

Arrangement to consolidate and compensate all OTC Contracts entered into or to be entered into under a single agreement

(referred to as the "**Close-Out Netting Annex**" or, for ease of reference hereinafter, this "**Annex**")

between

BANQUE DE LUXEMBOURG, incorporated as a société anonyme with its registered office at 14, boulevard Royal, L-2449 Luxembourg and registered with the Trade and Companies Register of Luxembourg under number B 5310 ("Party A")

and

the Insurance Company ("Party B")

#### 1. General principles

Party A and Party B (hereinafter, collectively the "**Parties**" and each individually, a "**Party**") have decided to submit to the provisions below, all their outstanding and future OTC Contract(s) (as defined hereinafter) and to consolidate them under a single agreement, and to benefit from the relevant legislative and regulatory provisions, in particular provisions set forth in the law of 5 August 2005 on financial collateral arrangements, as amended (*loi modifiée du 5 août 2005 sur les contrats de garantie financière*).

**"OTC Contract"** has the meaning given to it in the EMIR Regulation, i.e. a derivative contract the execution of which does not take place on a regulated market as within the meaning of Article 4(1)(14) of MiFID Regulation or on a third country market considered as equivalent to a regulated market in accordance with Article 19(6) of MiFID Regulation.

**"EMIR Regulation"** means Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories dated 4 July 2012 (as the same have been, or may from time to time be, replaced, extended, amended, varied, supplemented or superseded).

**"MiFID Regulation"** means Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (as the same has been, or may from time to time be, replaced, extended, amended, varied, supplemented or superseded).

**"Transaction"** means any and all of the transactions on non-cleared OTC Contracts entered into between the Parties.

For the purpose of the Annex, the Parties agree as follows:

- (i) all Transactions entered into shall constitute one single agreement for the purposes of termination and netting;
- (ii) the occurrence of an Enforcement Event (as defined hereinafter) for either Party shall entitle the other Party (the "**Non-Defaulting Party**")
  - to suspend the performance of its obligations under the Transactions and to terminate all Transactions,
  - to set off mutual debts and credits arising pursuant to the Transactions, and
  - to determine a Settlement Amount (as defined hereinafter) due to or payable by it;
- (iii) such Settlement Amount shall be calculated on the basis of an agreed method that integrates the Replacement Value of the terminated Transactions.

## 2. Termination due to an Enforcement Event

The occurrence at any time with respect to a Party (the “**Defaulting Party**”) of any of the following events shall constitute an “**Enforcement Event**”:

- 1) failure to make any payment pursuant to a Transaction which failure has not been remedied within one (1) full bank business day in Luxembourg (a “**Local Business Day**”) following notification of such failure by the Non-Defaulting Party;
- 2) (i) a declaration or a recognition that the Party cannot pay or perform, or a refusal to pay all or any part of its debts or perform its financial obligations, or (ii) a request for or a declaration of a governmental or judicial moratorium or any equivalent procedure instituting a moratorium or equivalent;
- 3) cessation of business, commencement of a voluntary winding-up procedure or any other equivalent procedure;
- 4) commencement or petition for the opening by the Defaulting Party for itself or by any regulatory or judicial authority, of a prevention procedure or treatment of businesses’ difficulties proceedings governed by its applicable law, or any equivalent procedure governed by foreign law with respect to the head office or any of the branches of one of the Parties, including (i) commencement of a composition procedure, (ii) commencement of a safeguard procedure, (iii) appointment of an administrator or a similar official (*mandataire*) in the context of composition, safeguard, amicable settlement, rehabilitation, reorganization, administration, insolvency, bankruptcy, dissolution or liquidation, (iv) commencement of a reorganization procedure, (v) commencement of a court-ordered winding-up procedure or any equivalent procedure to those referred to in (i) to (v);
- 5) failure to perform any payment obligation with respect to the other Party or any third party, other than such obligations arising out of a Transaction, save in the event of manifest error or serious substantive dispute;
- 6) the entry into force of a new law or regulation, the amendment, the abrogation or the annulment of any law or any other provision of mandatory effect, or any change in the judicial or administrative interpretation of any such provision which results in a Transaction being unlawful for such Party, or which results in a deduction or withholding on account of tax on an amount receivable from the other Party under such Transaction;
- 7) any merger or demerger affecting such Party, or any transfer of assets effected by which results in a substantial deterioration in its business, its assets or its financial condition;
- 8) the assignment of the Transactions to any third party, without obtaining the prior consent of the other Party;
- 9) the legal entity identifier (LEI) of the Party has expired or become inactive or has otherwise become invalid, other than, if relevant, due to a failure by Party A in renewing the LEI of Party B in accordance with a valid mandate given by Party B to Party A and accepted by Party A;
- 10) a legislative, regulatory, economic, financial change or any other case of force majeure rendering the maintenance of the Transaction(s) impossible, unlawful, or even abusive; or
- 11) any other serious event liable to be prejudicial to the honor and good reputation of the other Party, or if the operations appear to be contrary to public policy or morality.

The occurrence of the event mentioned below under section 12) shall constitute an **Additional Enforcement Event**, with Party B being the sole Defaulting Party and all Transactions shall be the terminated Transactions.

### 12) Termination of Custody Agreement - End of the business relationship

The termination of the Custody Agreement (as defined below) for any reason or the closing under such Custody Agreement of Party B’s account(s) opened and maintained with Party A or the cessation of their business relationship, for any reason.

“**Custody Agreement**” means the agreement (named Convention de Dépôt) signed between Party A and Party B approved by the Commissariat aux Assurances (the Luxembourg Insurance Regulator) as amended from time to time.

Upon the occurrence of an Enforcement Event, the Non-Defaulting Party shall be entitled, by notice given to the Defaulting Party, to suspend the performance of its obligations and, in line with market practices governing the Transactions (where such market practices may, *inter alia*, depend on the type of outstanding Transaction and/or the maturity of the outstanding Transaction) to either terminate all outstanding Transactions and/or to offset all outstanding Transactions by symmetric Transactions.

For the avoidance of doubt and for the purpose of this Annex, the offsetting of a Transaction by a symmetric Transaction shall be understood as also representing Transactions that are terminated, and the date when a Transaction is offset by a symmetric Transaction shall be understood as the Termination Date in respect of the Transactions so to be terminated.

With effect from the Termination Date, Party A and Party B shall no longer be bound to make any payment pursuant to the terminated Transactions, except the payment of the Settlement Amount for such terminated Transactions and the reimbursement of the fees and out-of-pocket expenses arising out of the termination of the Transactions, if these fees and out-of-pocket expenses have not already been taken into account when calculating the Settlement Amount.

### 3. Calculation of the Settlement Amount

The Settlement Amount shall be determined by Party A, on behalf of the Non-Defaulting Party (whoever this Party is).

Such determination shall be made as soon as possible. In determining the Settlement Amount, Party A will act in good faith and will use commercially reasonable procedures in order to produce a commercially reasonable result.

In order to determine the Settlement Amount for all terminated Transactions, Party A will add the positive Replacement Values and the Amounts Due (both as defined hereinafter) by the other Party and deduct the negative Replacement Values and the Amounts Due by the Non-Defaulting Party. The (positive or negative) difference shall be the **Settlement Amount**.

The « **Replacement Value** » corresponds to the gains of the Non-Defaulting Party (expressed as a negative amount) or the loss (expressed as a positive amount) resulting for such Party from the termination of the relevant Transaction, and is calculated based upon the market value of the relevant Transaction. If not reflected in the market value obtained, Party A who is responsible for the calculation may also take into account losses and costs incurred in order to terminate or enter into a hedging transaction relating to one or more terminated Transactions or any gain resulting therefrom.

The « **Amount due** » corresponds, in relation to a terminated Transaction and a specified Party, to the sum of any amounts payable by such Party and not paid (for whatever reason) at the Termination Date, together with the applicable interest, calculated from the due date for payment to the Termination Date, at the overnight refinancing rate of the Party entitled to receive the relevant amount, plus one per cent. per annum.

### 4. Notification and payment of the Settlement Amount

Party A shall notify as soon as possible to Party B, the amount corresponding to the Settlement Amount, together with details of the calculation by which it was determined. Such calculations shall be conclusive upon notification and, in the absence of manifest error, shall be binding.

The Party owing the Settlement Amount shall pay it to the other Party within three Local Business Days after receiving the notice mentioned above. In the event of delay in payment, interest calculated at the rate stipulated here above will be added to the Settlement Amount.

## 5. Set-Off

The Settlement Amount due by one Party (the “**Payer**”) to the other Party (the “**Payee**”) in circumstances where all Transactions are terminated Transactions, will, at the option of the Non-Defaulting Party (and without prior notice to the Defaulting Party), be reduced by its set-off against any other amounts (“**Other Amounts**”) due by the Payee to the Payer (whether or not arising under this Annex, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation).

To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly, and, in all respects, the Non-Defaulting Party will give notice to the other Party of any set-off effected under this Article 5.

This Article 5 will be without prejudice and in addition to any right of setoff, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which any Party is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise).

## 6. Recognition of the contractual netting provisions set forth herein as on-going risk-reducing provisions

Without prejudice to any aforementioned rights, the drafting emphasis of which is placed particularly on a situation where an Enforcement Event occurs (right to early terminate the Transactions and to set off mutual debts and credits arising therefrom in order to determine a single Settlement Amount due), the Parties hereby expressly recognise such netting provisions contained in this Annex as risk-reducing, not only in case an Enforcement Event occurs but also in the normal course of their OTC Derivative relationship, for the purposes of, for example, (i) setting credit limits, (ii) assessing or calculating counterparty-risk exposures, (iii) meeting regulatory ratios or for capital purposes or (iv) any other purposes of that kind, necessary for one or another Party (“*on-going basis*” or “*business as usual*” situation).

For the purposes of such “*on-going basis*” or “*business as usual*” situation, at any determination date or calculation date, any Party may take into account the risk-reducing effects of the Annex covering all Transactions, for which mutual claims and obligations under each individual Transactions are automatically amalgamed in such a way that the Annex fixes one single net amount across all Transactions (the single net sum of the positive and negative market values of all individual Transactions) as if an Enforcement Event would have occurred at the time of such determination date or calculation date.

## 7. Automation and the Account Bank

Party B has opened one or more accounts with Party A acting in its capacity as account bank (the “**Account Bank**”). For the purposes of this Annex, Party B hereby confirms that it has instructed, without any further specific authorisation being required, the Account Bank to provide automated transfer services (i.e to make and/or receive any payment or delivery on Party B’s behalf in relation to this Annex and each Transaction hereunder) and that, notwithstanding anything to the contrary in this Annex, the Account Bank shall:

- (i) subject to sufficient funds in the account(s), effect the transfer on Party B’s behalf of any payment due under this Annex from Party B to Party A on any date from one or more accounts of Party B held with the Account Bank; and
- (ii) procure that any payment due under this Annex on any date from Party A to Party B is transferred to one or more accounts of Party B held with the Account Bank.

## 8. Additional specific provisions in relation to Luxembourg Insurance Companies

### (a) Additional Enforcement Events.

The following events shall constitute an additional Enforcement Event for which Party B will be the sole Defaulting Party and all Transactions will be terminated Transactions:

(1) Party B commits any breach of its obligations under the Luxembourg law of 7 December 2015 on the insurance sector, as amended (the "**Insurance Sector Law**") or any applicable rules and regulations, including in particular, without limitation, the Regulation of the Commissariat aux Assurances N° 15/03 of 7 December 2015 on insurance and reinsurance undertakings, as amended, and such breach materially adversely affects the ability of Party B to perform any or all of its obligations under this Annex.

(2) Party B commits any breach of its obligations under the Luxembourg law or any applicable rules and regulations applicable to Party B, including in particular, without limitation, the Regulation of the Commissariat aux Assurances N°17/6 as amended.

(3) Party B loses, renounces or has withdrawn from it or fails to obtain renewal of any necessary license or regulatory authorisation from any regulatory authority which results in Party B becoming legally unable to contract or operate its business.

### (b) Representations of Party B.

Party B additionally represents to Party A, (which representations will be deemed to be repeated by Party B on each date on which a Transaction is entered into):

(i) that it is duly authorised by the Luxembourg insurance sector supervisory authority, the Commissariat aux Assurances, with permission to carry on the class or classes of insurance business (branche(s) d'assurance) carried on by it in the Grand Duchy of Luxembourg;

(ii) that the Transaction does not violate any solvency or technical reserve requirements; and

(iii) that none of the collateral assets, initial or variation margin, cash, property or other funds transferred or received under a Transaction forms part of representing any assets representing technical provisions and that the delivery of the same does not violate any solvency or technical reserve requirements.

## 9. Miscellaneous

**Entire agreement:** this Annex constitutes the entire agreement between the Parties as to its subject matter and the arrangements contemplated by this Annex, and supersedes all previous agreements, communications and representations in respect of the same.

**Amendment:** Party A may amend this Annex at any time. Party A will inform Party B of such amendments via written notification communicated by any means, including by notification on its website. The amended Annex (the "**New Annex**") will apply to all existing and future Transactions and will be deemed approved by Party B and will be binding upon the Parties unless objected to by Party B in writing. Any objection must be received by Party A within 30 days of the written notification being received by Party B. The applicable Annex is available on Party B's website: [www.banquedeluxembourg.com](http://www.banquedeluxembourg.com).

**Notices following an Enforcement Event:** any notice(s) sent in compliance with Article 2. Termination due to an Enforcement Event ("**Termination Notice**") will only be served by writing with an acknowledgement of receipt of the other Party. For information purposes only, a copy of the Termination Notice may be sent by email.



**Non-waiver:** the failure to exercise or the delay in exercising a right or remedy under this Annex shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Annex shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

**Remedies Cumulative:** all rights and actions arising from this Annex are cumulative and do not exclude the exercise of any other rights or actions to which the Parties may be entitled under another agreement or provided by law.

**Assignment:** this Annex and the rights and obligations created hereunder may not be transferred or assigned in whole or in part by either of the Parties hereto without the prior written consent of the other Party.

**Severability:** if any provision of this Annex were to prove to be invalid or unenforceable, the invalidity of unenforceability of that provision shall not affect the other provisions of this Annex or of such provisions under the laws of any other competent jurisdiction and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby further agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objective of the invalid or unenforceable provision.

**Security and guarantee:** the Parties may agree at any time to grant and provide, and potentially segregate, any security or guarantee in respect of all or any of the Transactions. For the avoidance of doubt, either (i) pursuant to Party A's general terms and conditions applicable to Party B, of which the most recent version shall prevail, (ii) a separate pledge agreement duly signed by Party B or (iii) specific provisions included in a service agreement (such as, for example, within the Custody Agreement) or other contractual arrangement duly executed between Party A and Party B, governed by the Luxembourg act dated 5 August 2005 on financial collateral arrangements, as amended (loi modifiée du 5 août 2005 sur les contrats de garantie financière), Party B agrees to pledge all its assets deposited or to be deposited with Party A as guarantee for all present and future commitments, liabilities whatsoever, which Party B owes and will owe to Party A, including the payment of the Settlement Amount if applicable.

**Governing law and jurisdiction:** this Annex shall be governed by and is construed in accordance with the laws of the Grand Duchy of Luxembourg. All litigation on its validity and interpretation that may arise from or during this Annex shall fall under the exclusive jurisdiction of the competent courts of and in Luxembourg. Party A nevertheless reserves the right to take legal action in the jurisdiction of Party B's domicile or before any other competent court.

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This Appendix forms a separate arrangement ("**Separate Appendix**") related to Party B when acting for the account of segregated assets of a Luxembourg Insurance Company, which includes without being limited to, "contrat d'assurances-vie où le risque de placement est supporté par le preneur d'assurance", "fonds interne", and/or "provisions techniques" which are covered by the Custody Agreement (named Convention de Dépôt), and referred hereinafter, for the sole ease of reading and reference, a "**Fonds Dédié**")

This Separate Appendix is made between Party A and Party B acting severally and not jointly for the account of each Fonds Dédié.

The purpose of this Separate Appendix is to identify and clarify some specifics related to the Fonds Dédié(s) of a Luxembourg Insurance Company in relation to the Transaction(s) governed by the Close-Out Netting Annex entered into by Party B on behalf of each Fonds Dédié.

The Parties hereby agree and acknowledge as follows:

1. The Close-Out Netting Annex applies to Party B for its own account. Such Close-Out Netting Annex is as well applies to Party B when acting for the account of each of the several and not joint Fonds Dédiés (each a "**Fonds Dédié**" and collectively the "**Fonds Dédiés**").
2. Party A acknowledges that Party B has for the entire duration of the life-insurance contract(s) and other insurance contract(s) as the case may be, a property right over all the funds and assets, present and future, deposited on account(s) of each Fonds Dédié with Party A and as such, Party B is entitled to manage or to delegate the management of all the funds and assets, present and future, deposited on account(s) of each Fonds Dédié with Party A.
3. Party A acknowledges that Party B has appointed, as the case may be, an agent for the Fonds Dédié(s) in charge of discretionary power conferred by Party B to manage all the funds and assets, present and future, deposited on the account(s) of the relevant Fonds Dédié ("**Party B's Authorised Agent**").
4. Party A, Party B and Party B's Authorised Agent has entered into an agreement (the "**Tripartite Agreement For Insurance Companies**") which defines the role and the duties of each of Party A, Party B and Party B's Authorised Agent.
5. Party A and Party B agree that:
  - (i) Party B's Authorised Agent has the power and authority (acting as agent) to enter into any Transaction on behalf of Party B, pursuant to the terms of the agreement between Party B and Party B's Authorised Agent;
  - (ii) Party B's Authorised Agent has the power and authority (acting as agent) to effect and cause Party B to enter into each Transaction and to take all actions with respect to each Transaction that Party B's Authorised Agent causes Party B to enter into;
  - (iii) Party B's Authorised Agent has the power and authority, to bind Party B as principal, in respect of (i) and, (ii) above;
  - (iv) Party A may assume that anything agreed or done by the Party B's Authorised Agent in relation to any Transaction or prospective Transaction is within the authority of Party B's Authorised Agent, provided that (i) Party A has not received notice from Party B or Party B's Authorised Agent of the cessation of such authority;
  - (v) Party B's Authorised Agent will execute Transactions and Confirmations as agent on behalf of Party B, and Party A and Party B will be bound by those Transactions and Confirmations as if they had been negotiated and executed directly by Party A and Party B;
  - (vi), any payments or deliveries to be made by Party A under any Transaction shall be deemed satisfied when paid or delivered (as the case may be) in full by Party A in accordance with the instructions given by Party B's Authorised Agent.



6. Party A acknowledges that each Fonds Dédié, in compliance with the laws applicable to the insurance companies in Luxembourg, disposes of separate account(s) with Party A. Party A further acknowledges that such account(s) for each Fonds Dédié constitute a separate account and the funds and assets, present and future, deposited on such account(s) shall under no circumstances be considered as one sole and indivisible current account.

7. No amendment, modification or waiver in respect of the matters contemplated by this Separate Appendix will be effective unless made in writing duly executed by Party A and Party B.

8. This Separate Appendix and any non-contractual obligations arising from or connected with it shall be governed by and construed in accordance with Luxembourg law and each Party submits to any suit, action or proceedings relating to any dispute arising out of or in connection with this Separate Appendix to the non-exclusive jurisdiction of the Luxembourg courts.

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