

Formulierungsvorschlag

Agreement dated

to the Collateral Addendum for Initial Margin 2020 to the Master Agreement for Financial Derivatives Transactions ("Besicherungsanhang für Initial Margin 2020 zum Rahmenvertrag für Finanztermingeschäfte") dated

("IM-Addendum")

IM-Security Agreement 2021 pursuant to Luxembourg Law – Multi-Custodian Scope ("Agreement")

between

Name and address of the IM-Security Provider

(hereinafter referred to as "IM-Security Provider")

and

Name and address of the IM-Security Receiver

(hereinafter referred to as "IM-Security Receiver")

(IM-Security Provider and IM-Security Receiver jointly hereinafter referred to as "Parties")

1. Purpose and scope of this Agreement

In relation to the obligation of the IM-Security Provider to provide IM-Collateral to the IM-Security Receiver pursuant to the IM-Addendum, the Parties hereby agree on the granting of the IM-Security Interest described herein.

2. Definitions and interpretation

(1) Definitions used in the IM-Addendum

The following capitalised terms used and not defined in this Agreement have the meaning ascribed to their corresponding German version in the IM-Addendum: IM-Bank Business Day (*IM-Bankgeschäftstag*), IM-Collateral (*IM-Sicherheiten*), IM-Security Interest (*IM-Sicherungsrecht*) and IM-Securities Collateral (*IM-Wertpapiersicherheiten*).

(2) Further Definitions of this Agreement

For the purposes of this Agreement:

"Appropriation Value" means,

(a) the valuation or price of the relevant Securities determined by the IM-Custodian on the relevant date; or

(b) if no IM-Custodian valuation is available, the fair market value of the relevant Securities determined by the Determining Party on the relevant date by reference to any relevant information.

"Cash" means any money standing from time to time to the credit of the IM-Charged Custody Account.

"Charge" means a mortgage, pledge, charge, security, lien (including privilege) 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.

"Charged Accounts" means the IM-Charged Custody Account and the IM-Charged Cash Account.

"Charged Assets" means all present and future assets, rights and claims that the IM-Security Provider has or will have in relation to the Charged Accounts, including, for the avoidance of doubt, the Cash and Securities credited thereto from time to time.

"Determining Party" means

(a) in case the Appropriation Value is determined in relation to Clause 7 (Enforcement), the IM-Security Receiver; and

(b) in case the Appropriation Value is determined in relation to the exercise of the delivery in lieu right pursuant to Clause 15 (18) of the IM-Addendum and Clause 19 (1) (a) of this Agreement (where applicable), the IM-Security Provider.

"Distributions" means all assets received by the IM-Custodian in respect of Posted 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 Charged Accounts and all the right, title and interest of the IM-Security Provider in and to such assets. Distributions will however not include any item of property acquired by the IM-Security Receiver upon any disposition or liquidation of Posted Collateral.

"Enforcement Event" means the right of the IM-Collateral Receiver to enforce the Posted Collateral pursuant to Clause 12(1) of the IM-Addendum.

"Final Security Release Date" means, in relation to the IM-Security Provider, the first date to occur on which all Secured Liabilities in respect of the IM-Security Provider have been satisfied in full.

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

"IM-Charged Custody Account" (*IM-Pfanddepot*)

"IM-Custodian" means the entity specified in Clause 15(2)(a) of the IM-Addendum.

"IM-Charged Cash Account" (*IM-Pfandkonto*) means the cash account (*Geldkonto*) opened in the IM-Custodian's system for the purpose of providing IM-Collateral to the IM-Security Receiver pursuant to the IM-Addendum; the relevant accounts may be further specified in Clause 19 (*Other agreements*) (2)(b). "IM-Custody Agreements" (*IM-Verwahrstellenvereinbarungen*) means the agreements specified in Clause 19 (*Other agreements*) (1).

"Notice of Exclusive Control" means, with respect to the IM-Custody Agreements, a notice given by the IM-Security Receiver to the IM-Custodian under the IM-Custody Agreements, in respect of a default of the IM-Security Provider.

"Posted Collateral" means the Securities and the Cash, other property, the Distributions and all proceeds of any such Securities, other property or Distributions that have been transferred to or received into the Charged Accounts pursuant to the IM-Addendum or otherwise credited to the Charged Accounts by the IM-Custodian and not transferred to the IM-Security Provider

pursuant to the provisions of the IM-Addendum, the IM-Custody Agreements or this Agreement, or otherwise debited from the relevant Charged Account by the IM-Custodian.

"Secured Liabilities" means the liabilities defined in Clause 1(3) of the IM-Addendum.

"Securities" means book-entry securities standing from time to time to the credit of the IM-Charged Custody Account and all right, title and interest of the IM-Security Provider relating to or arising from such securities.

(3) Construction

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

- (a) a reference to matching instructions from the IM-Security Provider and the IM-Security Receiver includes separate but matching instructions from each of the IM-Security Provider and the IM-Security Receiver;
- (b) any reference to the Master Agreement, the IM-Addendum, the IM-Custody 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
- (c) any reference to a provision of the Master Agreement, the IM-Addendum or the IM-Custody Agreements shall refer to such provision as construed pursuant to the governing law of such relevant agreement(s).

(4) Conflicts

In case of any conflict between the provisions of this Agreement and the Master Agreement, the IM-Addendum or the IM-Custody Agreements, the provisions of the Master Agreement, the IM-Addendum and the IM-Custody Agreements (as applicable) shall prevail.

3. IM-Security Interest

(1) Security

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

(2) Ranking

Without prejudice to liens mandatorily preferred by law, the security shall be a first ranking pledge (gage de premier rang).

(3) Segregated account

The Parties shall treat the Charged Accounts for all purposes as a special segregated account specifically opened for the purpose of holding IM-Collateral in accordance with the IM-Addendum, the IM-Custody Agreements and this Agreement, and each Party undertakes that it will not use the Charged Accounts for any other purpose.

(4) Perfection of the IM-Security Interest

- (a) The IM-Custodian shall be informed of the creation of the IM-Security Interest in favour of the IM-Security Receiver over the Charged Accounts.
- (b) For this purpose and for the perfection of the IM-Security Interest in accordance with Article 5 of the Financial Collateral Law, on or around the conclusion of this Agreement, the parties shall inform the IM-Custodian, (i) of the creation of the IM-Security Interest over the Charged Accounts, and (ii) that the IM-Security Interest has been granted in favour of the IM-Security Receiver.
- (c) Accordingly, pursuant to the collateral management services provided by the IM-Custodian under the IM-Custody Agreements the IM-Custodian will designate the Charged Accounts as pledged in favour of the IM-Security Receiver and manage the Posted Collateral in accordance with the IM-Custody Agreements.
- (d) The IM-Security Provider shall give instructions to deliver IM-Collateral to the Charged Accounts in accordance with the provisions of the IM-Custody Agreements. The Parties

will give the appropriate notices to the IM-Custodian in accordance with those agreements.

- (e) The Parties acknowledge that for conflicts of law purposes, the IM-Charged Custody Account is the "relevant account" for the purposes of Article 23 of the Financial Collateral Law.

(5) Ownership of the Securities

The IM-Security Provider shall at all times prior to enforcement of the IM-Security Interest pursuant to Clause 7 (*Enforcement*) remain the legal owner of the IM-Securities Collateral for all purposes (it being understood that any such rights shall be subject to the IM-Security Interest and any other rights of the IM-Security Receiver under this Agreement).

(6) Registration

The IM-Security Provider shall ensure that the IM-Security Interest is properly registered at its own costs if required by law to perfect the pledges pursuant to paragraph (1) and shall give evidence of any such registration to the IM-Security Receiver without undue delay.

4. Substitutions and margin adjustments

(1) Continuing IM-Security Interest

The Parties agree that (a) a substitution of any part of the Posted Collateral under Clause 7 of the IM-Addendum or otherwise in accordance with the terms of the relevant IM-Custody Agreements (a "Substitution") or (b) a transfer of additional IM-Collateral under Clause 3 of the IM-Addendum or otherwise in accordance with the terms of the relevant IM-Custody Agreements (a "Delivery") or (c) a return of Posted Collateral under Clause 4 of the IM-Addendum or otherwise in accordance with the terms of the relevant IM-Custody Agreements (a "Return") will not affect the continuity of the IM-Security Interest.

(2) Release of pledge in certain circumstances

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

(3) References to Posted Collateral

As of the date of:

- (a) a Substitution: all references to Posted Collateral in this Agreement will be deemed to include the substituting IM-Collateral and to exclude the collateral removed from the Charged Accounts pursuant to such Substitution;
- (b) a Delivery: all references to Posted Collateral in this Agreement will be deemed to include the additional IM-Collateral; and
- (c) a Return: all references to the Posted Collateral will be deemed to exclude any collateral removed from the Charged Accounts pursuant to such return.

5. Distributions and rights

The Parties shall deal with any and all Distributions and rights accompanying the Posted Collateral (including voting rights) in the manner set out in the IM-Addendum or the IM-Custody Agreements, as applicable. Any transfer from the Charged Accounts under the IM-Addendum, the relevant IM-Custody Agreements or this Clause 5 (*Distributions and rights*) shall to the extent of such transfer constitute a release of the IM-Security Interest in respect of the assets so transferred.

6. Undertaking in case of attachments

The IM-Security Provider hereby irrevocably and unconditionally undertakes, until full release of the IM-Security Interest in accordance with Clause 11 (*Release*), that no executory attachment (*sai-sie-arrêt*) is made on any of the Charged Assets and shall procure that any conservatory attachment (*saisie conservatoire*) on any of the Charged Assets is released within thirty (30) days. The IM-Security Provider shall inform the IM-Security Receiver without delay of any such attachment.

7. Enforcement

(1) Enforcement of IM-Security Interest

At any time when an Enforcement Event in respect of the IM-Security Provider has occurred and is continuing then, unless the IM-Security Provider has paid in full all of its Secured Liabilities, the IM-Security Receiver may immediately at its sole discretion, and without prior notice to the IM-Security Provider (but subject to such notices and instructions to the IM-Custodian in accordance with the IM-Custody Agreements), enforce the IM-Security Interest over the Charged 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 Charged 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 Charged 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 IM-Security Receiver; and/or
- (c) to appropriate the Charged 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 IM-Security Receiver 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 Charged Assets consisting of claims for Cash, to require the IM-Custodian to make payment of the relevant amount due by the IM-Custodian directly to the IM-Security Receiver. For these purposes the IM-Security Receiver 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 Posted Collateral in such manner as it shall reasonably determine, provided that no such action should be inconsistent with what may be required by the Master Agreement, the IM-Addendum, this Agreement and/or the IM-Custody Agreements.

(2) Authorisation

The IM-Security Provider hereby authorises the IM-Security Receiver to do anything which the IM-Security Provider is obliged to do (but has not done) under this Agreement in connection with the Posted Collateral (including the protection of the IM-Security Interest, its ranking, its perfection and anything necessary or useful to facilitate the realisation of the Charged Assets or the exercise of any rights vested in the IM-Security Receiver under this Agreement). The IM-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.

(3) Identification of Charged Assets subject to enforcement
On the occurrence of an Enforcement Event, the IM-Security Receiver shall be entitled to identify such Charged Assets which

shall be subject to enforcement in accordance with the provisions of Clauses 7(1) (*Enforcement of IM-Security Interest*).

8. Order of distributions, excess proceeds and final release

(1) Order of distributions

All amounts received or recovered by the IM-Security Receiver in the exercise of its rights under this Agreement shall, subject to the rights of any creditors having priority, 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 IM-Security Receiver under the Master Agreement, the IM-Addendum and this Agreement (including but not limited to Clause 13 (*Expenses*));
- (b) secondly, in or towards payment of any accrued interest due to the IM-Security Receiver under the Master Agreement, the IM-Addendum and this Agreement; and
- (c) thirdly, in or towards payment of any amount (other than as described in (a) and (b) above) due to the IM-Security Receiver under the Master Agreement, the IM-Addendum and this Agreement (Secured Liabilities).

(2) Excess proceeds

Following the exercise of rights and remedies, the IM-Security Receiver hereunder will transfer to the IM-Security Provider any proceeds and Posted Collateral remaining after satisfaction of the Secured Liabilities of the IM-Security Provider.

(3) Waiver

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

9. Liability of the IM-Security Receiver

(1) Limitation of liability

The IM-Security Receiver shall not be liable to the IM-Security Provider or any other person for any properly incurred costs, losses, liabilities or expenses relating to the enforcement of the IM-Security Interest or for any act, default, omission or misconduct of the IM-Security Receiver or any of its officers, employees or agents in relation to the Posted Collateral or this Agreement except to the extent caused by its own gross negligence (*faute lourde*) or wilful misconduct (*dol*).

(2) No obligation against other parties

The IM-Security Receiver shall not be under any obligation to take any steps to preserve any rights in the Charged Assets against any other party, but may do so at its sole discretion. All reasonable expenses incurred in connection therewith shall be for the account of the IM-Security Provider.

10. Saving provisions

(1) Continuing IM-Security Interest

- (a) Subject to Clauses 4(2) (*Release of pledge in certain circumstances*), 5 (*Distribution and rights*) and 11 (*Release*), the IM-Security Interest is a continuing IM-Security Interest 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 Clause 11 (*Release*), 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 IM-Security Receiver under this Agreement will remain in full force and effect notwithstanding any characterisation of any operation under the Master Agreement (including without limitation close-out netting) as a novation (Novation) of the Secured Liabilities.

(2) Reinstatement

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

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

it being understood that the IM-Security Provider shall promptly do whatever the IM-Security Receiver requires for such purpose, without prejudice to the IM-Security Providers other obligations under this Agreement.

(3) Waiver of defences

Neither the obligations of the IM-Security Provider under this Agreement, nor the IM-Security Interest, will be affected by an act, omission, matter or thing which, but for this Clause 10(3) (*Waiver of defences*), would reduce, release or prejudice any of its obligations under or pursuant to the Master Agreement, the IM-Addendum or the IM-Security Interest (without limitation and whether or not known to it or the IM-Security Receiver) including:

- (a) any time, waiver or consent granted to, or composition with, the IM-Security Provider or any other person;
- (b) the release of the IM-Security Provider or any other person under the terms of any composition or arrangement with any creditor of the IM-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 IM-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 IM-Security Provider or any other person;
- (e) any amendment (however fundamental) or replacement of the Master Agreement, the IM-Addendum or any other document or Charge;
- (f) any unenforceability, illegality or invalidity of any obligation of any person under the Master Agreement, the IM-Addendum or any other document or Charge; or
- (g) any insolvency or similar proceedings.

(4) Immediate recourse

The IM-Security Provider waives any right (if any) arising under Article 2037 of the Luxembourg Code Civil or any right it may have of first requiring the IM-Security Receiver 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 IM-Security Provider under this Agreement. This waiver applies irrespective of any law or any provision of the Master Agreement, the IM-Addendum or this Agreement to the contrary.

(5) Additional security

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

(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.

11. Release

(1) General

Unless released in accordance with Clause 4 (*Substitution and margin adjustments*), Clause 5 (*Distributions and rights*) or paragraph (2) below, the IM-Security Interest created and perfected in accordance with this Agreement will continue and remain in effect until expressly released by the IM-Security Receiver. The IM-Security Receiver may at its sole discretion grant a full or partial release of the IM-Security Interest.

(2) Automatic release

The Charged Assets shall be immediately and automatically released from the IM-Security Interest upon.

- (a) the occurrence of the Final Security Release Date, the Parties complying with their respective obligations under Clause 11(3) (Final release) and the effective transfer of all Charged Assets in accordance with such instructions; or
- (b) the IM-Custody Agreements having been terminated in accordance with its terms and the transfer of the Charged Assets in accordance with its terms.

(3) Final release

Subject to Clause 8 (2) (*Excess proceeds*), upon the occurrence of a Final Security Release Date in respect of the IM-Security Provider, the IM-Security Receiver will instruct the IM-Custodian to transfer to the IM-Security Provider all Posted Collateral, if any, provided that if matching instructions are required to effect such transfer pursuant to the IM-Custody Agreements, the IM-Security Provider and the IM-Security Receiver must each make the necessary notifications to the IM-Custodian in order to effect such transfer (and shall act in accordance with such notifications).

(4) IM-Security Provider rights and remedies

If the IM-Security Receiver is required to release the IM-Security Interest pursuant to Clause 12(4) of the IM-Addendum following a termination of the Master Agreement, then:

- (a) the IM-Security Provider may exercise all rights and remedies available to a pledgor under applicable law with respect to the Charged Assets;
- (b) and the IM-Security Receiver will be obligated to immediately transfer all the Charged Assets to the IM-Security Provider which obligation shall, for the avoidance of doubt, be without prejudice to the IM-Security Receiver's right to contest pursuant to the IM-Custody Agreements.

12. Notice of Exclusive Control

The IM-Security Receiver shall not send a Notice of Exclusive Control under the relevant IM-Custody Agreements to the IM-Custodian unless and until an Enforcement Event or a reason for a termination pursuant to Clause 12(2) of the IM-Addendum occurs and is continuing. A copy of any Notice of Exclusive Control shall be delivered to the IM-Security Provider when it is delivered to the IM-Custodian.

13. Expenses

The IM-Security Provider shall, within three (3) IM-Bank Business Days of demand, pay to the IM-Security Receiver the amount of all reasonable costs, losses, liabilities and expenses (including legal fees and any fees charged by the IM-Custodian) properly incurred by it or any of its delegates in relation to the protection, realisation, enforcement or preservation of any rights under or in connection with this Agreement.

14. Notifications

Any communication to be made under or in connection with this Agreement shall be made in accordance with the IM-Addendum.

15. 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.

16. 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.

17. Governing law

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

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).

18. Place of jurisdiction

19. Other agreements

(1) For the purpose of this Agreement IM-Custody Agreements means:

(2) The following shall only apply if the relevant box has been ticked:

(a) Further specifications regarding IM-Charged Custody Account:

(b) Further specifications regarding IM-Charged Cash Account:

(c) Modification to IM-Security Provider's Rights and Remedies in case of a Delivery in Lieu Right pursuant to Clause 15(18) of the IM-Addendum

The IM-Security Provider may, without the consent of the IM-Security Receiver, direct the IM-Custodian to transfer to the IM-Security Receiver as much of the Posted Collateral as is the cash equivalent (as determined by the IM-Security Provider acting in good faith and a commercially reasonable manner and, in respect of Securities, by reference to the Appropriation Value of such Securities) necessary to satisfy (together with any other payments already made by the IM-Security Provider) the single consolidated compensation claim (*Ausgleichsforderung*) or claim for non-performance (*Forderung wegen Nichterfüllung*), as applicable, in accordance with the Master Agreement and Clause 15(18) of the IM-Addendum.

(3) Other

Signature(s) of the IM-Security Provider

Signature(s) of the IM-Security Receiver