

## **INTERNATIONAL DEPOSIT NETTING AGREEMENT**

The International Deposit Netting Agreement was drafted by a BBA Working Party, with assistance from local and international lawyers, to provide a contractual basis to offset, in the event of a specified event of default, deposits taken by a bank from a counterparty bank against deposits placed with the same counterparty bank. The aim of the Agreement is to provide an orderly basis for terminating a relationship (for example in the event of insolvency proceedings affecting one bank) and to provide a basis for the measurement of risk which takes into account both monies taken on deposit (whatever the currency and maturity) and monies placed on deposit. Where banks have offsetting positions in the market, and local law supports rights of offset, the result will be substantially less credit risk for the two banks and, ultimately, this benefits the market as a whole. The cross border interbank deposit market has grown substantially as banks have become increasingly global in their focus. At the end of 1995 some \$6,000 billion of cross border interbank claims were outstanding in G10 countries. It is our hope that the Agreement will contribute to a significant reduction in the credit risk implicit in the interbank deposit market.

**August 1996**

**DISCLAIMER**

Whilst every care has been taken in the preparation of this Booklet, the British Bankers' Association gives no representation or warranty as to the suitability of the International Deposit Netting Agreement for any particular transaction, or that the International Deposit Netting Agreement will cover every or any eventuality, or as to the accuracy or completeness of the contents of this Booklet.

In addition, the legal opinion included in this Booklet (which has been given without regard to the circumstances affecting any particular transaction) has been provided solely to the BBA for its own purposes and may not be relied upon by any other person. Any person utilising the International Deposit Netting Agreement or entering into a transaction whether on the basis of the International Deposit Netting Agreement or otherwise must obtain and rely upon its own legal advice as to the suitability, validity and enforceability of the International Deposit Netting Agreement or the terms of such transaction and may not rely upon the legal opinion included in this Booklet. Neither the BBA nor Clifford Chance can be liable for any losses suffered by contracting on the terms of the International Deposit Netting Agreement or arising from the presence of any errors or omissions in this Booklet.

# ***INTERNATIONAL DEPOSIT NETTING AGREEMENT***

**Dated (1) BETWEEN and (2)**

## **1. Interpretation**

In this Agreement:

**“Base Currency”** means the currency agreed as such by the Parties and specified in the Schedule.

**“Business Day”** means, in relation to the giving of any notice to a Party, a day on which commercial banks are not authorised or required by law to close in the location of the office of the Defaulting Party to which such notice is given.

**“Break Cost Amount”** means, in relation to a Deposit that becomes repayable pursuant to Clause 2 earlier than it would otherwise have been repayable, (i) the amount (determined in good faith by the Non-Defaulting Party) of interest which the Depositor would have earned in respect of that Deposit (had it not become so repayable early) during the period from the date on which it actually becomes repayable to the date on which it would otherwise have been repayable less (ii) the amount (determined in good faith by the Non-Defaulting Party) of interest which the Depositor would earn on the amount of that Deposit if it were to be invested during such period in the London interbank market at the most appropriate rate offered by prime banks current at the beginning of that period.

**“Deposit”** means any unsecured interbank money market cash deposit placed or to be placed by a Designated Office of one of the Parties (the **“Depositor”**) with a Designated Office of the other, including, without limitation, any unsecured call loan made or call money placed in the Tokyo market but excluding,

- (i) any deposit evidenced or represented by a certificate of deposit or *other* form of certificate or security, whether in paper form or represented by a book entry in a clearing or depositary system or any computer based system for the holding and/or transfer of securities or rights in respect of securities;
- (ii) for the avoidance of doubt, any bonds, notes or commercial paper;
- (iii) any deposit held as or taken by way of credit support, margin, collateral or security for or in relation to the obligations of any person (by whatever name such credit support, margin, collateral or security arrangement may be called) in relation to any transaction or transactions between the Parties not itself or themselves being a deposit or deposits;
- (iv) for the avoidance of doubt, any sums paid in respect of the transfer of securities under a repo, reverse repo, securities loan or similar transaction;

- (v) any deposit by way of loan made (generally after normal banking hours) in the interbank payment clearing and settlement by one Party to the other Party as a participant in such clearing and settlement to enable it to cover a shortfall position incurred by it in such clearing and settlement;
- (vi) any deposit in respect of which the Party placing the deposit has notified the Party taking such deposit that the placing Party is acting as a trustee, agent or otherwise not as a principal in relation to that deposit; and
- (vii) monies provided by one Party to the other where the other is a correspondent bank for the first Party and such monies have been provided to fund payments to be made by such other Party in its capacity as such correspondent bank.

A deposit which the Parties expressly agree shall be a Deposit for the purposes of this Agreement shall be treated as a Deposit under this Agreement for all purposes.

“**Deposit Obligation**” means any obligation of the Party with whose Designated Office a Deposit has been placed to pay principal, interest or any other sum in respect of that Deposit, whether present or future, actual or contingent.

“**Designated Office**” means in relation to either Party, one of its offices mentioned in the Schedule.

“**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 to the Non-Defaulting Party with respect to any sum when due under any Deposit Obligation and such failure shall continue for two (2) Business Days after written notice of non-payment has been given by the Non-Defaulting Party to the Defaulting Party Provided that an Event of Default shall not be treated as occurring where, and for so long as, such a default in payment is the result of the Defaulting Party being prevented or hindered from making the relevant payment by reason of force majeure or act of State or of the making of such payment being Unlawful or impossible.
- (ii) the Defaulting Party shall commence a voluntary case or other procedure seeking liquidation, reorganisation (including a moratorium) 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 seeking to authorise any of the foregoing;
- (iii) a banking supervisory or other governmental authority or self-regulatory organisation having jurisdiction over the Defaulting Party or its assets shall commence a proceeding or otherwise apply for the institution of insolvency or bankruptcy proceedings, or seek liquidation, reorganisation (including a moratorium) or other similar relief with respect to the Defaulting

Party or its debts under any insolvency, bankruptcy or similar law or any regulatory or supervisory or similar law applicable to the Defaulting Party, or seek the appointment of a Custodian of it or any substantial part of its assets;

- (iv) an involuntary case or other procedure shall be commenced against the Defaulting Party seeking liquidation, reorganisation (including a moratorium) 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 procedure shall not have been dismissed within five (5) days of its institution or presentation or a Custodian is appointed of the Defaulting Party or any substantial part of its assets;
- (v) the Defaulting Party is bankrupt or insolvent, as defined under any bankruptcy or insolvency law applicable to such Party; or
- (vi) the Defaulting Party or any Custodian acting on behalf of the Defaulting Party shall disaffirm, disclaim or repudiate any Deposit Obligation.

“Parties” means the parties to this Agreement and shall include their successors and permitted assigns; 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 this Agreement.

“Spot Rate” in relation to the conversion of one currency into the Base Currency on any date means the spot rate of exchange quoted by the Non-Defaulting Party at or about 11am on such date (or, if the Non-Defaulting Party is not quoting such a rate, the spot rate so quoted in the London interbank market) for the sale by it of the Base Currency against a purchase by it of such other currency.

“Unlawful” in paragraph (i) of the definition of Event of Default, includes, without limitation, where the making of such ‘payment would result in the payer or any person through whom such payment is or would be made being in breach of any statute, regulation, order or other instrument having force of law or any request or requirement of any central bank or monetary authority.

## **2. Netting**

Following the occurrence of an Event of Default and in addition to all other rights of set-off which a Party may have, the Non-Defaulting Party shall have a general right of set-off with respect to all and any Deposit Obligations (regardless of currency or Designated Office of such obligation). Where it is specified in the Schedule to this Agreement that this second sentence of Clause 2 is to apply, such set-off shall occur automatically as to all Deposit Obligations upon the occurrence of an Event of Default of the kind mentioned in paragraph (ii), (iii) or (iv) of the definition of Event of Default.

Accordingly, in the event that the Non-Defaulting Party exercises such right of set-off in respect of any Deposit Obligations, or a set-off occurs in respect of Deposit Obligations automatically as provided in the previous sentence, the relevant Deposit Obligations owed by each Party to the other shall become immediately due and payable (notwithstanding any other terms upon which the same may have been incurred) and shall be aggregated and set off and only the difference between the two aggregates shall be payable, by the Party with the larger aggregate obligation.

For the purpose of calculating such aggregates and of including any obligation in such an aggregation and set-off (i) the Non-Defaulting Party shall convert any obligation not denominated in the Base Currency into the Base Currency at the Spot Rate on the date of such set-off, or as soon thereafter as the Non-Defaulting Party is practicably able to determine such rate, (ii) if an obligation is unascertained, the Non-Defaulting Party shall in good faith determine the value of that obligation (on the basis that such obligation is immediately due and payable) and include the value so determined in such aggregation and set-off and (iii) for the avoidance of doubt, a Party's Deposit Obligations in respect of a Deposit shall include any Break Cost Amount payable by it under this Agreement in relation to that Deposit. Any obligation taken into account in any such aggregation and set-off shall be discharged to the extent that it is so taken into account.

Where the Non-Defaulting Party exercises the right of set-off provided in this Clause, it shall promptly thereafter give notice to the other Party of such exercise together with details of the Deposit Obligations so set-off, provided that any failure to give, or delay in giving, such notice shall not invalidate or prejudice any set-off so exercised nor any further or other exercise of any right of set-off.

Where a Deposit becomes repayable pursuant to this Clause 2 earlier than it would otherwise have been repayable, the Party which took such Deposit shall be liable to pay to the Depositor the Break Cost Amount, if a positive amount, relating to such Deposit and the Depositor shall be liable to pay to the Party which took such Deposit the absolute value of the Break Cost Amount, if a negative amount, relating to such Deposit.

### **3. Conditional obligation to place Deposit**

Each Party's obligation to place a Deposit with the other Party shall be conditional upon no Event of Default having occurred in relation to that other Party.

### **4. Notices**

Unless otherwise agreed, all notices and other communications to be given or made to a Party under this Agreement shall be given or made by letter, telex (confirmed by appropriate answerback) or facsimile (confirmed if requested) to the Designated Office of such Party (and addressed to the individual or department) specified in the Schedule or as from time to time specified by such Party to

the other by notice in writing. The office of a Party to which notices or communications are to be given or made may only be changed by it to another Designated Office.

## **5. Governing Law and Jurisdiction**

### **5.1 Governing Law**

This Agreement shall be governed by, and construed in accordance with, the laws of England and Wales.

### **5.2 Consent to Jurisdiction**

With respect to any Proceedings, each Party irrevocably (i) agrees for the benefit of the other Party that the courts of England shall have jurisdiction to determine any Proceedings and irrevocably submits to the jurisdiction of the English courts, 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 this 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.

## **6. Acknowledgement**

The Parties acknowledge that, without prejudice to the definition of “Deposit”, the Deposits are made in the context of the Parties’ interbank treasury operations.