

## **Special Terms and Conditions applying to the use of non-marketable assets as collateral in business between [insert name of HCB] and its Counterparty when Deutsche Bundesbank is acting as correspondent central bank**

### **1. Scope**

(1) A Counterparty (hereinafter referred to as the “**Counterparty**”) may use credit claims governed by the law of the Federal Republic of Germany (hereinafter referred to as “**Assets**”) to collateralise Eurosystem credit operations on a cross-border basis, i.e. a Counterparty may obtain funds from their respective home central bank (hereinafter referred to as the “**HCB**”) – the national central bank of the Member State whose currency is the euro where they are domiciled or established– by making use of Assets. The national central bank of the country whose law governs the Asset acts as a correspondent central bank (hereinafter referred to as “**CCB**” or “**Deutsche Bundesbank**”). The registration, mobilisation and managing of collateral is processed via the Eurosystem Collateral Management System (hereinafter referred to as “**ECMS**”).

(2) These terms and conditions apply where Deutsche Bundesbank acts as CCB for the mobilisation of Assets mobilised by a Counterparty of the HCB. Insofar as Deutsche Bundesbank is mentioned in these Special Terms and Conditions, it is acting in the name and for the account of the HCB and is thus instructed and authorised to exercise the rights and discharge the obligations of the HCB arising from the following Special Terms and Conditions.

(3) A Counterparty participating in ECMS seeking to mobilise an Asset shall comply with the following provisions, which complement [the general terms and conditions / general contractual arrangements]<sup>1</sup> applicable between the Counterparty and the HCB and, thus, do not establish any contractual relationship with Deutsche Bundesbank. Unless otherwise

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<sup>1</sup> To be updated as applicable.

stipulated in these Special Terms and Conditions, the [general terms and conditions of] / [general contractual arrangements between the Counterparty and]<sup>2</sup> the HCB shall apply.

## 2. Eligible Assets

(1) Assets shall fulfil any requirement applicable to credit claims governed by the laws of the HCB as set out in the [the general terms and conditions / general contractual arrangements] applicable between the Counterparty and the HCB. At the time of mobilisation, an Asset's outstanding amount shall be at least € 500,000. Assets must belong to one of the loan types listed in Annex 2.

*[If the HCB opts to mirror Deutsche Bundesbank's solution of mitigating set-off risk, the following clause could be used:<sup>3</sup>*

*(2) The debtor's right of set-off against the lender and any legal successors (for instance assignees of the Asset) must be excluded in accordance with German law in the loan documentation.]*

## 3. Collateralisation arrangement

(1) The HCB accepts Assets by way of security assignment (*Sicherungsabtretung*) under German law.

(2) The Counterparty shall submit to the HCB the General Declaration of Assignment prior to the first mobilisation via CCBM on a form provided by Deutsche Bundesbank (see Annex 1). In said declaration, the Counterparty represents and warrants that the Assets registered in ECMS as set out in no. 5 below exist, that it may freely dispose of them and assign them to the HCB and that they are neither encumbered by rights of, nor assigned to a third party.

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<sup>2</sup> To be updated as applicable.

<sup>3</sup> If not, please delete number (1) and clause (2).

#### **4. Conditions of registration and mobilisation**

- (1) Prior to the initial mobilisation of Assets, the Counterparty shall
  - (a) be duly registered as ECMS participant ;
  - (b) inform its HCB of its intention to mobilise Assets; and
  - (c) provide the CCB documentation to its HCB (including, in particular, the information on the credit assessment source used by the Counterparty in accordance with the Eurosystem credit assessment framework (ECAAF), a list of authorized signatories, acceptance by the Counterparty of these Special Terms and Conditions and the duly signed General Declaration of Assignment).
  
- (2) The HCB shall only qualify the Counterparty to mobilise Assets using the cross-border channel (i.e. activate “Cross Border” as mobilisation type in ECMS) if (i) the Counterparty has successfully executed the mandatory ECMS customer tests prior to the initial participation, (ii) the HCB has confirmed completeness of the CCBM documentation to the CCB and (iii) there is no mobilisation stop pending in relation to the Counterparty and its HCB.

#### **5. Registration of Assets**

- (1) Assets must be registered with the HCB via ECMS prior to mobilisation. A Counterparty must submit the registration instruction to the HCB via ECMS. The registration instruction is processed by the HCB. The Counterparty can submit a single file including multiple registration instructions and Assets with different governing laws.
  
- (2) The Counterparty shall provide the minimum data elements as contained in Annex 2 as part of the Asset registration process.
  
- (3) A standardised Eurosystem credit claim identifier will be assigned by the HCB via ECMS to each Asset successfully registered. Once the Eurosystem identifier was assigned, it must be quoted in all future instructions submitted by the Counterparty regarding this Asset (in particular mobilisation and demobilisation of the Asset, update of the Asset).

(4) As soon as an Asset was validly registered, the Counterparty receives a confirmation by the HCB via ECMS. If no confirmation has been received by the Counterparty via ECMS, the Counterparty can check the status of its registration according to the processing report in ECMS.

## **6. Mobilisation of Assets and eligibility checks**

(1) Once registered, an Asset may be mobilised as collateral if the automated eligibility check has been completed as part of the mobilisation process. The Counterparty must submit instructions to mobilise Assets to the HCB via ECMS and can submit a registration and mobilisation request within the same file. The HCB is processing the mobilisation via ECMS automatically unless the mobilisation instruction is made available to Deutsche Bundesbank for further processing in accordance with No. 6 (3).

(2) The submission of the mobilisation instruction by the Counterparty to the HCB via ECMS shall constitute a binding offer by the Counterparty to assign these Assets to the HCB. The assignment to the HCB takes effect upon the intended settlement date as specified by the Counterparty. The Counterparty waives the right to receive an acceptance acknowledgement. A mobilisation instruction can be submitted during the operating hours of ECMS (i.e. Monday to Friday as defined in the TARGET calendar (in principal: 7:00CET to 18:00 CET)), while the A2A user cut-off time for registration and mobilisation of Asset files is 16:00 CET and the U2A user cut-off time for registration and mobilisation of Asset files is 17:45 CET). If – irrespective of an instruction by the Counterparty being legally binding and effective - processing on the same day by the CCB is not carried out, the processing will take place on the next business day.

(3) The Counterparty is responsible for assessing the eligibility of an Asset prior to its mobilisation. In the event that the eligibility requirements are not met, the mobilisation instruction is rejected by the CCB via ECMS.

## **7. Changes affecting mobilised Assets**

The Counterparty must report any change(s) in data concerning mobilised Assets (in particular, redemptions, partial redemptions, maturity and, if applicable, the creditworthiness, credit assessments but also any defaults on the part of obligors of assigned Assets) to ECMS without undue delay, i.e. at the latest within the business day following the change becoming effective.

## **8. Management of Loan Collateral**

(1) The Counterparty must transfer the collateral posted for the Assets themselves (hereinafter referred to as “**Loan Collateral**”) or, respectively, the acquired rights and expectancies on the Loan Collateral to the HCB if the HCB or Deutsche Bundesbank acting on behalf of the HCB wishes to collect the Assets. This also includes Loan Collateral which has subsequently replaced the Loan Collateral initially posted or Loan Collateral which is actually not posted until a later point in time.

(2) Loan Collateral may be released or substituted at any time. The Counterparty may not dispose of the Loan Collateral in favour of a third party which is not the Loan Collateral provider unless the HCB has previously released the Assets.

## **9. Demobilisation of Assets**

The Counterparty must submit instructions to demobilise Assets to ECMS unless the Asset is matured in which case no demobilisation instruction is required.

## **10. Further provisions on promissory notes (“*Schuldscheindarlehen*”)**

(1) If the Asset constitutes a *Schuldscheindarlehen*, the following additional provisions shall apply.

(2) The Counterparty shall register the Asset using the respective loan type in accordance with Annex 2.

(3) The HCB shall automatically acquire title to the promissory note upon the assignment taking effect (section 952 of the German Civil Code – Bürgerliches Gesetzbuch). This shall also apply if a promissory note is issued subsequently. The Counterparty must store the promissory note separately, manage it for the HCB and, upon request, inform the HCB of its exact whereabouts. The Counterparty must surrender the promissory note upon the HCB's request. If the promissory note is not in the Counterparty's possession, the Counterparty must inform the HCB accordingly and help the HCB to gain possession of the promissory note as soon as it wishes to assert its claim for the surrender thereof. If the Counterparty's creditors try to attach the promissory note, the Counterparty shall indicate immediately that the promissory note is the property of the HCB, and shall inform the HCB accordingly without delay. The HCB can check for compliance with the aforementioned requirements as part of the collateral verification procedures which it must perform.

## **11. Realisation**

(1) If the HCB's claims secured by means of the Assets fall due pursuant to its legal relationship with the Counterparty and the applicable law, and if the Counterparty fails to fulfil its payment obligations, the HCB shall be entitled to realise the Assets furnished as collateral to the extent necessary, either collectively or individually as it chooses (hereinafter referred to "**Realisation Event**"). The Counterparty is authorised to continue to collect the interest and principal payments due on Assets until Deutsche Bundesbank or the HCB notify the debtor of the Assets of the credit claim's assignment.

(2) The HCB and Deutsche Bundesbank are entitled to notify the debtor of the assignment at any time and will do so without delay upon the occurrence of a Realisation Event.

(3) Upon the occurrence of the Realisation Event, the HCB shall be entitled either to sell the Asset or, if the Asset falls due, to collect any payments due under the Asset from the debtor(s) for the account and at the risk and expense of the Counterparty so that the HCB can extract payment for itself from the proceeds.

(4) In the event of Asset realisation, the HCB shall credit any surplus remaining after settlement of the principal, interest, expenses and costs to the Counterparty; no interest shall be paid on this surplus.

## **12. Concluding provisions**

(1) Notwithstanding the [general terms and conditions / general contractual arrangements] of the HCB, the rights and obligations of the HCB and the Counterparties regarding the provision, administration and realisation of the Assets as contained in these Special Terms and Conditions shall be governed by German law. In this respect, the HCB shall be liable – with the exclusion of consequential damages – only for the culpable violation of a material contractual obligation. With regard to the violation of any other obligations, the HCB shall be liable vis-à-vis the Counterparty only in the event of gross negligence or wilful intent. The aforementioned restrictions shall not apply with respect to liability for damages owing to injury to life, body or health.

(2) If a provision under these Special Terms and Conditions should be invalid, this shall not affect the validity of all the other provisions. The invalid provision shall be replaced by a provision which the parties would have agreed to if they had been aware of the invalidity of the original provision.

## **Closing remarks**

*If the Counterparty wishes to contact Deutsche Bundesbank, its point of access shall be:*

*Deutsche Bundesbank  
Zentralbereich Märkte  
Kreditforderungsmanagement*

***For letters:*** Postfach 11 12 32, 60047 Frankfurt

***For registered mail and parcels:*** Taunusanlage 5,  
60329 Frankfurt am Main

*E-Mail:* [creditclaims-ecms@bundesbank.de](mailto:creditclaims-ecms@bundesbank.de)

*Telephone:* +49 69 2388 1470

*Telefax:* +49 69 2388 1460

## Annex 1: General Declaration of Assignment

MFI-ID \_\_\_\_\_  
 HCB's counterparty \_\_\_\_\_  
 Address \_\_\_\_\_  
 \_\_\_\_\_

Deutsche Bundesbank  
 Zentralbereich Märkte  
 Kreditforderungsmanagement  
 in Vertretung der Please choose HCB:  
 Postfach 11 12 32  
 D-60047 Frankfurt

### General declaration of assignment of credit claims to a home central bank (HCB) with the Deutsche Bundesbank as correspondent central bank (CCB)

By sending an instruction to mobilise credit claims using the correspondent central banking model (CCBM) channel of the Eurosystem Collateral Management System (ECMS) we assign these credit claims under German law to our home central bank (HCB), the [name of HCB] as collateral and request the Deutsche Bundesbank in its function as correspondent central bank (CCB) representing the HCB when receiving them to make them available in the name and on behalf of the HCB as collateral on a cross-border level as part of the CCBM. The assignment takes effect upon entering the mobilisation instruction in relation to the claim registered in ECMS on the intended settlement date as specified in the mobilisation instruction. We waive the right to receive an acceptance acknowledgement.

We warrant and represent that the credit claims assigned as collateral exist, that we may freely assign them to the HCB specified above and that they are neither encumbered by third-party rights nor assigned to a third party.

We shall inform the that HCB of any changes to an assigned credit claim (in particular, changes to the amount as a result of redemption or a partial redemption and changes to maturity, the method of paying interest or the debtor's creditworthiness) without delay by updating the relevant information in ECMS.

Place, date

Name of the company or company stamp and signature(s) of the HCB's counterparty

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**Annex 2: List of permissible loan types**

<b>Loan Type</b>	<b>Identifier</b>
Regular Loan	
Single Debtor Regular Loan	SREG
Multi-Debtor Regular Loan	MREG
Syndicated Loan	
Single Debtor Syndicated Loan	SSYN
Multi-Debtor Syndicated Loan	MSYN
Drawn Credit Line	
Single Debtor Drawn Credit Line	SDCL
Multi-Debtor Drawn Credit Line	MDCL
Ordinary Promissory Note	
Single Debtor Ordinary Promissory Note	SOPN
Multi-Debtor Ordinary Promissory Note	MOPN
Syndicated Promissory Note	
Single Debtor Syndicated Promissory Note	SSPN
Multi-Debtor Syndicated Promissory Note	MSPN
Other	
Other	OTHE

### Annex 3: Data elements for the Asset registration process

No.	Check	Description
Instruction information		
1	Operation Type	Identifies the action the Counterparty wants to undertake, in this case, to register a credit claim
2	Intended Settlement Date	Date on which the credit claim should be registered
3	Credit Claim Reference	Reference assigned to the credit claim by the Counterparty
4	Instruction Reference	Reference assigned to the instruction by the Counterparty
Creditor information		
5	Creditor RIAD Code	RIAD code of the creditor (if different from the Counterparty)
Debtor information		
6	Debtor Reference	Identifier of the debtor (including the type of code used to identify the debtor)
7	Debtor Name	Name of the debtor
Guarantee information (if a guarantor is used)		
8	Guarantor Reference	Identifier of the guarantor (including the type of code used to identify the guarantor)
9	Guarantor Name	Name of the guarantor
10	Guarantee Reference	Reference assigned to the guarantee by the Counterparty
Credit claim information		
11	Credit Claim Contract Number	Contract number of the credit claim as known by the debtor
12	Loan Type	Type of loan (e.g. regular loan, syndicated loan, drawn credit line)

13	Subordination Indicator	Identifies if the rights to the principal and/or interest of the credit claim are subordinated
14	Origination Date	Date on which the loan was extended to the debtor
15	Maturity Date	Date on which the loan is due to be repaid
16	Outstanding Amount	Outstanding amount of the loan
17	Currency	Currency in which the loan is denominated
18	Interest Rate Type	Indicates if the interest rate of the loan is fixed or variable
19	Resetting Period More Than One Year	Indicates if the interest rate resetting period is greater than 12 months (relevant if the interest rate is variable)
20	Changing Interest Rate Indicator (O)	Indicates if the credit claim includes a condition whereby the interest rate type can be changed from variable into fixed or vice versa
21	Changing Interest Rate Indicator Date (O)	Date on which the interest rate type will change (relevant if the changing interest rate indicator is true)
22	Negative Cash Flow	Indicates if the interest rate may result in a negative cash flow i.e. a transfer of proceeds from the creditor to the debtor
23	Agent Bank	RIAD code identifying the agent bank (relevant for syndicated loans)
24	Reference Index	Identification of the reference index used e.g. €STR (relevant if the interest rate is variable)
25	Cap Indicator	Indicates if the interest rate is capped (relevant if the interest rate is variable)

26	Governing Law Country Code	ISO country code of the governing law of the credit claim
27	Set Off Risk Indicator	Identifies if there is a set-off risk
AnaCredit information (required if the credit claim is in the scope of AnaCredit reporting obligations)		
28	Observed Agent Identifier	Counterparty identifier for the observed agent (as reported to AnaCredit)
29	Contract Identifier	Identifier applied by the reporting agent to uniquely identify each contract (as reported to AnaCredit)
30	Instrument Identifier	Identifier applied by the reporting agent to uniquely identify each instrument under a single contract (as reported to AnaCredit)
Rating information		
31	Operation Type	Identifies the action the Counterparty wants to undertake, in this case, to register a rating
32	Instruction Reference	Reference assigned to the instruction by the Counterparty
33	Rating Type	Indicates the type of rating being registered (i.e. IRB)
34	Obligor Code Type	Type of code used to identify the obligor
35	Obligor Reference	Identifier of the obligor
36	Obligor Name	Name of the obligor
37	Credit Assessment System Code	Identifier of the provider of the rating chosen by the Counterparty
38	Default Probability	Probability of default given by the IRB (relevant if the rating source = IRB)
39	Rating Date	Date of the rating (relevant if the rating source = IRB)
40	Rating Validity Date	First date on which the rating is valid (relevant if the rating source = IRB)