

Foreign Exchange Master Agreement

**Industrial and Commercial Bank of China
(New Zealand) Limited**

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Master Foreign Exchange Agreement

Dated

Parties

1. **Industrial and Commercial Bank of China (New Zealand) Limited (“ICBCNZ”)**
2. _____ (“Customer”).

Background

The parties wish to set out the terms and conditions that will apply to all Foreign Exchange Transactions entered into between them on and from the date of this agreement.

Operative provisions

1. Defined meanings

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this document.

2. Incorporation of Terms

The parties agree that all Foreign Exchange Transactions entered into between the parties on and from the date of this agreement will incorporate the terms and conditions contained in this master agreement, except as varied by a Transaction Confirmation.

3. Transactions

- (a) Foreign Exchange Transactions between the parties will usually be entered into and take effect by oral agreement made in one or more telephone conversations between the parties. The Customer consents to the recording of all such telephone conversations between the parties, however, ICBCNZ is under no obligation to record, store or make available to the Customer recordings of these conversations.
- (b) Foreign Exchange Transactions may also be executed by email, facsimile, internet or by providing an executed Foreign Exchange Application Form at a personal meeting. Foreign Exchange Transactions entered into using these methods will take effect when ICBCNZ books the transaction. In all cases an executed Foreign Exchange Application Form must be provided to ICBCNZ before the transaction is entered into.
- (c) ICBCNZ will use its best endeavours to provide the Customer with a Transaction Confirmation in respect of each Foreign Exchange Transaction within a reasonable timeframe, with ICBCNZ generally aiming for this to be within 24 hours of the relevant trade being executed (although the Foreign Exchange Transaction will be valid and binding despite such a Transaction Confirmation not being provided).

- (d) If the Customer disputes any aspect of the Foreign Exchange Transaction as set out in a Transaction Confirmation, the Customer must advise ICBCNZ of the dispute within one Business Day. Any Transaction Confirmation not disputed within that timeframe will be deemed to be accurate unless ICBCNZ (in its sole and absolute discretion) agrees otherwise, and ICBCNZ has no obligation to consider any dispute raised outside that timeframe.

4. Payments

- (a) The parties must make all payments due in respect of each Foreign Exchange Transaction in cleared funds to the accounts agreed between the parties in a Transaction Confirmation or in the absence of agreement, in the manner nominated by ICBCNZ acting reasonably.
- (b) Subject to ICBCNZ's right of set-off following a Default Event, if a payment is due between the parties under two or more Foreign Exchange Transactions in the same currency on any one day, all amounts in that particular currency may be netted off and settled by the party owing the highest amount paying the net amount due in that currency under the Foreign Exchange Transactions to the other party.
- (c) The parties must make all payments due in respect of each Foreign Exchange Transaction without any withholding, deduction or set-off (except as expressly permitted by this agreement or required by law).

5. Default

Default events

- (a) Each of the following is a Default Event for the purposes of this agreement:
 - (i) failure by the Customer to pay any money on the due date and in the manner specified in this agreement;
 - (ii) failure by the Customer to perform any of its obligations under this agreement;
 - (iii) any representation made or deemed to be made or repeated by the Customer under or in connection with this agreement is incorrect in any material respect; or
 - (iv) the happening of an Insolvency Event in relation to the Customer.

Consequences of a Default Event

- (b) Following a Default Event, ICBCNZ may terminate this agreement by notice in writing with immediate effect.
- (c) Following termination of this agreement:
 - (i) all payments otherwise payable in accordance with clause 4 of this agreement will immediately cease; and
 - (ii) ICBCNZ will calculate the mark-to-market value in New Zealand dollars of all open Foreign Exchange Transactions between the parties (each a "**Transaction Amount**") using the current market rates as determined by ICBCNZ acting reasonably (and, for this purpose, all mark-to-market values that are positive for ICBCNZ will be expressed as a negative number and all mark-to-market values that are positive for the Customer will be expressed as a positive number); and

- (iii) ICBCNZ will calculate the sum of all Transaction Amounts (the "**Close-out Amount**") and promptly provide this calculation to the Customer; and
- (iv) the Customer must pay an amount equal to the absolute value the Close-out Amount to ICBCNZ if the Close-out Amount is negative, and ICBCNZ must pay an amount equal to the Close-out Amount to ICBCNZ if the Close-out Amount is positive.
- (d) Any payment due by one party to the other under this clause must be made within two Business Days of ICBCNZ providing the calculation of the Close-out Amount to the Customer.
- (e) For the purposes of calculating a Transaction Amount in New Zealand dollars, ICBCNZ may, in its reasonable discretion, calculate the amount in New Zealand dollars that is equivalent to an amount in another currency included in its calculations.

Set-Off

- (f) In addition to any other right of set-off of ICBCNZ under a Transaction Confirmation or at law, after a Default Event occurs ICBCNZ may, without notice, combine, consolidate, or merge any or all amounts owed by ICBCNZ to the Customer, and may set-off the resulting amount against any amount the Customer owes ICBCNZ under this agreement, any Foreign Exchange Transaction or any other agreement, even where those amounts are not in the same currency. ICBCNZ may, in its reasonable discretion, calculate the amount in one currency that is equivalent to an amount in another currency to determine the effect of any exercise of its powers under this clause.

6. Interest

- (a) Without prejudice to the obligation to pay, if the Customer fails to make any payment on its due date, or if ICBCNZ is required to pay money or incurs cost or expense as a result of a breach by the Customer of its obligations in relation to this agreement or a Foreign Exchange Transaction, the Customer must pay interest to ICBCNZ on that amount computed from the due date or the date ICBCNZ pays the money or incurs the cost or expense whichever first occurs.
- (b) Interest will accrue on the daily balance of the amount due at 10% per annum above the 30 Day BKBM Rate as determined by ICBCNZ on the date from which interest becomes payable under this clause and reviewed and compounded on the last Business Day of each calendar month.

7. Representations

- (a) ICBCNZ has entered into this agreement relying on the following representations and warranties by the Customer. The Customer represents and warrants to ICBCNZ that the following is true and correct at the date of this agreement and each Foreign Exchange Transaction and at all times throughout the term of this agreement.
 - (i) **(No Event of Default)** No event has occurred which constitutes or which with the giving of notice and/or the lapse of time and/or a relevant determination by ICBCNZ would constitute a Default Event.
 - (ii) **(No litigation)** No litigation, arbitration, or administrative proceedings or claims are presently in progress, pending, or threatened against the Customer or any of its assets, which might by itself (or together with other proceedings or claims) have a material adverse effect on the Customer's assets or adversely affect the Customer's ability to

observe or perform its obligations under this agreement or any Foreign Exchange Transaction.

- (iii) **(Disclosure)** The Customer has fully disclosed to ICBCNZ in writing, all facts material for disclosure in the context of this agreement and any Foreign Exchange Transaction.
- (iv) **(Duly incorporated)** The Customer, if a corporation, is duly incorporated under the laws of its place of incorporation and has the power and authority to enter this agreement and any Foreign Exchange Transaction and has undertaken and complied with the necessary corporate proceedings to ensure this agreement and any Foreign Exchange Transaction is enforceable and binding on it.
- (v) **(Financials)** If the Customer is a corporation, all financial accounts provided to ICBCNZ were prepared in accordance with accounting principles and standards generally accepted in New Zealand; and where there has been no adverse change in the financial position disclosed by those financial accounts since the date when the financial accounts which have been provided to ICBCNZ were prepared.
- (vi) **(Valid and enforceable)** This agreement and any Foreign Exchange Transaction constitute legally valid, binding, and enforceable obligations of the Customer.
- (vii) **(No contravention)** The execution and delivery of this agreement and the performance of any Foreign Exchange Transaction contemplated by it will not contravene or constitute a default under any provision contained in any agreement, instrument, law, judgment, order, licence, permit, or consent by which the Customer is bound or affected.
- (viii) **(No registration)** No registration with or approval of any authority is necessary for the performance by the Customer of this agreement or any Foreign Exchange Transaction or, if required, all registrations and approvals have been, or will be, duly made or obtained and certified copies will be delivered to ICBCNZ.
- (ix) **(Information true and correct)** All information provided by the Customer to ICBCNZ is true and correct to the best of the Customer's knowledge, information, and belief.
- (x) **(Capacity)** The Customer has full legal capacity to own its assets and to carry on its business (if any) as it is now being conducted and to enter into and perform its obligations under this agreement and any Foreign Exchange Transaction.
- (xi) **(Ownership)** The Customer owns all of its property and assets and no other person has any mortgage, security interest or other right or claim to any interests in any of them except as previously disclosed in writing to ICBCNZ.
- (xii) **(No property subject to trust)** The property(s) disclosed to ICBCNZ as an asset of the Customer or any related party is not subject to any trust other than as disclosed in writing to ICBCNZ.

No reliance on ICBCNZ

- (b) The Customer acknowledges that it has not entered into this agreement and will not enter into any Foreign Exchange Transaction relying on any representation, warranty, promise or statement of ICBCNZ or of any person on behalf of ICBCNZ.

8. Indemnity

- (a) The Customer indemnifies ICBCNZ against, and must reimburse ICBCNZ on demand for, all claims or liabilities incurred by ICBCNZ resulting directly or indirectly from any default in payment of any amount due by the Customer under this agreement including any principal, interest or costs, or arising out of or resulting from any other Default Event.

9. General provisions

Costs

- (a) Each party must pay its own costs in relation to the negotiation, preparation, execution, performance, amendment or registration of this master agreement.
- (b) The Customer must pay all ICBCNZ's fees, costs and expenses:
 - (i) in connection with any Foreign Exchange Transaction; and
 - (ii) in the enforcement of or the taking of any action in relation to this master agreement.

GST

- (c) If any payment made by one party to any other party under or relating to this agreement constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this agreement.

Assignment

- (d) The Customer must not mortgage, charge, transfer, or deal in any other way with any right or liability under this agreement without the prior written consent of ICBCNZ. ICBCNZ may transfer or assign its rights under this agreement with the consent of the Customer which may not be unreasonably withheld.

Notices

- (e) The Customer must at all times maintain an email address for correspondence with ICBCNZ. Any notice given by ICBCNZ to the Customer's nominated email address will be deemed to be received by the Customer on transmission.

Governing law and jurisdiction

- (f) This agreement is governed by and construed under the laws of New Zealand and by executing this agreement, each party irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand.

Continuing performance

- (g) Any representation in this agreement survives the execution of any document for the purposes of, and continues after, performance of this agreement.
- (h) Any indemnity agreed by any party under this agreement:

- (i) constitutes a liability of that party separate and independent from any other liability of that party under this agreement or any other agreement; and
- (ii) survives and continues after performance of this agreement.

Waivers

- (i) Any failure by any party to exercise any right under this agreement does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

Remedies

- (j) The rights of a party under this agreement are cumulative and not exclusive of any rights provided by law.

Severability

- (k) Any provision of this agreement which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this agreement or the validity of that provision in any other jurisdiction.

Counterparts

- (l) This agreement may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same agreement.

Party acting as trustee

- (m) If a party enters into this agreement as trustee of a trust, that party and its successors as trustee of the trust will be liable under this agreement in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this agreement:
 - (i) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
 - (ii) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this agreement on behalf of the trust and that this agreement is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust;
 - (iii) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

10. Definitions and interpretation

Definitions

- (a) In this agreement unless the context otherwise requires:

30 Day BKBM Rate means the rate per cent per annum expressed as a yield determined by ICBCNZ being the mid rate for bank bills on the relevant day for a period equal to or approximately equal to thirty days as appearing on the Reuters' screen on page “**BKBM**” at

approximately 10:45 am Auckland time rounded upwards to two decimal places. If ICBCNZ decides that the basis on which the rate is determined at any time differs from that employed at the date of this agreement, or if no relevant rate appears on the Reuters' screen, 30 Day BKBM Rate means the rate determined by ICBCNZ acting reasonably from time to time.

Business Day means a day that is not a Saturday, Sunday, public holiday (as defined in the Holidays Act 2003) in Auckland.

Cross Currency Swap means a transaction under which the parties to this agreement make payments to each other that match the principal and interest payments that would be payable if each had made a loan to the other in a different currency.

Currency Option means a transaction under which a party to this agreement is granted an option to exchange two currencies with the other party at a specified exchange rate during a specified period of time.

Foreign Exchange Application Form is a form provided by ICBCNZ and completed by a Customer under which a Customer applies to enter into a Foreign Exchange Transaction.

Foreign Exchange Swap Transaction means a transaction under which the parties to this agreement agree to exchange two currencies at a specified exchange rate at a specified time in the future.

Foreign Exchange Transaction means transactions which provide for the purchase of one currency in exchange for the simultaneous sale of another currency in the spot or forward foreign exchange markets but excludes Currency Options, Cross Currency Swaps and Foreign Exchange Swap Transactions.

GST means any tax, levy, charge or impost implemented under Goods and Services Tax Act 1985.

Insolvency Event means the happening of any of the following events:

- (a) the Customer is unable to pay, or does not pay, its debts as they become due and payable, or becomes insolvent, or takes steps to benefit any of the Customer's creditors or to adjust or reschedule a material part of its debts, or in ICBCNZ's view the Customer's financial position otherwise changes adversely to a material extent;
- (b) the Customer is adjudicated bankrupt;
- (c) (if the Customer is a company or other corporate body) any action or step is taken for its dissolution or liquidation or to remove it from any official company or corporations register;
- (d) any person with a security interest in the Customer's property takes possession of that property, or a receiver, manager, receiver and manager, inspector, trustee, statutory manager, administrator or similar officer is appointed in respect of the Customer or any of its assets (or such appointment is applied for), or a judgment, distress, attachment or execution for an amount exceeding \$5,000 is levied, issued or enforced against the Customer or any of its assets;
- (e) an investigator, inspector or similar person is appointed under any law to investigate the Customer's business or any aspect of it;

- (f) any debt owed by the Customer to any person is not paid when due or is declared (or is capable of being declared) due and payable or is placed on demand before its maturity because of any default (however described), or any security interest provided in respect of any such debt becomes enforceable by the relevant creditor;
- (g) if the Customer is acting as a trustee of a trust, without ICBCNZ's prior written consent, any action is taken or proposed to terminate the trust; or
- (h) any event which has a similar effect to any of the above events occurs under the law of any place outside New Zealand.

Transaction Confirmation means a notice given by ICBCNZ to the Customer in respect of each Foreign Exchange Transaction that references this agreement and sets out the terms of the transaction, including:

- (a) the names of the counterparties;
- (b) the currency pairs;
- (c) amount(s) to be paid by each party in each currency;
- (d) the date of the transaction;
- (e) the due date(s) of payments; and
- (f) the account to which each payment is to be made.

Interpretation

- (b) In this agreement unless the context otherwise requires:
 - (i) clause and subclause headings are for reference purposes only;
 - (ii) the singular includes the plural and vice versa;
 - (iii) words denoting any gender include all genders;
 - (iv) reference to a person includes any other entity recognised by law and vice versa;
 - (v) references to time are to the time in Auckland;
 - (vi) any reference to a party to this document includes its successors and permitted assigns;
 - (vii) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
 - (viii) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally.

EXECUTED AS AN AGREEMENT

Signed on behalf of _____ :

Secretary/Director

Director

Print name

Print name

Signed on behalf of **Industrial and Commercial Bank of China (New Zealand) Limited** by its authorised representative in the presence of:

Director

Witness

Print name

Print name

Print address

Print address