



[DRAFT SUBJECT TO IECA BOARD APPROVAL]

**BILATERAL AMENDMENT TO ACKNOWLEDGE:
UK BAIL-IN AND STAY PROVISIONS**

THIS BILATERAL AMENDMENT TO ACKNOWLEDGE: UK BAIL-IN AND STAY PROVISIONS is dated as of _____, 201_ (“Bilateral UK Bail-in and Stay Provision Amendment”), between _____ (“Party A”) and _____ (“Party B”). Party A is the “regulated entity” hereunder.

WHEREAS, the parties desire to amend [that certain _____ [users to insert name of agreement to be covered; most likely an ISDA Master Agreement, or a master agreement covering physical commodity transactions, between the parties] dated _____] (the “Covered Agreement”);

NOW, THEREFORE, in consideration of the premises and the mutual covenants of the parties, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree and bind themselves as follows:

☐ Section 1. Bail-in Amendment.¹ The Covered Agreement is hereby amended to add the following terms:

[x]² “Contractual Recognition of UK Bail-In.

- (1) Party B acknowledges and accepts that BRRD Liabilities arising under the Covered Agreement (other than Excluded Liabilities) may be subject to the exercise of the UK Bail-in Power by the UK Resolution Authority and acknowledges, accepts and agrees to be bound by any Bail-in Action and the effects thereof (including any variation, modification and/or amendment to the terms of the Covered Agreement as may be necessary to give effect

¹ If Section 1 is not selected, then the UK Bail-In terms of this amendment shall not apply.

² If this Bilateral UK Bail-in and Stay Provision Amendment is being applied to a specific contract in the first recital clause above, specific contract section references can be included here.

to any such Bail-in Action), which if the Bail-in Termination Amount is payable by Party A to Party B may include, without limitation:

- (i) a reduction, in full or in part, of the Bail-in Termination Amount; and/or
 - (ii) a conversion of all, or a portion of, the Bail-in Termination Amount into shares or other instruments of ownership, in which case Party B acknowledges and accepts that any such shares or other instruments of ownership may be issued to or conferred upon it as a result of the Bail-in Action; and/or
 - (iii) a cancellation of the BRRD Liability.
- (2) Party B acknowledges and accepts that this provision is exhaustive on the matters described herein to the exclusion of any other agreements, arrangements or understandings between the parties relating to the subject matter of the Covered Agreement and that no further notice shall be required between the parties pursuant to the Covered Agreement in order to give effect to the matters described herein.
- (3) The following Definitions shall apply to this Section 1:

“Bail-in Action” means the exercise of the UK Bail-in Power by the UK Resolution Authority in respect of all transactions (or all transactions relating to one or more netting sets, as applicable) under the Covered Agreement.

“Bail-in Termination Amount” means the early termination amount or early termination amounts (howsoever described), together with any accrued but unpaid interest thereon, in respect of all transactions (or all transactions relating to one or more netting sets, as applicable) under the Covered Agreement before any such amount is written down or converted by the UK Resolution Authority.

“BRRD” means Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms as amended from time to time.

“BRRD Liability” / “BRRD Liabilities” means any liability in respect of which the UK Bail-in Powers may be exercised.

“Excluded Liabilities” means liabilities excluded from the scope of the contractual recognition of bail-in requirement pursuant to the UK Regulations.

“UK Bail-in Power” means any write-down or conversion power existing from time to time (including, without limitation, any power to amend or alter the maturity of eligible liabilities of an institution under resolution or amend the amount of interest payable under such eligible liabilities or the date on which interest becomes payable, including by suspending payment for a temporary period) under, and exercised in compliance with, any laws, regulations, rules or requirements (together, the **“UK Regulations”**) in effect in the United Kingdom relating to the transposition of the BRRD as amended from time to time, including but not limited to, the Banking Act 2009 as amended from time to time, and the instruments, rules and standards created thereunder, pursuant to which the obligations of a regulated entity (or other affiliate of a regulated entity) can be reduced (including to zero), cancelled or converted into shares, other securities, or other obligations of such regulated entity or any other person.

A reference to a **“regulated entity”** is to any BRRD Undertaking as such term is defined under the PRA Rulebook promulgated by the United Kingdom Prudential Regulation Authority or to any person falling within IFPRU 11.6 of the FCA Handbook promulgated by the United Kingdom Financial Conduct Authority, both as amended from time to time, which includes, certain credit institutions, investment firms, and certain of their parent or holding companies.

“UK Resolution Authority” means the Bank of England or any other relevant UK resolution authority from time to time.”

☐ Section 2. UK Stay Amendment.³ The Covered Agreement is hereby amended to add the following terms:

[y]⁴ “Contractual Recognition of UK Stay in Resolution

(1) Party B and Party A agree that if a:—

(i) *“crisis prevention measure”*;

(ii) *“crisis management measure”*; or

(iii) *“recognised third-country resolution action”*

is taken in relation to Party A or any *“member”* of the same *“group”* as Party A, Party B shall only be entitled to exercise *“termination rights”* under, or rights to enforce a *“security interest”* in connection with, this Covered

³ If Section 2 is not selected, then the UK Stay terms of this amendment shall not apply.

⁴ If this Bilateral UK Bail-in and Stay Provision Amendment is being applied to a specific contract in the first Whereas clause above, specific contract section references can be included here.

Agreement, to the extent that it would be entitled to do so under the “*Special Resolution Regime*” if this Covered Agreement were governed by the laws of any part of the “*United Kingdom*.”

- (2) Words and phrases in quotation marks and italics in this Section 2 have the meaning given to them in or pursuant to the final rules contained in paragraph 1.4 of the Prudential Regulatory Authority’s instrument PRA 2015/82 “PRA Rulebook: CRR Firms and Non-Authorised Persons: Stay In Resolution Instrument 2015” attached as an Appendix to the Prudential Regulation Authority’s Policy Statement PS25/15 (the “**PRA Rule**”) and this Section 2 shall be interpreted in accordance with the PRA Rule; provided that, for the purposes of Section 2(1) above, Section 48Z of the U.K. Banking Act 2009 is to be disregarded to the extent that it relates to a “*crisis prevention measure*” other than the making of a “*mandatory reduction instrument*” by the Bank of England under section 6B of the U.K. Banking Act 2009.”

Section 3. Scope. The agreed amendments, acknowledgements and acceptances contained in Sections 1 and 2 above will not apply if:

- (i) the UK Resolution Authority determines that the liabilities arising under the Covered Agreement may be subject to the exercise of the bail-in power, stay or similar action, pursuant to the law of another country governing such liabilities or a binding agreement with such other country; and the UK Regulations or the PRA Rule, as applicable, allow such determination or have been amended to reflect such determination; and/or
- (ii) the UK Regulations or the PRA Rule, as applicable, have been repealed or amended in such a way as to remove the requirement for the acknowledgements and acceptances contained in Sections 1 or 2 above, as applicable.

Section 4. Representations. Each party represents to the other that:

- (a) It is duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing; and
- (b) It has the power to execute and deliver this Bilateral UK Bail-in and Stay Provision Amendment and to perform its obligations under the Bilateral UK Bail-in and Stay Provision Amendment and the Covered Agreement as amended by the Bilateral UK Bail-in and Stay Provision Amendment and has taken all necessary action to authorize such execution, delivery and performance.

Section 5. Entire Agreement. This Bilateral UK Bail-in and Stay Provision Amendment constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communications or prior writings (except as otherwise provided herein) with respect thereto. Except as expressly amended herein, all of the provisions of the Covered Agreement shall remain in full force and effect, and all references to the agreement in the Covered Agreement or any document related thereto shall for all purposes constitute references to the Covered Agreement as amended hereby. This Bilateral UK Bail-in and Stay Provision Amendment shall in no way operate as a novation, release, or discharge of any of the provisions of the Covered Agreement (except as amended herein), or any indebtedness thereby evidenced.

Section 6. Governing Law. This Bilateral UK Bail-in and Stay Provision Amendment and any and all controversies arising out of or in relation to this Bilateral UK Bail-in and Stay Provision Amendment shall be governed by and construed in accordance with the laws of the State of New York (without reference to its conflict of laws doctrine).

Section 7. Counterparts. This Bilateral UK Bail-in and Stay Provision Amendment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have caused this Bilateral UK Bail-in and Stay Provision Amendment to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

[PARTY A]

[PARTY B]

By: _____	By: _____
Name:	Name:
Title:	Title: