





## **ANNEXE 12**

# **MASTER REPURCHASE AGREEMENT**

**for use in Monetary Policy Operations**



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Between:

and

Banque centrale du Luxembourg, \_\_\_\_\_

boulevard Royal 2 \_\_\_\_\_

L-2983 Luxembourg \_\_\_\_\_

(hereafter “the Central Bank”)

(hereafter the “Counterparty”)

## 1. Nature of the Agreement

(a) The parties hereto may enter into transactions in which one party hereto (the “Seller”), agrees to sell to the other party hereto (the “Buyer”) eligible assets (“Securities”) as specified in accordance with Guideline ECB/2014/60 (Part four) (and/or any temporary measure adopted in this field by the European Central Bank) and Chapter 8 of the General Terms and Conditions of the Central Bank against payment of the purchase price in money by the Buyer, with a simultaneous agreement by the Buyer to sell to the Seller securities equivalent to such Securities at a specified date against payment of an agreed price in money by the Seller to the Buyer.

(b) Each such transaction (to be referred to herein as a “Transaction”) and the parties shall be governed by the terms of this Agreement and in addition by the relevant provisions of the General Terms and Conditions of the Central Bank.

(c) Each party acknowledges that all Transactions hereunder constitute a single business and contractual relationship and are made in consideration of each other and that it has entered into each Transaction hereunder in consideration of and reliance upon such acknowledgement. Accordingly, each party agrees (i) to perform all of its obligations in respect of each Transaction hereunder, and that, subject to any express intent to the contrary contained herein, a failure to perform any such obligation shall constitute a failure by it to perform in respect of all Transactions, and (ii) that payments and transfers made by either party in respect of any Transaction shall be deemed to have been made in consideration of payments and transfers in respect of all other Transactions hereunder.

## 2. Definitions

(a) “*Adjusted Market Value*” with respect to any Security means the amount of the Market Value less any reduction to such amount (“haircut”) specified in Guideline ECB/2014/60

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(Annex 1 of the General Terms and Conditions of the Central Bank) or, as the case may be, specified by the European Central Bank as regards marketable debt instruments issued by non-euro area G10 central governments in their domestic currency.

(b) “*Business Day*” means

- (i) in relation to any obligation to make a payment any day on which all relevant parts of TARGET2 are operational to effect such a payment as mentioned in clause 1.9. of the General Terms and Conditions of the Central Bank and
- (ii) in relation to any delivery of Securities, a day on which the securities settlement system through which delivery is to be made is open for business in the place where delivery of the relevant Securities is to be effected.

(c) “*Default Market Value*”, means with respect to any Securities on any date,

- (i) the Market Value of such Securities at the Default Valuation Time; or,
- (ii) if the Central Bank has before the Default Valuation Time sold at the market price the securities or Equivalent Securities, the net proceeds of sale (after deducting all reasonable costs, fees and expenses incurred in connection with such sale),

such calculation being made and amounts determined by the Central Bank.

(d) “*Default Notice*” means a written notice served by the Central Bank on the Counterparty under clause 9 stating that an event shall be treated as an Event of Default for the purposes of this Agreement, which notice becomes effective immediately in accordance with clause 13(b) unless the Central Bank has provided for a period of up to a maximum of three Business Days during which the Counterparty may rectify the Event of Default to the satisfaction of the Central Bank in which latter case, if such rectification does not occur, the Event of Default shall be deemed to occur upon the expiration of such period.

(e) “*Default Valuation Time*” means, with respect to any Securities,

- (i) if the relevant Event of Default occurs during normal business hours on a day which is a dealing day in the Home Market for such Securities, the close of business in that market on the following dealing day;
- (ii) in any other case, the close of business in the Home Market on the second dealing day after the day on which the Event of Default occurs.

(f) “*Equivalent Margin Securities*” means Equivalent Securities to Securities previously transferred as Margin Securities (as defined in clause 4).

(g) “*Equivalent Securities*” means Securities of the same issuer, forming part of the same issue (irrespective of date of issue) and being of identical type, nominal value, amount and description as those Securities to which such comparison is made. If and to the extent that the Securities in respect of which the comparison is made have been redenominated, converted or a call has been made thereon, the definition of Equivalent Securities shall be modified to mean:

(i) in the case of redenomination, Equivalent Securities to the redenominated securities, together with a sum of money equivalent to the difference (if any) between the nominal value of the redenominated securities and the securities before denomination;

(ii) in the case of conversion, Equivalent Securities to the securities into which the Securities have been converted; or

(iii) in the case of a call being made on Securities which are partly paid, Equivalent Securities to the paid-up securities, provided that the Seller shall have paid to the Buyer a sum equating to the value of the call. (h) “*Income*” means, with respect to any Security at any time, all interest, dividends or other distributions thereon and shall include any amounts in respect of the redemption of any Security.

(i) “*Income Payment Date*” means, with respect to any Security, the date on which Income is paid in respect of such Security, or, in the case of a registered Security, the date by reference to which particular registered holders are identified as being entitled to payment of Income;

(j) “*Initial Margin Amount*” means, with respect to any Transaction:

(i) as of the Purchase Date, the amount obtained by application to the Purchase Price of a percentage specified in Guideline ECB/2014/60 and Chapter 8 of the General Terms and Conditions of the Central Bank;

(ii) as of any date after the Purchase Date, the amount obtained by application of the same percentage to the Repurchase Price;

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- (k) “*Margined Amount*” means, with respect to any Transaction:
- (i) as of the Purchase Date, the aggregate of the Purchase Price and the Initial Margin Amount;
  - (ii) as of any date after the Purchase Date, the aggregate of the Repurchase Price and the Initial Margin Amount.
- (l) “*Market Value*” means, as at any time on any date:
- (i) with respect to any Securities a valid market price available on the preceding day as specified in Guideline ECB/2014/60 and Chapter 8 of the General Terms and Conditions of the Central Bank; or
  - (ii) with respect to any Securities for which no valid market price is available, the price for such Securities obtained in accordance with the valuation principles specified in Guideline ECB/2014/60 and Chapter 8 of the General Terms and Conditions of the Central Bank.
- (m) “*Price Differential*” means, with respect to any Transaction as of any date, the aggregate amount obtained by daily application of the Pricing Rate for such Transaction to the Purchase Price for such Transaction (on an actual/360 day basis or, as the case may be, on an actual/365 basis, depending on the applicable market practices) during the period commencing on (and including) the Purchase Date for such Transaction and ending on (but excluding) the date of calculation or, if earlier, the Repurchase Date.
- (n) “*Pricing Rate*” means, with respect to any Transaction, the per annum percentage rate for calculation of the Price Differential as specified by the Central Bank.
- (o) “*Purchase Date*” means, with respect to any Transaction, the date (and where appropriate the time on that date) when the sale of Purchased Securities by the Seller to the Buyer is to become effective (which, for the avoidance of doubt, shall be the date the parties have agreed that settlement of a transfer of Purchased Securities shall occur).
- (p) “*Purchase Price*” means, on the Purchase Date, the price at which Purchased Securities are sold or are to be sold by the Seller to the Buyer.
- (q) “*Purchased Securities*” means, with respect to any Transaction, the Securities sold or to be sold by the Seller to the Buyer under that Transaction, together with any New Purchased Securities (as defined in clause 7 of this Agreement) transferred by the Seller to the Buyer under clause 7 of this Agreement in respect of that Transaction.
- (r) “*Repurchase Date*” means, with respect to any Transaction, the date (and where appropriate the time on that date) when the Buyer is to sell Equivalent Securities to the

Seller in relation to that Transaction (which for the avoidance of doubt, shall be the date the parties have agreed that settlement of a transfer of Repurchased Securities shall occur).

(s) “*Repurchase Price*” means, with respect to any Transaction and as of any date, the aggregate of the Purchase Price and the Price Differential.

(t) “*Repurchased Securities*” means, with respect to any Transaction, Equivalent Securities to the Purchased Securities.

(u) “*Spot Rate*” means, where an amount in one currency is to be converted into euro on any date, the spot rate of exchange indicated by the ECB on the previous business day.

### **3. Initiation and Confirmation**

(a) A Transaction may be entered into by the Buyer and the Seller in such manner and through such formalities as may be specified from time to time according to the provisions of Annex 8 to the General Terms and Conditions of the Central Bank, which formalities shall include the delivery by both Buyer and Seller of a written (including by electronic means) confirmation of the Transaction (“Confirmations”) in the form and manner specified hereafter (clause 13).

Confirmations relating to a Transaction shall, together with this Agreement, constitute evidence of the terms agreed between Buyer and Seller for that Transaction, unless objection is made promptly with respect to a Confirmation after receipt thereof. In the event of any conflict between the terms of the Confirmations and this Agreement, the Confirmations shall prevail in respect of that Transaction only.

(b) The Seller shall transfer the Purchased Securities to the Buyer against the payment of the Purchase Price by the Buyer at the time and date and in the manner prescribed by the Confirmations and the terms of this Agreement and so that settlement of such transfer shall be achieved at the Purchase Date. As of the Purchase Date, the Adjusted Market Value of the Purchased Securities must be at least equal to the Margined Amount.

(c) On the Repurchase Date, in accordance with the Confirmation and the terms of this Agreement, the Buyer shall transfer Repurchased Securities to the Seller against the payment of the Repurchase Price by the Seller to the Buyer (less any amount which, pursuant to clause 5, shall then be payable by the Buyer to the Seller and which, at the Repurchase Date, remains unpaid), except otherwise agreed between the parties.

(d) The Buyer may, with respect to any Transaction and on a case by case basis, impose on the Seller the use of the pooling system as specified in Chapter 7 of the General Terms and Conditions of the Central Bank.



#### **4. Risk Control.**

(a) If the Market Value of the Purchased Securities subject to any Transaction in which the Central Bank is acting as the Buyer is less than the Margined Amount for such Transaction (the difference being a “Margin Deficit”), then the Buyer may on the valuation date, by giving notice to the Seller, require the Seller to transfer money (“Cash Margin”) or, at the Seller’s option, to transfer Equivalent Securities to the Buyer (“Margin Securities”) so that the aggregate of the Market Value of the Purchased Securities, and any Margin Securities and/or Cash Margin so transferred, shall thereupon equal or exceed the Margined Amount. The remuneration of the Cash Margin account shall take place in accordance with Article 2.2.4 of Annex 8 to the General Terms and Conditions of the Central Bank.

(b) If the Market Value of the Purchased Securities subject to any Transaction in which the Central Bank is acting as the Buyer exceeds the Margined Amount for such Transaction (the difference being a “Margin Excess”), then the Buyer may on the valuation date, transfer Equivalent Securities and/or Cash Margin to the Seller so that the Market Value of the Purchased Securities will thereupon not be less than the Margined Amount.

(c) For the purposes of the calculations set out in (a) and (b) above, in order to determine, respectively, whether there is a Margin Deficit or a Margin Excess, the Market Value of Purchased Securities subject to a Transaction shall be aggregated with the Market Value of any Margin Securities previously transferred in respect of such Transaction.

(d) For the purposes of the calculations set out in (a) and (b) above, all sums not denominated in euro shall be converted into euro on the relevant date at the Spot Rate.

(e) Procedures, particularly as to timing for the delivery and return of Margin Securities are as set out in Chapter 7 of the General Terms and Conditions of the Central Bank.

(f) Even if a Margin Deficit or a Margin Excess arises, the Central Bank may decide only to exercise its rights under (a) above where any such Margin Deficit exceeds a level determined by the Central Bank and the Central Bank shall in such case only be subject to its obligation under (b) above if the Margin Excess exceeds such a level.

#### **5. Income Payments**

(a) Where the term of a Transaction extends over an Income Payment Date in respect of any Securities subject to such Transaction, the Buyer shall credit to the account of the Seller an amount equal to the Income (any conversion necessary being made at the Spot Rate)

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and shall account to the Seller for such amount on that Income Payment Date or on the next valuation date plus interest thereon calculated at the Pricing Rate for the relevant Transaction.

(b) Where Margin Securities are transferred from the Seller to the Buyer and an Income Payment Date in respect of such Securities occurs before Equivalent Margin Securities are transferred by the Buyer to the Seller, the Buyer shall credit to the account of the Seller an amount equal to the Income (any conversion necessary being made at the Spot Rate) and shall account to the Seller for such amount on that Income Payment Date or on the next valuation date plus interest thereon calculated at the Pricing Rate of the most recently entered into Transaction as at that date;

and, for the avoidance of doubt, references in this clause to the amount of any Income shall be to an amount paid without any withholding or deduction for or on account of taxes or duties notwithstanding that a payment of such Income made in certain circumstances may be subject to such a withholding or deduction.

(c) If, under (a) and (b) above, the credit to the account of the Seller of an amount equal to the Income shall have as a result that the Adjusted Market Value of the Purchased Securities subject to any Transaction in which the Central Bank is acting as the Buyer is less than the Margined Amount (under-collateralisation), then such payment is not due by the Buyer.

## 6. **Payment and Transfer**

(a) (i) All money paid under the terms of this Agreement shall be in immediately available funds and

(ii) all money payable by one party to the other in respect of any Transaction shall be paid gross and without withholding or deduction in respect of any taxes or duties of whatsoever nature, unless such withholding or deduction is required by law, in which case, unless otherwise agreed, the payer shall pay such additional amounts as shall result in the payee receiving the amount which it would have received had no such taxes or duties been withheld or deducted.

(b) All Securities to be transferred under the terms of this Agreement shall be in suitable form for transfer and (depending upon the means by which transfer of such Securities is to be effected) shall be transferred through one of the securities settlement systems as specified in Chapter 7 of the General Terms and Conditions of the Central Bank.

(c) In respect of any Transaction, the Central Bank shall only become subject to an obligation (i) to pay the Purchase Price or the Repurchase Price to the Counterparty when the relevant transfer of, respectively, Purchased Securities or Repurchased Securities, has been completed in accordance with the rules and/or law applicable to the method used for such transfer in accordance with (b) above, or (ii) to transfer Purchased Securities or Repurchased Securities to the Counterparty when it is satisfied that the relevant transfer of, respectively, the Purchase Price or the Repurchase Price has been completed in accordance with the rules and/or law applicable to the method used for such transfer.

(d) The parties shall take all steps necessary to procure that all right, title and interest in any Purchased Securities, any Repurchased Securities, any Margin Securities and any Equivalent Margin Securities to be transferred under the terms of this Agreement shall pass to the party to which transfer is being made free from all liens, claims, charges and encumbrances.

(e) Time shall be of the essence of this Agreement.

## 7. **Substitution**

Subject to the prior approval by the Buyer, the Seller shall be entitled to substitute the Purchased Securities of any Transaction, in whole or in part, by other Purchased Securities.

Such substitution may, in exceptional circumstances, be authorized by the Central Bank, subject to the payment of a handling fee and to the provisions hereafter:

(a) A Transaction may be modified at any time between the Purchase Date and the Repurchase Date, by the transfer by the Buyer to the Seller of Equivalent Securities to the Purchased Securities, or Equivalent Securities to a proportion of the Purchased Securities, in exchange for the transfer by the Seller to the Buyer of other Securities (“New Purchased Securities”). For the purposes of this clause, Purchased Securities shall include Margin Securities previously transferred in respect of the relevant Transaction.

(b) Subject to (c) below, such modifications shall require the prior agreement of both parties and determination of whether all or a proportion of Securities subject to a Transaction shall be substituted and the amount and description of New Purchased Securities shall be as agreed between the parties.

(c) Irrespective of the terms of (b) above where, during the lifetime of any Transaction, Purchased Securities in relation to such Transaction cease to be Securities as defined herein, the Central Bank shall have the right to require modification in accordance with (a) above so that the New Purchased Securities shall be Securities.

(d) Any substitution in accordance with (a) or (b) above shall be effected in compliance with clause 6(b) and (d) hereof and the Central Bank shall only become subject to an obligation to transfer Securities to the Counterparty in relation to such a substitution procedure when it is satisfied that the relevant transfer of Securities to it has been completed in accordance with the rules and/or law applicable to the method used for such transfer.

(e) Subject to (d) above, transfers of Securities required to be effected pursuant to a substitution in accordance with (a) or (b) above shall be made by the relevant party within such period of time as is appropriate in the context of the relevant Securities.

(f) A Transaction which is subject to the substitution procedure described in (a) above shall thereafter continue in effect as though the Purchased Securities under that Transaction consisted of or included the New Purchased Securities instead of those Securities which were classed as Purchased Securities prior to such substitution and in all other respects the terms of this Agreement shall continue to apply to that Transaction and the Transaction shall otherwise continue on the same terms and shall constitute in all other respects a continuation of the same obligation as prior to such substitution.

## **8. Representation**

Each party represents and warrants to the other that at the time of transfer to the other party of any Securities it will have the full and unqualified right to make such transfer and that upon such transfer of Securities the other party shall receive all right, title and interest in and to those Securities free of any rights or claims of any third party.

## **9. Events of Default**

(a) If any or any combination of the events set out respectively in (i), (ii) or (iii) below, or any event as provided for in the Central Bank's General Terms and Conditions (specifically Clauses 1.13 and 1.14), occur in relation to the Counterparty, an Event of Default shall be considered to have occurred and the provisions in sub-clauses (b) to (g) below shall apply:

- (i) a decision is made by a competent judicial or other authority to implement in relation to the Counterparty a procedure for winding-up of or the appointment of a liquidator or analogous officer over the Counterparty or any other analogous procedure;

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- (ii)
- (aa) a decision is made by a competent judicial or other authority to implement in relation to the Counterparty a reorganisation measure or other analogous procedure intended to safeguard or restore the financial situation of the Counterparty and to avoid the making of a decision of the kind referred to in (i) above;
  - (bb) a declaration by the Counterparty in writing of its inability to pay all or any part of its debts or to meet its obligations arising in relation to this Agreement, or a voluntary general agreement or arrangement entered into by it with its creditors, or the Counterparty is, or is deemed to be, insolvent or is deemed to be unable to pay its debts; or
  - (cc) procedural steps being taken preliminary to a decision being taken under (i) or (ii) (aa) above; or
  - (dd) whilst acting as the Buyer, the Counterparty fails to pay the Purchase Price or, whilst acting as the Seller, the Counterparty fails to deliver Securities, on the applicable Purchase Date; or,
  - (ee) whilst acting as the Seller, the Counterparty fails to pay the Repurchase Price or whilst acting as the Buyer the Counterparty fails to deliver Repurchased Securities on the applicable Repurchase Date; or
  - (ff) the Counterparty fails to comply with clause 4; or
  - (gg) the Counterparty fails to comply with clause 5; or
  - (hh) any representation made by the Counterparty in accordance with clause 9 above or which is implied to have been made by the Counterparty under applicable provisions of law is incorrect or untrue; or
- (ii) the Counterparty's authorisation to conduct activities under either Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)<sup>1</sup> as implemented or Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the

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<sup>1</sup> OJ L 177, 30.6.2006, p. 1

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Council and repealing Council Directive 93/22/EEC<sup>2</sup> as implemented, is suspended or revoked; or

- (jj) the Counterparty is suspended or expelled from membership of any securities exchange or association or is suspended or expelled from membership of any payment system or arrangement through which payments under this Agreement are made; or
- (kk) measures such as are referred to in Articles 29-37 of the Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) are taken against the Counterparty; or
- (ll) an event of default occurs in relation to the Counterparty in any agreement with the ECB, the Central Bank or any other central bank of the European System of Central Banks arising out of any agreement.
- (mm) the Counterparty becomes subject to the freezing of funds and/or other measures imposed by the Community restricting the Counterparty's ability to use its funds; or
- (nn) the Counterparty becomes subject to the freezing of funds and/or other measures imposed by a Member State under Article 60(2) of the Treaty restricting the Counterparty's ability to use its funds; or
- (oo) all or a substantial part of the Counterparty's assets are subject to a freezing order, attachment, seizure or any other procedure that is intended to protect the public interest or the rights of the Counterparty's creditors; or
- (pp) all or a substantial part of the Counterparty's assets are assigned to another entity; or
- (qq) any other impending or existing event the occurrence of which may threaten the performance by the Counterparty of its obligations under the arrangement it entered into for the purpose of effecting monetary policy operations or any other rules applying to the relationship between the Counterparty and any of the central banks of the Eurosystem;

and the Central Bank serves a Default Notice on the Counterparty.

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<sup>2</sup> OJ L 145, 30.4.2004, p. 1.

- (iii) the Counterparty fails to perform any other of its obligations hereunder and (if capable of remedy) does not remedy such failure within 30 days - after notice is given by the Central Bank requiring it to do so, and the Central Bank subsequently serves a Default Notice on the Counterparty.
- (b) The Repurchase Date for each Transaction hereunder shall be deemed immediately to occur and, subject to the following provisions, any Equivalent Margin Securities shall be immediately deliverable (and so that performance of respective obligations of the parties with respect to the delivery of Securities, the payment of the Repurchase Price for any Repurchased Securities shall be effected only in accordance with the provision of (c) below).
- (c) (i) The Default Market Values of the Repurchased Securities and any Equivalent Margin Securities to be transferred, and the Repurchase Price to be paid by each party shall be established by the Central Bank for all Transactions as at the Repurchase Date; and
- (ii) on the basis of the sums so established, a calculation shall be made by the Central Bank (as at the Repurchase Date) of what is due from each party to the other under this Agreement (on the basis that each party's claim against the other in respect of the transfer to it of Repurchased Securities or Equivalent Margin Securities under this Agreement equals the Default Market Value thereof) and the sums due from one party shall be set off against the sums due to the other and only the net balance shall be payable by the party having the claim thereby valued at the lower amount and such net balance shall be due and payable on the next following Business Day. For the purposes of this calculation, any sums not denominated in euro shall be converted into euro on the relevant date at the Spot Rate then prevailing.
- (d) Following the occurrence of an Event of Default, the Counterparty shall be liable to the Central Bank for the amount of all reasonable legal and other professional expenses incurred by the Central Bank in connection with or as a consequence of such Event of Default, together with interest thereon at EONIA or the marginal lending rate, whichever is the higher, plus 2% or, in the case of an expense attributable to a particular Transaction, at the Pricing Rate for the relevant Transaction if that Pricing Rate is greater than EONIA or the marginal lending rate whichever is the higher, plus 2%.
- (e) The Counterparty shall be obliged to notify the Central Bank of the occurrence of any Event of Default or any of the facts set out in (a) (ii) (aa) to (kk) above as soon as it is aware of such occurrence.

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(f) Following the occurrence of an Event of Default the Central Bank shall have, in addition to its rights hereunder, any rights otherwise available to it under any other agreement or applicable law and, in particular, irrespective of the need to make the calculations in (c) (ii) above and notwithstanding the terms of (b) above;

- (i) in relation to Transactions where the Central Bank is the Buyer, it shall decide whether, on the Repurchase Date, it will sell the Purchased Securities, Margin Securities and/or New Purchased Securities or whether it will retain them; and,
- (ii) in relation to Transactions where the Central Bank is the Seller, it may on or about the Repurchase Date purchase Repurchased Securities elect to treat the actual purchase price thereof, increased by any reasonable costs, fees and expenses incurred in connection therewith, as the Default Market Value for such Repurchased Securities.

(g) Following the occurrence of the circumstances described in sub-clause (a) (ii) (ee) above in relation to a Transaction, the Central Bank shall be entitled, rather than serving a Default Notice, to set a new Repurchase Date for such Transaction and may also set a new Pricing Rate, which new Pricing Rate shall apply to that Transaction from the original Repurchase Date to the new Repurchase Date.

#### **10. Failure on Initiation of Transaction**

(a) If the Seller fails to deliver Purchased Securities to the Buyer on the applicable Purchase Date, the Buyer may:

- (i) if it has paid the Purchase Price to the Seller, require the Seller immediately to repay such sum;
- (ii) at any time while such failure continues, terminate the Transaction by giving notice to the Seller. On such termination the obligations of the Seller and the Buyer with respect to delivery of Purchased Securities and Repurchased Securities shall terminate and the Seller shall pay to the Buyer an amount equal to the excess of the Repurchase Price over the Purchase Price as of the date of such termination.

(b) If the Buyer fails to transfer the Purchase Price to the Seller on the applicable Purchase Date, the Seller may:

- (i) if it has delivered the Purchased Securities to the Buyer, require the Buyer immediately to re-transfer the Purchased Securities;



(ii) at any time while such failure continues, terminate the Transaction by giving notice to the Buyer. On such termination the obligations of the Seller and the Buyer with respect to transfer of the Purchase Price and the Repurchase Price shall terminate.

(c) For the avoidance of doubt, the provisions in clause 11(a) and (b) above do not impact upon the acknowledgement set out in clause 1(c) above and the exercise of the rights in clause 10(a) or (b) in relation to a Transaction shall have no impact upon any other Transaction.

(d) Rights under clauses 9(f), 10(a) and (b) above are independent of rights to serve a Default Notice under clause 9(a)(ii)(dd) and (ee).

(e) The Central Bank shall have the right to claim against the Counterparty for any damage which it suffers as a result of the Counterparty failing to deliver Purchased Securities or to pay the Purchase Price in respect of a Transaction on the applicable Purchase Date.

## **11. Consequential Damage**

Other than as stated in 10(e) above, neither party may claim any sum by way of consequential damage in the event of a failure by the other party to perform any of its obligations under this Agreement.

## **12. Interest**

To the extent permitted by applicable law, if any sum of money payable hereunder or under any Transaction is not paid when due, interest shall accrue on such unpaid sum as an additional debt at the marginal lending rate plus 2% on a 360 days basis, for the actual number of days during the period from and including the date on which payment was due to, but excluding, the date of actual payment.

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### 13. Notices and Other Communications

(a) Any notice including confirmations or other communication to be given under this Agreement -

- (i) shall be made through SWIFT;
- (ii) may, in exceptional circumstances, be given in writing, by facsimile transmission, certified or registered mail, or electronic messaging system;
- (iii) shall be sent to the party to whom it is to be given at the address or facsimile number, or in accordance with the electronic messaging details, according to the provisions of General Terms and Conditions of the Central Bank.

(b) Any such notice or other communication shall be effective -

- (i) if in writing and delivered in person or by courier, at the time when it is delivered;
- (ii) if sent by facsimile transmission, at the time when the transmission is received by responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
- (iii) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), at the time when that mail is delivered or its delivery is attempted;
- (iv) if sent by electronic messaging system, at the time that electronic message is received;

except that any notice or communication which is received, or delivery of which is attempted, after close of business on the date of receipt or attempted delivery or on a day which is not a day on which the Central Bank is open shall be treated as having been given at the opening of the Central Bank on the next following day which is such a day.

(c) Either party may by notice to the other change the address, or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

(d) The parties agree that each of them may electronically record all telephone conversations between them which relate to the operation of this Agreement.

#### **14. Entire Agreement; Severability**

This Agreement shall supersede any existing agreements between the parties containing general terms and conditions for Transactions. Each provision and agreement herein shall be treated as separate from any other provision or agreement herein and shall be enforceable notwithstanding the unenforceability of any such other provision or agreement.

#### **15. Non-assignability**

The rights and obligations of the parties under this Agreement and under any Transaction shall not be assigned, charged or otherwise dealt with by the Counterparty without the prior written consent of the Central Bank.

#### **16. Duration/Termination**

- (a) This Agreement shall continue in force and effect for an indefinite period.
- (b) Either party may terminate this Agreement, subject to a three months' prior written notice to the other party ("Notice of Termination"). A Notice of Termination shall not affect any Transaction which has been entered into and is outstanding prior to its delivery and the terms of this Agreement shall continue to apply to each such Transaction until all of the obligations of each party to the other in respect thereof under this Agreement have been performed. No new Transactions shall be entered into under this Agreement following delivery of a Notice of Termination.

#### **17. Immunity**

There shall be no waiver by the Central Bank of immunity from suit or the jurisdiction of any court, or any relief against the Central Bank by the way of injunction, order for specific performance or for recovery of any property of the Central Bank or attachment of its assets (whether before or after judgement), in every case to the fullest extent permitted by applicable law.

#### **18. Counterparty of the Central Bank**

- (a) As regards the mobilisation of non-euro denominated collateral in contingencies, the Central Bank is only contracting (including the provision of collateral) directly with, and the

collateral provided is owned by, the eligible counterparties to which the Central Bank is extending liquidity, and not – under any circumstances – the parent company, subsidiary, affiliate or branch established outside the euro area e.g. in Japan, Sweden, Switzerland, the United Kingdom or the USA, of the eligible counterparty.

(b) A parent company, subsidiary, affiliate or branch of a counterparty located outside the euro area may not transfer securities to an account of the Central Bank at the relevant custodian. In the event that such parent company, subsidiary, affiliate or branch inadvertently transfers such securities, it shall be deemed acting solely as an agent for and on behalf of the Counterparty.

#### **19. Taxation**

The Counterparty shall comply with any tax reporting obligations which may arise vis-à-vis the Central Bank.

#### **20. Governing Law and Jurisdiction**

(a) In accordance with clauses 1.3 and 1.5 of the General Terms and Conditions of the Central Bank, this Agreement and each Transaction shall be governed by and construed in accordance with the laws of Luxembourg.

(b) For the benefit of the Central Bank, the Counterparty hereby irrevocably submits for all purposes of or in connection with this Agreement and each Transaction to the jurisdiction of the Courts of the City of Luxembourg.

(c) Nothing in this paragraph shall limit the right of the Central Bank to take proceedings in the courts of any other country of competent jurisdiction.

For the Counterparty:

Name \_\_\_\_\_

Name \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

For the Central Bank :

Name \_\_\_\_\_

Name \_\_\_\_\_

Signature \_\_\_\_\_

Signature \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_