

ISDA Sample Notice of Exclusive Control Provisions¹

[X.] Notice of Exclusive Control:²

[OPTION 1 (ONE STAGE PROCESS): Subject to Section [] (Conflicting Instructions), upon the effectiveness³ of a Notice of Exclusive Control from the Secured Party to the Securities Intermediary, the Securities Intermediary shall at the Release Time⁴ transfer the IA Seizure Amount to the Secured Party [and the Excess IA to the Pledgor].⁵ In addition, the Secured Party agrees with the Pledgor to deliver a copy of any notice (including any required attachments thereto) that the Secured Party delivers to the Securities Intermediary to the Pledgor reasonably contemporaneously with the Secured Party's delivery to the Securities Intermediary. The Securities Intermediary shall have no obligation or responsibility to review any attachments (including any Evidence of Filing) to the Notice of Exclusive Control or any other notice from the Secured Party in connection with this Section [X] (Notice of Exclusive Control) or verify that any statement or other information contained in any such notice is true and correct. Upon the effectiveness of a Notice of Exclusive Control or any other notice from the Secured Party to the Securities Intermediary in connection with this Section [X] (Notice of Exclusive Control), the Securities Intermediary shall promptly notify the Pledgor and provide a copy of such notice (including any attachments thereto) to the Pledgor; provided that the Securities Intermediary's failure to do so shall not affect the validity of such notice.]

[OPTION 2 (TWO STAGE PROCESS – ESTIMATED REQUIRED IA): Subject to Section [] (Conflicting Instructions):

(i) initially, upon the effectiveness⁶ of a Notice of Exclusive Control and a notice specifying the amount of Estimated Required IA from the Secured Party to the Securities Intermediary, the Securities Intermediary shall at the Initial Release Time⁷ transfer the Estimated Required IA to the Secured Party and shall continue to hold the remaining Collateral in the Account pursuant to the Control Agreement;

¹ For the sake of simplicity, the following terms are not defined here, but should be defined in the Control Agreement: Account, Business Day, Collateral, Control Agreement, ISDA Master Agreement, Pledgor, Secured Party and Securities Intermediary.

² The parties may select one of the options below or may specify an alternative formulation.

³ Note: Control Agreement should separately address when notices are "effective" under the Control Agreement.

⁴ If the parties prefer to specify in the CSA the amount of advance notice a Secured Party must give the Pledgor prior to delivering a Notice of Exclusive Control, then they can elect "Immediate" for the Release Time definition under these provisions and include separate provisions in the CSA regarding the Secured Party's requirement to provide notice.

⁵ Include bracketed text only if IA Seizure Amount is specified as "Required IA."

⁶ Note: Control Agreement should separately address when notices are "effective" under the Control Agreement.

⁷ If the parties prefer to specify in the CSA the amount of advance notice a Secured Party must give to the Pledgor prior to delivering a Notice of Exclusive Control, then they can elect "Immediate" for the Release

(ii) subsequently, upon the effectiveness⁸ of a Notice of Exclusive Control and a notice specifying the amount of Required IA and Excess IA from the Secured Party to the Securities Intermediary, the Securities Intermediary shall at the Release Time⁹ transfer the Required IA to the Secured Party and the Excess IA to the Pledgor.

In addition, the Secured Party agrees with the Pledgor to provide the Pledgor with a copy of any notice (including any required attachments thereto) that the Secured Party delivers to the Securities Intermediary in connection with this Section [X] (Notice of Exclusive Control) reasonably contemporaneously with the Secured Party's delivery to the Securities Intermediary. The Securities Intermediary shall have no obligation or responsibility to review any attachments (including any Evidence of Filing) to the Notice of Exclusive Control or any other notice provided by the Secured Party in connection with this Section [X] (Notice of Exclusive Control) or verify that any statement or other information contained in any such notice is true and correct. Upon the effectiveness of a Notice of Exclusive Control or any other notice from the Secured Party to the Securities Intermediary in connection with this Section [X] (Notice of Exclusive Control), the Securities Intermediary shall promptly notify the Pledgor and provide a copy of such notice (including any attachments thereto) to the Pledgor; provided that the Securities Intermediary's failure to do so shall not affect the validity of such notice.]

[[Y.] Pledgor Dispute Right:^{10, 11}

(a) Each of the Secured Party and the Pledgor shall provide the other with a copy of any notice (including any required attachments thereto) that it delivers to the Securities Intermediary in connection with this Section [Y] (Pledgor Dispute Right) reasonably contemporaneously with its delivery to the Securities

Time definition under these provisions and include separate provisions in the CSA regarding the Secured Party's requirement to provide notice.

⁸ Note: Control Agreement should separately address when notices are "effective" under the Control Agreement.

⁹ If the parties prefer to specify in the CSA the amount of advance notice a Secured Party must give to the Pledgor prior to delivering a Notice of Exclusive Control, then they can elect "Immediate" for the Release Time definition under these provisions and include separate provisions in the CSA regarding the Secured Party's requirement to provide notice.

¹⁰ These Pledgor Dispute Right provisions are optional and may be deleted in their entirety. Additionally, although not otherwise required, if the parties agree to specify in the CSA a dispute mechanism that applies (e.g., by applying Attachment 14 of the CSA Amendment for IA Segregation) prior to the delivery of a Notice of Exclusive Control, then they can delete these Pledgor Dispute Right provisions and include separate provisions in the CSA regarding the dispute mechanism.

¹¹ If the Release Time is specified as "Immediate," then these Pledgor Dispute Right provisions should be deleted.

Intermediary. Upon receipt of any notice by the Securities Intermediary from either the Secured Party or the Pledgor in connection with this Section [Y] (Pledgor Dispute Right), the Securities Intermediary shall promptly notify the other and provide a copy of such notice (including any attachments thereto) to the other; provided that the Securities Intermediary's failure to do so shall not affect the validity of such notice. If the Secured Party provides an effective Notice of Exclusive Control [certifying the occurrence of an event other than an Indisputable Event with respect to the Pledgor]¹² and the Pledgor provides an effective notice to the Securities Intermediary before the transfer of the IA Seizure Amount to the Secured Party that it in good faith disputes the occurrence of such event (a "Pledgor Dispute Notice"), subject to Section [Y(b)], the Securities Intermediary will not transfer any amounts otherwise required to be transferred pursuant to Section [X] (Notice of Exclusive Control) until the earliest to occur of the following:

(i) effective written notice is provided from the Pledgor to the Securities Intermediary stating that the Pledgor has withdrawn its dispute;

(ii) the Cutoff Time, provided that effective written notice is provided from the Secured Party to the Securities Intermediary indicating that the Cutoff Time has occurred, with a contemporaneous copy of such notice to the Pledgor, unless the Pledgor has previously delivered to the Securities Intermediary evidence of its initiation of a legal proceeding to prevent the Securities Intermediary from complying with the Notice of Exclusive Control or otherwise challenging the legitimacy of the Notice of Exclusive Control;

(iii) delivery to the Securities Intermediary of a written notice from the Secured Party stating that:

(A) there has been a declaratory or other judgment¹³ by a court (or other forum) of competent jurisdiction finding that [the relevant Event of Default, Termination Event or Specified Condition had occurred and was continuing with respect to the Pledgor (or any Credit Support Provider or any applicable Specified Entity of the Pledgor) as of the designation or occurrence of the Early Termination Date]¹⁴;

¹² If there are no Indisputable Events, this provision should be deleted.

¹³ If the parties prefer that the Securities Intermediary wait until a final, non-appealable judgment is made, then they may include additional language to this effect throughout this provision.

¹⁴ Parties should ensure that the bracketed language conforms to the events allowing for the release of the IA Seizure Amount under the Control Agreement.

(B) any injunction or other legal action preventing the Securities Intermediary from transferring the IA Seizure Amount to the Secured Party has expired or been removed or lifted; or

(C) a court (or other forum) of competent jurisdiction has issued an order dismissing or resolving in the Secured Party's favor a legal proceeding initiated by the Pledgor challenging the legitimacy of the Notice of Exclusive Control;

in each case, accompanied by a copy of the relevant such judgment, order, or other legal document/evidence, as applicable; or

(iv) service upon the Securities Intermediary of a judicial order directing the Securities Intermediary to comply with the instructions and entitlement orders contained in the order.

[(b) If, however, prior to the transfer of the IA Seizure Amount to the Secured Party, effective written notice is provided by the Secured Party to the Securities Intermediary certifying that an Indisputable Event has occurred with respect to the Pledgor (or any Credit Support Provider or any applicable Specified Entity of the Pledgor), the Securities Intermediary shall comply with the provisions of Section [X] (Notice of Exclusive Control), without regard to this Section [Y] (Pledgor Dispute Right).]¹⁵

[(c) Notwithstanding anything to the contrary in this Section [Y] (Pledgor Dispute Right), if, prior to the transfer of the IA Seizure Amount to the Secured Party, effective written notice is provided by the Pledgor to the Securities Intermediary certifying that an Indisputable Event has occurred with respect to the Secured Party (or any Credit Support Provider or any applicable Specified Entity of the Secured Party), then the Securities Intermediary shall comply with the provisions of Section [] (Pledgor Access) and disregard any Notice of Exclusive Control issued previously certifying the occurrence of any event other than an Indisputable Event.]¹⁶

(d) Notwithstanding anything to the contrary in this Section [Y] (Pledgor Dispute Right), if, prior to the transfer of the IA Seizure Amount to the Secured Party, effective written notice is provided to the Securities Intermediary:

(i) from the Secured Party, stating that the Secured Party has withdrawn its Notice of Exclusive Control; or

¹⁵ If Indisputable Events are not specified, this provision should be amended or deleted.

¹⁶ If Indisputable Events are not specified, this provision should be amended or deleted.

(ii) from the Pledgor, stating that there has been a declaratory or other judgment by a court (or other forum) of competent jurisdiction finding that [the relevant Event of Default, Termination Event or Specified Condition had not occurred or was not continuing as of [the designation or occurrence of the Early Termination Date] [the date of effective delivery of the Notice of Exclusive Control]]¹⁷ accompanied by a copy of such declaratory or other judgment;

then the Notice of Exclusive Control will be deemed ineffective.

(e) The Securities Intermediary shall have no obligation or responsibility to review any attachments (including any Evidence of Filing) to any notice provided by the Secured Party or the Pledgor in connection with this Section [Y] (Pledgor Dispute Right) or verify that any statement or other information contained in any such notice is true and correct.

(f) The Pledgor agrees with the Secured Party that the Pledgor shall include a statement in reasonable detail setting forth the grounds for the dispute in any Pledgor Dispute Notice.]

[Z.] Definitions:

As used in this Agreement, the following capitalized terms will have the meaning specified in this Section [Z]. Capitalized terms used but not defined in this Control Agreement shall have the meaning ascribed to them in the ISDA Master Agreement.¹⁸

“Cutoff Time” means [the open of business][*specify time of day*] on the [*please specify relevant number of days/business days*] following the date on which the Pledgor or the Secured Party, as applicable, delivered a Dispute Notice to the Securities Intermediary.

["IA Seizure Amount” means¹⁹

[OPTION 1 (All IA): all of the Collateral credited to the Account, as specified by the Secured Party in a written notice to the Securities Intermediary.]

¹⁷ Parties should ensure that the bracketed language conforms to the events allowing for the release of the IA Seizure Amount under the Control Agreement.

¹⁸ The following terms should be defined in the Credit Support Annex (or an amendment thereto) , to the extent applicable: Bankruptcy Event, Bankruptcy Filing Event, Bankruptcy Filing Evidence Event, Estimated Required IA, Evidence of Filing, Excess IA, Indisputable Event, Net Termination Payment, and Required IA.

¹⁹ The parties may select one of the options below or may specify an alternative formulation.

[OPTION 2 (Required IA): the Required IA, as specified by the Secured Party in a written notice to the Securities Intermediary.]]²⁰

["**Initial Release Time**"] means, for purposes of Section [X] (Notice of Exclusive Control),

[OPTION 1 (Immediate): the time at which a Notice of Exclusive Control is effective; *provided, however*, if the Estimated Required IA is not specified in the effective Notice of Exclusive Control, then the Initial Release Time will be the time at which written notice from the Secured Party to the Securities Intermediary specifying the Estimated Required IA is effective]

[OPTION 2 (Specified Initial Release Time): [at the open of business] [at [specify time of day]] on the [please specify relevant number of business days, if any (e.g., same, 1st, 2nd, 3rd, etc.)] [____] Business Day [as/following] the date on which the Securities Intermediary notifies the Pledgor of its receipt of a Notice of Exclusive Control; *provided, however*, if the Estimated Required IA is not specified in the effective Notice of Exclusive Control, then the Initial Release Time will be no earlier than the time at which written notice from the Secured Party to the Securities Intermediary specifying the Estimated Required IA is effective]

[OPTIONAL PROVISOR TO OPTION 2 (INDISPUTABLE EVENT): *provided further* that if the Secured Party has given effective written notice to the Securities Intermediary (which may be by effective delivery of a separate notice or by inclusion in the Notice of Exclusive Control) certifying that an Indisputable Event has occurred with respect to the Pledgor (or any Credit Support Provider or any applicable Specified Entity of the Pledgor), the Initial Release Time will be deemed to mean the time at which such notice is effective or, if the Estimated Required IA is not specified in such notice, the time at which written notice from the Secured Party to the Securities Intermediary specifying the Estimated Required IA is effective.]]²¹

["**Notice of Exclusive Control**"] means a notice in the form of Exhibit [] hereto.

²⁰ If under the Notice of Exclusive Control provision OPTION 2 (TWO STAGE PROCESS – ESTIMATED REQUIRED IA) is selected, then OPTION 2 (Required IA) of this definition should be selected.

²¹ If under the Notice of Exclusive Control provisions OPTION 1 (ONE STAGE PROCESS) is selected, the entire definition of "Initial Release Time" should be deleted.

“Release Time” means, for purposes of Section [X] (Notice of Exclusive Control),

[OPTION 1 (Immediate): the time at which a Notice of Exclusive Control is effective; *provided, however*, if the IA Seizure Amount is not specified in the effective Notice of Exclusive Control, then the Release Time will be the time at which written notice from the Secured Party to the Securities Intermediary specifying the IA Seizure Amount is effective.]

[OPTION 2 (Specified Release Time): [at the open of business] [at [*specify time of day*]] on the [*please specify relevant number of business days, if any (e.g., same, 1st, 2nd, 3rd, etc.)*] [____] Business Day [following/as] the date on which the Securities Intermediary notifies the Pledgor of its receipt of a Notice of Exclusive Control; *provided, however*, if the IA Seizure Amount is not specified in the effective Notice of Exclusive Control, then the Release Time will be no earlier than the time at which written notice from the Secured Party to the Securities Intermediary specifying the IA Seizure Amount is effective[;][.]

[OPTIONAL PROVISIO TO OPTION 2 (INDISPUTABLE EVENT): *provided further* that if the Secured Party has given effective written notice to the Securities Intermediary (which may be by effective delivery of a separate notice or by inclusion in the Notice of Exclusive Control) certifying that an Indisputable Event has occurred with respect to the Pledgor (or any Credit Support Provider or any applicable Specified Entity of the Pledgor), the Release Time will be deemed to mean the time at which such notice is effective or, if the IA Seizure Amount is not specified in such notice, the time at which written notice from the Secured Party to the Securities Intermediary specifying the IA Seizure Amount is effective.]