such exercise period will be deemed to commence on the date on which the relevant Transaction is entered into.

If the relevant confirmation does not specify an Expiration Time, then the Expiration Time will be deemed to be the close of business on the Reference Stock Exchange for Underlying Obligations.

In respect of Underlying Obligations that are not listed on any stock exchange, the Expiration Time will be agreed separately in the relevant confirmation.

**A 0.2** As a general rule, physical Underlying Obligations will be physically settled upon the exercise of the relevant option unless the parties agree that Cash Settlement applies. Where an option is physically settled, the relevant Underlying Obligations shall be delivered to the other party in accordance with the rules of the Reference Stock Exchange for Underlying Obligations. Where Cash Settlement applies, the option shall be Cash Settled in accordance with the settlement rules of the Reference Stock Exchange for Underlying Obligations.

**A 0.3** An American Option can be exercised in partial amounts. Options that have not been exercised are deemed to have been exercised on the Expiration Date if (i) Cash Settlement applies, and (ii) such options are in the money. Where physical settlement applies, options that have not been exercised are deemed to have been exercised on the Expiration Date only if (i) the parties have elected automatic termination to apply, and (ii) the relevant option is in the money.

**A 0.4** The same taxes, levies and commissions shall be incurred on the exercise of an option that are payable in the case of direct trading on the stock exchange.

**A 0.5** Where an option is bought on an Underlying Obligation that is registered, it is the buyer's responsibility to obtain the consent of the issuer of the Underlying Obligation for the buyer to be registered on the relevant register. Failure to obtain such consent will not affect the validity of the exercise of the option.

# Shares

## A 1. Rights under the Underlying Obligations

Prior to the Exercise Date all rights under or in connection with the Underlying Obligations belong to the holder of the Underlying Obligations. Upon exercise of the option any Underlying Obligations acquired by the purchaser entitle him to all dividend and other rights connected with the Underlying Obligations that become payable after the Exercise Date. Where an Exercise Date falls on the date on which a dividend is paid, the Underlying Obligation will be delivered without such dividend. The same applies with respect to other rights that may be related to the Underlying Obligation (e.g. subscription and preferential subscription rights).

## A 2. Protection against dilution, stock split, suspension of trading

**A 2.1** In the event that, prior to the expiration of the exercise period, the issuer of the Underlying Obligations grants a subscription right or preferential subscription right to the holder of Underlying Obligations and thereby:

- increases its capital by issuing new shares, participation certificates or other participation instruments, and/or
- issues convertible bonds or bonds with warrants attached thereto or sells options which entitle the holder of such instruments to purchase shares, participation certificates or other participation instruments, and/or
- issues options with no premium payable ,

then the Transactions shall be adjusted pursuant to the rules applicable at the Reference Stock Exchange for Adjustments; in particular, the Exercise Price shall be adjusted proportionately pursuant to such rules (rounded up or downwards to a full currency unit, whereby a currency unit exceeding 0.5

will be rounded up). If there is no trade in the subscription or preferential subscription rights or if the Reference Stock Exchange for Adjustments provides no adjustment rules, the method of adjusting the Transactions will be agreed between the parties.

**A 2.2** An analogous provision to section A 2.1 shall apply in the event that the issuer of the Underlying Obligation splits its stock prior to the expiration of the exercise period.

**A 2.3** If trading in the Underlying Obligations is temporarily or permanently suspended, the market price of the relevant Underlying Obligation will be determined pursuant to the rules of the Reference Stock Exchange for Adjustments. If there are no such rules, the market price of the relevant Underlying Obligation will be determined on the following Banking Day. If the market price cannot be determined within five Banking Days, the Calculation Agent will determine the market price in good faith.

**A 2.4** If, prior to the expiration of the exercise period, the issuer announces the distribution of an extraordinary dividend, the Calculation Agent will determine whether such distribution has the effect of diluting or increasing the value of a Transaction and adjust the terms of the Transaction pursuant to the rules of the Reference Stock Exchange for Adjustments; in particular, the Exercise Price will be adjusted proportionately pursuant to such rules (rounded up or down to a full currency unit, whereby a currency unit exceeding 0.5 will be rounded up). If the Reference Stock Exchange for Adjustments does not have such rules, the parties will agree amongst themselves the appropriate adjustment of the relevant Transactions.

## A 3. Capital restructuring and mergers

**A 3.1** If a capital restructuring or merger occurs, the Transactions will be adjusted in accordance with the rules of the Reference Stock Exchange for Adjustments. If no such rules exist, the following rules will apply:

**A 3.2** Where Underlying Obligations are consolidated or exchanged, such Underlying Obligations will be replaced by the new Underlying Obligations and the Exercise Price will be adjusted accordingly, if necessary. If there are any elections to be made, they shall be made by the holder of the previous Underlying Obligations in his sole discretion. Any residual amount shall be settled in cash.

**A 3.3** Where, during the exercise period of a Call Option, the issuer of the Underlying Obligations announces its intention to merge with, or to be taken over by, another company and the issuer of the Underlying Obligations is subsequently to be dissolved, the party obligated to deliver the Underlying Obligations has the right to adjust its delivery obligation under the current agreement in respect of all, but not part, of the Underlying Obligations, so that the other party upon exercise of the relevant option will be entitled to an amount (X) which will be determined pursuant to the following formula, instead of receiving the Underlying Obligations or other rights in such other company that are granted to the holders of Underlying Obligations in connection with such merger:

| | | |
|---|---|---|
| X = Number of Underlying Obligations of the issuer | x | Price of the Underlying Obligations of the issuer at the close of business on the Reference Stock Exchange for Underlying Obligations on the last trading day prior to the day on which the merger becomes effective |

Such adjustment must be notified to the other party no later than 20 calendar days prior to the merger date. If the party obligated to deliver the Underlying Obligations fails to notify the other party, such other party, when exercising its option rights, may nevertheless request from the party obligated to deliver the Underlying Obligations the payment of the amount (X) instead of delivery of Underlying Obligations or other rights in such other company that are granted to the holders of Underlying Obligations in connection with such merger. Such decision must be notified to the party that is required to deliver the Underlying Obligations no later than 10 calendar days prior to the merger date.

**A 3.4** The provision contained in section A 3.3 above shall apply by analogy to Put Options. Accordingly, it is the party that is required to pay the Exercise Price that must serve the respective notice no later than 20 calendar days, whereas the other party must serve the notice no later than 10 calendar days prior to the merger date.

# Indices

## A 4. Adjustment of the Index calculation

**A 4.1** Where, prior to the Expiration Day, the Index is not calculated and published by the original index sponsor but by a third party that is acceptable to both parties to this Master Agreement (the "**Third Party**"), then the Calculation Agent will determine the Cash Settlement amount pursuant to the price calculated and published by the Third Party at the close of business on the Exercise Day.

**A 4.2** Where, prior to the Exercise Date, the original sponsor or Third Party changes the formula or the method of calculating the Index or the Index itself, the Cash Settlement amount will in principle be adjusted pursuant to the procedure applicable on the Reference Stock Exchange for Adjustments. If this is not possible, the Calculation Agent will make the calculation in such a way that the Cash Settlement amount owed is as close as possible to the amount that would have been payable if the calculation were based on the formula and method previously applied.

**A 4.3** In the event that the original index sponsor or the Third Party suspend (temporarily or permanently) the calculation and publication of the Index and no successor index is available, the rules applicable at the Reference Stock Exchange for Adjustments shall apply. If there are no such rules, the Index will be calculated on the next following Banking Day. If the Index cannot be calculated within five Banking Days, the Calculation Agent will calculate the Index for the determination of the Cash Settlement amount in good faith, by applying the calculation formula and method that were used on the day on which the calculation of the Index was interrupted or suspended.

# Fixed Income Instruments (*Zinsinstrumente*)

## A 5. Rights under the Underlying Obligations

Until the Settlement Date, all rights under, or in connection with, the Underlying Obligations belong to the holder of the Underlying Obligations. Upon exercise of an option, the party receiving the relevant Underlying Obligations may exercise all rights in respect of interest payments or other rights related to such Underlying Obligations that become payable after the Settlement Date. If a Settlement Day falls on the same day on which an interest payment becomes due, the Underlying Obligation will be delivered without such interest payment. The same rule applies to other rights which may be attached to the Underlying Obligation.

## A 6. Alteration of the terms and conditions of the issue of Underlying Obligations

**A 6.1** Where, in particular following a debt restructuring, debtor substitution etc., the Underlying Obligations are exchanged or consolidated, then the old Underlying Obligations shall be replaced by the new Underlying Obligations and, if applicable, the Exercise Price shall be adjusted accordingly. Any elections to be made will be made by the holder of the old Underlying Obligations at its sole discretion. Any residual amount shall be settled in cash.

**A 6.2** The same applies if changes are made that are binding upon all creditors in relation to the repayment of capital, interest payments or the due dates of such payments.

## A 7. Early redemption

**A 7.1** The party obligated to deliver the Underlying Obligation upon the exercise of the option remains obligated to physically deliver the relevant Underlying

Obligation even if some of the Underlying Obligations redeem early, e.g. by a drawdown.

**A 7.2** If an early redemption in respect of all Underlying Obligations occurs which is binding on all creditors, then a European Option may be exercised early and shall have effect as of the redemption date. If a European Option or an American Option is exercised, Cash Settlement, based on the repayment price paid by the debtor, shall apply.

## A 8. Suspension of trading

**A 8.1** If trading in Underlying Obligations is temporarily or permanently suspended on the Reference Stock Exchange for Underlying Obligations, then the Calculation Agent will determine the market price pursuant to the existing market practice at the time such trading is suspended.

# Annex B

to the Swiss Master Agreement for OTC-derivatives instruments

## Special provisions for swaps and interest-rate hedging transactions (*Zinsbegrenzungsgeschäfte*)

## B 1. Periodic payment obligations

The periodic payment obligations under interest rate swaps and interest rate and currency swaps will be determined as follows:

### B 1.1 Fixed rate payment amounts

Fixed rate payment amounts that are payable periodically will be determined by multiplying the underlying notional amount (in respect of interest rate swaps and currency swaps the currency amount that was paid initially) by the agreed fixed interest rate. The product of such calculation will be multiplied by the number of days between one payment date and the next following payment date, in accordance with the agreed market practice (as adjusted pursuant to section 4 of this Master Agreement) and divided by 360 or 365 (and 366, respectively, in a leap year), as applicable:

$$\frac{C \times FIR \times D}{N}$$

C = capital (in respect of currency and interest rate swaps, the amount paid initially)
FIR = fixed interest rate, expressed as a decimal (e.g., 3% = 0.03)
D = actual number of days
N = 360 or 365 (and 366, respectively, in a leap year), in accordance with the agreed market practice

### B 1.2 Floating rate payment amounts

a) Floating rate payment amounts that are payable periodically will be determined by multiplying the underlying notional amount (in respect of interest rate swaps and currency swaps, the currency amount that was paid initially) by the variable interest rate applicable to the relevant interest period. The product of such calculation will be multiplied by the actual number of days in the relevant interest period, in accordance with the agreed market practice (the period between two floating rate payment dates, or the period between the commencement date and the first floating rate payment date, or the period between the penultimate payment date and the final payment date, as adjusted pursuant to section 4) and divided by 360 or 365 (and 366, respectively, in a leap year), as applicable:

$$\frac{C\ x FlIR\ x\ D}{N}$$

C = capital (for currency and interest rate swaps, the amount paid initially)
FlIR = floating interest rate, expressed as a decimal (e.g., 3% = 0.03)
D = actual number of days
N = 360 or 365 (and 366, respectively, in a leap year), in accordance with the agreed market practice

If the amount resulting from the application of the above formula is negative, then the other party will pay to the party that is the floating rate payment amount payer the absolute value of such amount, unless the parties have agreed otherwise.

This provision shall not apply to interest-rate hedging transactions *(Zinsbegrenzungsgeschäfte)*.

b) Determination of the floating interest rate

(i) In the event that the floating rate payment amount is not denominated in Euro,

then the floating rate applicable to an interest period will be the rate offered in the interbank market for money market transactions in the relevant currency for the relevant interest period at 11:00 a.m., London time, on the day that is two London banking days preceding the commencement date of the relevant interest period (LIBOR). The Calculation Agent will determine such floating rate based on the BBA Interest Settlement Rate applicable to the interest period specified in the relevant confirmation as published by the British Bankers' Association ("**BBA**") and shall notify the other party of the applicable floating rate.

(ii) In the event that the floating rate payment amount is denominated in Euro,

then the floating rate applicable to an interest period will be the rate offered in the interbank market for money market transactions in Euros and for the relevant interest period at 11:00 a.m., Brussels time, on the day that is two "TARGET Settlement Days" preceding the commencement date of the relevant interest period (EUR-EURIBOR). The Calculation Agent will determine such floating rate based on the EUR-EURIBOR reference interest rate applicable to the interest period specified in the relevant confirmation as published by the European Banking Federation and the ACI - The Financial Market Association ("**FBE/ACI**") and shall notify the other party of the applicable floating rate.

A TARGET Settlement Day means any day on which the TARGET system is open.

(iii) If BBA or FBE/ACI, respectively, or any other body designated by them does not publish the rates referred to in subparagraph (i) and (ii) above, the Calculation Agent shall determine the floating rate as the average (rounded upwards to the fifth decimal place) of the rates quoted by four prime banks in the place of payment, selected mutually by both parties, for money market transactions in amounts similar to the agreed notional amount and for the relevant period.

If no agreement can be reached as to the selection of the prime banks, or if, due to other reasons, the Calculation Agent cannot determine the average, then the reference interest rate that was last published for the relevant period by the entities referred to above shall apply.

### B 1.3 Floating rate applicable to interest-rate hedging transactions (*Zinsbegrenzungsgeschäfte)*

In respect of interest-rate hedging transactions (*Zinsbegrenzungsgeschäfte)* the floating rate pursuant to the confirmation shall be as follows:

a) for payments to be made by the party designated as the surplus payer (or cap or FRA seller) the agreed base rate minus the rate specified as the maximum rate (or cap rate) in the confirmation provided that such amount is positive;

b) for payments to be made by the party designated as the shortfall payer (or floor or FRA purchaser) the minimum rate (or floor rate) specified in the confirmation less the agreed base rate provided that such amount is positive.

## B 2. Optional break clause

The parties may agree to the termination of a Transaction (Optional Break Clause), whereby one party or both parties shall be entitled to terminate the relevant Transaction after the expiration of a certain period or upon the satisfaction of a condition. If such right is exercised, then the Calculation Agent will - in accordance with the procedure specified in the relevant confirmation - determine the liquidation value that one party must pay to the other party.

## B 3. Swaptions

If the confirmation provides that "Cash Settlement" will apply upon exercise of the relevant swaption, then such swaption shall be settled in cash. The Calculation Agent will calculate the Cash Settlement amount pursuant to the principles laid down in the confirmation and notify the counterparty. The seller will pay such amount to the purchaser on the Settlement Date specified in the confirmation.

If the Confirmation provides that "Physical Settlement" will apply upon exercise of the relevant swaption, then the swap underlying the swaption shall come into effect.

# Annex C

to the Swiss Master Agreement for OTC-derivatives instruments

## Special provisions for Foreign Exchange Transactions and Precious Metal Transactions

## C 1. General

This annex applies to spot transactions, forward transactions, options and swaps relating to foreign exchange transactions and precious metals.

## C 2. Exercise of foreign exchange and precious metal options

### C 2.1 Expiration Times

A European Option can only be exercised on the Expiration Date up until 10.00 New York time (in respect foreign exchange options) and 09.30 New York time (in respect of precious metal options) ("**Expiration Time**").

An American Option can be exercised on any Banking Day; on the Expiration Date, an American Option can only be exercised up until 10.00 New York time (in respect foreign exchange options) and 09.30 New York time (in respect of precious metals options) ("**Expiration Time**").

### C 2.2 Exercise of an option by a bank

If one of the parties is a bank and the other party is a client holding deposits with such bank, if the bank is free to offset or charge such deposits without further authorisation, then such bank is not required to notify the client when it exercises its option. The client hereby entitles the bank to settle the option transaction, by way of cash or physical settlement, as applicable, and agrees to be notified after the settlement of such transaction.

### C 2.3 Automatic exercise of option transactions

If the purchaser of an option has not given any previous instructions as to the exercise of its option, then the option will be deemed to be exercised provided that the option is in the money at the Expiration Time on the Expiration Date.

## C 3. Cash Settlement

The Cash Settlement amount in respect of Foreign Exchange Transactions and Precious Metal Transactions will be calculated as follows:

**C 3.1 in respect of Forward Foreign Exchange Transactions and Forward Precious Metal Transactions:**

The Reference Price for Underlying Obligations less the settlement price on the date on which the forward transaction was entered into, multiplied by the number or amount of the relevant Underlying Obligations. If the resulting number is positive, then the purchaser will receive the relevant Cash Settlement amount, if the resulting number is negative, then the purchaser of the forward transaction will pay to the seller the Cash Settlement amount.

**C 3.2 in respect of Call Options:**

The Reference Price of the Underlying Obligations less the Exercise Price, multiplied by the number or amount of the Underlying Obligations that are affected by the exercise of the relevant option.

**C 3.3 in respect of Put Options:**

The Exercise Price less the Reference Price of the Underlying Obligation, multiplied by the number or amount of the Underlying Obligations that are affected by the exercise of the relevant option.

## C 4. Market disruption events

### C 4.1 Conversion and re-denomination

If, after entering into a foreign exchange transaction, a currency is converted or re-denominated into another currency, then the obligation to deliver the initial currency will be replaced by the obligation to deliver a respective amount of the new currency.

### C 4.2 Inconvertability

If, after entering into a foreign exchange transaction, a currency becomes inconvertible due to any change in law, then the obligation to deliver such currency will be replaced by an obligation to pay a Cash Settlement amount.