

Security interest over Clearstream collateral  
account in the name of the Security-provider in  
favour of the Security-taker<sup>1</sup>

(ISDA 2019 Clearstream Security Agreement  
subject to Luxembourg Law)<sup>2</sup>



International Swaps and Derivatives Association, Inc.



# 2019 CLEARSTREAM SECURITY AGREEMENT

for use with

the Clearstream Triparty Collateral Management Service

between

..... and .....  
("Security-provider") ("Security-taker")

dated .....

relating to the:

**ISDA Master Agreement**

(as defined in Paragraph 21 (*Definitions*) of this Agreement) between Security-provider and Security-taker;

and

**Collateral Transfer Agreement**

dated ..... between Security-provider and Security-taker.

and

**Pledged Account** number ..... (as defined in Paragraph 21 (*Definitions*) of this Agreement)

<sup>1</sup> Note that this 2019 Clearstream Security Agreement template has been designed for use with regulatory IM.

<sup>2</sup> This 2019 Clearstream Security Agreement has been prepared for use in conjunction with an ISDA Clearstream 2019 Collateral Transfer Agreement. Users should consult their legal advisers as to the proper use and effect of this form and the arrangements it contemplates.

This Agreement is entered into in relation to the ISDA Master Agreement and Collateral Transfer Agreement in order to secure the Security-provider's obligations under the ISDA Master Agreement, the Collateral Transfer Agreement and this Agreement by creating a Luxembourg law first ranking pledge in respect of the Pledged Account (including the Clearstream Collateral) (all as defined in Paragraph 21 (*Definitions*) of this Agreement) upon the terms set out herein.

Accordingly, each of the Security-provider and Security-taker (each a **Party** and together the **Parties**) agrees as follows:

## 1. INTERPRETATION

### 1.1 *Definitions*

Unless otherwise defined in Paragraph 21 (*Definitions*) or elsewhere in this Agreement, capitalised terms defined in the Collateral Transfer Agreement have the same meanings in this Agreement.

Unless otherwise specified, references to sub-paragraphs or Paragraphs are references to such provisions of this Agreement and references to a sub-paragraph are references to the relevant sub-paragraph of the Paragraph in which it appears.

### 1.2 *Construction*

Unless a contrary indication appears (and without limiting the generality of the foregoing):

- (a) a reference to any **party** includes its successors in title, permitted assigns and permitted transferees;
- (b) **assets** includes present and future properties, revenues and rights of every description;
- (c) a **person** includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality);
- (d) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (e) references to a law, statute or statutory provision include:
  - (i) such law, statute or statutory provision as from time to time amended, modified, re-enacted or consolidated whether before or after the date of this Agreement; and
  - (ii) any subordinate legislation from time to time made, amended, modified, re-enacted or consolidated, whether before or after the date of this Agreement, under any such law, statute or statutory provision;
- (f) Paragraph headings are for ease of reference only;
- (g) a reference to **matching instructions** from the Security-provider and the Security-taker includes separate but matching instructions from each of the Security-provider and the Security-taker;
- (h) any reference herein to the **Clearstream Agreements** (as defined in the Collateral Transfer Agreement) shall refer to the CMSA-CG between Clearstream and the Security-provider in its capacity as "Collateral Giver" and to the CMSA-CR between Clearstream and the Security-taker in its capacity as "Collateral Receiver" only, or to any of them, or the relevant

of them, as the context requires;

- (i) any reference to the ISDA Master Agreement, the Collateral Transfer Agreement, the Clearstream Agreements or any other agreement or instrument (including this Agreement) is a reference to such agreement or instrument as the same may be amended, novated, varied, modified, suspended, assigned, supplemented, restated or replaced by any other agreement or instrument; and
- (j) any reference to a provision of the ISDA Master Agreement, the Collateral Transfer Agreement or the Clearstream Agreements shall refer to such provision as construed pursuant to the governing law of such relevant agreement(s).

### 1.3 ***Conflicts***

In case of any conflict between the provisions of this Agreement and the ISDA Master Agreement, the Collateral Transfer Agreement or the Clearstream Agreements, the provisions of the ISDA Master Agreement, the Collateral Transfer Agreement and the Clearstream Agreements (as applicable) shall prevail. In case of any conflict between Paragraph 22 (*Other Provisions*) and the other provisions of this Agreement, Paragraph 22 (*Other Provisions*) will prevail.

## 2. **SECURITY**

### 2.1 ***Security***

As continuing security for the full discharge and payment of the Secured Liabilities, the Security-provider hereby grants to the Security-taker a first ranking pledge (*gage de premier rang*) over the Pledged Assets, in accordance with the Financial Collateral Law.

### 2.2 ***Ranking***

Without prejudice to liens mandatorily preferred by law, the Security shall be a first ranking pledge.

### 2.3 ***Special account***

The Parties shall treat the Pledged Account for all purposes as a special segregated account specifically opened for the purpose of holding the Clearstream Collateral in accordance with the Collateral Transfer Agreement, the Clearstream Agreements and this Agreement, and each Party undertakes that it will not use the Pledged Account for any other purpose.

### 2.4 ***Perfection of the Security***

- (a) As third party custodian bank maintaining the Pledged Account, Clearstream shall be informed of the creation of the Security in favour of the Security-taker over the Pledged Account.
- (b) For this purpose and for the perfection of the Security in accordance with Article 5 of the Financial Collateral Law, on or around the conclusion of this Agreement, the Parties shall inform Clearstream, by the execution of the relevant Appendix A to the CMSAs with Clearstream, (i) of the creation of the Security over the Pledged Account, (ii) that the Security has been granted in favour of the Security-taker, and (iii) that the terms of the Security are governed by an agreement concluded in the form of an ISDA Clearstream Security Agreement (as published by ISDA and Clearstream for use with the Clearstream tri-party collateral management services documentation from time to time).

- (c) Accordingly, pursuant to the collateral management services provided by Clearstream under the Clearstream Agreements and Clearstream's systems, following execution of Appendix A to the CMSA by each respective Party with Clearstream, Clearstream will automatically designate the Pledged Account as pledged in favour of the Security-taker and manage the Clearstream Collateral standing to the credit of the Pledged Account in accordance with the Clearstream Agreements and considering the existence between the Parties of an agreement in the form of the ISDA Clearstream Security Agreement (and the underlying Collateral Transfer Agreement).
- (d) The Security-provider shall give instructions to deliver Eligible Collateral to the Pledged Account in accordance with the provisions of the Collateral Transfer Agreement and the Clearstream Agreements. The Parties will give the appropriate notices to Clearstream in accordance with those agreements.
- (e) The Parties acknowledge that for conflicts of law purposes, the Pledged Account is the "relevant account" for the purposes of Article 23 of the Financial Collateral Law.

## 2.5 ***Ownership of the Securities***

The Security-provider shall at all times prior to enforcement of the Security pursuant to Paragraph 7 (*Enforcement*) remain the legal owner of the Securities for all purposes (it being understood that any such rights shall be subject to the Security and the rights of the Security-taker under this Agreement).

## 3. **SUBSTITUTION AND MARGIN ADJUSTMENTS**

### 3.1 ***Continuity of Security***

The Parties agree that (a) a substitution of any part of the Clearstream Collateral under Paragraph 3.5 (*Substitutions*) of the Collateral Transfer Agreement or otherwise in accordance with the terms of the relevant Clearstream Agreements (a **Substitution**) or (b) a transfer of additional Clearstream Collateral under Paragraph 2.1 (*Delivery Amount*) of the Collateral Transfer Agreement or otherwise in accordance with the terms of the relevant Clearstream Agreements (a **Delivery**) or (c) a return of Clearstream Collateral under Paragraph 2.2 (*Return Amount*) of the Collateral Transfer Agreement or otherwise in accordance with the terms of the relevant Clearstream Agreements (a **Return**) will not affect the continuity of the Security.

### 3.2 ***Release***

The Parties acknowledge that (a) upon the occurrence of a Substitution or a Delivery, the substituting Clearstream Collateral or additional Clearstream Collateral transferred into the Pledged Account will be deemed to be pledged under the same conditions as the existing Clearstream Collateral and (b) upon the occurrence of a Substitution or a Return, the Clearstream Collateral removed from the Pledged Account pursuant to such Substitution or Return will be automatically and immediately released from the Security. For the avoidance of doubt, a Substitution will not constitute a release of the Security, except in respect of the Clearstream Collateral which is substituted and removed from the Pledged Account. All Clearstream Collateral from time to time standing to the credit of the Pledged Account will remain subject to the Security.

### 3.3 ***Effect***

As of the date of:

- (a) a Substitution: all references to Clearstream Collateral in this Agreement will be deemed to include the substituting Clearstream Collateral and to exclude the Clearstream Collateral removed from the Pledged Account pursuant to such Substitution;

- (b) a Delivery: all references to Clearstream Collateral in this Agreement will be deemed to include the additional Clearstream Collateral; and
- (c) a Return: all references to the Clearstream Collateral will be deemed to exclude any Clearstream Collateral removed from the Pledged Account pursuant to such Return.

#### **4. RIGHTS ACCOMPANYING CLEARSTREAM COLLATERAL**

The Parties shall deal with any and all Clearstream Distributions and rights accompanying the Clearstream Collateral (including voting rights) in the manner set out in the Collateral Transfer Agreement or the Clearstream Agreements, as applicable. Any transfer from the Pledged Account under the Collateral Transfer Agreement, the relevant Clearstream Agreements or this Paragraph 4 (*Rights accompanying Clearstream Collateral*) shall to the extent of such transfer constitute a release of the Security in respect of the assets so transferred.

#### **5. NO IMMUNITY**

The Security-provider represents and warrants to the Security-taker (which representation will be deemed to be repeated as of each date on which a Delivery Amount or Substitution is effected under and in accordance with the Collateral Transfer Agreement and the Clearstream Agreements) that the execution and performance by the Security-provider of this Agreement constitute commercial acts performed for commercial purposes, and it will not be entitled to claim immunity from suit, execution, attachment or other legal process in any proceedings taken in relation to this Agreement.

#### **6. RESTRICTIONS AND UNDERTAKINGS**

The Security-provider hereby irrevocably and unconditionally undertakes, until full discharge of the Security in accordance with Paragraph 12 (*Discharge of Security*), to comply with the following restrictions and undertakings:

##### **6.1 *Security***

The Security-provider shall not create or permit to subsist any Charge over any of the Pledged Assets except as expressly permitted by or pursuant to the Collateral Transfer Agreement, the relevant Clearstream Agreements or this Agreement, subject in each case to any liens mandatorily preferred by law.

##### **6.2 *No use***

The Security-provider will not have the right to sell, pledge, rehypothecate, charge, mortgage, assign, invest, use, declare a trust over, commingle or otherwise dispose of, secure or otherwise use in its business any Clearstream Collateral, except as expressly permitted by or pursuant to the Collateral Transfer Agreement and/or this Agreement.

##### **6.3 *Exercise of rights***

Subject to the Collateral Transfer Agreement, the Clearstream Agreements and this Agreement, the Security-provider shall remain liable to (and the Security-taker shall use reasonable endeavours to assist the Security-provider, if so required by the Security-provider, to enable the Security-provider to) observe, perform and exercise all its (subscription and any other) obligations and rights in respect of the Securities.

#### 6.4 ***No adverse action***

Subject to the rights of the Security-provider under this Agreement, the Security-provider shall not do, cause or permit to be done anything which:

- (a) will, or could be reasonably expected to, directly or indirectly adversely affect the effectiveness, ranking, validity, value or enforceability of the Security or the rights of the Security-taker under this Agreement; or
- (b) is in any material way inconsistent with the Security or this Agreement.

#### 6.5 ***Attachments***

The Security-provider shall procure that no executory attachment (*saisie-arrêt*) is made on any of the Pledged Assets and shall procure that any conservatory attachment (*saisie conservatoire*) on any of the Pledged Assets is released within thirty (30) days. The Security-provider shall inform the Security-taker without delay of any such attachment.

#### 6.6 ***No unilateral action***

The Security-provider will observe its obligations in Paragraph 7 (*Restriction on exercise of unilateral rights under Clearstream Agreements*) of the Collateral Transfer Agreement in relation to notices to Clearstream and other unilateral action under the Clearstream Agreements.

### 7. **ENFORCEMENT**

#### 7.1 ***Enforcement of Security***

At any time when an Enforcement Event in respect of the Security-provider has occurred and is continuing then, unless the Security-provider has paid in full all of its Secured Liabilities, the Security-taker may immediately at its sole discretion, and without prior notice to the Security-provider (but subject to such notices and instructions to Clearstream in accordance with the Clearstream Agreements), enforce the Security over the Pledged Assets (or the relevant portion thereof) in relation to any Secured Liability in accordance with available procedures under Luxembourg law, and in particular:

- (a) to sell or cause the sale of the Pledged Assets that constitute financial instruments (including transferable securities) listed or quoted on a stock exchange in Luxembourg or abroad or dealt on one of the markets defined in Article 11 (1) (e) of the Financial Collateral Law at such stock exchange or on such market; and/or
- (b) to sell or cause the sale of any Pledged Assets that constitute financial instruments (including transferable securities) other than those referred to in sub-paragraph (a) above (i) by private agreement on normal commercial terms, (ii) at a stock exchange or (iii) by public auction held by a public officer designated by the Security-taker; and/or
- (c) to appropriate the Pledged Assets (or any part of them). The value of the Securities in the event of appropriation under this sub-paragraph (c) will be the Appropriation Value of such Securities as of, or as soon as reasonably practicable after, the date on which such Securities are appropriated. For the purposes of this sub-paragraph (c) the Security-taker shall be entitled to make any currency conversions or effect any transaction in currencies which it thinks fit, and to do so at such times and rates as it thinks proper, acting reasonably; and/or
- (d) in respect of Pledged Assets consisting of claims for Cash, to require Clearstream to make payment of the relevant amount due by Clearstream directly to the Security-taker. For these

purposes the Security-taker shall be entitled to make any currency conversions or effect any transaction in currencies which it thinks fit and to do so on the date of enforcement and at such rates as it thinks proper, acting reasonably; and/or

- (e) exercise all rights and remedies it possesses under all applicable laws, and act generally in relation to the Clearstream Collateral in such manner as it shall reasonably determine, provided that no such action should be inconsistent with what may be required by the ISDA Master Agreement, the Collateral Transfer Agreement, this Agreement and/or the Clearstream Agreements.

The Security-provider hereby authorises the Security-taker to do anything which the Security-provider is obliged to do (but has not done) under this Agreement in connection with the Clearstream Collateral (including the protection of the Security, its ranking, its perfection and anything necessary or useful to facilitate the realisation of the Pledged Assets or the exercise of any rights vested in the Security-taker under this Agreement). The Security-provider agrees to do any act necessary to give effect to this provision, including executing any document or agreement or granting any power of attorney.

## **7.2 *Limitation on realisation***

The Security-taker shall use reasonable endeavours to realise the Pledged Assets to the extent necessary to recover the Secured Liabilities.

To the extent that, notwithstanding the reasonable endeavours of the Security-taker to comply with the provisions of this Paragraph, the cash proceeds received by the Security-taker in respect of the realisation of the Pledged Assets exceed the total amount of the Secured Liabilities due (on the satisfaction or termination of all Secured Liabilities), such excess proceeds shall be returned to the Security-provider in accordance with Paragraph 8.2 (*Deficiencies and Excess Proceeds*).

## **7.3 *Identification of Pledged Assets subject to enforcement***

On the occurrence of an Enforcement Event, the Security-taker shall be entitled to identify such Pledged Assets which shall be subject to enforcement in accordance with the provisions of Paragraphs 7.1 (*Enforcement of Security*) and 7.2 (*Limitation on realisation*).

For this purpose, the Security-taker shall act in good faith and in accordance with the specifications contained in the Collateral Transfer Agreement and in accordance with any collateral reporting (including account statements) provided by Clearstream to the Parties from time to time.

# **8. ORDER OF DISTRIBUTIONS**

## **8.1 *General***

All amounts received or recovered by the Security-taker in the exercise of its rights under this Agreement shall, subject to the rights of any creditors having priority (but without prejudice to the Security-taker's retention right), be applied in or towards the payment of the Secured Liabilities, in the following order:

- (a) first, in or towards payment of any unpaid costs, fees and expenses of the Security-taker under the ISDA Master Agreement, the Collateral Transfer Agreement and this Agreement (including but not limited to Paragraph 14 (*Expenses*));
- (b) secondly, in or towards payment of any accrued interest due to the Security-taker under the ISDA Master Agreement, the Collateral Transfer Agreement and this Agreement; and

- (c) thirdly, in or towards payment of any Secured Liabilities (other than as described in sub-paragraphs 8.1(a) and (b) above) due to the Security-taker.

## 8.2 ***Deficiencies and Excess Proceeds***

- (a) The Security-provider will remain liable for all Secured Liabilities remaining unsatisfied after the exercise of rights and remedies by the Security-taker under Paragraph 7 (*Enforcement*) of this Agreement or under Paragraph 12.2 (*Security-provider Rights and Remedies*) of the Other Security Agreement, or equivalent provisions of any Other CSA.
- (b) Following the exercise of such rights and remedies, the Security-taker hereunder will transfer to the Security-provider any proceeds and Clearstream Collateral remaining after satisfaction or termination in full of all payment and delivery Secured Liabilities of the Security-provider, including (if applicable) the transfer and release to the Security-taker by the Security-provider, in its capacity as the “Security-taker” under the Other Security Agreement, of all “Clearstream Collateral” as defined thereunder and the return of any other amounts and items posted by the Security-taker to the Security-provider as credit support under any Other CSA.

## 8.3 ***Final Returns***

Subject to Paragraph 8.2 (*Deficiencies and Excess Proceeds*), upon the occurrence of a Final Security Release Date in respect of the Security-provider, the Security-taker will instruct Clearstream to transfer to the Security-provider all Clearstream Collateral, if any, provided that if matching instructions are required to effect such transfer, the Security-provider and the Security-taker must each make the necessary notifications to Clearstream in order to effect such transfer (and shall act in accordance with such notifications).

## 8.4 ***Waiver***

To the extent applicable, the Security-provider expressly waives the benefit of Article 1253 and Article 1256 of the Luxembourg Civil Code.

## 9. **LIABILITY OF THE SECURITY-TAKER**

- (a) The Security-taker shall not be liable to the Security-provider or any other person for any properly incurred costs, losses, liabilities or expenses relating to the enforcement of the Security or for any act, default, omission or misconduct of the Security-taker or any of its officers, employees or agents in relation to the Clearstream Collateral or this Agreement except to the extent caused by its own gross negligence (*faute lourde*) or wilful misconduct (*dol*).
- (b) The Security-taker shall not be under any obligation to take any steps to preserve any rights in the Pledged Assets against any other parties, but may do so in its sole discretion. All reasonable expenses incurred in connection therewith shall be for the account of the Security-provider.
- (c) For the avoidance of doubt, and without limiting the rights of the Security-taker under the other provisions of this Agreement or the Collateral Transfer Agreement, the Security-taker will have no right to sell, pledge, rehypothecate, assign, invest, use, commingle or otherwise dispose of, or otherwise use in its business any Pledged Asset, except as expressly permitted by or pursuant to the Collateral Transfer Agreement and/or this Agreement. The Security-taker shall not be understood under this sub-paragraph or on any other basis (including the relevant Clearstream Agreements) as having the benefit of a re-use right over the Pledged Assets.



## **10. PROTECTION OF THIRD PARTIES**

No person dealing with the Security-taker shall be concerned to enquire:

- (a) whether the rights conferred by or pursuant to this Agreement are exercisable;
- (b) whether any consents, regulations, restrictions or directions relating to such rights have been obtained or complied with; or
- (c) otherwise as to the propriety or regularity of acts purporting or intended to be in exercise of any such rights.

## **11. SAVING PROVISIONS**

### **11.1 *Continuing Security***

- (a) Subject to Paragraphs 3.2 (*Release*), 4 (*Rights accompanying Clearstream Collateral*) and 12 (*Discharge of Security*), the Security is a continuing Security and will extend to the ultimate balance of the Secured Liabilities, regardless of any intermediate payment or discharge in whole or in part. It shall, subject to Paragraph 12 (*Discharge of Security*), in particular not be discharged by reason of the circumstance that there is at any time no Secured Liability arising.
- (b) All rights of the Security-taker under this Agreement will remain in full force and effect notwithstanding any characterisation of any operation under the ISDA Master Agreement (including without limitation close-out netting) as a novation (*novation*) of the Secured Liabilities.

### **11.2 *Reinstatement***

If any payment by the Security-provider or any discharge given by the Security-taker (whether in respect of any of the Secured Liabilities or any Security for the Secured Liabilities or otherwise) is avoided or reduced as a result of insolvency or any similar event:

- (a) the Security-provider shall remain liable to the Security-taker and the Security shall continue as if the payment, discharge, avoidance or reduction had not occurred; and
- (b) the Security-taker shall, to the extent permitted by applicable law, be entitled to recover the value or amount of that Security or payment from the Security-provider, as if the payment, discharge, avoidance or reduction had not occurred,

it being understood that the Security-provider shall promptly do whatever the Security-taker requires for such purpose, without prejudice to the Security-provider's other obligations under this Agreement.

### **11.3 *Waiver of defences***

Neither the obligations of the Security-provider under this Agreement, nor the Security, will be affected by an act, omission, matter or thing which, but for this Paragraph 11.3 (*Waiver of defences*), would reduce, release or prejudice any of its obligations under or pursuant to the ISDA Master Agreement, the Collateral Transfer Agreement or the Security (without limitation and whether or not known to it or the Security-taker), including:

- (a) any time, waiver or consent granted to, or composition with, the Security-provider or any other person;

- (b) the release of the Security-provider or any other person under the terms of any composition or arrangement with any creditor of the Security-provider;
- (c) the taking, variation, compromise, exchange, renewal or release of, or refusal or neglect to perfect, take up or enforce any rights against, or Charge over assets of, the Security-provider or any other person or any non-presentation or non-observance of any formality or other requirement in respect of any instrument or any failure to realise the full value of any Charge;
- (d) any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of the Security-provider or any other person;
- (e) any amendment (however fundamental) or replacement of the ISDA Master Agreement, the Collateral Transfer Agreement or any other document or Charge;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under the ISDA Master Agreement, the Collateral Transfer Agreement or any other document or Charge; or
- (g) any insolvency or similar proceedings.

#### 11.4 ***Immediate recourse***

The Security-provider waives any right (if any) arising under Article 2037 of the Luxembourg Civil Code or any right it may have of first requiring the Security-taker to proceed against or enforce any other rights or Charge or claim payment from, or to divide any action between and against, any other person before claiming from the Security-provider under this Agreement. This waiver applies irrespective of any law or any provision of the ISDA Master Agreement, the Collateral Transfer Agreement or this Agreement to the contrary.

#### 11.5 ***Additional Security***

The Security is in addition to and is not in any way prejudiced by any other guarantees or Charge now or subsequently held by the Security-taker.

#### 11.6 ***Transferability***

Neither Party may assign, transfer, novate or dispose of any of, or any interest in, its rights and/or obligations under this Agreement without the prior written consent of the other Party.

### 12. **DISCHARGE OF SECURITY**

#### 12.1 ***Release***

- (a) Unless released in accordance with Paragraph 3 (*Substitution and Margin Adjustments*), Paragraph 4 (*Rights accompanying Clearstream Collateral*) or sub-paragraph (b) below, the Security created and perfected in accordance with this Agreement will continue and remain in effect until expressly released by the Security-taker. The Security-taker may at its sole discretion grant a full or partial release of the Security.
- (b) The Pledged Assets shall be immediately and automatically released from the Security upon:
  - (i) the occurrence of a Final Security Release Date, the Parties complying with their respective obligations under Paragraph 8.3 (*Final Returns*) and the effective transfer of all Clearstream Collateral in accordance with such instructions; or

- (ii) the termination of the Clearstream Agreements and the transfer of the Clearstream Collateral in accordance with the terms of the Clearstream Agreements.

## **12.2 *Security-provider Rights and Remedies***

If at any time a Security-provider Access Event has occurred and is continuing, then:

- (i) the Security-provider may exercise all rights and remedies available to a pledgor under applicable law with respect to the Pledged Assets; and
- (ii) the Security-taker will be obligated immediately to transfer all the Clearstream Collateral to the Security-provider which obligation shall, for the avoidance of doubt, be without prejudice to the Security-taker's right to submit a Notice of Contest under Paragraph 13.3 (*Notice of Contest*) following the Security-provider's service of a Security-provider Access Notice under Paragraph 13.2 (*Security-provider Access Notice*).

## **13. RESTRICTION ON EXERCISE OF UNILATERAL RIGHTS UNDER CLEARSTREAM AGREEMENTS**

### **13.1 *Notice of Exclusive Control***

The Security-taker covenants to the Security-provider that:

- (a) it will not send a Notice of Exclusive Control under the relevant Clearstream Agreements to Clearstream unless and until an Enforcement Event occurs and is continuing; and
- (b) it will deliver a copy of any Notice of Exclusive Control to the Security-provider when it is delivered to Clearstream.

### **13.2 *Security-provider Access Notice***

The Security-provider covenants to the Security-taker that:

- (a) it will not send a Security-provider Access Notice under the relevant Clearstream Agreements to Clearstream in relation to the Pledged Account unless and until a Security-provider Access Event occurs (except in order to exercise its right to return of Clearstream Collateral pursuant to Paragraph 8.3 (*Final Returns*) of this Agreement); and
- (b) it will deliver a copy of any Security-provider Access Notice to the Security-taker at the same time as it is delivered to Clearstream.

### **13.3 *Notice of Contest***

The Security-taker covenants to the Security-provider that, following service of a Security-provider Access Notice by the Security-provider to Clearstream under the relevant Clearstream Agreements in relation to the Pledged Account, it will not send a Notice of Contest to Clearstream under such Clearstream Agreements unless the Security-provider's service of such Security-provider Access Notice was made other than in accordance with Paragraph 13.2 (*Security-provider Access Notice*) of this Agreement.

## **14. EXPENSES**

The Security-provider shall, within three (3) Local Business Days of demand, pay to the Security-taker the amount of all reasonable costs, losses, liabilities and expenses (including legal fees and any fees charged by Clearstream) properly incurred by it or any of its delegates in relation to this Agreement (including the administration, protection, realisation, enforcement or preservation

of any rights under or in connection with this Agreement, or any consideration by the Security-taker as to whether to realise or enforce the same, and/or any amendment, waiver, consent or release of or pursuant to in this Agreement).

## **15. RIGHTS, WAIVERS AND DETERMINATIONS**

### **15.1 *Ambiguity***

Where there is any ambiguity or conflict between the rights conferred by law and those conferred by or pursuant to this Agreement, the terms of this Agreement shall prevail.

### **15.2 *Exercise of rights***

No failure to exercise, nor any delay in exercising, on the part of the Security-taker, any right or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

### **15.3 *Determinations***

Any determination by or certificate of the Security-taker under this Agreement is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

### **15.4 *Further assurances***

Promptly following a demand made by a party, the other party will execute, deliver, file and record any financing statement or other document and take any other action that may be necessary or desirable and reasonably requested by that party to create, preserve, perfect or validate any security interest granted under this Agreement, to enable that party to exercise or enforce its rights under this Agreement with respect to the Pledged Assets or to effect or document a release of a security interest on the Pledged Assets.

## **16. NOTICES**

Any communication to be made under or in connection with this Agreement shall be made in accordance with the Collateral Transfer Agreement.

## **17. PARTIAL INVALIDITY**

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## **18. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of this Agreement.

## **19. GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with this Agreement are governed by Luxembourg law.

## 20. CHOICE OF FORUM

The courts of Luxembourg-City have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity, interpretation, performance, breach or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement).

## 21. DEFINITIONS

Capitalised terms used and not defined in this Agreement have the meaning ascribed to them (including by reference) in the Collateral Transfer Agreement.

In this Agreement (including its recitals):

**Affiliates** means, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, **control** of any entity or person means ownership of a majority of the voting power of the entity or person.

**Agreement** means this agreement.

**Appropriation Value** means, on any date, in relation to securities of any description (such securities, **Relevant Securities**):

- (a) subject to sub-paragraphs (b) and (c) below, the Market Value determined by Clearstream for such Relevant Securities on such date;
- (b) if either: (x) no Market Value as determined by Clearstream for the Relevant Securities is available on such date or (y) in the reasonable belief of the AV Determining Party acting in good faith, such Market Value for the Relevant Securities as determined by Clearstream is not commercially reasonable and, in either case, the AV Determining Party has received firm bid quotations in respect of such Relevant Securities from either:
  - (i) two or more market makers or regular dealers in the Appropriate Market of a commercially reasonable size but which in aggregate are for all such Relevant Securities; or
  - (ii) a market maker or regular dealer in the Appropriate Market for all such Relevant Securities,

the firm price quoted (or where more than one price is so quoted, the weighted average of the prices so quoted) for the purchase of the Relevant Securities which, to the extent expressed as a percentage, shall be multiplied against the face amount of the Relevant Securities such that the Appropriation Value is expressed as an absolute figure and which price shall take into account the value of any accrued but as yet unpaid distributions in respect of such Relevant Securities (such Appropriation Value under limb (b) as determined by the AV Determining Party acting in good faith and in a commercially reasonable manner including, but not limited to, in relation to obtaining such firm bid quotations); or

- (c) if either (x) no Market Value as determined by Clearstream for the Relevant Securities is available on such date or (y) in the reasonable belief of the AV Determining Party acting in good faith, such Market Value for the Relevant Securities as determined by Clearstream is not commercially reasonable and, in either case, acting in good faith, the AV Determining Party has either:

- (i) endeavoured but been unable to obtain quotations in accordance with sub-paragraph (b) above; or
- (ii) determined that it would not be commercially reasonable to obtain such quotations, (including, without limitation, owing to circumstances affecting such Appropriate Market),

the fair market value of the Relevant Securities determined by the AV Determining Party, acting in good faith and in a commercially reasonable manner, by reference to any relevant information, including, without limitation, one or more of the following pricing sources and methods:

- (A) available prices for securities with similar maturities, terms and credit characteristics as the Relevant Securities supplied by one or more third parties;
- (B) if the Relevant Securities are listed or traded on a recognised exchange, the value at which they could have been sold on the exchange on the date of appropriation;
- (C) information consisting of relevant market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other relevant market data in the relevant market; or
- (D) information of the types described in sub-paragraphs (A) or (C) above from internal sources (including any of the AV Determining Party's Affiliates) if that information is of the same type used by the AV Determining Party in the regular course of its business for the valuation of similar securities.

In this definition of Appropriation Value, the following terms will have the meanings set out below:

**Appropriate Market** means, in relation to securities of any description, the market which is the most appropriate market for securities of that description, as determined by the AV Determining Party.

**AV Determining Party** means:

- (i) for the purposes of determining the Appropriation Value under Paragraph 7 (*Enforcement*) of this Agreement, the Security-taker; and
- (ii) for the purposes of determining the Appropriation Value in relation to the exercise of the Delivery in Lieu Right (if applicable), the Security-provider.

**Market Value** has the meaning ascribed to such term in the Clearstream Agreements.

**Cash** means any money standing from time to time to the credit of the Pledged Account.

**Charge** means a mortgage, pledge, charge, security, lien (including *privilège*) or other security interest or transfer by way of security arrangement securing any obligation of any person, a mandate to create the same or any other right arising by operation of law, agreement, or arrangement having a similar effect.

**Clearstream** refers to Clearstream Banking S.A., a Luxembourg *société anonyme*, whose registered office is at 42, avenue J.F. Kennedy, L-1855 Luxembourg and whose registration number with the Luxembourg Register of Commerce and Companies is B-9248.

**Clearstream Collateral** means the Securities and the Cash, other property, the Clearstream Distributions and all proceeds of any such Securities, other property or Clearstream Distributions that have been transferred to or received into the Pledged Account pursuant to the Collateral Transfer Agreement or otherwise credited to the Pledged Account by Clearstream and not transferred to the Security-provider pursuant to the provisions of the Collateral Transfer Agreement, the Clearstream Agreements or this Agreement, or otherwise debited from the relevant Pledged Account by Clearstream.

**Clearstream Distributions** means all amounts received by Clearstream in respect of Clearstream Collateral, whether by way of interest, principal, premium, dividend, return of capital or otherwise and whether in cash or in kind, standing to the credit of the Pledged Account and all the right, title and interest of the Security-provider in and to such amounts. Distributions will however not include any item of property acquired by the Security-taker upon any disposition or liquidation of Clearstream Collateral.

**Collateral Transfer Agreement** has the meaning given to it on the first page of this Agreement (but without prejudice, for the avoidance of doubt, to the provisions in Paragraph 1.2(i) (*Construction*)).

**Delivery in Lieu Right**, if applicable, has the meaning given to such term in Paragraph 22 (*Other Provisions*).

**Enforcement Event** has the meaning given to that term in Paragraph 22 (*Other Provisions*).

**Final Security Release Date** means, in relation to the Security-provider, the first date to occur on which all Secured Liabilities in respect of the Security-provider (except for any potential liability under Section 2(d) of the ISDA Master Agreement or any obligation to transfer any interest payment under any Other CSA) have been satisfied in full.

**Financial Collateral Law** means the Luxembourg law of 5 August 2005 on financial collateral arrangements.

**ISDA Master Agreement** has the meaning given to that term in the Collateral Transfer Agreement.

**Luxembourg Civil Code** means the Luxembourg *Code Civil*.

**Notice of Contest** means, with respect to the Clearstream Agreements, a notice given by the Security-taker (as “Collateral Receiver”) to Clearstream under Article 18 of the relevant Clearstream Agreement, objecting to an event of default notice provided by the Security-provider (as “Collateral Giver”).

**Notice of Exclusive Control** means, with respect to the Clearstream Agreements, a notice given by the Security-taker (as “Collateral Receiver”) to Clearstream under Article 18 of the relevant Clearstream Agreement, in respect of a default of the Security-provider (as “Collateral Giver”).

**Other Security Agreement** means, in relation to the Collateral Transfer Agreement, the Security Agreement defined thereunder which is not this Agreement (if any).

**Pledged Account** means the account referred to on the first page of this Agreement, opened in the Clearstream system in the name of the Security-provider and in relation to which Clearstream provides collateral management services in accordance with the Clearstream Agreements.

**Pledged Assets** means all present and future assets, rights and claims that the Security-provider has or will have in relation to the Pledged Account, including, for the avoidance of doubt, the Clearstream Collateral credited thereto from time to time.

**Secured Liabilities** means all present, future, actual and contingent obligations of the Security-provider (including moneys, debts and liabilities due, owing or incurred by the Security-provider to the Security-taker) under the ISDA Master Agreement, the Collateral Transfer Agreement, this Agreement and the Other Security Agreement, *provided that*, if the Parties have elected in the Collateral Transfer Agreement that the “One Way Provisions” are applicable and the Security-provider is specified as the “Posting Party” thereunder, the definition of Secured Liabilities shall also include all present, future, actual and contingent obligations of the Posting Party to the Other Party under any Other CSA (including, without limitation, to pay default interest or equivalent amounts arising from a failure by the Posting Party as a secured party thereunder to comply with its obligations to transfer or otherwise procure the return of initial margin to the Other Party).

**Securities** means book-entry securities standing from time to time to the credit of the Pledged Account and all right, title and interest of the Security-provider relating to or arising from such securities.

**Security** means the first ranking pledge (*gage de premier rang*) created by or pursuant to this Agreement.

**Security-provider Access Event** means (where any term used hereunder but not defined in this Agreement shall be as defined in the ISDA Master Agreement or Collateral Transfer Agreement, as applicable, and in each case subject to Paragraph 1.2(j) (*Construction*)): an Early Termination Date in respect of all Transactions has occurred or been designated as the result of an Event of Default or Access Condition with respect to the Security-taker; *provided that*, if “**Security-provider Full Discharge Condition**” is specified as applicable in Paragraph 22 (*Other Provisions*), a Security-provider Access Event will not occur unless the Security-provider (i) has provided a statement to the Security-taker in respect of such Early Termination Date pursuant to Section 6(d) of the ISDA Master Agreement and (ii) is claiming that an amount under Section 6(e) of the ISDA Master Agreement (A) is payable to the Security-provider, (B) is zero or (C) is payable by the Security-provider but (x) has been discharged in full together with any accrued interest or (y) will be discharged in full together with any accrued interest in whole or in part pursuant to the Security-provider’s exercise of the Delivery in Lieu Right as notified in writing by the Security-provider to the Security-taker in connection with its delivery of a Security-provider Access Notice, if applicable.

**Security-provider Access Notice** means, with respect to the Clearstream Agreements, a notice given by the Security-provider (as “Collateral Giver”) to Clearstream under Article 18 of the relevant Clearstream Agreement in respect of a default of the Security-taker (as “Collateral Receiver”).

## 22. OTHER PROVISIONS

### 22.1 *Enforcement Event*

**Enforcement Event** means (where any term used hereunder but not defined in this Agreement shall be as defined in the ISDA Master Agreement or Collateral Transfer Agreement, as applicable, and in each case, subject to Paragraph 1.2(j) (*Construction*)):

- (a) an Early Termination Date in respect of all Transactions has occurred or been designated as the result of an Event of Default or Access Condition with respect to the Security-provider [and the Security-provider has not paid in full all of its Secured Liabilities that are then due]; or
- (b) if Failure to Pay Early Termination Amount is specified as applicable here, an Event of Default has occurred and is continuing with respect to the Security-provider and its obligation to pay an amount under Section 6(e) of the ISDA Master Agreement relating to an Early Termination Date with respect to all Transactions: Failure to Pay Early Termination Amount is [Applicable]/[Not Applicable].



## 22.2 **Modification to Security-provider's Rights and Remedies**

**Delivery in Lieu Right.** If specified as applicable here, the below (the **Delivery in Lieu Right**) will be inserted at the end of Paragraph 12.2 (*Security-provider Rights and Remedies*): Delivery in Lieu Right is [Applicable]/[Not Applicable].

“The Security-provider may, without the consent of the Security-taker, but notwithstanding Paragraph 13.3 (*Notice of Contest*), subject to the Security-taker being able to deliver a Notice of Contest, direct Clearstream to transfer to the Security-taker so much of the Clearstream Collateral as is the cash equivalent (as determined by the Security-provider acting in good faith and a commercially reasonable manner and, in respect of Clearstream Collateral comprising Securities, by reference to the Appropriation Value of such Securities determined by the Security-provider on or about such date of direction, the **Delivery Value**) necessary to satisfy (together with any other payments already made by the Security-provider) all amounts payable by the Security-provider pursuant to Section 6(e) (together with any accrued interest) of the ISDA Master Agreement. Such Section 6(e) (together with any obligation to pay interest) payment obligation of the Security-provider will be deemed satisfied to the extent of such transfer. At the time of giving directions to Clearstream for such transfer, the Security-provider shall also send a notice to the Security-taker specifying the details of the Clearstream Collateral being transferred and the related Delivery Value. For the avoidance of doubt, the Security-provider in all events will remain liable for any amounts remaining unpaid after such transfer, and to the extent of any transfer of Clearstream Collateral under this sub-paragraph, the Security-provider waives any right to redemption or similar rights in relation to the Clearstream Collateral or to require the Security-taker to make disposition of, account for any surplus in respect of, or request the sale of such Clearstream Collateral by the Security-taker.”

## 22.3 **Security-provider Full Discharge Condition**

Security-provider Full Discharge Condition is: [Applicable]/[Not Applicable].

## 22.4 **Other provisions<sup>3</sup>**

### (a) **Amendments**

*If the parties wish to make any modifications to the pre-printed provisions in Paragraph 1 through Paragraph 21 of this Agreement that are not already being amended or supplemented by this Paragraph 22, they should do so here.*

### (b) **Additional Terms**

*If the parties wish to add any additional terms to this Agreement, they should do so here.*

<sup>3</sup>

Parties to ensure that any additional provisions inserted are consistent with the mechanics of the Clearstream system.

**THIS AGREEMENT** has been duly executed on the date stated at the beginning in as many originals as there are parties hereto.

**[NAME OF SECURITY-PROVIDER]**

\_\_\_\_\_

By:

Title:

\_\_\_\_\_

By:

Title:

**[NAME OF SECURITY-TAKER]**

\_\_\_\_\_

By:

Title:

\_\_\_\_\_

By:

Title: