

# TDFX – Terms and Conditions

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## Terms and Conditions

In consideration of TD allowing the Counterparty to have access to TD's foreign exchange web based online trading service ("TDFX"), the Counterparty agrees as follows:

### 1. TDFX

TDFX is an on-line trading system through which customers including the Counterparty may obtain foreign exchange rates and enter into foreign exchange transactions ("FX Transactions") with TD.

### 2. FX TRANSACTIONS

An FX Transaction will be initiated by the Counterparty offering to buy from or sell to TD available currencies on TDFX, on a spot or forward basis, by "clicking" on the designated fields on TDFX. Upon the Counterparty's submission of a proposed FX Transaction to TD through TDFX and acceptance thereof by TD, a Deal ID number shall be provided to the Counterparty through TDFX. The issuance of a Deal ID number to the Counterparty by TD shall create a legal, valid, and binding FX Transaction between TD and the Counterparty. The Counterparty understands that TD is under no obligation to enter into any FX Transaction, and if a Deal ID number is not issued for an FX Transaction, then the FX Transaction is not binding on either party.

TD shall furnish the Counterparty with a confirmation of each FX Transaction executed through TDFX and the terms of each such confirmation shall be valid and binding on the Counterparty unless objected to in writing within three business days of the date of transmission thereof. Each FX Transaction entered into by the Counterparty through TDFX shall be subject to the terms of the master agreement between TD and the Counterparty applicable to FX Transactions, if any, or, if no such master agreement or no other written agreement is in place, the FX Transaction is governed by the terms and conditions of the applicable confirmation. In the event of any conflict between the terms of this Agreement, any applicable master agreement, if any, and the terms of such confirmation, such confirmation shall prevail solely with regard to the calculation and determination of the amount of the parties' respective payment obligations under the FX Transaction (and the due dates therefore). In every other respect, in the event of any inconsistency or other conflict, the terms of any applicable master agreement (or in the absence of a master agreement, the terms of this Agreement) shall prevail.

All material operational and economic terms, including the pre-trade mid-market mark ("PT3M"), as may be required to be disclosed to Counterparty pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection, will be displayed on, or entered into, the System terminal or screens. Counterparty must ensure that its systems are configured to accept and view the PT3M. In the case of liquid in-scope products where TD has provided bids and offers, Counterparty acknowledges and agrees that, if a PT3M has not been provided by TD through the System, these bids and offers can be reasonably used by the Counterparty to derive the PT3M on its own behalf.

### 3. SECURITY FOR TDFX

Access to TDFX is provided by way of passwords and logon IDs, authentication devices or codes (the "Access Devices"). It is understood that possession or knowledge of an Access Device by any person may result in that person being able to access TDFX. TD is authorized to provide TDFX to and enter into FX Transactions with anyone using the appropriate Access Device(s) without further enquiry of the Counterparty. The Counterparty will be responsible for any use of TDFX, and all FX Transactions entered into thereunder, whether authorized or unauthorized which use or make use of Access Devices issued and employed by the Counterparty. The Counterparty hereby consents to the electronic delivery of any document or material to be provided by TD in connection with TDFX.

The Counterparty agrees that maintenance of the security of access to TDFX (including the strict confidentiality of the Access Devices) is the Counterparty's responsibility. The Counterparty agrees that it will always have in place commercially reasonable procedures to prevent and detect losses caused by unauthorized access to, or unauthorized use of, the software, if any, Access Devices or TDFX by the Counterparty's employees, agents or third parties. TD has no obligation to confirm or verify with the Counterparty any information transmitted through TDFX by the Counterparty. The Counterparty will not access or try to access restricted areas of TD's computer system or perform or try to perform functions that are not authorized. If TD reasonably suspects that the Counterparty is doing so or that the Counterparty is using the Access Devices or software, if any, in any inappropriate manner, TD may, without notice, suspend the Counterparty's access to any part of or all of TDFX. TD agrees to develop and maintain reasonable and appropriate encryption standards and other security precautions in and with respect to TDFX to ensure that the Counterparty's information and data cannot be accessed by third parties. If TD fails to maintain such standards and precautions and, as a direct result of such failure, there are fraudulent account transactions, the Counterparty shall not be liable for such transactions. For greater certainty, TD shall not be liable for any fraudulent FX Transactions where the Counterparty has not maintained reasonable and appropriate internal security precautions, including without



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limitation, ensuring that such passwords and/or security codes are known only to the authorized persons and are not made available to any other person, advising TD if an authorized person is no longer an employee or authorized to use TDFX and informing TD if the Counterparty learns that an unauthorized person is or may be using its passwords and/or security codes.

## 4. USE OF TDFX

The Counterparty is responsible for arranging its access to the Internet and for any costs associated therewith and for any actions or omissions of the Internet service provider. TD is not responsible in any manner for direct, indirect, special, or consequential damages, however caused, arising out of Counterparty's use of any web browser and/or TDFX, including any damages the Counterparty may suffer if the Counterparty transmits confidential or sensitive information to TD or if TD communicates such information to the Counterparty at its request over the Internet. No endorsement of any third-party products, services or information is expressed or implied by any information, material or content referred to or included on, or linked from or to TDFX. The Counterparty acknowledges that TDFX may be unavailable from time to time due to maintenance or unanticipated circumstances.

## 5. LIMITATION OF LIABILITY

TDFX AND ANY MARKET INFORMATION AND CONTENT CONTAINED IN, OBTAINED THROUGH OR DERIVED FROM TDFX, IS PROVIDED "AS IS" AND TD AND ITS AFFILIATES DISCLAIM ANY AND ALL WARRANTIES OF ANY KIND, EITHER EXPRESS, IMPLIED OR STATUTORY (INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TIMELINESS, TRUTHFULNESS, SEQUENCE, COMPLETENESS, ACCURACY, FREEDOM FROM INTERRUPTION, FREEDOM AGAINST INTERFERENCE WITH CUSTOMER'S ENJOYMENT AND FREEDOM FROM INFRINGEMENT) RELATING TO TDFX OR ANY PART THEREOF TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS SECTION, IN NO EVENT WILL TD OR ITS AFFILIATES, SHAREHOLDERS, DIRECTORS, MANAGERS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY THE "RELATED PARTIES") BE LIABLE TO THE COUNTERPARTY OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL CLAIMS, LOSSES OR DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, TRADING LOSSES, LOSS OF PROFITS, FOREGONE GAINS OR FAILURE TO SUCCESSFULLY IMPLEMENT ANY INVESTMENT STRATEGY, OPPORTUNITY, OR BUSINESS), FINES OR PENALTIES ARISING FROM ANY CAUSE WHATSOEVER, WHETHER BASED ON CONTRACT (INCLUDING UNDER INDEMNITY), TORT (INCLUDING NEGLIGENCE) ARISING AT COMMON LAW, UNDER STATUTE, BY MEANS OF STRICT LIABILITY OR ARISING UNDER ANY OTHER LEGAL THEORY (INCLUDING UNDER CRIMINAL LAW). NEITHER TD NOR ANY RELATED PARTY SHALL BE LIABLE TO THE COUNTERPARTY OR ANY PERSON ASSERTING CLAIMS ON BEHALF OF THE COUNTERPARTY EXCEPT TO THE EXTENT THAT ANY LOSSES, CLAIMS OR DAMAGES ARE INCURRED BY THE COUNTERPARTY AS A RESULT OF GROSS NEGLIGENCE OR WILFUL MISCONDUCT ON THE PART OF TD. THIS EXCLUSION SHALL NOT OPERATE TO EXCLUDE OR LIMIT ANY LIABILITY THAT CANNOT BE LAWFULLY EXCLUDED OR LIMITED.

## 6. TRADE-MARKS AND COPYRIGHTS

Certain names, words, titles, phrases, logos, icons, graphics, or designs in the pages of TDFX and the User Guide may constitute trade names, registered or unregistered trademarks or service marks ("Trademarks") of TD, other members of the TD Bank Financial Group or of third parties and used under license by TD or other members of the TD Bank Financial Group. However, the display of Trademarks on pages on TDFX does not imply that any license has been granted to any third party. All information in TDFX and the User Guide is protected under the copyright laws of the United States, Canada and/or other countries. Users of TDFX shall be entitled to copy any information for their own personal use but may not republish or reproduce any such information in any manner, including electronic reproduction by "uploading" or "downloading", without the prior written consent of the TD. Otherwise, no one has permission to copy, redistribute, reproduce, or republish, in any form, any information found in the pages of TDFX or in the User Guide.

TD will indemnify the Counterparty for costs and damages against the Counterparty for any claim that TDFX infringes any patent, copyright or other proprietary right, provided (i) Counterparty has used such patent, copyright or other proprietary right according to TD's instructions and in accordance with the User Guide; (ii) the Counterparty notify TD promptly of the claim in writing; (iii) if the Counterparty is named in the claim the Counterparty gives TD the sole right to participate in defending it and the parties agree that no compromise or settlement will occur without the consent of TD; and (iv) the Counterparty provides TD with all reasonable information and assistance to provide such indemnification.

## 7. ELECTRONIC COMMUNICATIONS

Any electronic communication that TD receives from or in the name of the Counterparty will be considered to be duly authorized and



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binding upon the Counterparty, and TD is authorized to rely and act upon any such communication. TD will be entitled to rely upon any signature appearing on a facsimile transmission that purports to be a signature of the Counterparty or of a representative of the Counterparty as authorized, valid, and binding on the Counterparty, even if the signature was not, in fact, signed by the Company or its representative. The Counterparty agrees that any electronic communication shall be deemed to constitute a "writing" for the purposes of any statute or rule of law that requires the terms of such communication to be in writing and expressly waives any right to raise any defense or waiver of liability based on the absence of a writing. The term "electronic communication" includes without limitation any communication by facsimile transmission, telephone, Internet, bank wire or other method of telecommunication or electronic transmission. As a condition for using TDFX, the Company accepts and agrees that its use of TDFX will be subject to legends, disclaimers and other disclosures set forth on TDFX and its continued use shall be deemed to be an acknowledgement and acceptance of such legends, disclaimers, and disclosures. TD and the Counterparty agree that a copy of a document transmitted by facsimile or printed from an electronic file shall be admissible as evidence of the contents and its execution by the parties in the same manner as an original document, and expressly waive any right to object to its introduction as evidence, including any right to object based on the best evidence rule.

## **8. COUNTERPARTY REPRESENTATION**

The Counterparty represents and warrants that it has the power and authority to enter into this Agreement and into FX Transactions and perform its obligations hereunder and under the FX Transactions, and that it has obtained all regulatory and other consents required to be obtained to enter into this Agreement and perform its obligations hereunder and under any FX Transaction.

## **9. GOVERNING LAW**

This Agreement and any document delivered under it shall be governed exclusively by the laws of the State of New York, without regard to the conflict of laws provisions thereof. The federal and state courts located in the City of New York, County of Suffolk shall have exclusive jurisdiction for settling disputes arising from the Agreement and both parties irrevocably submit to that jurisdiction.

## **10. TERMINATION**

Counterparty or TD may terminate this Agreement upon thirty (30) days written notice to the other; provided that any termination shall not affect the respective obligations or rights of the parties arising under any FX Transaction for which a confirmation has been issued, prior to the effective date of termination. TD may terminate the Agreement immediately in the event that the Counterparty defaults under any FX Transaction or becomes bankrupt or insolvent.

## **11. AMENDMENT**

The terms and conditions of this Agreement and the User Guide may be amended from time to time and any amendment will be posted and or displayed on TDFX for a minimum of thirty days prior to becoming effective. Any amendment will not affect any FX Transactions entered into prior to the effective date of the amendment. The User Guide is available on the Internet at [www.tdsecurities.com/tdfx](http://www.tdsecurities.com/tdfx) and may be revised by TD from time to time as set out herein. A date stamp is available on the web page, which indicates the date the User Guide was last updated. TD may send an e-mail notice to the Counterparty (using the most recent notice information provided to TD) of any such revisions. The Counterparty waives any claims that may result from TD amending the User Guide in this manner. Section 6.

## **12. PARTIES TO RELY ON THEIR OWN EXPERTISE**

Each Party shall enter into each FX Transaction 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, 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. The Company acknowledges that it has received a copy from TD of the Risk Disclosure Statement attached below, and further acknowledges that it fully understands the risks outlined in such statement.

## **13. RISK DISCLOSURE STATEMENT**

Foreign exchange transactions and currency options ("FX Transactions") contain a number of risks. If you are not already familiar with these risks, you should consider them carefully before undertaking any FX Transaction. FX Transactions involve market risk. At any given time subsequent to execution, an FX Transaction will normally have a market value - you will either have to make a payment, or you will be entitled to receive a payment, in order to terminate the transaction or otherwise fix or realize the rate change of such FX Transaction. Depending on the terms of the FX Transaction and market conditions, such payment could be substantial. You may be required due to



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changes in market value and other factors, on short notice, to pledge additional margin (if applicable) in order to maintain foreign currency positions. In the event of default, outstanding FX Transactions may be liquidated at a loss and in that event, you will be liable for any shortfall. You should therefore carefully consider whether foreign exchange trading is appropriate for you in light of your financial circumstances and obtain any professional advice you deem appropriate including without limitation legal and tax advice. When you enter into an FX Transaction with TD, you should be aware that TD will always be acting as a principal in FX Transactions and not as your agent or fiduciary, regardless of any other agreements that you have entered into for products and services from TD or its affiliates, where TD or its affiliates may act as your advisor. The rates and/or terms of any FX Transaction entered into by TD with you may differ from other foreign exchange transactions entered into by TD and TD may earn revenue from each FX Transaction entered into with you. It is important that you make your own independent decisions to enter into any FX Transaction and as to whether any FX Transaction is appropriate or proper for you based upon your own judgment and upon advice from such advisors as you have deemed necessary. You are not to rely on any communication (written or oral) of TD as investment advice or as a recommendation to enter into a FX Transaction; it being understood that information and explanations related to the terms and condition of an FX Transaction shall not be considered investment advice or a recommendation to enter into a FX Transaction and such information will not constitute any assurance or guarantee as to the expected results of that FX Transaction.

It is important that you are capable of evaluating and understanding (on your own behalf or through independent professional advice), and understand and accept, the terms, conditions, and risks of that FX Transaction, and that you are capable of assuming, and assume, the financial and other risks of that FX Transaction.

