

**Special Terms and Conditions applying to the use of non-marketable assets as collateral in business between [insert name of a central bank of another participating country] and its counterparties when Deutsche Bundesbank is in the role of correspondent central bank.**

**Preliminary remarks**

*The following Terms and Conditions apply to the relationship between [name of the central bank concerned] (hereinafter referred to as the “Home Central Bank”) and its counterparties (hereinafter referred to as the “Counterparties”) when they wish to use assets listed under No 1 as collateral in cross-border credit operations within the Eurosystem involving Deutsche Bundesbank **as the representative** of the Home Central Bank (Correspondent Central Bank).*

*Under an agreement within the Eurosystem, Deutsche Bundesbank has been assigned this role of representative by the Home Central Bank and is thus instructed and authorised to exercise the rights and discharge the obligations of the Home Central Bank arising from the following Terms and Conditions<sup>1</sup>. Insofar as Deutsche Bundesbank is mentioned in these Terms and Conditions, it is acting in the name and for the account of the Home Central Bank.*

*These Terms and Conditions complement the existing provisions applicable to relations between the Home Central Bank and its Counterparties and are intended to enable Deutsche Bundesbank to fulfil its function as Correspondent Central Bank. They are part of the General Terms and Conditions of the Home Central Bank and, thus, do not establish any contractual relationship with Deutsche Bundesbank. Unless otherwise stipulated in these Terms and Conditions, the other General Terms and Conditions of the Home Central Bank apply.*

*Deutsche Bundesbank is available for transactions of this kind only during specific hours of business (currently on TARGET2 business days, between 9:00 am and 4:00 pm Frankfurt*

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<sup>1</sup> These Terms and Conditions can be found at [www.bundesbank.de](http://www.bundesbank.de) → Service → Service for banks and companies → MACCs → Legal basis

local time, – hereinafter referred to as “CCBM Opening Hours” –, whereby 4:00 pm is the latest time at which assets may be submitted to the Bundesbank).

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:** Weserstraße 46, 60329 Frankfurt

E-Mail: [maccs@bundesbank.de](mailto:maccs@bundesbank.de)

Telephone: +49 69 2388 1470

Telefax: +49 69 2388 1460

## **1 Eligible assets**

(1) To collateralise credit operations within the Eurosystem with the Home Central Bank, Counterparties may use credit claims (hereinafter also referred to as “Assets”), which fulfil the requirements for eligible assets pursuant to the Home Central Bank’s regulations and also comply with the special conditions specified below.

(2) Assets are accepted by Deutsche Bundesbank as the representative of the Home Central Bank by way of assignment (*Sicherungsabtretung*) under German law. Notwithstanding the provisions in the preceding paragraphs, only Assets which are governed by German law, are legally enforceable before a German court and amount to at least €500,000 at the time of submission shall be accepted. The number of jurisdictions applicable as such to the Counterparty, debtor, joint and several debtors (if applicable), co-obligor (if applicable), claim, Home Central Bank and Deutsche Bundesbank may not exceed two.

**[If the Home Central Bank prefers the implementation of Bundesbank’s solution for the purpose of mitigating set-off risk, the following clause should be used:**

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

## **2 Conditions of submission, submission method**

(1) On the first occasion on which it submits Assets, the Counterparty shall notify Deutsche Bundesbank of its intention to do so and shall supply the following information. In addition to information on its person, among other things, the credit assessment systems used pursuant to No 3 (1) and a list of signatures are to be provided in advance.

(2) Assets may be submitted electronically in accordance with No 4 (2). Subject to a separate agreement with Deutsche Bundesbank they may in exceptional cases (e.g. backup procedure) also be submitted by email or fax.

## **3 Credit assessment systems**

(1) The Counterparty shall inform Deutsche Bundesbank of the credit assessment systems which it may use pursuant to the Home Central Bank.

(2) As a general rule, the Counterparty is obliged to supply an admissible credit assessment when submitting Assets to Deutsche Bundesbank<sup>2</sup>. Notwithstanding sentence 2 of paragraph (3) below, this obligation applies regardless of the credit assessment system used by the Counterparty.

(3) Subject to a separate agreement in line with special conditions, the Counterparty may also use Deutsche Bundesbank's own credit assessments from its in-house credit assessment system (Annex 1). In such a case, the obligation for the Counterparty to submit the credit assessment does not apply.

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<sup>2</sup> Please note the counterparties' information obligation with regard to changes concerning the credit assessment of debtors stipulated in No 4 (7) below.

#### **4 Submission, management, release of Assets**

(1) The Counterparty shall submit a General Declaration of Assignment once on a form provided by Deutsche Bundesbank (Annex 2). In said declaration, the Counterparty provides its assurance that the credit claims assigned as collateral exist, that it may freely dispose of them and assign them to the Home Central Bank and that they are neither encumbered by third-party rights nor assigned to a third party.

(2) For the standard case that the credit claims are submitted electronically via the procedure known as MACCs (Mobilisation and Administration of Credit Claims), the Counterparty must apply to Deutsche Bundesbank for participation in this procedure Deutsche. The "Special Terms and Conditions for the submission of credit claims as eligible collateral in MACCs" (*MACCs-Terms and Conditions*, Annex 3) apply in addition and are deemed to be part of the General Terms and Conditions of the Home Central Bank.

(3) The Counterparty shall transmit the data of the Assets to Deutsche Bundesbank via the method specified pursuant to No 2 (2). The transmission of these data simultaneously constitutes a binding offer by the Counterparty to assign these Assets to the Home Central Bank. The assignment takes effect upon completion of submission to Deutsche Bundesbank. The Counterparty waives the right to receive an acceptance acknowledgement. At the time at which the assignment takes effect, the Asset is transferred to the Home Central Bank. New submissions may be made every business day during the CCBM Opening Hours.

(4) Submissions via email or fax require a valid ExtraNet user-ID, which will be checked against the list of registered ExtraNet user.

(5) Deutsche Bundesbank then checks whether the Assets meet the eligibility criteria. In the event that the requirements are not met, the credit claims are reassigned to the Counterparty.

(6) Deutsche Bundesbank is entitled to inform the debtor of the assignment at any time and will do so without delay upon the occurrence of a Secured Event as defined in No 6 (1).

*[If the Home Central Bank considers its law applicable which foresees mandatory notification or registration (or other) requirements, it might be recommendable to include here a reference to another part of its General Terms and Conditions.]*

(7) The Counterparty shall inform Deutsche Bundesbank of any changes which may have occurred in relation to the relevant Assets (in particular, redemptions, partial redemptions, maturity and, if applicable, the creditworthiness, credit assessments) without delay. Furthermore, Deutsche Bundesbank is to be notified informally and without delay of any defaults on the part of obligors of assigned Assets.

(8) The Counterparty is authorised to continue to collect the interest and redemption payments due on credit claims until the occurrence of a Secured Event as defined in No 6 (1). Deutsche Bundesbank or the Home Central Bank shall inform the debtors of the Assets and the Counterparty if payments are to be made to either of them directly in future.

(9) The Counterparty must transfer the collateral posted for the Assets themselves (Loan Collateral) or, respectively, the acquired rights and expectancies on the Loan Collateral to the Home Central Bank if the Home Central Bank or Deutsche Bundesbank acting on behalf of the Home Central Bank wishes to collect the Assets (see paragraph 8 sentence 2). 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.

(10) 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 Home Central Bank has previously released the Assets; paragraph 11 applies to the application for release.

(11) Applications for the release of Assets should be submitted by the Counterparty to Deutsche Bundesbank by the submission method which the Counterparty is using at that time. The Home Central Bank shall decide whether or not the Assets are to be released.

## **5 Further provisions on loans against borrowers' notes ("Schuldschein")**

(1) If a borrower's note has been issued with regard to the Assets, the following additional provisions shall apply.

(2) No 4 (3) shall apply to the transmission of loan data provided that the fact that a borrower's note was issued is declared separately.

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

## **6 Realisation**

(1) If the Home Central Bank'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 Home Central Bank shall be entitled to realise the Assets furnished as collateral to the extent necessary, either collectively or individually as it chooses (Secured Event). Deutsche Bundesbank shall take action for the Home Central Bank in the event of realisation.

(2) Upon the occurrence of the Secured Event, Deutsche Bundesbank shall be entitled either to sell the Asset for the Home Central Bank or, if the Asset falls due, to collect the

countervalue from the liable Asset debtors for the account and at the risk and expense of the Counterparty so that the Home Central Bank can exact payment for itself from the proceeds.

(3) In the event of Asset realisation, Deutsche Bundesbank shall credit any surplus remaining after settlement of the principal, interest, expenses and costs to the Home Central Bank for the Counterparty; no interest shall be paid on this surplus.

## **7 Costs, fees**

Any fees laid down by the Eurosystem for a transaction and the management of the Assets shall be passed on to the Home Central Bank for debiting to the Counterparty. This shall also apply to any third-party costs charged to Deutsche Bundesbank during collection or realisation.

## **8 Concluding provisions**

(1) Notwithstanding the General Terms and Conditions of the Home Central Bank, the rights and obligations of the Home Central Bank and the Counterparties regarding the provision, administration and realisation of the Assets as contained in these Terms and Conditions shall be governed by German law. In this respect, the Home Central Bank 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 Home Central Bank 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 Deutsche Bundesbank considers changes to these Terms and Conditions to be necessary, it shall inform the Home Central Bank thereof in writing so that the Home Central Bank can agree the said Terms and Conditions with the Counterparty via the customary channels.

(3) If a provision under these 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 if they had been aware of the invalidity of the original provision.