

**IRREVOCABLE PAYMENT COMMITMENT AND
COLLATERAL ARRANGEMENT AGREEMENT
(2021 CONTRIBUTION PERIOD)**

BETWEEN:
with registered office at
.....
registered with the register of commerce and companies of
.....
under the number, represented by
..... (the "**Institution**"),

AND: **THE SINGLE RESOLUTION BOARD**, a Union agency established by Article 42 of the SRMR, with address at Treurenberg 22, 1049 Brussels, represented by its Chair (the "**SRB**"),

Hereinafter individually referred to as a "**Party**" and collectively as the "**Parties**".

WHEREAS:

- (A) Pursuant to article 103 of the BRRD and article 70 of the SRMR, individual contributions of each institution (as defined in the SRMR) to the single resolution fund (the "**SRF**") are raised at least annually in order for the SRF to reach the target level mentioned in article 69 of the SRMR.
- (B) Pursuant to article 67(4) of the SRMR, contributions referred to in article 70 of the SRMR shall be raised from institutions required to provide contributions for the 2021 Contribution Period by national resolution authorities and transferred to the SRF in accordance with the intergovernmental agreement on the transfer and mutualisation of contributions to the SRF dated 14 May 2014.
- (C) Pursuant to article 70(3) of the SRMR, the available financial means to be taken into account to reach the target level specified in article 69 of the SRMR may include irrevocable payment commitments which are fully backed by collateral of low-risk assets unencumbered by any third-party rights, at the free disposal and ear-marked for the exclusive use by the SRB for the purposes specified in article 76(1) of the SRMR.

- (D) Pursuant to article 13 of the Delegated Regulation 2015/63 and article 5 of the Implementing Regulation 2015/81, the NRA (as defined below) shall notify each institution of the SRB's decision on calculation of the annual contribution due by each institution at the latest by 1 May of each year. This notification shall specify the share of irrevocable payment commitments referred to in article 103 of the BRRD and article 70 of the SRMR that each institution can use.
- (E) In accordance with article 7(1) of the Implementing Regulation 2015/81, recourse to irrevocable payment commitments shall in no manner affect the financial capacity or the liquidity of the SRF.
- (F) Pursuant to a decision of the Executive Session of the SRB taken on 17 December 2019, the SRB has determined that institutions may provide for the 2021 Contribution Period, irrevocable payment commitments (in accordance with article 70(3) of the SRMR) for an amount of 15% of their annual contribution, and that such irrevocable payment commitments must be fully backed by collateral exclusively in the form of cash collateral.
- (G) For the purpose of providing the irrevocable payment commitment and constituting the cash collateral required, the Institution and the SRB enter into the following agreement (the "**Agreement**").

1. **DEFINITIONS**

In this Agreement:

"2021 Contribution Period" means the contribution period (as defined in the Implementing Regulation 2015/81) of the calendar year 2021.

"Aggregate Interest Amount" means the sum of the Interest Amounts for the days in a reference period (as determined pursuant to Article 4 of this Agreement).

"Annual Contribution" means the amount of annual contribution (within the meaning of Article 3 (3) of the Implementing Regulation 2015/81) calculated by the SRB for the Institution for the 2021 Contribution Period in accordance with applicable legislation, as specified in the Annual Contribution Notice.

"Annual Contribution Notice" means the notice sent by the NRA to the Institution pursuant to article 13(1) of the Delegated Regulation 2015/63 and article 5 of the Implementing Regulation 2015/81 for the 2021 Contribution Period.

"Banking Day" means a day, on which the Trans-European Automated Real-time Cross-Settlement Express Transfer System which was launched on 19 November 2007 by the European Central Bank (TARGET 2) is operational to effect a payment, in accordance with Guideline (EU) 2015/510 of the European Central Bank.

"BRRD" means directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and

2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council.

"Delegated Regulation 2015/63" means Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex ante* contributions to resolution financing arrangements.

"Implementing Regulation 2015/81" means Council Implementing Regulation (EU) 2015/81 of 19 December 2014 specifying uniform conditions of application of Regulation (EU) No 806/2014 of the European Parliament and of the Council with regard to *ex ante* contributions to the Single Resolution Fund.

"Interest Amount" means the amount of interest accrued for any day during a reference period (as determined pursuant to Article 4 of this Agreement), which is calculated by:

- (a) multiplying the amount of the Cash Collateral existing on that day;
- (b) by the Reference Interest Rate in effect for that day, even if the Reference Interest Rate is below zero per cent (0%);
- (c) divided by 360.

"IPC Amount" means the amount in Euro of the Annual Contribution which the Institution is entitled to provide in the form of an irrevocable payment commitment, being the amount indicated and specified as such in the Annual Contribution Notice.

"Irrevocable Payment Commitment" means the irrevocable commitment by the Institution to pay the IPC Amount to the SRB in the conditions set out in Clause 2 (*Irrevocable Payment Commitment*) hereof.

"Negative Aggregate Interest Amount" means the absolute value of an Aggregate Interest Amount that is less than zero (0).

"NRA" means the national resolution authority competent for the Institution pursuant to Article 5 (2) of the Implementing Regulation 2015/81.

"Reference Interest Rate" means the European Central Bank deposit facility rate for overnight deposits as published by the European Central Bank on its website (www.ecb.europa.eu) as applicable from time to time. The SRB may change the Reference Interest Rate at any time, with effect not earlier than the following Banking Day.

"Secured Obligations" means all obligations and liabilities which the Institution owes to the SRB for the payment of the IPC Amount under or pursuant to Clause 2 (*Irrevocable Payment Commitment*) hereof.

"SRB Account" means a bank account opened in the name of the SRB with the Banque de France.

"SRMR" means Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010.

2. **IRREVOCABLE PAYMENT COMMITMENT**

- 2.1 The Institution undertakes and irrevocably commits to pay to the SRB an amount up to the IPC Amount following a call and demand for payment made by the SRB in accordance with applicable legislation, including in particular article 7(2) of the Implementing Regulation 2015/81.
- 2.2 The SRB is entitled to call for payment of the Irrevocable Payment Commitment, by sending a notice (the "**IPC Call Notice**") to the Institution requesting the payment of the IPC Amount or any amount up to the IPC Amount, as specified in the IPC Call Notice (the "**Called Amount**"), in accordance with applicable legislation, including in particular article 7(2) of the Implementing Regulation 2015/81. The Institution shall pay the Called Amount on the Banking Day following the date of the IPC Call Notice by transfer of cleared funds into the account specified in the IPC Call Notice.
- 2.3 In case the Called Amount represents only part of the IPC Amount, the Irrevocable Payment Commitment, and cash collateral arrangement contained herein, as well as this Agreement generally, shall, after due payment of the Called Amount, remain in full force and effect with respect to the part of the IPC Amount that has not been called (and the SRB shall be entitled to issue further IPC Call Notices up to the remaining IPC Amount in accordance with Clause 2.2.). Going forward any reference herein to the "IPC Amount at such time" shall be to the IPC Amount that has not been called.
- 2.4 The Institution agrees that the receipt of an IPC Call Notice pursuant to Clause 2.2. constitutes conclusive and binding evidence that the conditions set out in the applicable legislation are fulfilled and that the SRB is entitled to call for the payment of the IPC Amount. The Institution shall not be entitled to delay or withhold payment by arguing that such conditions were not fulfilled.
- 2.5 Upon due payment of the Called Amount, the amount thus paid shall constitute a contribution received with respect to the 2021 Contribution Period within the meaning of the SRMR. In accordance with article 70(4) of the SRMR, this amount shall not be reimbursed to the Institution.

3. **TRANSFER OF CASH COLLATERAL**

- 3.1 In order to secure the full and punctual payment of the Secured Obligations, the Institution shall constitute cash collateral in favour of the SRB and shall transfer in full ownership to the SRB an amount in cash equal to the IPC Amount (the "**Cash Collateral**").

- 3.2 The constitution of the initial Cash Collateral shall occur as part of the payment of the Annual Contribution to the NRA in accordance with the process and within the timing set out in the Annual Contribution Notice.
- 3.3 The cash transferred by the Institution to the NRA (as part of the process referred to in clause 3.2.) for the purpose of constituting the initial Cash Collateral shall be considered as Cash Collateral held on behalf of SRB as of the entry into effect of this Agreement, notwithstanding the fact that it is held by the NRA at such time, prior to being transferred by the NRA to the SRB Account in accordance with applicable procedures.
- 3.4 The SRB shall confirm receipt of the initial Cash Collateral in the SRB Account by notice to the Institution as soon as possible upon receipt of the full amount of initial Cash Collateral in the SRB Account. The notice shall reference (i) the IPC Amount and (ii) the amount of Cash Collateral received from the Institution and shall confirm that the full amount of initial Cash Collateral has been transferred to the SRB Account.
- 3.5 The SRB has full ownership (*pleine propriété*) to the cash transferred and is entitled to freely use the cash transferred hereunder, subject to the obligation to return the corresponding amount of Cash Collateral in case of payment of the Secured Obligations when due.

4. **INTEREST**

- 4.1 Interest shall accrue on a daily basis on the amount of Cash Collateral existing on that day at the Reference Interest Rate.
- 4.2 The Aggregate Interest Amount shall be calculated for each reference period from 1 January to 31 December (calendar year).
- 4.3 For the year 2021, (i) the reference period shall start on the Banking Day following the day on which the cash transferred by the Institution for the purpose of constituting the initial Cash Collateral has been received by the NRA in accordance with the process referred to in clause 3.2. and shall end on 31 December, and (ii) the amount of cash transferred to the NRA as initial Cash Collateral shall, for the purpose of clause 4.1. and the calculation of the Interest Amounts, be considered as if it was Cash Collateral as of the Banking Day following the day on which such amount has been received by the NRA in accordance with the process referred to in clause 3.2.
- 4.4 Interest shall be payable in arrears at a date determined by the SRB, which may not be later than the last day of the month of February of the year following the calendar year for which it has been calculated, or if such day is not a Banking Day, the next following Banking Day.
- 4.5 The SRB may increase the frequency of interest payments at its discretion and may set dates for calculation and payment of the interest as well as reference periods that are different from those set out in clauses 4.2. and 4.3 above.
- 4.6 Interest accrued will not be compounded (*capitalisé*).

- 4.7 If the Aggregate Interest Amount is a positive number, the SRB will transfer such amount to an account of the Institution, as shall be specified in writing by the Institution. The SRB shall not be obliged to transfer any amounts if this would result in the amount of Cash Collateral being less than the IPC Amount at such time. Any Aggregate Interest Amount not transferred shall be taken into account as Cash Collateral.
- 4.8 If the Aggregate Interest Amount is a negative number, the amount of Cash Collateral shall be reduced by the Negative Aggregate Interest Amount, and if, as a result, the amount of Cash Collateral is less than the IPC Amount at such time, the SRB shall, within the first three weeks of February of each year, require the Institution to transfer cash in the amount specified by the SRB in full ownership to the SRB as additional Cash Collateral, by sending a notice (the "**Shortfall Notice**") to the Institution, whereupon the Institution shall as soon as possible and at the latest two (2) Banking Days after the date of issuance of the Shortfall Notice transfer the amount specified in the Shortfall Notice in cleared funds to the account specified therein.

5. **RETURN OF COLLATERAL**

Upon receipt of payment of the Called Amount in full into the specified account in accordance with Clause 2 (*Irrevocable Payment Commitment*) above, the SRB shall return an amount of Cash Collateral equal to the Called Amount thus paid by transfer to the account specified in writing by the Institution as soon as reasonably possible thereafter. The SRB shall not be obliged to transfer amounts of Cash Collateral if this would result in the amount of Cash Collateral being less than the IPC Amount at such time.

6. **ENFORCEMENT AND DISCHARGE**

- 6.1 In case of failure of the Institution to pay the Called Amount on first demand in accordance with Clause 2 (*Irrevocable Payment Commitment*) above, the SRB shall be entitled to seize and apply the Cash Collateral in discharge of the Secured Obligations, and in particular shall be entitled to proceed to a set-off (*compensation*) between the amount of the Secured Obligations unpaid and its obligation to repay the Cash Collateral.
- 6.2 The discharge of the Secured Obligations by way of set-off extinguishes the obligation of the SRB to return the Cash Collateral up to the amount of the set-off and the SRB shall be and remain the full owner of the relevant amount of Cash Collateral.
- 6.3 The discharge of the Secured Obligations by way of set-off extinguishes the obligations of the Institution to pay contributions to the SRB for a corresponding amount. The amount thus discharged shall constitute a duly received contribution with respect to the 2021 Contribution Period within the meaning of the SRMR. In accordance with article 70(4) of the SRMR, this amount shall not be reimbursed to the Institution.

7. **RETENTION OF COLLATERAL**

If the SRB reasonably considers that any amount paid or credited to it is capable of being avoided or otherwise set aside in the context of insolvency proceedings or any similar event relating to the Institution or any other person and for any other reason, (i) this amount will be

considered as not being paid for the needs to determine whether the Secured Obligations have been definitely and integrally executed and (ii) the SRB shall be entitled not to release the Cash Collateral and shall incur no liability in this respect.

8. **AGENTS AND SERVICERS**

The SRB shall be entitled to use the services of third parties, employ agents, give powers and mandates and generally rely on actions of third parties in performing its obligations and exercising its rights hereunder. In case any such third party acts as servicer to or agent of the SRB in relation to the Institution, any actions taken by it, notices given, determinations made or discretions exercised hereunder shall be effective as if taken, given, made or exercised by the SRB itself. Any agent of the SRB will have to evidence its appointment and the terms of its powers to the Institution.

9. **NOTICES**

9.1 Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by letter or email.

9.2 Addresses

The postal address and email address (and the department or officer, if any, for whose attention the communication is to be made) of the SRB and the Institution for any communication or document to be made or delivered under or in connection with this Agreement is:

- (a) in the case of the Institution, the postal address and email address set out in the "IPC Application form for the 2021 contribution period" provided by the Institution to the SRB on the basis of the schedule of the Annual Contribution Notice; and
- (b) in the case of the SRB, as follows:
Single Resolution Board
Attention: Unit E4 – IPC
Address: Treurenberg 22, 1049 Brussels, Belgium
Email: SRB-IPC@srb.europa.eu;

or any substitute postal address, email address or department or officer as any party may notify to the other by not less than five (5) Banking Days' notice.

10. **FURTHER ASSURANCE**

- 10.1 The Institution shall, at its own cost, promptly do all such acts, cooperate to the widest extent required or execute all such documents as the SRB may reasonably specify (and in such form as the SRB may reasonably require) for the exercise of any rights, powers and remedies of the SRB provided by this Agreement or by law and to perfect, protect and maintain any collateral arrangement created under this Agreement.

10.2 The Institution shall not do or cause or permit to be done anything which will, or could be reasonably expected to, adversely affect the rights of the SRB under this Agreement and the Cash Collateral or which in any way is inconsistent with or jeopardises or otherwise prejudices such rights or the Cash Collateral.

11. ENTRY INTO EFFECT, DURATION AND TERMINATION

11.1 This Agreement shall enter into effect on the date on which the second Party to sign has signed this Agreement, such date being the date specified in the signature block of that Party.

11.2 This Agreement is entered into for an unlimited duration (*durée indéterminée*).

11.3 A termination may not occur unless made by registered letter with acknowledgment of receipt and will be effective only at the end of a period of fourteen (14) Banking Days (the "**Cancellation Period**") after receipt of the notice of termination by the recipient of the termination notice.

11.4 Until five (5) Banking Days before the expiry of the Cancellation Period, the Institution shall pay to the SRB an amount in cash equal to the IPC Amount by credit to the account specified by the SRB (such payment constituting part of its Annual Contribution for the 2021 Contribution Period), whereupon the SRB shall return the Cash Collateral to the Institution. If the Institution has not complied with this obligation, the SRB shall be entitled to set off its repayment obligation of the Cash Collateral against the obligation of the Institution to pay referred to in the preceding sentence.

12. MISCELLANEOUS

12.1 No failure to exercise, nor any delay in exercising, on the part of the SRB, any right, power or remedy of the SRB provided by this Agreement or by law shall operate as a waiver, nor shall any single or partial exercise of that right, power or remedy prevent any further or other exercise of that or any other right, power or remedy of the SRB provided by this Agreement or by law.

12.2 If any provision of this Agreement is declared by any judicial or other competent authority to be void or otherwise unenforceable, that provision shall be severed from this Agreement and the remaining provisions of this Agreement shall remain in full force and effect. The Agreement shall, however, thereafter be amended by the parties in such reasonable manner so as to achieve, without illegality, the intention of the parties with respect to that severed provision.

12.3 Changes to this Agreement and any waiver of rights under this Agreement shall require written form.

12.4 Neither the SRB nor any of its agents shall be liable to the Institution or any other person in relation to a loss suffered by the Institution or such person arising from the acts or omissions of the SRB or any of its agents under or in connection with this Agreement, unless the loss is a direct result of the gross negligence or wilful misconduct by the SRB or its agent.

12.5 This Agreement is without prejudice to the application of article 7(3) of the Implementing Regulation 2015/81.

12.6 Nothing in this Agreement shall be construed so as to prevent the possibility of the NRA or the SRB to apply administrative penalties or take administrative measures provided for by applicable legislation.

13. GOVERNING LAW AND JURISDICTION

13.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by Luxembourg law.

13.2 The Parties undertake to submit any dispute which may arise relating to the legality, validity, interpretation or performance of this Agreement to the exclusive jurisdiction of the General Court of the European Union, and in the case of appeal, the Court of Justice of the European Union.

13.3 Judgments of the Court of Justice of the European Union shall be fully binding on and enforceable by the Parties.

Done in two (2) originals.

Any translation provided together with the English version of this Agreement shall be considered as a courtesy translation only and the English version of this Agreement shall at all times be the sole binding version.

**IRREVOCABLE PAYMENT COMMITMENT AND COLLATERAL ARRANGEMENT
AGREEMENT (2021 CONTRIBUTION PERIOD) - SIGNATURE PAGE**

The Institution

Duly represented by:

Name:

Title:

Date:

The Single Resolution Board

Duly represented by its Chair,
itself duly represented by:

Name:

Title:

Date: