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Introduction to the 2022 Form of Amendment Agreement on Incorporation of Additional Provisions for use with a Deliverable Currency Disruption Event for RUB foreign exchange transactions (the "Amendment Agreement")

ISDA and EMTA have jointly published the Amendment Agreement in response to requests from certain of their members with deliverable Russian Ruble foreign exchange transactions. Broadly speaking, it introduces a fallback that would be triggered by the Calculation Agent determining that it is impossible to deliver or convert amounts denominated in Rubles on the date scheduled for settlement. The contemplated fallback in those circumstances is non-deliverable settlement of the transaction, with a net cash payment payable in the relevant non-Ruble currency.

The Amendment Agreement enables parties to bilaterally amend the terms of all or some of their outstanding deliverable Ruble FX transactions with an option to include the same provisions in future such transactions too.

Points to consider

Before entering into the Amendment Agreement, parties should carefully consider whether doing so is appropriate for them based on such external advice as is necessary. The following is a non-exclusive list of considerations when deciding whether, or the basis on which, to enter into the Amendment Agreement:

- **Overlap with the provisions of applicable master agreements and other terms**

  - In the absence of the fallback provisions contemplated in the Amendment Agreement (or similar provisions), the occurrence of the events or circumstances contemplated by those provisions may (but may not) result in deliverable Ruble FX transactions being subject to termination events under any applicable master agreement. If any of those termination events apply, the process, timing and outcome (which may in certain circumstances include a mark-to-market termination amount becoming payable in the termination currency of the master agreement) may be different than those under the fallback provisions set out in the Amendment Agreement.

  - Where the deliverable FX transactions subject to the Amendment Agreement are governed by an ISDA Master Agreement and events or circumstances occur which constitute <u>both</u> a Termination Event <u>and</u> a trigger for the fallback provisions set out in the Amendment Agreement, the fallback provisions will apply. Parties should consider the hierarchy of provisions which might apply in relation to any deliverable FX transactions subject to the Amendment Agreement which are not governed by an ISDA Master Agreement.

  - Where such transactions are not subject to any master agreement, there may not be any express contractual terms setting out how the parties should perform their obligations in the event of impediments to delivering or converting amounts contemplated by the fallback provisions in the Amendment Agreement.

- **Temporary nature of the fallback provisions**

  The Amendment Agreement includes an acknowledgement by the parties that it is their intention that their deliverable FX transactions remain deliverable. The fallback provisions only apply to the extent that one or more of the defined triggers is continuing on the scheduled settlement date for the relevant transaction. If a trigger is continuing on one scheduled settlement date but ceases to exist prior to a subsequent scheduled settlement date (if any) the fallback provisions will not apply with respect to that subsequent scheduled settlement date (unless a new trigger is continuing on such date), and the parties will remain obliged to deliver currency amounts in accordance with the original terms of their transaction.

- **Transaction- and party-specific nature of certain Disruption Events**

  The disruption events included in the Amendment Agreement are defined in the 1998 FX and Currency Option Definitions and comprise General Inconvertibility, Specific Inconvertibility, General Non-transferability and Specific Non-transferability. Parties should be aware that Specific Inconvertibility and Specific Non-transferability are transaction- and party-specific, meaning that the events may be triggered in relation to one transaction or counterparty but not in relation to another. For example, the results may be different as between a transaction and its hedge. If that potential basis risk is problematic, the parties should consult with their legal and external advisors about how to best address it (which may include not entering into an Amendment Agreement).

- **Settlement Rate**

  The fallbacks under the Amendment Agreement use the Settlement Rate specified in EMTA's most current NDF template (which, as of the date hereof, is RUB MOEX (RUB05)) for non-deliverable settlement. Parties should carefully consider whether that is the appropriate Settlement Rate for their transactions, whether any adjustment should be agreed between them or whether a different Settlement Rate should be specified. Parties should consider any basis risk with equivalent Non-Deliverable FX Transactions or Deliverable FX Transactions that incorporate similar provision addressing non-deliverability that might result from using a different Settlement Rate Option to that in the EMTA Template Terms.

- **Valuation Date**

  Parties should be aware that the level of the Settlement Rate used in the non-deliverable settlement will be that observed as of one scheduled business day prior to the scheduled settlement date for the transaction (subject to adjustment if such day is not a business day as further described in the Amendment Agreement).

- **Impact of Price Source Disruption**

  If the fallback provisions are triggered following the occurrence of a deliverability/convertibility disruption, valuation takes place using the specified price source for obtaining a currency exchange rate for the RUB. The Disruption Event "Price Source Disruption" will apply and if that price source is unavailable, the settlement is postponed for up to 14 days. This postponement applies irrespective of whether the original deliverability/inconvertibility is cured while the Price Source

Disruption is continuing. Parties should be aware that a price source disruption may therefore delay settlement.

- **Using the Amendment Agreement to include the fallback provisions in future deliverable Ruble FX transactions**

  The option to include the fallback provisions in future transactions may be considered useful in relation to trades executed on electronic platforms, such as SWIFT, which may not have the facility to specify the application of such fallbacks going forwards. Parties should be aware, however, that in order to disapply the fallback provisions at a later date, they would need to do so expressly.

- **Regulatory characterization**

  In many jurisdictions, certain deliverable FX transactions are given specific regulatory treatment, including with respect to the applicability of margin rules for uncleared derivatives. Amending these transactions to include the contemplated fallback provisions may affect the regulatory characterization of those transactions. Prior to executing the Amendment Agreement parties should carefully consider (after consulting any necessary advisers) the possible regulatory implications in each relevant jurisdiction.

  Neither ISDA nor EMTA has conducted any due diligence with respect to, and provides no assurance or representation as to, nor assumes any responsibility for, the regulatory treatment accorded any transaction amended by means of the Amendment Agreement.

- **Sanctions and responses to sanctions**

  The effect of sanctions or responses to sanctions may prevent the effective operation of the fallback provisions. Parties should consult with their legal advisers and any other adviser that they deem relevant in relation to the way in which any possible sanctions may affect their RUB Transactions[1].

ISDA and EMTA make no recommendation or as to whether parties should enter into the Amendment Agreement, or as to the effect on any party of entering into the Amendment Agreement. Each party should consult carefully with its legal advisers and any other adviser that it deems relevant as to any regulatory or other legal consequences in doing so in the jurisdictions in which it does business or has a business presence.

The Amendment Agreement is provided in the interest of mitigating market risk and promoting orderly and efficient settlement of RUB positions by market participants. Each EMTA Member, ISDA Member and other market participant should form its own conclusions as to whether to enter into the Amendment Agreement. EMTA Members, ISDA Members and other market participants are free to agree on such actions as they deem appropriate and suitable for their RUB Transactions. This introduction to the Amendment Agreement does not constitute legal or regulatory advice and market participants should consult their legal and other advisors in connection with use of these proposed terms and their effect on such participants' RUB Transactions. Neither ISDA nor EMTA bears any responsibility for use of the

[1] ISDA produced guidance documents in 2019 and 2020, see links below https://www.isda.org/2020/12/15/isda-guidance-note-for-addressing-sanctions-issues-in-isda-documentation/; https://www.isda.org/2019/12/18/economic-sanctions-programs-derivatives/.

Amendment Agreement or for any actions taken or not taken based on this Introduction to the Amendment Agreement.

2022 Amendment Agreement to Incorporate Additional Provisions for use with a Deliverable Currency Disruption Event for RUB foreign exchange transactions

Amendment Agreement (the "**Amendment Agreement**") dated [*date*] between [ ] ("**Party A**") and [ ] ("**Party B**") (each, a "**Party**" and together the "**Parties**").

WHEREAS, the Parties have previously entered into various foreign exchange ("**FX**") transactions involving amounts payable in RUB including FX spot, FX forward, currency option, cross-currency FX forward, cross-currency currency option and FX swap transactions (each a "**RUB Foreign Exchange Transaction**") that are outstanding on the date hereof (each, an "**Outstanding RUB Foreign Exchange Transaction**"), each evidenced by way of a written confirmation, including any automatically generated electronic confirmation on SWIFT or any other confirmation platform (the "**Confirmation**") [in each case pursuant to the ISDA Master Agreement between the Parties dated as of [ ] (the "**ISDA Master Agreement**")][2].

[WHEREAS, the Parties may in the future enter into RUB Foreign Exchange Transactions (each a "**Future RUB Foreign Exchange Transaction**").][3]

The Parties hereby agree as follows:

1. **<u>Covered RUB Foreign Exchange Transactions and scope of Outstanding RUB Foreign Exchange Transactions</u>.**

    (a) "**Covered RUB Foreign Exchange Transaction**" means each [Outstanding RUB Foreign Exchange Transaction]/[Outstanding RUB Foreign Exchange Transaction without Deliverability Provisions]/[Specified Outstanding RUB Foreign Exchange Transaction][4] [and each Future RUB Foreign Exchange Transaction, unless that Future RUB Foreign Exchange Transaction excludes the application of the provisions contemplated by this Amendment Agreement][5].

    (b) The provisions set out in this Amendment Agreement shall apply to all Covered RUB Foreign Exchange Transactions and shall, if that Covered RUB Foreign Exchange Transaction contains Deliverability Provisions, supersede in their entirety all Deliverability Provisions incorporated in that Covered RUB Foreign Exchange Transaction [other than any Bespoke Future Deliverability Provisions][6].

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2 Delete if the RUB transactions are not governed by an ISDA Master Agreement.

3 Includes if the parties intend this Amendment Agreement to cover future RUB Foreign Exchange Transactions.

4 Include 'Outstanding RUB Foreign Exchange Agreement', 'Outstanding RUB Foreign Exchange Agreement without Deliverability Provisions' or 'Specified RUB Foreign Exchange Transaction', as applicable.

5 Include if the parties intend this Amendment Agreement to cover Future RUB Foreign Exchange Transactions.

6 Include if the parties intend this Amendment Agreement to cover Future RUB Foreign Exchange Transactions.

(c) "**Deliverability Provisions**" means any provisions that address, in similar terms to the terms set out in this Amendment Agreement, impossibility of a Party to make transfers in RUB to the other Party or to convert amounts from RUB into the Settlement Currency.

(d) ["**Bespoke Future Deliverability Provisions**" means Deliverability Provisions that are included in Future RUB Foreign Exchange Transaction that have been incorporated other than by way of an agreement between the parties which pre-dates this Amendment Agreement.] [7].

(e) ["**Specified Outstanding RUB Foreign Exchange Transaction**" means each Outstanding RUB Foreign Exchange Transaction identified in the Schedule hereto.] [8]

(f) ["**Outstanding RUB Foreign Exchange Transaction without Deliverability Provisions**" means each Outstanding RUB Foreign Exchange Transaction that does not include Deliverability Provisions.][9]

2. **Agreement to incorporate Deliverable Currency Disruption Event provisions**.

The Parties agree that the terms of each Covered RUB Foreign Exchange Transaction shall incorporate the terms set out in paragraphs 3 and 4 of this Amendment Agreement, which terms shall be deemed to be set out in the Confirmation for the Covered RUB Foreign Exchange Transaction, with effect from the date of execution of this Amendment Agreement [or, in the case of Future RUB Foreign Exchange Transactions, with effect from the date on which such transaction is entered into][10].

3. **Definitions and Provisions**.

The Parties agree that the 1998 FX and Currency Option Definitions, including the most recently dated Annex A thereto as at the date of this Amendment Agreement [or, in the case of Future RUB Foreign Exchange Transactions, on the date on which such transaction is entered into][11] (the "**FX Definitions**") and the Non-Deliverable Cross Currency FX Transactions Supplement thereto dated May 31, 2011, as published by the International Swaps and Derivatives Association and EMTA, Inc., as amended or supplemented from time to time, and the EMTA Template Terms (as defined below) are incorporated into and shall form part of the Confirmation for each Covered RUB Foreign Exchange Transaction.

Any terms not defined herein shall have the meanings ascribed to them in the Confirmation to the RUB Foreign Exchange Transaction, the FX Definitions and the EMTA Template Terms. In the event of any inconsistency between the FX Definitions and the EMTA Template Terms, the EMTA Templates Terms shall prevail. In the event of any inconsistency between the FX Definitions, the EMTA Template Terms and the terms as set out in the Confirmation for a Covered RUB Foreign

7 Include if the parties intend this Amendment Agreement to cover Future RUB Foreign Exchange Transactions.

8 Include if the definition of Covered RUB Foreign Exchange Transaction is restricted to Specified RUB Foreign Exchange Transactions, otherwise delete.

9 Include if the definition of Covered RUB Foreign Exchange Transaction is restricted to Outstanding RUB Foreign Exchange Transactions without Deliverability Provisions, otherwise delete.

10 Include if the parties intend this Amendment Agreement to cover Future RUB Foreign Exchange Transactions.

11 Include if the parties intend this Amendment Agreement to cover Future RUB Foreign Exchange Transactions.

Exchange Transaction (as amended by this Amendment Agreement), the terms of the Confirmation will prevail.

4. **Additional Terms for RUB Foreign Exchange Transactions.**

In the event that a Deliverable Currency Disruption Event occurs on or prior to the Scheduled Settlement Date and is continuing on the Scheduled Settlement Date (in each case as determined by the Calculation Agent), Non-Deliverable Settlement will apply in respect of that Scheduled Settlement Date in accordance with the Disruption Fallback for Deliverable Currency Disruption Event below:

EMTA Template Terms	The most recently published EMTA Template Terms for RUB/USD Non-Deliverable FX Forward Transactions and EMTA Template Terms for RUB/USD Non-Deliverable Currency Option Transactions, as applicable, on the date of this Amendment Agreement [or, in the case of Future RUB Foreign Exchange Transactions, on the date on which such transaction is entered into][12].
Deliverable Currency Disruption Event:	General Inconvertibility, General Non-Transferability, Specific Inconvertibility or Specific Non-Transferability.
Disruption Fallback for Deliverable Currency Disruption Event:	Settlement as a Non-Deliverable ("**Non-Deliverable Settlement**") pursuant to the terms herein.
Reference Currency (for Non-Deliverable Settlement):	RUB
Settlement Currency (for Non-Deliverable Settlement):	The currency of the currency pair for the Covered RUB Foreign Exchange Transaction that is not RUB.
Settlement Date (for Non-Deliverable Settlement):	The 'Settlement Date', 'Value Date' or similar date specified for the purpose of delivery of the RUB amount as specified in the Confirmation for the Covered RUB Foreign Exchange Transaction (the "**Scheduled Settlement Date**"), subject to

[12] Include if the parties intend this Amendment Agreement to cover Future RUB Foreign Exchange Transactions.

	adjustment if the Scheduled Valuation Date is adjusted in accordance with the Following Business Day Convention or if Valuation Postponement applies, and in each such case, the Settlement Date shall be as soon as practicable, but in no event later than one Business Day after the date on which the Spot Rate is determined.
Spot Rate:	The currency exchange rate determined from, (i) if the currency pair is RUB/USD, the Settlement Rate Option for the Reference Currency, and (ii) if the currency pair is not RUB/USD, from the Cross-Currency Settlement Rate Option. References in the EMTA Template Terms to 'Reference Currency Spot Rate' shall be deemed to be references to 'Spot Rate'.
Settlement Rate Option for the Reference Currency	The Settlement Rate Option as defined in the EMTA Template Terms[13] [, or the currency exchange rate for USD/RUB as agreed by the Parties in good faith as at the Valuation Date.]
Cross Currency Settlement Rate:	The currency exchange rate determined by the Calculation Agent in accordance with, or derived from, the Settlement Rate Option for the Reference Currency and the Settlement Rate Option for the Settlement Currency.
Settlement Rate Option for the Settlement Currency:	The currency exchange rate for the currency pair comprised of USD and the Settlement Currency (i) as agreed by the Parties in good faith as at the Valuation Date and determined as at the time at which such rate is to be determined (the Specified Time), as agreed between the Parties, or (ii) failing such agreement by the Parties, as determined by the Calculation Agent.

13 This Settlement Rate Option reflects the Settlement Rate Option used in the EMTA Template Terms which, as at the date of publication of this template Amendment Agreement, is RUB MOEX (RUB05). If parties wish to use an alternative Settlement Rate Option, it should be specified here. Parties should consider any basis risk with equivalent Non-Deliverable FX Transactions or Deliverable FX Transactions that incorporate similar provision addressing non-deliverability that might result from using a different Settlement Rate Option to that in the EMTA Template Terms and whether changing the Settlement Rate Option has any knock-on contractual or regulatory consequences.

Valuation Date (for Non-Deliverable Settlement):	One Scheduled Business Day prior to the Scheduled Settlement Date, (the "**Scheduled Valuation Date**"); provided that if that day is an Unscheduled Holiday, that day shall be subject to adjustment in accordance with the Following Business Day Convention. For the purposes hereof, '**Scheduled Business Day**' means any day which is a Business Day or which would have been a Business Day but for the occurrence of an Unscheduled Holiday.
Applicable Disruption Events	Price Source Disruption
Applicable Disruption Fallbacks for Price Source Disruption	As provided in the EMTA Template Terms.
Definition of Unscheduled Holiday:	As defined in the EMTA Template Terms.
Deferral Period for Unscheduled Holiday:	As defined in the EMTA Template Terms.
Valuation Postponement for Price Source Disruption:	As defined in the EMTA Template Terms.
Cumulative Events:	As defined in the EMTA Template Terms.
Maximum Days of Postponement:	As defined in the EMTA Template Terms.
Relevant Cities for Business Day for Valuation Date:	As provided in the EMTA Template Terms.
Relevant City for Business Day for Settlement Date:	As provided in the EMTA Template Terms.

5. **Acknowledgement of the Parties**. The Parties acknowledge and agree that their mutual commercial intent is to exchange a delivery of RUB in the notional amounts set forth for the relevant Transactions and that their further intent is that Non-Deliverable Settlement will apply only to the extent that a Deliverable Currency Disruption Event has occurred and is continuing on the Scheduled Settlement Date. Absent a current and continuing Deliverable Currency Disruption Event on the Scheduled Settlement Date, the obligations of the Parties to deliver and receive RUB remains in full force and effect.

6. **[Price adjustment**.

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7. **Miscellaneous.**

(a) Counterparts. This Amendment Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same agreement and any Party may agree to and acknowledge this Amendment Agreement by executing a counterpart.

(b) Representations. Each Party represents to the other Party that all representations made by such Party in any Outstanding RUB Foreign Exchange Transaction that is a Covered RUB Foreign Exchange Transaction (as amended by this Amendment Agreement) are true and accurate in every material respect as of the date of this Amendment Agreement.

(c) Governing law. This Amendment Agreement shall be governed by and construed in accordance with the governing law of the ISDA Master Agreement, or, if there is no governing ISDA Master Agreement, in accordance with the laws of [England and Wales] [the State of New York].

(d) Jurisdiction. In connection with this Amendment Agreement, each Party irrevocably submits to the courts mentioned in the ISDA Master Agreement to the same extent set out therein or, if there is no governing ISDA Master Agreement, each Party irrevocably submits to the [exclusive] [non-exclusive] jurisdiction of the courts of [England and Wales] [the State of New York].

8. **Other**.

[*Insert any other provisions or delete this paragraph*]

IN WITNESS WHEREOF, the Parties have caused this Amendment Agreement to be signed by their duly authorized officers or agents as of the date first set forth above.

[*NAME OF INSTITUTION*] ("**Party A**")

By ___________________________

Title:

By ___________________________

Title:

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14 This is an optional free text provision and should be deleted if the parties to do not intend to make any adjustment to the Settlement Rate or amount payable on Non-Deliverable Settlement. Parties should consider any basis risk with equivalent Non-Deliverable FX Transactions or Deliverable FX Transactions that incorporate similar provisions addressing non-deliverability that might result from using a different Settlement Rate Option to that in the EMTA Template Terms and whether adjusting the Settlement Rate Option has any knock-on contractual or regulatory consequences.

[*NAME OF INSTITUTION*] ("**Party B**")

By __________________________

Title:

By __________________________

Title: