



International Swaps and Derivatives Association, Inc.

**ISDA 2013 ACCOUNT CONTROL AGREEMENT**

**AMONG**

**[NAME OF SECURITIES INTERMEDIARY],  
as Securities Intermediary**

**[NAME OF SECURED PARTY],  
as Secured Party**

**AND**

**[NAME OF PLEDGOR],  
as Pledgor**

**Dated as of [●]**

**Published on October 11, 2013 by the International Swaps and Derivatives Association, Inc.**

**Annotated (in Red) As of May 30, 2014**

**THIS ANNOTATED VERSION OF THE ISDA 2013 ACCOUNT CONTROL AGREEMENT HAS BEEN DEVELOPED IN AN ATTEMPT TO ASSIST MARKET PARTICIPANTS THAT ELECT TO IMPLEMENT MARGIN SEGREGATION PURSUANT TO COMMODITY FUTURES TRADING COMMISSION (“CFTC”) REGULATIONS 23.702 AND 23.703 (THE “CFTC SEGREGATION REGIME”). THE CFTC SEGREGATION REGIME IS A NON-EXCLUSIVE REGIME FOR THE SEGREGATION OF INITIAL MARGIN AND IS NOT MANDATORY. PLEDGORS MAY ELECT NOT TO SEGREGATE INITIAL MARGIN OR MAY SEEK TO IMPLEMENT OR PRESERVE OTHER ARRANGEMENTS FOR THE SEGREGATION OF INITIAL MARGIN IF THEY WISH. THE ANNOTATIONS INCORPORATED IN THIS DOCUMENT DO NOT PURPORT TO BE AND SHOULD NOT BE CONSIDERED A GUIDE TO OR AN EXPLANATION OF ALL RELEVANT ISSUES IN CONNECTION WITH CONSIDERATION OF THE CFTC SEGREGATION REGIME. PARTIES SHOULD CONSULT WITH THEIR LEGAL ADVISERS AND ANY OTHER ADVISERS THEY DEEM APPROPRIATE AS PART OF THEIR CONSIDERATION OF WHETHER TO ELECT THE SEGREGATION OF INITIAL MARGIN PURSUANT TO THE CFTC SEGREGATION REGIME. ISDA ASSUMES NO RESPONSIBILITY FOR ANY USE TO WHICH ANY OF ITS DOCUMENTATION OR OTHER DOCUMENTATION MAY BE PUT.**

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**ANNEX to the ISDA 2013 ACCOUNT CONTROL AGREEMENT**

**EXHIBIT A – FORM of NOTICE of EXCLUSIVE CONTROL**

**EXHIBIT B – FORM of PLEDGOR ACCESS NOTICE**

**EXHIBIT C – ELIGIBLE INVESTMENTS**

## ISDA 2013 ACCOUNT CONTROL AGREEMENT

This ISDA 2013 Account Control Agreement, including the annex (the “**Annex**”) and the exhibits thereto (collectively, the “**Control Agreement**”), is dated as of [●] and is entered into among [Pledgor] (“**Pledgor**”), [Dealer] (“**Secured Party**”) and [Securities Intermediary] (“**Securities Intermediary**”).

### WITNESSETH:

WHEREAS, Secured Party and Pledgor have entered into an ISDA Master Agreement dated as of [●] (as amended and restated from time to time, the “**ISDA Master Agreement**”), which ISDA Master Agreement includes, without limitation, the Credit Support Annex<sup>1</sup> thereto (the “**CSA**”) and Schedule thereto;

WHEREAS, pursuant to the CSA, Pledgor has agreed to pledge Collateral in order to secure the payment of Pledgor’s obligations to Secured Party under the ISDA Master Agreement;

WHEREAS, Secured Party and Pledgor want Securities Intermediary to hold Collateral and perform certain other functions as more fully described in this Control Agreement; and

WHEREAS, Securities Intermediary has agreed to hold such Collateral and to perform such other functions, subject to the terms of this Control Agreement.

NOW THEREFORE, in consideration of the mutual promises set forth hereafter, the parties hereto agree as follows:

1. **Definitions.** Whenever used in this Control Agreement, the following words shall have the meanings set forth below:

“**Account**” shall have the meaning set forth in Section 2(c) of this Control Agreement.

“**Affiliate**” means, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, “control” of any entity or person means ownership of a majority of the voting power of the entity or person.

“**Authorized Person**” shall mean each person listed in a document that certifies that such person is authorized to transmit or deliver Written Instructions on behalf of Secured Party or Pledgor, as the case may be, and that contains specimen signatures of each such person.

“**Business Day**” shall mean any day, other than a Saturday or Sunday, on which Securities Intermediary is open for general business.

“**Cash Account**” shall have the meaning set forth in Section 2(c) of this Control Agreement.

“**Collateral**” shall have the meaning set forth in Section 2(a) of this Control Agreement.

“**Depository**” shall mean, unless otherwise specified in Part 14 of the Annex, The Federal Reserve Bank of New York, The Depository Trust Company and any other clearing corporation within the meaning of Section 8-102 of the UCC.

“**Joint Instructions**” shall mean Written Instructions that are (i) signed by both an Authorized Person of Pledgor and an Authorized Person of Secured Party or (ii) transmitted by Pledgor and Secured Party via an

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<sup>1</sup> Unless otherwise agreed, an election by Pledgor to segregate initial margin in accordance with the CFTC Segregation Regime will be applied prospectively to new uncleared swaps only. Parties seeking to conform to the CFTC Segregation Regime may choose to put in place a new Credit Support Annex that applies only to the new uncleared swaps covered by such election. The date of the relevant Credit Support Annex may be inserted here should it differ from the date of the ISDA Master Agreement referenced above.

electronic messaging platform to Securities Intermediary and include identical instructions concerning the Collateral or otherwise indicate that Pledgor and Secured Party have both consented to identical instructions concerning the Collateral.<sup>2</sup>

“**Losses**” shall have the meaning set forth in Section 8(h) of this Control Agreement.

“**Notice of Exclusive Control**” shall mean a written notice, substantially in the form of Exhibit A attached hereto delivered or transmitted by an Authorized Person of Secured Party.

“**NOEC Provisions**” shall mean the provisions contained in Part 2 of the Annex.

“**Pledgor Access Notice**” shall mean a written notice, substantially in the form of Exhibit B attached hereto delivered or transmitted by an Authorized Person of Pledgor.

“**Pledgor Access Provisions**” shall mean the provisions contained in Part 3 of the Annex.

“**Securities Account**” shall have the meaning set forth in Part 1 of the Annex.

“**UCC**” shall mean the Uniform Commercial Code as in effect in the State of New York.

“**Written Instructions**” shall mean entitlement orders and other instructions in a written record (including, without limitation, an electronic record) delivered or transmitted by an Authorized Person in accordance with the notices provision of this Control Agreement and received by Securities Intermediary at the address specified for it in Part 13 of the Annex or such other address specified by Securities Intermediary as available for use in connection with this Control Agreement.

The terms “**adverse claim**”, “**bank**”, “**customer**”, “**entitlement holder**”, “**entitlement order**”, “**financial asset**”, “**investment property**”, “**proceeds**”, “**security**”, “**security entitlement**” and “**securities intermediary**” shall have the meanings set forth in Articles 8 and 9 of the UCC.

## 2. Nature of Account; Segregation of Collateral.

- (a) Pledgor’s Instruction to Segregate. Pledgor will from time to time provide Written Instructions to Securities Intermediary, with respect to cash and/or other property received by Securities Intermediary from Pledgor and accepted for credit by Securities Intermediary, to segregate certain of such cash and/or other property for the benefit of Secured Party (such cash and other property, after giving effect to the instructed segregation, the “**Collateral**”). Except as otherwise permitted in Sections 4, 5 or 10 of this Control Agreement and Parts 2, 3, 6, 7 and 8 of the Annex, Pledgor will not be entitled to provide Written Instructions to Securities Intermediary that reduces the amount of cash and/or other property that is segregated for the benefit of Secured Party. Securities Intermediary shall not be obligated to accept for credit, hold or maintain any cash or other property that is not acceptable to it.
- (b) Segregation of Property other than Cash. Securities Intermediary will segregate property other than cash as set forth in Part 1 of the Annex. Such property shall be treated as “financial assets” within the meaning of the UCC, and the Securities Account shall be a “securities account” (within the meaning of Section 8-501(a) of the UCC) for purposes of the UCC.
- (c) Segregation of Cash. Securities Intermediary will segregate cash by identifying such cash on Securities Intermediary’s books and records and crediting the cash to a separate deposit account in the

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<sup>2</sup> Parties wishing to conform to the CFTC Segregation Regime may wish to revise clause (ii) of the definition of “Joint Written Instructions” as set forth below to more closely follow the language of CFTC regulation 23.702(c)(1):

“(ii) transmitted by Pledgor and Secured Party via an electronic messaging platform to Securities Intermediary and include identical instructions concerning the Collateral or otherwise indicate that Pledgor and Secured Party have agreed to the instructions concerning the Collateral.”.

Revisions to this Control Agreement should be made in the Annex hereto, such as in Part 14 – Other Provisions.

name of Pledgor as Securities Intermediary's customer for the benefit of Secured Party (the "**Cash Account**") and together with the Securities Account, the "**Account**"). The Cash Account shall be a "deposit account" (within the meaning of Section 9-102 of the UCC) for purposes of the UCC and cash shall not be treated as "financial assets" within the meaning of the UCC.

3. Status of Securities Intermediary; Account Control.

- (a) Status of Securities Intermediary. With respect to Collateral consisting of financial assets, Securities Intermediary is, and will at all times be acting as, a securities intermediary. With respect to Collateral consisting of cash, Securities Intermediary is, and will at all times be acting as, a bank.
- (b) Use of Depositories.
  - i. Collateral held by Securities Intermediary through a Depository will be held subject to the rules, terms and conditions of such Depository.
  - ii. Where Collateral in the form of financial assets is held through a Depository, Securities Intermediary shall identify on its records as belonging to Pledgor and pledged to Secured Party a quantity of financial assets as part of a fungible bulk of financial assets held in Securities Intermediary's account at such Depository, as applicable. Financial assets held by a Depository, as applicable, will be held in accounts which include only assets of Securities Intermediary's customers.
- (c) Perfection by Control. Except as the parties may otherwise provide in Sections 5(b) and 9(c) of this Control Agreement and Parts 2, 3, 4, 5 and 10 of the Annex, Securities Intermediary will comply with any Written Instructions originated by Secured Party in accordance with Section 5(a) of this Control Agreement and the NOEC Provisions without further consent of Pledgor.

4. Collateral Services.

- (a) Return of Collateral to Pledgor. Except as otherwise provided in Sections 5 and 9(c) of this Control Agreement and the Annex, Securities Intermediary shall comply with Part 7 of the Annex with respect to any Written Instructions.
- (b) Investment of Collateral. Collateral in the form of cash shall be invested in accordance with the terms of Part 8 of the Annex.
- (c) Proceeds and Income. Except as otherwise provided in Section 9(c) of this Control Agreement, all interest, dividends, distributions, proceeds and other amounts received by Securities Intermediary with respect to the Collateral shall be subject to Part 9 of the Annex.
- (d) Corporate Actions. Except as otherwise provided in Sections 4(c) or 5 of this Control Agreement and the Annex, this Control Agreement shall not affect the right of Pledgor to direct Securities Intermediary regarding any voluntary corporate action with respect to Collateral that is not in the form of cash.

5. Notice of Exclusive Control and Pledgor Access Notice.

- (a) Notice of Exclusive Control. Except as the parties may otherwise provide in Section 9(c) of this Control Agreement and Parts 5 and 10 of the Annex, Secured Party may deliver or transmit a Notice of Exclusive Control in accordance with the NOEC Provisions and the parties agree to comply with the obligations set forth in the NOEC Provisions.
- (b) Pledgor Access Notice. Except as the parties may otherwise provide in Section 9(c) of this Control Agreement and Parts 5 and 10 of the Annex, Pledgor may deliver or transmit a Pledgor Access Notice in accordance with the Pledgor Access Provisions and the parties agree to comply with the obligations set forth in the Pledgor Access Provisions.

6. Representations and Covenants of Pledgor and Secured Party.

- (a) Representations of Secured Party and Pledgor. Each of Secured Party and Pledgor represents and warrants that:
- i. it is duly organized and existing under the laws of the jurisdiction of its organization with full power and authority to execute and deliver this Control Agreement and to perform all of the duties and obligations to be performed by it hereunder; and
  - ii. this Control Agreement is legally and validly entered into, does not, and will not, violate any ordinance, charter, by-law, rule or statute applicable to it, and is enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, administration, liquidation or analogous or similar laws or regulations, or by equitable principles.
- (b) Pledgor Representation. Pledgor represents that it is the sole owner of or otherwise has the right to transfer the Collateral free and clear of any security interests, liens or other adverse claims (except those set forth in Section 9(c) of this Control Agreement and as may otherwise be agreed between Secured Party and Pledgor). The foregoing representation will be deemed repeated as of each date on which Pledgor provides Written Instruction to Securities Intermediary to segregate cash or other property for the benefit of Secured Party.
- (c) Covenants of Pledgor and Secured Party. As between Pledgor and Secured Party:
- i. Secured Party hereby covenants, for the benefit of Pledgor, that Secured Party will not originate Written Instructions concerning the Account or the Collateral, other than to instruct Securities Intermediary to deliver or otherwise transfer some or all of the Collateral to another account of, or as otherwise requested by, Pledgor, unless and until Secured Party delivers or transmits a Notice of Exclusive Control to Securities Intermediary in accordance with the NOEC Provisions.<sup>3</sup>
  - ii. Except as permitted in Sections 2(a), 4, 5, and 10 of this Control Agreement and Parts 2, 3, 6, 7 and 8 of the Annex, Pledgor hereby covenants that it will not deliver or transmit Written Instructions directly to Securities Intermediary.

7. Representations, Covenants and Additional Duties of Securities Intermediary.

- (a) General. Securities Intermediary represents and warrants that it is duly organized and existing under the laws of the jurisdiction of its organization with full power and authority to execute and deliver this Control Agreement and to perform all of the duties and obligations to be performed by it hereunder, and this Control Agreement is legally and validly entered into, does not, and will not, violate any ordinance, charter, by-law, rule or statute applicable to it, and is enforceable in accordance with its terms, except as may be limited by bankruptcy, insolvency, administration, liquidation or analogous or similar laws or regulations, or by equitable principles.
- (b) Competing Security Interest. Securities Intermediary shall not subject any Collateral to any security interest, lien or right of setoff in favor of any third party that is making a claim against Securities Intermediary as debtor, and Securities Intermediary shall not pledge, encumber, hypothecate, transfer, dispose of, or otherwise grant any such third party an interest in, any Collateral in the form of financial assets. Securities Intermediary confirms that it has not entered into and will not enter into

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<sup>3</sup> Parties wishing to conform to the CFTC Segregation Regime may wish to revise clause (i) of this Section 6(c) to include the italicized text set forth below in order to more closely follow the language of CFTC regulation 23.702(c)(1):

“Secured Party hereby covenants, for the benefit of Pledgor, that Secured Party will not originate Written Instructions concerning the Account or the Collateral, other than to instruct Securities Intermediary *pursuant to an agreement of Pledgor and Secured Party* to deliver or otherwise transfer some or all of the Collateral to another account of, or as otherwise requested by, Pledgor, unless and until Secured Party delivers or transmits a Notice of Exclusive Control to Securities Intermediary in accordance with the NOEC Provisions.”

Revisions to this Control Agreement should be made in the Annex hereto, such as in Part 14 – Other Provisions.

any agreement with any other person or entity under which Securities Intermediary has agreed to comply with instructions or entitlement orders of such other person or entity relating to the Collateral or the Account.

- (c) Notice of Legal Action. The parties agree to be bound by the terms of Part 14 of the Annex, if applicable.
- (d) Account Statements. The parties acknowledge that, to the extent that regulations of any applicable regulatory authority grant a right to receive brokerage confirmations of security transactions in respect of the Account, the parties waive receipt of such confirmations, to the extent permitted by applicable law. Securities Intermediary will comply with the obligations (if any) of Part 14 of the Annex with respect to delivery of account statements and other information concerning the Account.
- (e) Directly Held Property and Other Assets. Securities Intermediary will treat all property and other assets credited to the Account as financial assets except that Securities Intermediary will not treat as a financial asset (i) any property or other asset that is not capable of such treatment under section 8-501(d) of the UCC or (ii) any cash or cash balance credited to the Account. Any property otherwise included in the Collateral and that is not capable of being treated as a financial asset under section 8-501(d) will be held by Securities Intermediary as bailee for Secured Party, and Section 5 of this Control Agreement will apply, solely for purposes of such section, as if the property were a financial asset credited to the Account. Securities Intermediary is entitled to all exculpations, indemnities and other benefits under this Control Agreement when acting as bailee for Secured Party.

8. Exculpation of Securities Intermediary.

- (a) No Obligation Regarding Quality of Collateral. Securities Intermediary shall be under no obligation to inquire into, and shall not be liable for, any Losses incurred by Pledgor, Secured Party or any other person as a result of the receipt or acceptance of fraudulent, forged or invalid Collateral, or Collateral that otherwise is not freely transferable or deliverable without encumbrance in any relevant market.
- (b) No Responsibility Concerning Other Agreement. Notwithstanding references to the ISDA Master Agreement and the CSA in this Control Agreement, Securities Intermediary has no duty, responsibility or obligation with respect to, the ISDA Master Agreement or the CSA (including, without limitation, any duty, responsibility or obligation to monitor Pledgor's or Secured Party's compliance with the ISDA Master Agreement or the CSA or to know the terms of the ISDA Master Agreement or the CSA).
- (c) No Duty of Oversight. Securities Intermediary is not at any time under any duty to monitor the value of any Collateral or to determine whether the Collateral is of a type eligible to be posted by Pledgor under the CSA, or to monitor the performance of or to advise on or make any recommendation for the purchase, sale, retention or disposition of any Collateral or to determine whether the aggregate value of the Collateral is sufficient to secure Pledgor's obligations under the CSA.
- (d) Compliance with Written Instructions. Securities Intermediary will have no responsibility or liability (i) to Secured Party for acting in accordance with the terms of this Control Agreement in response to a Pledgor Access Notice or Written Instructions on which Securities Intermediary may rely pursuant to Section 8(f) of this Control Agreement, (ii) to Pledgor for acting in accordance with the terms of this Control Agreement in response to a Notice of Exclusive Control or Written Instructions on which Securities Intermediary may rely pursuant to Section 8(f) of this Control Agreement and (iii) to Secured Party or Pledgor for failing to comply with Written Instructions before Securities Intermediary has had a reasonable time to act thereon, taking into account the applicable nature, purposes and circumstances of the Written Instructions.
- (e) No Collection Obligations. Securities Intermediary shall be under no obligation to take action to collect any amount payable on Collateral in default.



- (f) Reliance on Written Instructions; Risk Acknowledgements.
- i. Subject to the terms below, Securities Intermediary shall be entitled to rely upon any Written Instructions actually received by Securities Intermediary and reasonably believed by Securities Intermediary to be duly authorized and delivered or transmitted even if such Written Instructions were not duly authorized and delivered or transmitted.
  - ii. If Securities Intermediary receives Written Instructions which appear on their face to have been transmitted via (A) computer facsimile, email, the internet or other insecure electronic method, or (B) secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys, Secured Party and Pledgor each understands and agrees that Securities Intermediary cannot determine the identity of the actual sender of such Written Instructions and that Securities Intermediary shall be entitled to conclusively presume that such Written Instructions have been delivered or transmitted by an Authorized Person. Secured Party and Pledgor shall be responsible for ensuring that only its Authorized Persons deliver or transmit such Written Instructions to Securities Intermediary.
  - iii. If Secured Party or Pledgor elects to transmit Written Instructions through an on-line communication system that may be offered by Securities Intermediary, its use thereof shall be subject to the relevant terms and conditions specified by Securities Intermediary. If Secured Party or Pledgor elects (with Securities Intermediary's prior consent) to transmit Written Instructions through an on-line communications service owned or operated by a third party, it agrees that Securities Intermediary shall not be responsible or liable for the reliability or availability of any such service.
- (g) Account Disclosure. Securities Intermediary is authorized to supply any information regarding the Account to Secured Party and also to any applicable regulatory authority to such extent that the information is required to be supplied by any applicable law or governmental regulation now or hereafter in effect.
- (h) Securities Intermediary's Standard of Care; Limitation of Liability.
- i. Securities Intermediary shall comply with the standard of care set forth in Part 11 of the Annex, if applicable.
  - ii. Securities Intermediary's liability for any costs, expenses, damages, liabilities or claims, including attorneys' fees ("**Losses**") in connection with this Control Agreement shall be limited as set forth in Part 11 of the Annex, if applicable.
- (i) No Liability of Securities Intermediary for Third Parties. Securities Intermediary shall not be liable for any Losses incurred by Secured Party or Pledgor that result from an act or omission of any third party, including but not limited to Depositories and sub-custodians, except that for an act or omission of any Affiliate of Securities Intermediary, Securities Intermediary's liability will be the same as if such act or omission had been by Securities Intermediary.
- (j) Compliance by Securities Intermediary with Orders, Legal Processes, Regulations. Securities Intermediary will have no responsibility or liability to Secured Party or Pledgor or to any other person or entity for acting in accordance with (i) any judicial or arbitral process, injunction or other order, writ, judgment, decree or claim relating to the Account or the Collateral, even if subsequently modified, vacated or otherwise determined to have been without legal force or effect, (ii) the rules, regulations or interpretations of any regulatory body of competent jurisdiction, or (iii) any instructions given or made to Securities Intermediary by any regulatory body of competent jurisdiction acting in an official capacity during such regulatory body's normal business hours at its regular place of business or the place of business of Securities intermediary, as the case may be, and/or on official letterhead of such regulatory body.
- (k) No Liability for Consequential Damages. Under no circumstances will Securities Intermediary be liable for any indirect, incidental, consequential or special damages (including, without limitation,

lost profits) of any form incurred by any person or entity, whether or not foreseeable and regardless of the type of action in which such a claim may be brought, with respect to the Account, the Collateral or Securities Intermediary's performance under this Control Agreement, or its role as securities intermediary or bank.

- (l) Advice of Counsel. Securities Intermediary may obtain the advice of reputable external legal counsel selected by it to advise on (i) the interpretation of any of the provisions of this Control Agreement or (ii) any action of Securities Intermediary necessary to satisfy Securities Intermediary's duties hereunder and shall be fully protected in relying in good faith on counsel's advice on such interpretation or action or in connection with any subsequent acts or omissions of Securities Intermediary made in good faith in reliance upon and in conformity with such advice.
- (m) Force Majeure. Securities Intermediary shall not be responsible or liable for any failure or delay in the performance of its obligations under this Control Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including without limitation: acts of God; earthquakes; fires; floods; wars; civil or military disturbances; sabotage; epidemics; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications service; accidents; labor disputes; acts of civil or military authority; governmental actions; and inability to obtain labor, material, equipment or transportation.
- (n) No Implied Duties; Entire Agreement. Except for those duties and responsibilities as are expressly set forth in this Control Agreement or are implied by law that cannot be waived by agreement, Securities Intermediary shall have no duties or responsibilities whatsoever, and no covenant or obligation shall be implied against Securities Intermediary in connection with this Control Agreement. This Control Agreement constitutes the sole agreement between the parties with respect to its subject matter and supersedes any and all other agreements (whether written or oral) between the parties with respect to such subject matter.
- (o) No Obligation for Ensuring Compliance. Securities Intermediary shall have no obligation to monitor, ensure, or enforce Pledgor's or Secured Party's compliance with any applicable law, rule, regulation, or order and shall not be deemed to have breached any provision of this Control Agreement or to have committed fraud, negligence, gross negligence, or willful misconduct for obeying an instruction authorized under this Control Agreement that violates or is alleged to violate any applicable law, rule, regulation or order.<sup>4</sup>
- (p) Enforceability of Security Interest. Securities Intermediary makes no representations or warranties with respect to the creation, attachment, perfection, or priority of any security interest in the Account or Collateral or the adequacy of Secured Party's remedies to enforce Secured Party's security interest in the Account or the Collateral.

9. Compensation, Indemnification and Security Interest of Securities Intermediary.

- (a) Fees and Expenses. Secured Party and Pledgor, as applicable, agree to Securities Intermediary's fees (if any) set forth in Part 14 of the Annex.
- (b) Indemnification of Securities Intermediary. Secured Party and Pledgor each agree to indemnify Securities Intermediary in accordance with the terms of Part 12 of the Annex.
- (c) Securities Intermediary's Security Interest and Rights of Recoupment and Setoff. Securities Intermediary's security interest, lien and right to recoup or set-off against the Account and Collateral, if any, shall be as set forth in Part 10 of the Annex.

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<sup>4</sup>Where the CFTC Segregation Regime applies, parties may wish to include the following addition to this Section 8(o), for the avoidance of doubt:

"Securities Intermediary has no duty, responsibility or obligation with respect to the compliance of this Control Agreement with any applicable law, rule, regulation or order, including but not limited to, the Commodity Exchange Act or the rules promulgated thereunder."

Revisions to this Control Agreement should be made in the Annex hereto, such as in Part 14 – Other Provisions.

10. Termination.

- (a) Termination by Securities Intermediary. This Control Agreement may be terminated by Securities Intermediary as set forth in Part 6 of the Annex.
- (b) Termination by Secured Party and/or Pledgor in Certain Circumstances. This Control Agreement shall terminate upon: (i) Securities Intermediary's receipt of Written Instructions from Secured Party terminating this Control Agreement; (ii) Securities Intermediary's receipt of a Notice of Exclusive Control delivered or transmitted by Secured Party pursuant to the terms of this Control Agreement and the subsequent transfer by Securities Intermediary of all of the Collateral as instructed by Secured Party; (iii) Securities Intermediary's receipt of a Pledgor Access Notice delivered or transmitted by Pledgor pursuant to the terms of this Control Agreement and the subsequent transfer by Securities Intermediary of all of the Collateral as instructed by Pledgor; or (iv) Securities Intermediary's receipt of Joint Instructions from Pledgor and Secured Party and the subsequent transfer by Securities Intermediary of all of the Collateral from the Account as instructed by Secured Party and Pledgor.
- (c) Obligations upon Termination. Except as otherwise provided herein, all obligations of the parties to each other hereunder shall cease upon termination of this Control Agreement. The provisions of Sections 8, 9 and 11(p) of this Control Agreement and Parts 6, 10, 11, 12, 14(d) of the Annex shall survive the termination of this Control Agreement.

11. Miscellaneous.

- (a) Ambiguity. In the event that Securities Intermediary determines that there is an ambiguity in any Written Instructions received from Pledgor or Secured Party (a "Sender"), Securities Intermediary shall promptly give the Sender written notice of such ambiguity and may, in its reasonable discretion, thereafter refrain from taking any action directed in such Written Instructions other than to retain possession of the Collateral, unless Securities Intermediary receives clarifying or superseding Written Instructions from the Sender which, in the determination of Securities Intermediary, eliminate such ambiguity. Securities Intermediary shall be permitted to rely upon such clarifying or superseding Written Instructions without further inquiry.
- (b) Conflicting Instructions. In the event of any conflicting Written Instructions (including, but not limited to a Notice of Exclusive Control or Pledgor Access Notice) received by Securities Intermediary, the terms of Part 4 of the Annex shall apply.
- (c) Notices. Except as otherwise agreed by the parties in Part 13 of the Annex or otherwise, any notice or other communication to be delivered or transmitted under this Control Agreement may be given in any manner set forth below to the address or number or in accordance with any electronic messaging system details provided in Part 13 of the Annex and will be deemed effective as follows:
  - i. if in writing and delivered in person or by courier, on the date it is delivered;
  - ii. if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);
  - iii. if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or
  - iv. if sent by electronic messaging system (including without limitation, email), on the date that electronic message is received;

unless the date of that delivery or transmission (or attempted delivery or attempted transmission) or that receipt, as applicable, is not a Business Day or that communication is delivered or transmitted (or attempted) or received, as applicable, after the close of business on a Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Business Day.

- (d) Cumulative Rights; No Waiver. Each and every right granted to the parties hereunder or under any other document delivered hereunder or in connection herewith, or allowed it by law or equity, shall be cumulative and may be exercised concurrently or sequentially. No failure on the part of any party to this Control Agreement to exercise, and no delay in exercising, any right will operate as a waiver thereof, nor will any single or partial exercise by the relevant party of any right preclude any other future exercise thereof or the exercise of any other right.
- (e) Severability. In case any provision in or obligation under this Control Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions and/or obligations shall not in any way be affected thereby.
- (f) Amendments. This Control Agreement may not be amended or modified in any manner except by a written agreement executed by the parties hereto.
- (g) Assignment. This Control Agreement shall extend to and shall be binding upon the parties hereto, and their respective successors and assigns. The rights and duties of Securities Intermediary under this Control Agreement may be assigned to and assumed by any successor pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity. Otherwise, this Control Agreement shall not be assignable by any party without the prior written consent of the other parties.
- (h) Governing Law; Jurisdiction. This Control Agreement and the Account shall be governed by and construed in accordance with laws of the State of New York. The State of New York shall be the jurisdiction of Securities Intermediary as securities intermediary and bank for purposes of the UCC. The law applicable to all issues in Article 2(1) of the *Hague Convention on the Law Applicable to Certain Rights in respect of Securities Held with an Intermediary* shall be the law in force in the State of New York. Each party hereto consents to the non-exclusive jurisdiction of a state or federal court situated in New York City, New York in connection with any dispute arising hereunder.
- (i) Waiver of Immunity. To the extent that, in any jurisdiction, Secured Party or Pledgor may now or hereafter be entitled to claim, for itself or its assets, immunity from suit, execution, attachment (before or after judgment) or other legal process, Secured Party and Pledgor each irrevocably agrees not to claim, and hereby waives, such immunity.
- (j) JURY TRIAL WAIVER. SECURED PARTY, PLEDGOR AND SECURITIES INTERMEDIARY EACH HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS CONTROL AGREEMENT.
- (k) No Third Party Beneficiaries. In performing its duties hereunder, Securities Intermediary is acting solely on behalf of Secured Party and Pledgor and no contractual or service relationship shall be deemed to be established hereby between Securities Intermediary and any other person.
- (l) Headings. Section headings are included in this Control Agreement for convenience only and shall have no substantive effect on its interpretation.
- (m) Counterparts. This Control Agreement and any Joint Instructions may be executed in any number of counterparts, each of which shall be deemed to be an original, but such counterparts shall, together, constitute only one instrument.
- (n) USA PATRIOT ACT. Pledgor and Secured Party hereby acknowledge that Securities Intermediary is subject to federal laws, including the Customer Identification Program (“CIP”) requirements under the USA PATRIOT Act and its implementing regulations, pursuant to which Securities Intermediary must obtain, verify and record information that allows Securities Intermediary to identify each of Pledgor and Secured Party. Accordingly, prior to establishing the Account hereunder Securities Intermediary will ask Pledgor and/or Secured Party to provide certain information including, but not

- limited to, Pledgor's and/or Secured Party's name, physical address, tax identification number and other information that will help Securities Intermediary to identify and verify each of Pledgor's and Secured Party's identity, such as organizational documents, certificate of good standing, license to do business, or other pertinent identifying information. Pledgor and Secured Party agree that Securities Intermediary cannot establish an Account hereunder, unless and until Securities Intermediary verifies Pledgor's and/or Secured Party's identity in accordance with its CIP. Secured Party is not responsible for providing to Securities Intermediary documents related to Pledgor.
- (o) Relationship to Custodian Agreement. The terms of Part 14 of the Annex may address conflicts between the terms of this Control Agreement and the terms of the Custodian Agreement (as defined in the Annex).
  - (p) Limited Recourse of Securities Intermediary and Secured Party. The terms of Part 14 of the Annex may address any limitation on recourse of Securities Intermediary or Secured Party with respect to obligations of Pledgor under this Control Agreement.
  - (q) New Authorized Persons. Pledgor or Secured Party may add or remove person(s) from their respective list of Authorized Persons by delivering a written notice to Securities Intermediary that certifies an amended list of person(s) authorized to transmit or deliver Written Instructions and specimen signature(s) of such person(s); provided that, until Securities Intermediary has had commercially reasonable time to act on such notice, the person(s) previously certified as Authorized Person(s) shall continue to be Authorized Person(s) and Securities Intermediary shall be fully protected in acting in accordance with this Control Agreement upon Written Instructions from such Authorized Person(s) previously certified.
  - (r) Authorization to Deduct or Withhold for Taxes. Pledgor and Secured Party confirm that Securities Intermediary is authorized to deduct or withhold from any cash received or credited to the Account any taxes or levies required by any revenue or governmental authority for whatever reason in respect of the Account.
  - (s) Liability of Pledgor and Secured Party for Consequential Damages. The terms of Part 14 of the Annex may address any liability of Pledgor and/or Secured Party for indirect, incidental, consequential or special damages with respect to the Account, the Collateral or Pledgor and/or Secured Party's performance under this Control Agreement.
  - (t) Legal Uncertainty Regarding Instructions. The parties agree to the terms of Part 5 of the Annex, if applicable.

12. Risks and Protections Associated with Transmitting Written Instructions. Secured Party and Pledgor each acknowledges and agrees that it is fully informed of the protections and risks associated with the various methods of delivering or transmitting Written Instructions to Securities Intermediary and that there may be more secure methods of transmitting Written Instructions than the method(s) selected by it. Securities Intermediary, Pledgor and Secured Party each agree to comply with any applicable security procedures with respect to the delivery, transmission or authentication of Written Instructions as notified by Securities Intermediary on or prior to the date of this Control Agreement, which may be amended in accordance with the security procedures or otherwise upon reasonable notice.

IN WITNESS WHEREOF, Secured Party, Pledgor and Securities Intermediary have caused this Control Agreement to be executed by their respective officers, thereunto duly authorized, as of the day and year first above written.

**PLEDGOR:**

**[LEGAL NAME OF PLEDGOR]**

**By: [Name of Investment Manager/Authorized Signatory Firm]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SECURED PARTY:**

**[LEGAL NAME OF DEALER]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SECURITIES INTERMEDIARY:**

**[LEGAL NAME OF SECURITIES INTERMEDIARY]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ANNEX**

**to the**

**ISDA 2013 ACCOUNT CONTROL AGREEMENT**

**AMONG**

**[NAME OF SECURITIES INTERMEDIARY],**  
**as Securities Intermediary**

**[NAME OF SECURED PARTY],**  
**as Secured Party**

**AND**

**[NAME OF PLEDGOR],**  
**as Pledgor**

**Dated as of [●]**

**PART 1**  
**NATURE OF ACCOUNT**

*Segregation of property other than cash.* For purposes of Section 2(b) of this Control Agreement, Securities Intermediary will segregate property other than cash.<sup>5</sup>

[OPTION 1 (STAND ALONE ACCOUNT): in a separate numbered account for such property in the name of Pledgor as the entitlement holder for the benefit of Secured Party (the “**Securities Account**”).]

[OPTION 2 (MEMO-PLEDGE ACCOUNT): by identifying and segregating such property on Securities Intermediary’s books and records in the name of Pledgor as the entitlement holder for the benefit of Secured Party (property so identified and segregated as herein described, the “**Securities Account**”).]

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<sup>5</sup> Select one of the following options; delete the other.



## PART 2 NOEC PROVISIONS

*Notice of Exclusive Control.* For purposes of Section 5(a) of this Control Agreement, Secured Party may deliver or transmit a Notice of Exclusive Control, and the parties agree to comply with the following obligations set forth in these NOEC Provisions:

(a) Notice of Exclusive Control.<sup>6</sup>

[OPTION 1 (ONE STAGE PROCESS):

Upon the effectiveness of a Notice of Exclusive Control from Secured Party to Securities Intermediary, Securities Intermediary shall at the Release Time<sup>7</sup> transfer the IA Seizure Amount as instructed by Secured Party [and the Excess IA as instructed by Pledgor].<sup>8</sup> In addition, Secured Party agrees with Pledgor to deliver a copy of any notice (including any required attachments thereto) that Secured Party delivers to Securities Intermediary to Pledgor reasonably contemporaneously<sup>9</sup> with Secured Party's delivery to Securities Intermediary. 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 Secured Party in connection with this clause (a) of these NOEC Provisions or verify that any statement or other information contained in any such notice is true and correct.]

[OPTION 2 (TWO STAGE PROCESS – ESTIMATED REQUIRED IA):

(i) Initially, upon the effectiveness of a Notice of Exclusive Control specifying the amount of Estimated Required IA from Secured Party to Securities Intermediary, Securities Intermediary shall at the Initial Release Time<sup>10</sup> transfer the Estimated Required IA as instructed by Secured Party and shall continue to hold the remaining Collateral pursuant to this Control Agreement.

(ii) Subsequently, upon the effectiveness of a Notice of Exclusive Control and a notice specifying the amount of Required IA and Excess IA from Secured Party to Securities Intermediary, Securities Intermediary shall at the Release Time<sup>11</sup> transfer the Required IA as instructed by Secured Party and the Excess IA as instructed by Pledgor.

In addition, Secured Party agrees with Pledgor to provide Pledgor with a copy of any notice (including any required attachments thereto) that Secured Party delivers to Securities Intermediary in connection with this clause (a) of these NOEC Provisions reasonably contemporaneously<sup>12</sup> with Secured Party's delivery to Securities Intermediary. 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 Secured Party in connection with this clause (a) of these NOEC Provisions or verify that any statement or other information contained in any such notice is true and correct.]

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<sup>6</sup> The parties may select one of the options below or may specify an alternative formulation.

<sup>7</sup> If the parties prefer to specify in the CSA the amount of advance notice a Secured Party must give 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 Secured Party's requirement to provide notice.

<sup>8</sup> Include bracketed text only if IA Seizure Amount is specified as "Required IA."

<sup>9</sup> Parties seeking to conform to the CFTC Segregation Regime should consider changing "reasonably contemporaneously" to "immediately" with respect to notices that effect a "turnover of control" to address CFTC regulation 23.702(c)(2), which provides that if "turnover of control" is made to Secured Party, Pledgor shall be "immediately" notified of such turnover.

<sup>10</sup> If the parties prefer to specify in the CSA the amount of advance notice a Secured Party must give to 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 Secured Party's requirement to provide notice.

<sup>11</sup> If the parties prefer to specify in the CSA the amount of advance notice a Secured Party must give to 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 Secured Party's requirement to provide notice.

<sup>12</sup> Parties seeking to conform to the CFTC Segregation Regime should consider changing "reasonably contemporaneously" to "immediately" with respect to notices that effect a "turnover of control" to address CFTC regulation 23.702(c)(2), which provides that if "turnover of control" is made to Secured Party, Pledgor shall be "immediately" notified of such turnover.

[ADDITIONAL OPTION (FORWARDING OF NOTICES): Upon the effectiveness of a Notice of Exclusive Control or any other notice from Secured Party to Securities Intermediary in connection with this clause (a) of these NOEC Provisions, Securities Intermediary shall promptly notify Pledgor and provide a copy of such notice (including any attachments thereto) to Pledgor; provided that Securities Intermediary's failure to do so shall not affect the validity of such notice.]<sup>13, 14</sup>

[(b) Pledgor Dispute Provisions.<sup>15, 16, 17</sup>

(i) If Secured Party provides an effective Notice of Exclusive Control [certifying the occurrence of an event other than an Indisputable Event with respect to Pledgor]<sup>18</sup> and, prior to the transfer of the IA Seizure Amount as instructed by Secured Party, Pledgor provides an effective notice to Securities Intermediary that it in good faith disputes the occurrence of such event (a "Pledgor Dispute Notice"), then [, subject to clause (ii) of these Pledgor Dispute Provisions,] Securities Intermediary will not transfer any amounts otherwise required to be transferred pursuant to clause (a) of these NOEC Provisions until the earliest to occur of the following:

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

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

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

(I) there has been a declaratory or other judgment<sup>19</sup> 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 Pledgor as of the designation or occurrence of the Early Termination Date]<sup>20</sup>;

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

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<sup>13</sup> Delete if inapplicable.

<sup>14</sup> Unless otherwise addressed above (as set forth in footnotes 9 and 12), parties seeking to conform to the CFTC Segregation Regime should consider changing "promptly" to "immediately" with respect to notices that effect a "turnover of control" to address CFTC regulation 23.702(c)(2), which provides that if "turnover of control" is made to Secured Party, Pledgor shall be "immediately" notified of such turnover.

<sup>15</sup> These Pledgor Dispute 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 ISDA published CSA Amendment for IA Segregation) prior to the delivery of a Notice of Exclusive Control, then they can delete these Pledgor Dispute Provisions and include separate provisions in the CSA regarding the dispute mechanism. Parties should consult legal counsel as to whether including one or more of these provisions may affect Secured Party's perfection by "control" of its security interest in the Collateral under the UCC.

<sup>16</sup> If the Release Time is specified as "Immediate," then these Pledgor Dispute Provisions should be deleted.

<sup>17</sup> Parties seeking to conform to the CFTC Segregation Regime should consider whether the inclusion of these Pledgor Dispute Provisions complies with CFTC regulation 23.702(c)(2) which requires that "turnover of control" of Collateral be made "promptly".

<sup>18</sup> If there are no Indisputable Events, this provision should be deleted.

<sup>19</sup> If the parties prefer that Securities Intermediary wait until a final, non-appealable judgment is made, then they may include additional language to this effect throughout this provision.

<sup>20</sup> Parties should ensure that the bracketed language conforms to the events allowing for the release of the IA Seizure Amount under this Control Agreement.

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

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

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

[(ii) If, however, prior to the transfer of the IA Seizure Amount as instructed by Secured Party, effective written notice is provided by Secured Party to Securities Intermediary certifying that an Indisputable Event has occurred with respect to Pledgor, Securities Intermediary shall comply with the provisions of clause (a) of these NOEC Provisions, without regard to these Pledgor Dispute Provisions.]<sup>21</sup>

[(iii) Notwithstanding anything to the contrary contained in clause (i) of these Pledgor Dispute Provisions, if, prior to the transfer of the IA Seizure Amount as instructed by Secured Party, effective written notice is provided by Pledgor to Securities Intermediary certifying that an Indisputable Event has occurred with respect to Secured Party, then Securities Intermediary shall comply with clause (a) of the Pledgor Access Provisions and disregard any Notice of Exclusive Control issued previously certifying the occurrence of any event other than an Indisputable Event.]<sup>22</sup>

(iv) Notwithstanding anything to the contrary in clause (i) of these Pledgor Dispute Provisions, if, prior to the transfer of the IA Seizure Amount as instructed by Secured Party, effective written notice is provided to Securities Intermediary:

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

(B) from 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]]<sup>23</sup> accompanied by a copy of such declaratory or other judgment;

then the Notice of Exclusive Control will be deemed ineffective.

(v) Securities Intermediary shall have no obligation or responsibility to review any attachments (including any Evidence of Filing) to any notice provided by Secured Party or Pledgor in connection with these Pledgor Dispute Provisions or verify that any statement or other information contained in any such notice is true and correct.

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

(vii) Each of Secured Party and Pledgor shall provide the other with a copy of any notice (including any required attachments thereto) that it delivers to Securities Intermediary in connection with these Pledgor Dispute Provisions reasonably contemporaneously with its delivery to Securities Intermediary.

[ADDITIONAL OPTION (FORWARDING OF NOTICES): (viii) Upon receipt of any notice by Securities Intermediary from either Secured Party or Pledgor in connection with these Pledgor Dispute

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<sup>21</sup> If Indisputable Events are not specified, this provision should be amended or deleted.

<sup>22</sup> If Indisputable Events are not specified, this provision should be amended or deleted.

<sup>23</sup> Parties should ensure that the bracketed language conforms to the events allowing for the release of the IA Seizure Amount under this Control Agreement.

Provisions, Securities Intermediary shall promptly notify the other and provide a copy of such notice (including any attachments thereto) to the other; provided that Securities Intermediary's failure to do so shall not affect the validity of such notice.]<sup>24</sup>

(c) Definitions.

As used in these NOEC Provisions, the following capitalized terms will have the meaning specified in these NOEC Provisions. Capitalized terms used but not defined in these NOEC Provisions or this Control Agreement shall have the meaning ascribed to them in the ISDA Master Agreement.<sup>25</sup>

**“IA Seizure Amount”** means<sup>26</sup>

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

[OPTION 2 (REQUIRED IA): the Required IA, as specified by Secured Party in a written notice to Securities Intermediary.]<sup>27</sup>

**["Initial Release Time”** means, for purposes of clause (a) of these NOEC Provisions,

[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 Secured Party to 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, 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, etc.)*] [\_\_\_\_] Business Day [as/following] the date on which Securities Intermediary notifies 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 Secured Party to Securities Intermediary specifying the Estimated Required IA is effective[;][.]

[OPTIONAL PROVISIO TO OPTION 2 (INDISPUTABLE EVENT): *provided further* that if Secured Party has given effective written notice to 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 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 Secured Party to Securities Intermediary specifying the Estimated Required IA is effective.]]<sup>28</sup>

**["Pledgor Dispute 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 Pledgor, delivered a Pledgor Dispute Notice to Securities Intermediary.]<sup>29</sup>

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<sup>24</sup> Delete if inapplicable.

<sup>25</sup> The following terms should be defined in the CSA (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.

<sup>26</sup> The parties may select one of the options below or may specify an alternative formulation.

<sup>27</sup> 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.

<sup>28</sup> 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.

<sup>29</sup> Parties should delete this bracketed definition if the Pledgor Dispute Provisions in clause (b) are deleted.

["**Pledgor Dispute Provisions**" means the provisions in clause (b) of these NOEC Provisions.]<sup>30</sup>

**"Release Time"**<sup>31</sup> means, for purposes of clause (a) of these NOEC Provisions,

[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 Secured Party to 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, 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, etc.)*] [\_\_\_\_\_] Business Day [following/as] the date on which Securities Intermediary notifies 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 Secured Party to Securities Intermediary specifying the IA Seizure Amount is effective;][.]

[OPTIONAL PROVISIO TO OPTION 2 (INDISPUTABLE EVENT): *provided further* that if Secured Party has given effective written notice to 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 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 Secured Party to Securities Intermediary specifying the IA Seizure Amount is effective.]]

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<sup>30</sup> Parties should delete this bracketed definition if the Pledgor Dispute Provisions in clause (b) are deleted.

<sup>31</sup> Parties seeking to conform to the CFTC Segregation Regime should consider whether the stated Release Time complies with CFTC regulation 23.702(c)(2) which requires that "turnover of control" be made "promptly".

**PART 3**  
**PLEDGOR ACCESS PROVISIONS**

*Pledgor Access Notice.* For purposes of Section 5(b) of this Control Agreement, Pledgor may deliver or transmit a Pledgor Access Notice, and the parties agree to comply with the following obligations set forth in these Pledgor Access Provisions:

(a) Pledgor Access.<sup>32</sup>

[OPTION 1 (ONE STAGE PROCESS):

Upon the effectiveness of a Pledgor Access Notice from Pledgor to Securities Intermediary, Securities Intermediary shall at the Release Time<sup>33</sup> transfer the IA Return Amount as instructed by Pledgor [and the Required IA as instructed by Secured Party].<sup>34</sup> In addition, Pledgor agrees with Secured Party to deliver a copy of any notice (including any required attachments thereto) that Pledgor delivers to Securities Intermediary to Secured Party reasonably contemporaneously<sup>35</sup> with Pledgor's delivery to Securities Intermediary. Securities Intermediary shall have no obligation or responsibility to review any attachments (including any Evidence of Filing) to the Pledgor Access Notice or any other notice from Pledgor in connection with this clause (a) of these Pledgor Access Provisions or verify that any statement or other information contained in any such notice is true and correct.]

[OPTION 2 (TWO STAGE PROCESS – ESTIMATED EXCESS IA):

(i) Initially, upon the effectiveness of a Pledgor Access Notice and a notice specifying the amount of Estimated Excess IA from Pledgor to Securities Intermediary, Securities Intermediary shall at the Initial Release Time<sup>36</sup> transfer the Estimated Excess IA as instructed by Pledgor and shall continue to hold the remaining Collateral pursuant to this Control Agreement.

(ii) Subsequently, upon the effectiveness of a Pledgor Access Notice and a notice specifying the amount of Excess IA and Required IA from Pledgor to Securities Intermediary, Securities Intermediary shall at the Release Time<sup>37</sup> transfer the Excess IA as instructed by Pledgor and the Required IA as instructed by Secured Party.

In addition, Pledgor agrees with Secured Party to provide Secured Party with a copy of any notice (including any required attachments thereto) that Pledgor delivers to Securities Intermediary in connection with clause (a) of these Pledgor Access Provisions reasonably contemporaneously<sup>38</sup> with Pledgor's delivery to Securities Intermediary. Securities Intermediary shall have no obligation or responsibility to review any attachments (including any Evidence of Filing) to the Pledgor Access Notice or any other notice provided by Pledgor in connection with this clause (a) of these Pledgor Access Provisions or verify that any statement or other information contained in any such notice is true and correct.]

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<sup>32</sup> The parties may select one of the options below or may specify an alternative formulation.

<sup>33</sup> If the parties prefer to specify in the CSA the amount of advance notice a Pledgor must give Secured Party prior to delivering a Pledgor Access Notice, then they can elect "Immediate" for the Release Time definition under these provisions and include separate provisions in the CSA regarding Pledgor's requirement to provide notice.

<sup>34</sup> Include bracketed text only if IA Return Amount is specified as "Excess IA."

<sup>35</sup> Parties seeking to conform to the CFTC Segregation Regime should consider changing "reasonably contemporaneously" to "immediately" with respect to notices that effect a "turnover of control" to address CFTC regulation 23.702(c)(2), which provides that if "turnover of control" is made to Pledgor, Secured Party shall be "immediately" notified of such turnover.

<sup>36</sup> If the parties prefer to specify in the CSA the amount of advance notice a Pledgor must give Secured Party prior to delivering a Pledgor Access Notice, then they can elect "Immediate" for the Release Time definition under these provisions and include separate provisions in the CSA regarding Pledgor's requirement to provide notice.

<sup>37</sup> If the parties prefer to specify in the CSA the amount of advance notice a Pledgor must give Secured Party prior to delivering a Pledgor Access Notice, then they can elect "Immediate" for the Release Time definition under these provisions and include separate provisions in the CSA regarding Pledgor's requirement to provide notice.

<sup>38</sup> Parties seeking to conform to the CFTC Segregation Regime should consider changing "reasonably contemporaneously" to "immediately" with respect to notices that effect a "turnover of control" to address CFTC regulation 23.702(c)(2), which provides that if "turnover of control" is made to Pledgor, Secured Party shall be "immediately" notified of such turnover.

[ADDITIONAL OPTION (FORWARDING OF NOTICES): Upon the effectiveness of a Pledgor Access Notice or any other notice from Pledgor to Securities Intermediary in connection with this clause (a) of these Pledgor Access Provisions, Securities Intermediary shall promptly notify Secured Party and provide a copy of such notice (including any attachments thereto) to Secured Party; provided that Securities Intermediary's failure to do so shall not affect the validity of such notice.]<sup>39, 40</sup>

[(b) Secured Party Dispute Provisions.<sup>41, 42, 43</sup>

(i) If Pledgor provides an effective Pledgor Access Notice [certifying the occurrence of an event other than an Indisputable Event with respect to Secured Party]<sup>44</sup> and, prior to the transfer of the IA Return Amount as instructed by Pledgor, Secured Party provides an effective notice to Securities Intermediary that it in good faith disputes the occurrence of such event (a "Secured Party Dispute Notice"), then [, subject to clause (ii) of these Secured Party Dispute Provisions,] Securities Intermediary will not transfer any amounts otherwise required to be transferred pursuant to clause (a) of these Pledgor Access Provisions until the earliest to occur of the following:

(A) effective written notice is provided from Secured Party to Securities Intermediary stating that Secured Party has withdrawn its dispute;

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

(C) delivery to Securities Intermediary of a written notice from Pledgor stating that:

(I) there has been a declaratory or other judgment<sup>45</sup> 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 Secured Party as of the designation or occurrence of the Early Termination Date]<sup>46</sup>;

(II) any injunction or other legal action preventing Securities Intermediary from transferring the IA Return Amount as instructed by Pledgor has expired or been removed or lifted; or

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

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<sup>39</sup> Delete if inapplicable.

<sup>40</sup> Unless otherwise addressed above (as set forth in footnotes 35 and 38), parties seeking to conform to the CFTC Segregation Regime should consider changing "promptly" to "immediately" with respect to notices that effect a "turnover of control" to address CFTC regulation 23.702(c)(2), which provides that if "turnover of control" is made to Pledgor, Secured Party shall be "immediately" notified of such turnover.

<sup>41</sup> These Secured Party Dispute 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 13 of the ISDA published CSA Amendment for IA Segregation) prior to the delivery of a Pledgor Access Notice, then they can delete these Secured Party Dispute Provisions and include separate provisions in the CSA regarding the dispute mechanism.

<sup>42</sup> If the Release Time is specified as "Immediate," then the Secured Party Dispute Provisions should be deleted.

<sup>43</sup> Parties seeking to conform to the CFTC Segregation Regime should consider whether the inclusion of these Secured Party Dispute Provisions complies with CFTC regulation 23.702(c)(2) which requires that "turnover of control" of collateral be made "promptly".

<sup>44</sup> If there are no Indisputable Events, this provision should be deleted.

<sup>45</sup> If the parties prefer that Securities Intermediary wait until a final, non-appealable judgment is made, then they may include additional language to this effect throughout this provision.

<sup>46</sup> Parties should ensure that the bracketed language conforms to the events allowing for the release of the IA Return Amount under this Control Agreement.

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

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

[(ii) If, however, prior to the transfer of the IA Return Amount as instructed by Pledgor, effective written notice is provided by Pledgor to Securities Intermediary certifying that an Indisputable Event has occurred with respect to Secured Party, Securities Intermediary shall comply with clause (a) of these Pledgor Access Provisions, without regard to these Secured Party Dispute Provisions.]<sup>47</sup>

[(iii) Notwithstanding anything to the contrary in these Secured Party Dispute Provisions, if, prior to the transfer of the IA Return Amount as instructed by Pledgor, effective written notice is provided by Secured Party to Securities Intermediary certifying that an Indisputable Event has occurred with respect to Pledgor, then Securities Intermediary shall comply with the clause (a) of the NOEC Provisions and disregard any Pledgor Access Notice issued previously certifying the occurrence of any event other than an Indisputable Event.]<sup>48</sup>

(iv) Notwithstanding anything to the contrary in clause (i) of these Secured Party Dispute Provisions, if, prior to the transfer of the IA Return Amount as instructed by Pledgor, effective written notice is provided to Securities Intermediary:

(A) from Pledgor, stating that Pledgor has withdrawn its Pledgor Access Notice; or

(B) from Secured Party, 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 Pledgor Access Notice]]<sup>49</sup> accompanied by a copy of such declaratory or other judgment;

then the Pledgor Access Notice will be deemed ineffective.

(v) Securities Intermediary shall have no obligation or responsibility to review any attachments (including any Evidence of Filing) to any notice provided by Pledgor or Secured Party in connection with these Secured Party Dispute Provisions or verify that any statement or other information contained in any such notice is true and correct.

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

(vii) Each of Pledgor and Secured Party shall provide the other with a copy of any notice (including any required attachments thereto) that it delivers to Securities Intermediary in connection with these Secured Party Dispute Provisions reasonably contemporaneously with its delivery to Securities Intermediary.

[ADDITIONAL OPTION (FORWARDING OF NOTICES): (viii) Upon receipt of any notice by Securities Intermediary from either Pledgor or Secured Party in connection with these Secured Party Dispute Provisions, Securities Intermediary shall promptly notify the other and provide a copy of such

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<sup>47</sup> If Indisputable Events are not specified, this provision should be amended or deleted.

<sup>48</sup> If Indisputable Events are not specified, this provision should be amended or deleted.

<sup>49</sup> Parties should ensure that the bracketed language conforms to the events allowing for the release of the IA Return Amount under this Control Agreement.



notice (including any attachments thereto) to the other; provided that Securities Intermediary's failure to do so shall not affect the validity of such notice.]<sup>50</sup>

(c) Definitions.

As used in these Pledgor Access Provisions, the following capitalized terms will have the meaning specified in these Pledgor Access Provisions. Capitalized terms used but not defined in these Pledgor Access Provisions or this Control Agreement shall have the meaning ascribed to them in the ISDA Master Agreement.<sup>51</sup>

**“IA Return Amount”** means<sup>52</sup>

[OPTION 1 (ALL IA): all of the Collateral, as specified by Pledgor in a written notice to Securities Intermediary.]

[OPTION 2 (EXCESS IA): the Excess IA, as specified by Pledgor in a written notice to Securities Intermediary.]<sup>53</sup>

**["Initial Release Time”** means, for purposes of clause (a) of these Pledgor Access Provisions,

[OPTION 1 (IMMEDIATE): the time at which a Pledgor Access Notice is effective; *provided, however,* if the Estimated Excess IA is not specified in the effective Pledgor Access Notice, then the Initial Release Time will be the time at which written notice from Pledgor to Securities Intermediary specifying the Estimated Excess 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, 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, etc.)*] [\_\_\_\_] Business Day [as/following] the date on which Securities Intermediary notifies Secured Party of its receipt of a Pledgor Access Notice; *provided, however,* if the Estimated Excess IA is not specified in the effective Pledgor Access Notice, then the Initial Release Time will be no earlier than the time at which written notice from Pledgor to Securities Intermediary specifying the Estimated Excess IA is effective];[.]

[OPTIONAL PROVISIO TO OPTION 2 (INDISPUTABLE EVENT): *provided further* that if Pledgor has given effective written notice to Securities Intermediary (which may be by effective delivery of a separate notice or by inclusion in the Pledgor Access Notice) certifying that an Indisputable Event has occurred with respect to Secured Party, the Initial Release Time will be deemed to mean the time at which such notice is effective or, if the Estimated Excess IA is not specified in such notice, the time at which written notice from Pledgor to Securities Intermediary specifying the Estimated Excess IA is effective]]<sup>54</sup>

**“Release Time”**<sup>55</sup> means, for purposes of clause (a) of these Pledgor Access Provisions,

[OPTION 1 (IMMEDIATE): the time at which a Pledgor Access Notice is effective; *provided, however,* if the IA Return Amount is not specified in the effective Pledgor Access Notice, then the

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<sup>50</sup> Delete if inapplicable.

<sup>51</sup> The following terms should be defined in the CSA (or an amendment thereto), to the extent applicable: Bankruptcy Event, Bankruptcy Filing Event, Bankruptcy Filing Evidence Event, Estimated Excess IA, Evidence of Filing, Excess IA, Indisputable Event, Net Termination Payment, and Required IA.

<sup>52</sup> The parties may select one of the options below or may specify an alternative formulation.

<sup>53</sup> If under the Pledgor Access Provision OPTION 2 (TWO STAGE PROCESS – ESTIMATED EXCESS IA) is selected, then OPTION 2 (EXCESS IA) of this definition should be selected.

<sup>54</sup> If under the Pledgor Access Provisions OPTION 1 (ONE STAGE PROCESS) is selected, the entire definition of “Initial Release Time” should be deleted.

<sup>55</sup> Parties seeking to conform to the CFTC Segregation Regime should consider whether the stated Release Time complies with CFTC regulation 23.702(c)(2) which requires that “turnover of control” be made “promptly”.

Release Time will be the time at which written notice from Pledgor to Securities Intermediary specifying the IA Return 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, 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, etc.)*] [\_\_\_\_] Business Day [following/as] the date on which Securities Intermediary notifies Secured Party of its receipt of a Pledgor Access Notice; *provided, however*, if the IA Return Amount is not specified in the effective Pledgor Access Notice, then the Release Time will be no earlier than the time at which written notice from Pledgor to Securities Intermediary specifying the IA Return Amount is effective[;][.]

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

[**“Secured Party Dispute 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 Secured Party delivered a Secured Party Dispute Notice to Securities Intermediary.]<sup>56</sup>

[**“Secured Party Dispute Provisions”** means the provisions in clause (b) of these Pledgor Access Provisions.]<sup>57</sup>

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<sup>56</sup> Parties should delete this bracketed definition if the Secured Party Dispute Provisions in clause (b) are deleted.

<sup>57</sup> Parties should delete this bracketed definition if the Secured Party Dispute Provisions in clause (b) are deleted.

**PART 4**  
**CONFLICTING INSTRUCTIONS**

- (a) For the purposes of Section 11(b) of this Control Agreement, notwithstanding anything else to the contrary in this Control Agreement, in the event that both an effective Notice of Exclusive Control and an effective Pledgor Access Notice have been received by Securities Intermediary, the following provisions apply:<sup>58</sup>

[OPTION 1: (FIRST IN TIME PREVAILS):

[Subject to the Secured Party Dispute Provisions and the Pledgor Dispute Provisions,] (i) any Pledgor Access Notice that is effective (or deemed effective) after a Notice of Exclusive Control is effective (or deemed effective) will be deemed ineffective and (ii) any Notice of Exclusive Control that is effective (or deemed effective) after a Pledgor Access Notice is effective (or deemed effective) will be deemed ineffective. [If Securities Intermediary is unable to determine which of the Pledgor Access Notice or the Notice of Exclusive Control was effective first, then the [Notice of Exclusive Control][Pledgor Access Notice] will be deemed to have been effective after the [Notice of Exclusive Control][Pledgor Access Notice].]<sup>59</sup> [Pledgor and Secured Party agree to abide by Securities Intermediary's good faith determination as to whether the Notice of Exclusive Control or the Pledgor Access Notice was effective first or whether Securities Intermediary is unable to determine whether the Notice of Exclusive Control or the Pledgor Access Notice was effective first.]<sup>60</sup>

[OPTION 2: (NOTICE OF EXCLUSIVE CONTROL PREVAILS):<sup>61</sup>

Securities Intermediary shall be entitled to rely upon the effective Notice of Exclusive Control from Secured Party to Securities Intermediary and shall disregard any effective Pledgor Access Notice from Pledgor to Securities Intermediary.]<sup>62</sup>

- (b) Notwithstanding anything else to the contrary in this Control Agreement, if Securities Intermediary transfers Collateral in compliance with any effective Pledgor Access Notice or any effective Notice of Exclusive Control before the effectiveness of both a Pledgor Access Notice and a Notice of Exclusive Control, then such transfer shall be valid and enforceable.

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<sup>58</sup> Select one of the following options; delete the other.

<sup>59</sup> Parties should select whether the Notice of Exclusive Control or Pledgor Access Notice should prevail in the event of a "tie". Parties should consult with legal counsel as to whether the inclusion of language permitting the Pledgor Access Notice to prevail over a Notice of Exclusive Control in the event of a "tie" may affect Secured Party's perfection by "control" of its security interest in the Collateral within the meaning of the UCC. Parties may also elect to delete this sentence and remain silent on the possibility of a "tie".

<sup>60</sup> Parties may also elect to delete this sentence.

<sup>61</sup> Parties wishing to segregate initial margin pursuant to the CFTC Segregation Regime should consider whether providing that a Notice of Exclusive Control prevails pursuant to Option 2 conflicts with CFTC regulation 23.702(c)(2)'s requirement that "turnover of control" be made promptly without the written consent of both Secured Party and Pledgor.

<sup>62</sup> Option 2 is not intended to be used in conjunction with the Pledgor Dispute Provisions.

**PART 5**  
**LEGAL UNCERTAINTY REGARDING INSTRUCTIONS**

[If at any time Securities Intermediary determines that on account of non-contractual legal obligations wholly apart from its obligations under this Control Agreement, Securities Intermediary is uncertain as to its duties to transfer Collateral as instructed by Secured Party or Pledgor, as applicable, (including, without limitation, due to a determination by Securities Intermediary that a transfer may be prohibited by applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws affecting creditors' rights generally), then Securities Intermediary shall promptly give Secured Party and Pledgor written notice of its determination and may retain the Collateral until Securities Intermediary determines that its non-contractual legal obligations to transfer Collateral as instructed by Secured Party or Pledgor, as applicable, have been adequately clarified. The determination may be based upon the receipt of (i) an order from a court (or other forum) of competent jurisdiction that directs Securities Intermediary to take action in respect of the Collateral, (ii) a copy of a declaratory or other judgment from a court (or other forum) of competent jurisdiction that clarifies its legal obligations to transfer Collateral as instructed by Secured Party or Pledgor, as applicable, (iii) an opinion of external counsel acceptable in good faith to Securities Intermediary stating that Securities Intermediary is permitted by law to transfer the Collateral as instructed by Secured Party or Pledgor, as applicable or (iv) other assurances satisfactory to Securities Intermediary.]<sup>63, 64, 65</sup>

[Not Applicable]<sup>66</sup>

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<sup>63</sup> Delete if inapplicable.

<sup>64</sup> This provision should be coordinated with other provisions in this Control Agreement addressing similar issues.

<sup>65</sup> Parties wishing to segregate initial margin in accordance with the CFTC Segregation Regime may wish to consider deleting "may retain the Collateral" in the sixth line of Part 5 above and in its place consider including "shall not be liable should Securities Intermediary retain the Collateral".

<sup>66</sup> Include if this Part 5 is inapplicable.

**PART 6**  
**TERMINATION BY SECURITIES INTERMEDIARY**

- (a) Prior to the effectiveness of a Notice of Exclusive Control or a Pledgor Access Notice, this Control Agreement may be terminated by Securities Intermediary by providing written notice to the other parties, provided that such termination shall not be effective until [X days]<sup>67</sup> following Securities Intermediary's delivery or transmission of such written notice (the "Effective Termination Date").<sup>68</sup>
- (b) Secured Party and Pledgor will endeavor to provide Joint Instructions for the transfer of all Collateral on or before the Effective Termination Date. If Securities Intermediary has not received such Joint Instruction for the transfer of all Collateral prior to the Effective Termination Date, Securities Intermediary shall transfer the Collateral<sup>69</sup>

[OPTION 1 (TRANSFER TO SECURED PARTY): as Secured Party may direct pursuant to Written Instructions. If such Written Instructions are not received by Securities Intermediary on or before the Effective Termination Date, Securities Intermediary may petition a court of competent jurisdiction for instructions and transfer the Collateral as directed by such court.]<sup>70</sup>

[OPTION 2 (TRANSFER TO PLEDGOR): as Pledgor may direct pursuant to Written Instructions. If such Written Instructions are not received by Securities Intermediary on or before the Effective Termination Date, Securities Intermediary may petition a court of competent jurisdiction for instructions and transfer the Collateral as directed by such court.]

[OPTION 3 (TRANSFER AS DIRECTED BY A COURT): as directed by a court of competent jurisdiction in response to petition by Securities Intermediary.]

- [(c) Notwithstanding the designation of an Effective Termination Date pursuant to clause (a), no termination of this Control Agreement pursuant to this Part 6 shall be effective until all Collateral has been transferred by Securities Intermediary as provided in clause (b) of this Part 6. Following the Effective Termination Date and until the date of transfer of all Collateral, the sole duty of Securities Intermediary under this Control Agreement will be to retain custody of the Collateral pending the transfer.]

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<sup>67</sup> Parties to specify number of days/Business Days.

<sup>68</sup> Parties may want to consider including provisions in the CSA to address the effect of termination of the Control Agreement.

<sup>69</sup> Parties should consult legal counsel as to whether choosing Option 2 or 3 may affect Secured Party's perfection by "control" of its security interest in the Collateral under the UCC.

<sup>70</sup> Parties wishing to segregate initial margin in accordance with the CFTC Segregation Regime should consider whether transferring Collateral as Secured Party directs pursuant to Option 1 comports with CFTC regulations and should consider putting in place alternative arrangements for the transfer of Collateral upon the termination by Securities Intermediary which preserve Pledgor's election to segregate initial margin in accordance with the CFTC Segregation Regime, such as requiring an arrangement with a new custodian that has entered into an account control agreement with Secured Party and Pledgor substantially similar to this Control Agreement.

**PART 7**  
**RETURN OF COLLATERAL TO PLEDGOR<sup>71, 72</sup>**

[OPTION A (JOINT INSTRUCTIONS):

Unless a Pledgor Access Notice or a Notice of Exclusive Control is effective, Securities Intermediary shall comply with all Joint Instructions that are issued in respect of the Collateral.]

[OPTION B (SECURED PARTY DIRECTS):

Unless a Pledgor Access Notice is effective, Securities Intermediary shall comply with all Written Instructions originated by Secured Party concerning the Collateral without further consent of Pledgor.]

[OPTION C (SECURED PARTY DIRECTS TO STANDING ACCOUNT OF PLEDGOR):

Unless a Pledgor Access Notice is effective, if Secured Party delivers or transmits Written Instructions to Securities Intermediary to transfer Collateral to an account of Pledgor as identified by Pledgor in standing instructions (which may be modified by Pledgor from time to time), then Securities Intermediary shall comply with such Written Instructions. Unless a Notice of Exclusive Control is effective, if Secured Party delivers or transmits Written Instructions to Securities Intermediary to transfer Collateral to an account other than an account of Pledgor as identified by Pledgor in standing instructions (which may be modified by Pledgor from time to time), then Securities Intermediary shall not comply with such Written Instructions.]

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<sup>71</sup> Parties seeking to conform to the CFTC Segregation Regime should consider CFTC regulation 23.702(c)(1) which provides that any withdrawal of margin (excluding withdrawals relating to a “turnover of control” pursuant to 23.702(c)(2)) only be made pursuant to the agreement of both Secured Party and Pledgor.

<sup>72</sup> Parties seeking to conform to the CFTC Segregation Regime should consider CFTC regulation 23.702(c)(1) which provides that notification of withdrawals of Collateral (excluding those relating to a “turnover of control”) be given immediately to the non-withdrawing party and should consider adding the following:

“NOTICE OF WITHDRAWAL: Upon the [withdrawal][transfer] of Collateral out of the Account by or pursuant to the Written Instructions of a party (the “Withdrawing Party”) (other than pursuant to the NOEC Provisions or the Pledgor Access Provisions), [the Withdrawing Party][Securities Intermediary] shall immediately notify the party that is not the Withdrawing Party; provided that a failure to provide such notice shall not affect the validity of such [withdrawal][transfer].”.

**PART 8**  
**INVESTMENT OF COLLATERAL**<sup>73</sup>

Subject to Section 5 of the Control Agreement, Securities Intermediary is authorized to, and shall, in accordance with this Part 8 and Exhibit C (as such Exhibit C may be amended from time to time) (a) invest immediately available cash in the Cash Account in the instruments designated in Exhibit C (“**Eligible Investments**”), or (b) redeem or otherwise liquidate Eligible Investments, in each case as directed by [Pledgor][Pledgor and Secured Party] pursuant to effective [Written Instructions][Joint Instructions]. Payment for the purchase of Eligible Investments may be made by debiting cash in the Cash Account.

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<sup>73</sup> Parties seeking to conform to the CFTC Segregation Regime should consider that CFTC regulation 23.703(a) provides that Collateral may only be invested consistent with CFTC Rule 1.25, which is the same standard that applies to the investment of customer funds related to exchange-traded futures and cleared swaps. Subject to the above, the swap dealer and Pledgor may enter into any commercial arrangement in writing regarding the investment of Collateral and the related allocation of gains and losses resulting from such investment. The CFTC notes that 23.703(a) only restricts the manner in which a swap dealer may invest margin that is segregated pursuant to the CFTC Segregation Regime and does not in any way restrict the types of collateral that Pledgor may post to a swap dealer, nor does it require a swap dealer to convert posted collateral.

**PART 9  
PROCEEDS AND INCOME**

[OPTION A (ALL PROCEEDS CREDITED TO THE ACCOUNT):

Securities Intermediary will credit to the Cash Account all interest, dividends, income and other amounts received in the form of cash by Securities Intermediary in respect of the Collateral and will [credit to][identify as part of]<sup>74</sup> the Securities Account all non-cash interest, dividends, income and other property received by Securities Intermediary on the Collateral. All interest, dividends and other amounts or property received in respect of the Collateral will constitute Collateral.]

[OPTION B (NO PROCEEDS CREDITED TO THE ACCOUNT ABSENT A NOTICE OF EXCLUSIVE CONTROL):

Securities Intermediary will credit to Pledgor's [custodial] account at Securities Intermediary, exclusive of the Account, all cash interest, dividends, income and other amounts [other than amounts of principal or redemption proceeds] received by Securities Intermediary in respect of the Collateral and will [credit to][identify as part of]<sup>75</sup> Pledgor's [custodial] account at Securities Intermediary, exclusive of the Account, all non-cash interest, dividends, income and other property [other than amounts of principal or redemption proceeds] received by Securities Intermediary in respect of the Collateral. The interest, dividends and other income or amounts or property [other than amounts of principal or redemption proceeds] will not constitute Collateral. However, if a Notice of Exclusive Control has become effective, cash interest, dividends, income and other amounts will be credited to the Cash Account, and non-cash interest, dividends, income and other property will be [credited to][identified as part of]<sup>76</sup> the Securities Account. [Securities Intermediary will credit to the Cash Account all principal and redemption proceeds received in the form of cash by Securities Intermediary in respect of the Collateral and will [credit to][identify as part of]<sup>77</sup> the Securities Account all non-cash principal and redemption proceeds received by Securities Intermediary on the Collateral.]

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<sup>74</sup> Insert the latter, if utilizing the memo-pledge structure.

<sup>75</sup> Insert the latter, if utilizing the memo-pledge structure.

<sup>76</sup> Insert the latter, if utilizing the memo-pledge structure.

<sup>77</sup> Insert the latter, if utilizing the memo-pledge structure.



**PART 10**  
**SECURITIES INTERMEDIARY'S SECURITY INTEREST AND RIGHTS OF**  
**RECOUPMENT AND SETOFF**

(a) Securities Intermediary's Security Interest.

[OPTION 1 (SECURITIES INTERMEDIARY'S LIEN ARISES UNDER THE CONTROL AGREEMENT):

In order to secure the payment of fees, charges, expenses and other amounts payable to Securities Intermediary pursuant to Section[s] 9(a)[ and 9(b)], [whether contingent or otherwise,] Securities Intermediary shall have and Pledgor hereby grants a continuing security interest in and right of recoupment or setoff against the Account and the Collateral.]

[OPTION 2 (SECURITIES INTERMEDIARY'S LIEN ARISES OTHERWISE THAN UNDER THE CONTROL AGREEMENT):

By [the Custodian Agreement (as defined in Part 14 of the Annex) or other] contract or by operation of law, Securities Intermediary may have a security interest in or right of recoupment or setoff against the Account or the Collateral to secure obligations owed to Securities Intermediary.]

[OPTION 3 (SECURITIES INTERMEDIARY WAIVES SECURITY INTEREST IN THE COLLATERAL):

Securities Intermediary waives any security interest, lien or right of setoff that it may be granted or acquire in or against the Collateral, whether arising pursuant to any agreement with Pledgor or by operation of law.<sup>78]</sup>

(b) Priority of Securities Intermediary's Security Interest.

[OPTION 1 (SECURITIES INTERMEDIARY'S LIEN IS SENIOR TO SECURED PARTY'S LIEN):

Securities Intermediary does not subordinate any security interest, lien or right of recoupment or setoff that it may have in or against the Collateral or the Account to the security interest in favor of Secured Party.<sup>79]</sup>

[OPTION 2 (SECURITIES INTERMEDIARY'S LIEN IS SUBORDINATED TO SECURED PARTY'S LIEN):

Securities Intermediary subordinates any security interest, lien or right of recoupment or setoff that it may have in or against the Collateral or the Account to the security interest in favor of Secured Party.]

[OPTION 3 (SECURITIES INTERMEDIARY'S LIEN IS PARTIALLY SUBORDINATED TO SECURED PARTY'S LIEN):

Securities Intermediary subordinates any security interest, lien or right of recoupment or setoff that it may have in or against the Collateral or the Account to the security interest in favor of Secured Party. However, the subordination will not apply to the extent that Securities Intermediary's security interest, lien or right of recoupment or setoff secures or may reduce obligations of Pledgor [(a) to pay fees, charges, expenses and other amounts payable to Securities Intermediary pursuant to Section[s] 9(a)[ and 9(b)], whether contingent or otherwise, [(b) arising out of the operation of the custodial account under the Custodian Agreement (as defined in Part 14 of the Annex)][ or [b][c] to pay or reimburse Securities Intermediary for advances of cash, securities or other financial assets made by Securities Intermediary to clear or settle the redemption[,

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<sup>78</sup> If this Option 3 is selected, the priority provisions in clause (b) of this Part 10 should be disregarded, and many of the provisions in clause (c) of this Part 10 may not be relevant or may need to be revised.

<sup>79</sup> If the parties wish to cap Securities Intermediary's lien, they should consider using Option 3 of clause (b) below.

sale or purchase by Pledgor] of securities or other financial assets in connection with the operation of the Account].]

[(**CAP ON PRIORITY OF SECURITY INTEREST**) Securities Intermediary's security interest, lien or right of recoupment or setoff in or against the Collateral or the Account shall be senior to the security interest in favor of Secured Party only with respect to an amount not to exceed [●].<sup>80</sup>]

(c) Related Provisions.

[*Advances by Securities Intermediary.* [Securities Intermediary will not advance cash, securities or other financial assets to, for or on behalf of Pledgor in connection with the operation of the Account [except that Securities Intermediary may, but is not obligated to, do so to clear or settle the redemption[, sale or purchase by Pledgor] of securities or other financial assets in connection with the operation of the Account.]] [If Securities Intermediary advances cash, securities or financial assets to the Account for any purpose [permitted by the foregoing sentence]<sup>81</sup>, Pledgor's obligations to pay or reimburse Securities Intermediary for such advances shall be secured by the security interest referred to in clause (a) of this Part 10 or as may arise by operation of law.]<sup>82</sup> [If there is insufficient cash in the Cash Account to pay the purchase price of Eligible Investments at the time of settlement, Securities Intermediary shall be under no obligation to advance funds to complete the purchase of such Eligible Investments.]]

[*Property Not Fully Paid.* Securities Intermediary may decline to follow Written Instructions from Pledgor under Section 2 of this Control Agreement to accept any property for credit to the Securities Account if following the Written Instructions would, in Securities Intermediary's sole judgment, result in the purchase price of the property not being fully paid.]<sup>83</sup>

[*Remaining Assets Inadequate.* Securities Intermediary may decline to follow Written Instructions from Pledgor under Section 2 of this Control Agreement to accept any cash or other property for credit to the Account if following the Written Instructions would, in Securities Intermediary's sole judgment[, after taking into account the subordination above,]<sup>84</sup> result in any remaining assets in the [custodial] account of Pledgor, exclusive of the Account, being inadequate to cover any obligations of Pledgor to Securities Intermediary. Securities Intermediary will notify Pledgor of any decision to decline to follow the Written Instructions.]<sup>85</sup>

[*Reserves on Transfers of Collateral.*

- (i) In connection with any transfer of Collateral as instructed by Secured Party, any obligation of Securities Intermediary to transfer Collateral will be subject to Securities Intermediary's right to establish and maintain at Securities Intermediary reasonable reserves from the Collateral for any obligations secured by any security interest, lien or right of recoupment or setoff in favor of Securities Intermediary senior to the security interest of Secured Party.<sup>86</sup>
- (ii) In connection with any transfer of Collateral as instructed by Pledgor, any obligation of Securities Intermediary to transfer Collateral will be subject to Securities Intermediary's right to establish and maintain at Securities Intermediary reasonable reserves from the Collateral for any obligations secured by any security interest, lien or right of recoupment or setoff in favor of Securities Intermediary.]

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<sup>80</sup> The parties could choose to express a cap on the priority of Securities Intermediary's security interest either as a fixed dollar amount, an amount of fees accrued and unpaid over a certain period of time or in some other manner.

<sup>81</sup> This bracketed language should only be included if the first sentence of the paragraph is included along with the bracketed language within that sentence.

<sup>82</sup> This second sentence could be used in lieu of the first sentence, in which case the words "permitted by the foregoing sentence" should be deleted.

<sup>83</sup> This option is not applicable if Option 1 is chosen under clause (b) of this Part 10.

<sup>84</sup> The language in brackets should be included if Option 2 or 3 is chosen under clause (b) of this Part 10.

<sup>85</sup> This option is not applicable if Option 1 is chosen under clause (b) of this Part 10.

<sup>86</sup> This clause (i) is not applicable if Option 2 is chosen under clause (b) of this Part 10.

*[Notice from the Party with a Subordinate Interest.* To the extent Securities Intermediary's security interest, lien or right of recoupment or setoff in or against the Collateral or the Account is subordinate to the security interest, lien or right of recoupment or setoff in or against the Collateral or the Account in favor of Secured Party, Securities Intermediary agrees to provide notice to Secured Party prior to exercising any remedies in respect thereof.]

*[Securities Intermediary's Exercise of Remedies.* In order to satisfy obligations owed by Pledgor to Securities Intermediary in respect of which Securities Intermediary has a security interest, lien or right of recoupment or setoff in or against the assets that form a part of the Account, Securities Intermediary will use commercially reasonable efforts to enforce Securities Intermediary's security interest, lien or right of recoupment or setoff that it may have in or against assets of Pledgor that do not form a part of the Account before enforcing Securities Intermediary's security interest, lien or right of recoupment or setoff that it may have in or against assets of Pledgor that form a part of the Account. This provision does not require Securities Intermediary to enforce its security interest in any assets which are not readily marketable.]

**PART 11**  
**SECURITIES INTERMEDIARY'S STANDARD OF CARE; LIMITATION OF LIABILITY**

- (a) Standard of Care. In performing its obligations and duties under this Control Agreement, Securities Intermediary shall exercise [*insert applicable standard*].
- (b) Limitation of Liability. Securities Intermediary shall not be liable for Losses incurred by or asserted against Pledgor or Secured Party except those Losses arising out of [*insert applicable standard*].

**PART 12**  
**INDEMNIFICATION OF SECURITIES INTERMEDIARY<sup>87</sup>**

[OPTION A (JOINT AND SEVERAL):

Pledgor and Secured Party shall, jointly and severally, indemnify Securities Intermediary and hold Securities Intermediary harmless from and against any and all Losses sustained or incurred by or asserted against Securities Intermediary (i) solely by virtue of the fact that Collateral has been accepted for credit, held or maintained by Securities Intermediary in accordance with this Control Agreement, (ii) by reason of or as a result of Securities Intermediary acting on Written Instructions from either Pledgor or Secured Party in accordance with this Control Agreement, or (iii) in connection with or arising out of Securities Intermediary's performance of its other duties under this Control Agreement, provided that Pledgor and Secured Party shall not indemnify Securities Intermediary under this clause (iii) for any such Losses arising out of Securities Intermediary's *[insert applicable standard]*.]

[OPTION B (JOINT AND SEVERAL WITH SPLIT INDEMNITY FOR WRITTEN INSTRUCTIONS):

Pledgor and Secured Party shall, jointly and severally, indemnify Securities Intermediary and hold Securities Intermediary harmless from and against any and all Losses sustained or incurred by or asserted against Securities Intermediary (i) solely by virtue of the fact that Collateral has been accepted for credit, held or maintained by Securities Intermediary in accordance with this Control Agreement, (ii) by reason of or as a result of Securities Intermediary acting on Written Instructions from either Pledgor or Secured Party in accordance with this Control Agreement, or (iii) in connection with or arising out of Securities Intermediary's performance of its other duties under this Control Agreement, provided that Pledgor and Secured Party shall not indemnify Securities Intermediary under this clause (iii) for any such Losses arising out of Securities Intermediary's *[insert applicable standard]*. Notwithstanding, the foregoing, with respect to any action taken by Securities Intermediary pursuant to Written Instructions solely from Pledgor, Pledgor shall be the sole party providing such indemnity and with respect to any action taken by Securities Intermediary pursuant to Written Instructions solely from Secured Party, Secured Party shall be the sole party providing such indemnity.]

[OPTION C (COMPLETE PLEDGOR INDEMNIFICATION WITH PARTIAL INDEMNIFICATION FROM SECURED PARTY):

- (a) Pledgor shall indemnify Securities Intermediary and hold Securities Intermediary harmless from and against any and all Losses sustained or incurred by or asserted against Securities Intermediary (i) solely by virtue of the fact that Collateral has been accepted for credit, held or maintained by Securities Intermediary in accordance with this Control Agreement, (ii) by reason of or as a result of Securities Intermediary acting on Written Instructions from either Pledgor or Secured Party in accordance with this Control Agreement, or (iii) in connection with or arising out of any action or inaction by Securities Intermediary in the performance of its other duties under this Control Agreement, provided that Pledgor shall not indemnify Securities Intermediary under this clause (iii) for any such Losses arising out of Securities Intermediary's *[insert applicable standard]*.
- (b) Secured Party shall indemnify Securities Intermediary and hold Securities Intermediary harmless from and against any and all Losses sustained or incurred by or asserted against Securities Intermediary by reason of or as a result of Securities Intermediary acting on Written Instructions from Secured Party in accordance with this Control Agreement.]

[OPTION D (REVERSAL OF PROVISIONAL CREDITS):<sup>88</sup>

Secured Party shall indemnify Securities Intermediary and hold Securities Intermediary harmless from and against any and all Losses sustained or incurred by or asserted against Securities Intermediary by reason of or as a result of the reversal of any provisional credit to the Account if the reversal occurred following a Notice of Exclusive Control becoming effective and the transfer of Collateral as instructed by Secured Party.]

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<sup>87</sup> Pledgor and Secured Party can allocate their respective liabilities under the applicable indemnity provision, as between themselves, by agreeing to a contribution or similar clause pursuant to the CSA or a side letter agreement.

<sup>88</sup> This Option D can be used in conjunction with other options in this Part 12.

**PART 13**  
**NOTICES**

- (a) Methods of Notice. Notwithstanding Section 11(c) of the Control Agreement, the parties hereby agree that for any notice or other communication to be delivered or transmitted under this Control Agreement the following methods of delivery will not be permitted: *[Not Applicable]* *[Specify methods of delivery that are not permitted]*.<sup>89</sup>
- (b) Addresses for Notices. For the purposes of Section 11(c) of this Control Agreement
- (i) Address for notices or other communications to Securities Intermediary:
- Address:  
Attention:  
[Facsimile:]  
[Electronic Messaging System Details:]  
[Email:]
- or at such other place as Securities Intermediary may from time to time designate in writing to the other parties hereto.
- (ii) Address for notices or other communications to Secured Party:
- Address:  
Attention:  
[Facsimile:]  
[Electronic Messaging System Details:]  
[Email:]
- or at such other place as Secured Party may from time to time designate in writing to the other parties hereto.
- (iii) Address for notices or other communications to Pledgor:
- Address:  
Attention:  
[Facsimile:]  
[Electronic Messaging System Details:]  
[Email:]
- or at such other place as Pledgor may from time to time designate in writing to the other parties hereto.
- [(c) Notices of Exclusive Control and Pledgor Access Notices.<sup>90</sup> Notwithstanding anything to the contrary in clause (a) of this Part 13 or Section 11(c) of the Control Agreement, the parties hereby agree that any Notice of Exclusive Control or Pledgor Access Notice shall be given as set forth below: *[Specify method of delivery]*].

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<sup>89</sup> Parties may limit the permitted delivery methods for notice provided in Section 11(c)(i)-(iv) of the Control Agreement by specifying the impermissible delivery methods here. If the delivery methods for notice provided in Section 11(c)(i)-(iv) of the Control Agreement are acceptable, then the parties may rely on Section 11(c) as drafted, in which case they should indicate "Not Applicable" in clause (a) of this Part 13. Parties should list the appropriate corresponding notice details in clause (b) of this Part 13.

<sup>90</sup> Optional provision if the parties wish to specify a particular method of notice with respect to Notices of Exclusive Control or Pledgor Access Notices.

**PART 14**  
**MISCELLANEOUS**

- (a) Definition of Depository. Depository shall have the meaning specified in Section 1 of the Control Agreement unless another meaning is specified here: [*specify alternative definition*][*Not Applicable*].
- (b) Notice of Legal Action. Securities Intermediary [may but shall not be obligated to][shall promptly] notify Secured Party and Pledgor after Securities Intermediary has notice of any judicial or arbitral process, injunction or other order, writ, judgment, decree or claim relating to the Account or the Collateral [or other claim by another person to a property interest therein] except to the extent prohibited by applicable law.
- (c) Account Statements.

[OPTION 1 (STAND ALONE ACCOUNT): Securities Intermediary will provide to each of Secured Party and Pledgor a written report[, which may be provided through an internet portal made available by Securities Intermediary,]<sup>91</sup> of all transactions that occurred in the Account and a statement of all Collateral held in or credited to the Account as follows: [*insert frequency of reporting*]. Secured Party[ and Pledgor]<sup>92</sup> each agree to comply with Securities Intermediary's customary procedures for obtaining access.]

[OPTION 2 (MEMO-PLEDGE ACCOUNT): Pledgor authorizes Securities Intermediary to provide to Secured Party a copy of a statement of the Account as follows: [*insert frequency of reporting*].]

- (d) Fees and Expenses. Securities Intermediary shall be entitled to receive, and Pledgor agrees to pay, fees for its services and Securities Intermediary's reasonable out-of-pocket or incidental expenses as may be agreed upon in writing from time to time between Securities Intermediary and Pledgor.
- [(e) Relationship to Custodian Agreement.<sup>93</sup>
- (i) Nothing in this Control Agreement shall affect the rights and obligations of Pledgor and Securities Intermediary under the Custodian Agreement (as defined below), except as expressly provided herein.
- (ii) Nothing in the Custodian Agreement shall affect the rights and obligations of Secured Party under this Control Agreement. This Control Agreement does not confer on Secured Party any third party rights under the Custodian Agreement.
- (iii) Instructions and entitlement orders originated by any party in accordance with this Control Agreement will constitute [effective instructions] under the Custodian Agreement.

“**Custodian Agreement**” shall have the meaning specified here: ]

- [(f) Limited Recourse of Securities Intermediary and Secured Party.<sup>94</sup> Any recourse of Securities Intermediary or Secured Party for the obligations of Pledgor under this Control Agreement is limited to the assets and property of Pledgor. This provision shall survive termination of this Control Agreement.]
- [(g) Liability of Pledgor and Secured Party for Consequential Damages.<sup>95</sup> Under no circumstances will Pledgor or Secured Party be liable for any indirect, incidental, consequential or special damages (including, without limitation, lost profits) of any form incurred by any person or entity, whether or not foreseeable and regardless of the type of action in which such a claim may be brought, with respect to the Account, the Collateral or such party's performance under this Control Agreement. This provision shall survive termination of this Control Agreement.]
- [(h) Other Provisions.]

<sup>91</sup> To be included if electronic access is contemplated.

<sup>92</sup> To the extent this is already covered by the Custodian Agreement, this bracket can be deleted.

<sup>93</sup> Parties may elect to delete clause (e) of this Part 14.

<sup>94</sup> Parties may elect to delete clause (f) of this Part 14.

<sup>95</sup> Parties may elect to delete clause (g) of this Part 14.

**EXHIBIT A**  
**FORM of NOTICE of EXCLUSIVE CONTROL**

[PARTIES TO INSERT AGREED FORM OF NOEC, WHICH MAY BE BASED ON THE  
FOLLOWING SAMPLE NOTICES A, B AND C]



**Notice "A"**

**Applicable for parties having chosen the following options:**

<b>1. Calculation of IA Amount:</b>	<b>OPTION 1 (ONE STAGE PROCESS)</b>
<b>2. "IA Seizure Amount":</b>	<b>OPTION 1 (ALL IA)</b>

[Letterhead of Secured Party]

Date: \_\_\_\_\_

[SECURITIES INTERMEDIARY]  
[ADDRESS LINE 1]  
[ADDRESS LINE 2]  
Attention:

Re: Control Agreement

## NOTICE OF EXCLUSIVE CONTROL

We refer to the ISDA 2013 Account Control Agreement, dated as of [\_\_\_\_\_, 20\_\_] (as amended and in effect from time to time, the “**Control Agreement**”), between [Secured Party], [Pledgor] (the “**Pledgor**”), and you, as Securities Intermediary. Unless otherwise provided herein, capitalized terms used in this notice have the meanings assigned to them in the Control Agreement or the ISDA Master Agreement (as defined in the Control Agreement), as applicable.

We hereby issue a Notice of Exclusive Control pursuant to Section 5(a) of the Control Agreement.

We certify that [an Event of Default][a Specified Condition]<sup>96</sup> has occurred with respect to Pledgor [due to the occurrence of an event under [Section [●]][Part [●]] of the [ISDA Master Agreement][Schedule]].<sup>97</sup> [In addition, we certify that such event constitutes an Indisputable Event.]<sup>98</sup>

We certify that, as a result of such [Event of Default][Specified Condition], an Early Termination Date under the ISDA Master Agreement has [occurred][been designated] with respect to all Transactions thereunder, and therefore we are entitled to exercise certain rights and remedies provided to us under the Control Agreement.<sup>99</sup>

We hereby instruct you to transfer, in accordance with Part 2 of the Annex to the Control Agreement, all of the Collateral pursuant to the transfer instructions indicated below.

1. Transfer Instructions:

[Specify Delivery Instructions]

[2. Evidence of Filing (if applicable)]<sup>100</sup>

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<sup>96</sup> Parties will need to modify this form by choosing the bracketed language (or inserting other relevant language) that reflects the parties' agreement as to the circumstances giving rise to a Secured Party's right to deliver a Notice of Exclusive Control. If multiple circumstances may result in a Secured Party's right to deliver a Notice of Exclusive Control, then the various options should be included (in brackets), with the following footnote: "These bracketed provisions are alternatives, and Secured Party must include one of these alternatives and delete the others."

<sup>97</sup> Parties may elect to require the notifying party to specify the event giving rise to the notice if they so choose.

<sup>98</sup> "Indisputable Event" should be defined in the CSA (or an amendment thereto). This language should be included (with brackets) if the parties have incorporated the concept of an "Indisputable Event" in the Control Agreement (e.g., dispute rights, Release Time). If this bracketed language is included, the following footnote should be included: "This bracketed sentence is optional and should only be included if in fact an Indisputable Event has occurred. If an Indisputable Event has not occurred, this sentence should be deleted."

<sup>99</sup> Parties wanting to conform to the CFTC Segregation Regime should consider the following addition to satisfy CFTC regulation 23.702(c)(2), which requires that turnover of control be made promptly upon presentation of a statement in writing made under oath or under penalty of perjury as specified in 28 U.S.C. 1746:

If executing without the U.S.: "I, the undersigned authorized representative of Secured Party, certify under penalty of perjury under the laws of the United States of America that the statements included in this Notice of Exclusive Control are true and correct."

If executing within the U.S., its territories, possessions, or commonwealths: "I, the undersigned authorized representative of Secured Party, certify under penalty of perjury that the statements included in this Notice of Exclusive Control are true and correct."

If we have certified above that an Indisputable Event has occurred, then, as indicated below, documents satisfying at least one of the following categories are attached to this Notice of Exclusive Control as Evidence of Filing:

- Copies of relevant excerpts of publications (including any on-line publication) published by two of the following sources: Wall Street Journal, Bloomberg News, New York Times, Thomson Reuters, Dow Jones or the Financial Times Ltd. (or any successors thereto) reporting an Indisputable Event with respect to such entity.
- A copy of a petition or filing instituting any proceeding described in Section 5(a)(vii)(4) of the ISDA Master Agreement duly filed by or against such entity with an authorized judicial authority (or a comparable filing duly filed in the applicable jurisdiction if such jurisdiction is not in the United States of America).
- A copy of an order of a court of competent jurisdiction that has not been appealed or stayed that evidences that an Indisputable Event exists with respect to such entity.
- A copy of an official announcement of the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for such entity or for all or substantially all of its assets including any such announcement that is published on the website of any relevant governmental authority.
- Announcements (including any website announcements) published by such entity or its affiliates with respect to the occurrence of an Indisputable Event with respect to such entity.]

[As provided in the Control Agreement, this Notice of Exclusive Control shall be effective regardless of whether the specified Evidence of Filing is complete or attached, and Securities Intermediary shall have no obligation to verify or review the attached Evidence of Filing.]<sup>101</sup>

[You are hereby instructed to forward this notice to Pledgor promptly in accordance with the Control Agreement.]<sup>102</sup>

Very truly yours,

[Secured Party]

By: \_\_\_\_\_  
Authorized Signatory

cc: [Pledgor]

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<sup>100</sup> To be included only if the parties have incorporated the concept of an “Indisputable Event” in the Control Agreement and “Indisputable Event” is defined as “Bankruptcy Filing Evidence Event”. The terms “Evidence of Filing”, “Indisputable Event” and “Bankruptcy Filing Evidence Event” should be defined in the CSA (or an amendment thereto).

<sup>101</sup> Parties should ensure that this language is consistent with the provisions contained in the body of the Control Agreement if it is included here.

<sup>102</sup> To be included only if the parties have incorporated a requirement in the Control Agreement for Securities Intermediary to forward this Notice of Exclusive Control to Pledgor. Please note that this requirement may not be appropriate where the parties are utilizing an automated notification system. Parties should not include a forwarding address unless they are certain that it will be correct at the time of notice and be consistent with the notice information that Securities Intermediary has on file.

**Notice "B"**

**Applicable for parties having chosen the following options:**

<b>1. Calculation of IA Amount:</b>	<b>OPTION 1 (ONE STAGE PROCESS)</b>
<b>2. "IA Seizure Amount":</b>	<b>OPTION 2 (REQUIRED IA)</b>

[Letterhead of Secured Party]

Date: \_\_\_\_\_

[SECURITIES INTERMEDIARY]  
[ADDRESS LINE 1]  
[ADDRESS LINE 2]  
Attention:

Re: Control Agreement

### NOTICE OF EXCLUSIVE CONTROL

We refer to the ISDA 2013 Account Control Agreement, dated as of [\_\_\_\_\_ \_\_, 20\_\_] (as amended and in effect from time to time, the “**Control Agreement**”), between [Secured Party], [Pledgor] (the “**Pledgor**”), and you, as Securities Intermediary. Unless otherwise provided herein, capitalized terms used in this notice have the meanings assigned to them in the Control Agreement or the ISDA Master Agreement (as defined in the Control Agreement), as applicable.

We hereby issue a Notice of Exclusive Control pursuant to Section 5(a) of the Control Agreement.

We certify that [an Event of Default][a Specified Condition]<sup>103</sup> has occurred with respect to Pledgor [due to the occurrence of an event under [Section [●]][Part [●]] of the [ISDA Master Agreement][Schedule]].<sup>104</sup> [In addition, we certify that such event constitutes an Indisputable Event.]<sup>105</sup>

We certify that, as a result of such [Event of Default][Specified Condition], an Early Termination Date under the ISDA Master Agreement has occurred with respect to all Transactions thereunder, and therefore we are entitled to exercise certain rights and remedies provided to us under the Control Agreement.<sup>106</sup>

We have determined the amounts of Required IA<sup>107</sup> and Excess IA<sup>108</sup> and specify such amounts below. We hereby instruct you to transfer, in accordance with Part 2 of the Annex to the Control Agreement,

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<sup>103</sup> Parties will need to modify this form by choosing the bracketed language (or inserting other relevant language) that reflects the parties’ agreement as to the circumstances giving rise to a Secured Party’s right to deliver a Notice of Exclusive Control. If multiple circumstances may result in a Secured Party’s right to deliver a Notice of Exclusive Control, then the various options should be included (in brackets), with the following footnote: “These bracketed provisions are alternatives, and Secured Party must include one of these alternatives and delete the others.”

<sup>104</sup> Parties may elect to require the notifying party to specify the event giving rise to the notice if they so choose.

<sup>105</sup> “Indisputable Event” should be defined in the CSA (or an amendment thereto). This language should be included (with brackets) if the parties have incorporated the concept of an “Indisputable Event” in the Control Agreement (e.g., dispute rights, Release Time). If this bracketed language is included, the following footnote should be included: “This bracketed sentence is optional and should only be included if in fact an Indisputable Event has occurred. If an Indisputable Event has not occurred, this sentence should be deleted.”

<sup>106</sup> Parties wanting to conform to the CFTC Segregation Regime should consider the following addition to satisfy CFTC regulation 23.702(c)(2), which requires that turnover of control be made promptly upon presentation of a statement in writing made under oath or under penalty of perjury as specified in 28 U.S.C. 1746:

If executing without the U.S.: “I, the undersigned authorized representative of Secured Party, certify under penalty of perjury under the laws of the United States of America that the statements included in this Notice of Exclusive Control are true and correct.”

If executing within the U.S., its territories, possessions, or commonwealths: “I, the undersigned authorized representative of Secured Party, certify under penalty of perjury that the statements included in this Notice of Exclusive Control are true and correct.”

<sup>107</sup> “Required IA” should be defined in the CSA (or an amendment thereto).

<sup>108</sup> “Excess IA” should be defined in the CSA (or an amendment thereto).

Collateral with a value equal to the Required IA specified below pursuant to the transfer instructions indicated below. Collateral with a value equal to the Excess IA specified below may be transferred to Pledgor.

1. Required IA: \_\_\_\_\_
2. Excess IA: \_\_\_\_\_
3. Transfer Instructions for Required IA:  
  
[Specify Delivery Instructions]
- [4. Evidence of Filing (if applicable)<sup>109</sup>

If we have certified above that an Indisputable Event has occurred, then, as indicated below, documents satisfying at least one of the following categories are attached to this Notice of Exclusive Control as Evidence of Filing:

- Copies of relevant excerpts of publications (including any on-line publication) published by two of the following sources: Wall Street Journal, Bloomberg News, New York Times, Thomson Reuters, Dow Jones or the Financial Times Ltd. (or any successors thereto) reporting an Indisputable Event with respect to such entity.
- A copy of a petition or filing instituting any proceeding described in Section 5(a)(vii)(4) of the ISDA Master Agreement duly filed by or against such entity with an authorized judicial authority (or a comparable filing duly filed in the applicable jurisdiction if such jurisdiction is not in the United States of America).
- A copy of an order of a court of competent jurisdiction that has not been appealed or stayed that evidences that an Indisputable Event exists with respect to such entity.
- A copy of an official announcement of the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for such entity or for all or substantially all of its assets including any such announcement that is published on the website of any relevant governmental authority.
- Announcements (including any website announcements) published by such entity or its affiliates with respect to the occurrence of an Indisputable Event with respect to such entity.]

[As provided in the Control Agreement, this Notice of Exclusive Control shall be effective regardless of whether the specified Evidence of Filing is complete or attached, and Securities Intermediary shall have no obligation to verify or review the attached Evidence of Filing.]<sup>110</sup>

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<sup>109</sup> To be included only if the parties have incorporated the concept of an “Indisputable Event” in the Control Agreement and “Indisputable Event” is defined as “Bankruptcy Filing Evidence Event”. The terms “Evidence of Filing”, “Indisputable Event” and “Bankruptcy Filing Evidence Event” should be defined in the CSA (or an amendment thereto).

<sup>110</sup> Parties should ensure that this language is consistent with the provisions contained in the body of the Control Agreement if it is included here.

[You are hereby instructed to forward this notice to Pledgor promptly in accordance with the Control Agreement.]<sup>111</sup>

Very truly yours,

[Secured Party]

By: \_\_\_\_\_  
Authorized Signatory

cc: [Pledgor]

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<sup>111</sup> To be included only if the parties have incorporated a requirement in the Control Agreement for Securities Intermediary to forward this Notice of Exclusive Control to Pledgor. Please note that this requirement may not be appropriate where the parties are utilizing an automated notification system. Parties should not include a forwarding address unless they are certain that it will be correct at the time of notice and be consistent with the notice information that Securities Intermediary has on file.

**Notice "C1"**

**Applicable for parties having chosen the following options:**

<b>1. Calculation of IA Amount:</b>	<b>OPTION 2 (TWO STAGE PROCESS)</b>
<b>2. First Stage of Two Stage Process:</b>	<b>Specifying "Estimated Required IA"</b>



[Letterhead of Secured Party]

Date: \_\_\_\_\_

[SECURITIES INTERMEDIARY]  
[ADDRESS LINE 1]  
[ADDRESS LINE 2]  
Attention:

Re: Control Agreement

## NOTICE OF EXCLUSIVE CONTROL

We refer to the ISDA 2013 Account Control Agreement, dated as of [\_\_\_\_\_] \_\_, 20\_\_] (as amended and in effect from time to time, the “**Control Agreement**”), between [Secured Party], [Pledgor] (the “**Pledgor**”), and you, as Securities Intermediary. Unless otherwise provided herein, capitalized terms used in this notice have the meanings assigned to them in the Control Agreement or the ISDA Master Agreement (as defined in the Control Agreement), as applicable.

We hereby issue a Notice of Exclusive Control pursuant to Section 5(a) of the Control Agreement.

We certify that [an Event of Default][a Specified Condition]<sup>112</sup> has occurred with respect to Pledgor [due to the occurrence of an event under [Section [●]][Part [●]] of the [ISDA Master Agreement][Schedule]].<sup>113</sup> [In addition, we certify that such event constitutes an Indisputable Event.]<sup>114</sup>

We certify that, as a result of such [Event of Default][Specified Condition], an Early Termination Date under the ISDA Master Agreement has occurred with respect to all Transactions thereunder, and therefore we are entitled to exercise certain rights and remedies provided to us under the Control Agreement.<sup>115</sup>

We hereby instruct you to transfer, in accordance with Part 2 of the Annex to the Control Agreement, Collateral with a value equal to the Estimated Required IA<sup>116</sup> specified below pursuant to the transfer instructions indicated below.

1. Estimated Required IA: \_\_\_\_\_
2. Transfer Instructions for Estimated Required IA: [*Specify Delivery Instructions*]
- [3. Evidence of Filing (if applicable)<sup>117</sup>

<sup>112</sup> Parties will need to modify this form by choosing the bracketed language (or inserting other relevant language) that reflects the parties' agreement as to the circumstances giving rise to a Secured Party's right to deliver a Notice of Exclusive Control. If multiple circumstances may result in a Secured Party's right to deliver a Notice of Exclusive Control, then the various options should be included (in brackets), with the following footnote: "These bracketed provisions are alternatives, and Secured Party must include one of these alternatives and delete the others."

<sup>113</sup> Parties may elect to require the notifying party to specify the event giving rise to the notice if they so choose.

<sup>114</sup> "Indisputable Event" should be defined in the CSA (or an amendment thereto). This language should be included (with brackets) if the parties have incorporated the concept of an "Indisputable Event" in the Control Agreement (e.g., dispute rights, Release Time). If this bracketed language is included, the following footnote should be included: "This bracketed sentence is optional and should only be included if in fact an Indisputable Event has occurred. If an Indisputable Event has not occurred, this sentence should be deleted."

<sup>115</sup> Parties wanting to conform to the CFTC Segregation Regime should consider the following addition to satisfy CFTC regulation 23.702(c)(2), which requires that turnover of control be made promptly upon presentation of a statement in writing made under oath or under penalty of perjury as specified in 28 U.S.C. 1746:

If executing without the U.S.: "I, the undersigned authorized representative of Secured Party, certify under penalty of perjury under the laws of the United States of America that the statements included in this Notice of Exclusive Control are true and correct."

If executing within the U.S., its territories, possessions, or commonwealths: "I, the undersigned authorized representative of Secured Party, certify under penalty of perjury that the statements included in this Notice of Exclusive Control are true and correct."

<sup>116</sup> "Estimated Required IA" should be defined in the CSA (or an amendment thereto).

<sup>117</sup> To be included only if the parties have incorporated the concept of an "Indisputable Event" in the Control Agreement and "Indisputable Event" is defined as "Bankruptcy Filing Evidence Event". The terms "Evidence of Filing", "Indisputable Event" and "Bankruptcy Filing Evidence Event" should be defined in the CSA (or an amendment thereto).

If we have certified above that an Indisputable Event has occurred, then, as indicated below, documents satisfying at least one of the following categories are attached to this Notice of Exclusive Control as Evidence of Filing:

- Copies of relevant excerpts of publications (including any on-line publication) published by two of the following sources: Wall Street Journal, Bloomberg News, New York Times, Thomson Reuters, Dow Jones or the Financial Times Ltd. (or any successors thereto) reporting an Indisputable Event with respect to such entity.
- A copy of a petition or filing instituting any proceeding described in Section 5(a)(vii)(4) of the ISDA Master Agreement duly filed by or against such entity with an authorized judicial authority (or a comparable filing duly filed in the applicable jurisdiction if such jurisdiction is not in the United States of America).
- A copy of an order of a court of competent jurisdiction that has not been appealed or stayed that evidences that an Indisputable Event exists with respect to such entity.
- A copy of an official announcement of the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for such entity or for all or substantially all of its assets including any such announcement that is published on the website of any relevant governmental authority.
- Announcements (including any website announcements) published by such entity or its affiliates with respect to the occurrence of an Indisputable Event with respect to such entity.]

In accordance with the Control Agreement, we will deliver a subsequent notice specifying the remaining Required IA,<sup>118</sup> if any, to be transferred to us in accordance with the terms of the Control Agreement and the Excess IA,<sup>119</sup> if any, to be transferred to Pledgor in accordance with the terms of the Control Agreement.

[As provided in the Control Agreement, this Notice of Exclusive Control shall be effective regardless of whether the specified Evidence of Filing is complete or attached, and Securities Intermediary shall have no obligation to verify or review the attached Evidence of Filing.]<sup>120</sup>

[You are hereby instructed to forward this notice to Pledgor promptly in accordance with the Control Agreement.]<sup>121</sup>

Very truly yours,

[Secured Party]

By: \_\_\_\_\_  
Authorized Signatory

cc: [Pledgor]

<sup>118</sup> "Required IA" should be defined in the CSA (or an amendment thereto).

<sup>119</sup> "Excess IA" should be defined in the CSA (or an amendment thereto).

<sup>120</sup> Parties should ensure that this language is consistent with the provisions contained in the body of the Control Agreement if it is included here.

<sup>121</sup> To be included only if the parties have incorporated a requirement in the Control Agreement for Securities Intermediary to forward this Notice of Exclusive Control to Pledgor. Please note that this requirement may not be appropriate where the parties are utilizing an automated notification system. Parties should not include a forwarding address unless they are certain that it will be correct at the time of notice and be consistent with the notice information that Securities Intermediary has on file.

**Notice "C2"**

**Applicable for parties having chosen the following options:**

<b>1. Calculation of IA Amount:</b>	<b>OPTION 2 (TWO STAGE PROCESS)</b>
<b>2. Second Stage of Two Stage Process:</b>	<b>Specifying "Required IA" and "Excess IA"</b>

[Letterhead of Secured Party]

Date: \_\_\_\_\_

[SECURITIES INTERMEDIARY]  
[ADDRESS LINE 1]  
[ADDRESS LINE 2]  
Attention:

Re: Notification of Excess IA

Ladies and Gentlemen:

We refer to (i) the ISDA 2013 Account Control Agreement, dated as of [\_\_\_\_\_, 20\_\_] (as amended and in effect from time to time, the “**Control Agreement**”), between [Secured Party], [Pledgor] (the “**Pledgor**”), and you, as Securities Intermediary, and (ii) the Notice of Exclusive Control, dated as of [\_\_\_\_\_, 201\_], transmitted by us to you (the “**Notice of Exclusive Control**”). Unless otherwise provided herein, capitalized terms used in this notice have the meanings assigned to them in the Control Agreement or the ISDA Master Agreement (as defined in the Control Agreement), as applicable.

You have transferred Estimated Required IA<sup>122</sup> in the amount of [\$X] to us. We have determined the amount of remaining Required IA<sup>123</sup> and Excess IA<sup>124</sup> and specify such amounts below. In accordance with the Control Agreement, we instruct you to transfer Collateral with a value equal to the Required IA specified below pursuant to the transfer instructions indicated below. Collateral with a value equal to the Excess IA specified below may be transferred to Pledgor.

1. Required IA: \_\_\_\_\_
2. Excess IA: \_\_\_\_\_
3. Transfer Instructions for Required IA: [*Specify Delivery Instructions*]

[You are hereby instructed to forward this notice to Pledgor promptly in accordance with the Control Agreement.]<sup>125</sup>

Very truly yours,

[Secured Party]

By: \_\_\_\_\_  
Authorized Signatory

cc: [Pledgor]

<sup>122</sup> “Estimated Required IA” should be defined in the CSA (or an amendment thereto).

<sup>123</sup> “Required IA” should be defined in the CSA (or an amendment thereto).

<sup>124</sup> “Excess IA” should be defined in the CSA (or an amendment thereto).

<sup>125</sup> To be included only if the parties have incorporated a requirement in the Control Agreement for Securities Intermediary to forward this Notice of Exclusive Control to Pledgor. Please note that this requirement may not be appropriate where the parties are utilizing an automated notification system. Parties should not include a forwarding address unless they are certain that it will be correct at the time of notice and be consistent with the notice information that Securities Intermediary has on file.

**EXHIBIT B**  
**FORM of PLEDGOR ACCESS NOTICE**

[PARTIES TO INSERT AGREED FORM OF PLEDGOR ACCESS NOTICE, WHICH MAY  
BE BASED ON THE FOLLOWING SAMPLE NOTICES A, B AND C]

**Notice "A"**

**Applicable for parties having chosen the following options:**

<b>1. Calculation of IA Return Amount:</b>	<b>OPTION 1 (ONE STAGE PROCESS)</b>
<b>2. "IA Return Amount":</b>	<b>OPTION 1 (ALL IA)</b>

[Letterhead of Pledgor]

Date: \_\_\_\_\_

[SECURITIES INTERMEDIARY]  
[ADDRESS LINE 1]  
[ADDRESS LINE 2]  
Attention:

Re: Control Agreement

## PLEDGOR ACCESS NOTICE

We refer to the ISDA 2013 Account Control Agreement, dated as of [\_\_\_\_\_, 201\_] (as amended and in effect from time to time, the “**Control Agreement**”), between [Secured Party] (the “**Secured Party**”), [Pledgor], and you, as Securities Intermediary. Unless otherwise provided herein, capitalized terms used in this notice have the meanings assigned to them in the Control Agreement or the ISDA Master Agreement (as defined in the Control Agreement), as applicable.

We hereby issue a Pledgor Access Notice pursuant to Section 5(b) of the Control Agreement.

We certify that [an Event of Default][a Specified Condition]<sup>126</sup> has occurred with respect to Secured Party [due to the occurrence of an event under [Section [●]][Part [●]] of the [ISDA Master Agreement][Schedule]].<sup>127</sup> [In addition, we certify that such event constitutes an Indisputable Event.]<sup>128</sup>

We certify that, as a result of such [Event of Default][Specified Condition], an Early Termination Date under the ISDA Master Agreement has [occurred] [been designated] with respect to all Transactions thereunder, and therefore we are entitled to exercise certain rights and remedies provided to us under the Control Agreement.<sup>129</sup>

We hereby instruct you to transfer, in accordance with Part 3 of the Annex to the Control Agreement, all of the Collateral pursuant to the transfer instructions indicated below.

1. Transfer Instructions:

[Specify Delivery Instructions]

2. Evidence of Filing (if applicable)<sup>130</sup>

<sup>126</sup> Parties will need to modify this form by choosing the bracketed language (or inserting other relevant language) that reflects the parties' agreement as to the circumstances giving rise to a Pledgor's right to deliver a Pledgor Access Notice. If multiple circumstances may result in a Pledgor's right to deliver a Pledgor Access Notice, then the various options should be included (in brackets), with the following footnote: "These bracketed provisions are alternatives, and Pledgor must include one of these alternatives and delete the others."

<sup>127</sup> Parties may elect to require the notifying party to specify the event giving rise to the notice if they so choose.

<sup>128</sup> "Indisputable Event" should be defined in the CSA (or an amendment thereto). This language should be included (with brackets) if the parties have incorporated the concept of an "Indisputable Event" in the Control Agreement (e.g., dispute rights, Release Time). If this bracketed language is included, the following footnote should be included: "This bracketed sentence is optional and should only be included if in fact an Indisputable Event has occurred. If an Indisputable Event has not occurred, this sentence should be deleted."

<sup>129</sup> Parties wanting to conform to the CFTC Segregation Regime should consider the following addition to satisfy CFTC regulation 23.702(c)(2), which requires that turnover of control be made promptly upon presentation of a statement in writing made under oath or under penalty of perjury as specified in 28 U.S.C. 1746:

If executing without the U.S.: "I, the undersigned authorized representative of Pledgor, certify under penalty of perjury under the laws of the United States of America that the statements included in this Pledgor Access Notice are true and correct."

If executing within the U.S., its territories, possessions, or commonwealths: "I, the undersigned authorized representative of Pledgor, certify under penalty of perjury that the statements included in this Pledgor Access Notice are true and correct."

<sup>130</sup> To be included only if the parties have incorporated the concept of an "Indisputable Event" in the Control Agreement and "Indisputable Event" is defined as "Bankruptcy Filing Evidence Event". The terms "Evidence of Filing", "Indisputable Event" and "Bankruptcy Filing Evidence Event" should be defined in the CSA (or an amendment thereto).

If we have certified above that an Indisputable Event has occurred, then, as indicated below, documents satisfying at least one of the following categories are attached to this Pledgor Access Notice as Evidence of Filing:

- Copies of relevant excerpts of publications (including any on-line publication) published by two of the following sources: Wall Street Journal, Bloomberg News, New York Times, Thomson Reuters, Dow Jones or the Financial Times Ltd. (or any successors thereto) reporting an Indisputable Event with respect to such entity.
- A copy of a petition or filing instituting any proceeding described in Section 5(a)(vii)(4) of the ISDA Master Agreement duly filed by or against such entity with an authorized judicial authority (or a comparable filing duly filed in the applicable jurisdiction if such jurisdiction is not in the United States of America).
- A copy of an order of a court of competent jurisdiction that has not been appealed or stayed that evidences that an Indisputable Event exists with respect to such entity.
- A copy of an official announcement of the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for such entity or for all or substantially all of its assets including any such announcement that is published on the website of any relevant governmental authority.
- Announcements (including any website announcements) published by such entity or its affiliates with respect to the occurrence of an Indisputable Event with respect to such entity.]

[As provided in the Control Agreement, this Pledgor Access Notice shall be effective regardless of whether the specified Evidence of Filing is complete or attached, and Securities Intermediary shall have no obligation to verify or review the attached Evidence of Filing.]<sup>131</sup>

[You are hereby instructed to forward this notice to Secured Party promptly in accordance with the Control Agreement.]<sup>132</sup>

Very truly yours,

[Pledgor]

By:

\_\_\_\_\_  
Authorized Signatory

cc: [Secured Party]

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<sup>131</sup> Parties should ensure that this language is consistent with the provisions contained in the body of the Control Agreement if it is included here.

<sup>132</sup> To be included only if the parties have incorporated a requirement in the Control Agreement for Securities Intermediary to forward this Pledgor Access Notice to Secured Party. Please note that this requirement may not be appropriate where the parties are utilizing an automated notification system. Parties should not include a forwarding address unless they are certain that it will be correct at the time of notice and be consistent with the notice information that Securities Intermediary has on file.



**Notice "B"**

**Applicable for parties having chosen the following options:**

<b>1. Calculation of IA Return Amount:</b>	<b>OPTION 1 (ONE STAGE PROCESS)</b>
<b>2. "IA Return Amount":</b>	<b>OPTION 2 (EXCESS IA)</b>

[Letterhead of Pledgor]

Date: \_\_\_\_\_

[SECURITIES INTERMEDIARY]  
[ADDRESS LINE 1]  
[ADDRESS LINE 2]  
Attention:

Re: Control Agreement

### PLEDGOR ACCESS NOTICE

We refer to the ISDA 2013 Account Control Agreement, dated as of [\_\_\_\_\_] [\_\_\_\_\_, 201\_] (as amended and in effect from time to time, the “**Control Agreement**”), between [Secured Party] (the “**Secured Party**”), [Pledgor], and you, as Securities Intermediary. Unless otherwise provided herein, capitalized terms used in this notice have the meanings assigned to them in the Control Agreement or the ISDA Master Agreement (as defined in the Control Agreement), as applicable.

We hereby issue a Pledgor Access Notice pursuant to Section 5(b) of the Control Agreement.

We certify that [an Event of Default][a Specified Condition]<sup>133</sup> has occurred with respect to Secured Party [due to the occurrence of an event under [Section [●]][Part [●]] of the [ISDA Master Agreement][Schedule]].<sup>134</sup> [In addition, we certify that such event constitutes an Indisputable Event.]<sup>135</sup>

We certify that, as a result of such [Event of Default][Specified Condition], an Early Termination Date under the ISDA Master Agreement has occurred with respect to all Transactions thereunder, and therefore we are entitled to exercise certain rights and remedies provided to us under the Control Agreement.<sup>136</sup>

We have determined the amounts of Excess IA<sup>137</sup> and Required IA<sup>138</sup> and specify such amounts below. We hereby instruct you to transfer, in accordance with Part 3 of the Annex to the Control Agreement, Collateral with a value equal to the Excess IA specified below pursuant to the transfer instructions indicated below. Collateral with a value equal to the Required IA specified below may be transferred to Secured Party.

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<sup>133</sup> Parties will need to modify this form by choosing the bracketed language (or inserting other relevant language) that reflects the parties’ agreement as to the circumstances giving rise to a Pledgor’s right to deliver a Pledgor Access Notice. If multiple circumstances may result in a Pledgor’s right to deliver a Pledgor Access Notice, then the various options should be included (in brackets), with the following footnote: “These bracketed provisions are alternatives, and Pledgor must include one of these alternatives and delete the others.”

<sup>134</sup> Parties may elect to require the notifying party to specify the event giving rise to the notice if they so choose.

<sup>135</sup> “Indisputable Event” should be defined in the CSA (or an amendment thereto). This language should be included (with brackets) if the parties have incorporated the concept of an “Indisputable Event” in the Control Agreement (e.g., dispute rights, Release Time). If this bracketed language is included, the following footnote should be included: “This bracketed sentence is optional and should only be included if in fact an Indisputable Event has occurred. If an Indisputable Event has not occurred, this sentence should be deleted.”

<sup>136</sup> Parties wanting to conform to the CFTC Segregation Regime should consider the following addition to satisfy CFTC regulation 23.702(c)(2), which requires that turnover of control be made promptly upon presentation of a statement in writing made under oath or under penalty of perjury as specified in 28 U.S.C. 1746:

If executing without the U.S.: “I, the undersigned authorized representative of Pledgor, certify under penalty of perjury under the laws of the United States of America that the statements included in this Pledgor Access Notice are true and correct.”

If executing within the U.S., its territories, possessions, or commonwealths: “I, the undersigned authorized representative of Pledgor, certify under penalty of perjury that the statements included in this Pledgor Access Notice are true and correct.”

<sup>137</sup> “Excess IA” should be defined in the CSA (or an amendment thereto).

<sup>138</sup> “Required IA” should be defined in the CSA (or an amendment thereto).

1. Excess IA: \_\_\_\_\_
2. Required IA: \_\_\_\_\_
3. Transfer Instructions for Excess IA:

[Specify Delivery Instructions]

4. Evidence of Filing (if applicable)<sup>139</sup>

If we have certified above that an Indisputable Event has occurred, then, as indicated below, documents satisfying at least one of the following categories are attached to this Pledgor Access Notice as Evidence of Filing:

- Copies of relevant excerpts of publications (including any on-line publication) published by two of the following sources: Wall Street Journal, Bloomberg News, New York Times, Thomson Reuters, Dow Jones or the Financial Times Ltd. (or any successors thereto) reporting an Indisputable Event with respect to such entity.
- A copy of a petition or filing instituting any proceeding described in Section 5(a)(vii)(4) of the ISDA Master Agreement duly filed by or against such entity with an authorized judicial authority (or a comparable filing duly filed in the applicable jurisdiction if such jurisdiction is not in the United States of America).
- A copy of an order of a court of competent jurisdiction that has not been appealed or stayed that evidences that an Indisputable Event exists with respect to such entity.
- A copy of an official announcement of the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for such entity or for all or substantially all of its assets including any such announcement that is published on the website of any relevant governmental authority.
- Announcements (including any website announcements) published by such entity or its affiliates with respect to the occurrence of an Indisputable Event with respect to such entity.]

[As provided in the Control Agreement, this Pledgor Access Notice shall be effective regardless of whether the specified Evidence of Filing is complete or attached, and Securities Intermediary shall have no obligation to verify or review the attached Evidence of Filing.]<sup>140</sup>

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<sup>139</sup> To be included only if the parties have incorporated the concept of an “Indisputable Event” in the Control Agreement and “Indisputable Event” is defined as “Bankruptcy Filing Evidence Event”. The terms “Evidence of Filing”, “Indisputable Event” and “Bankruptcy Filing Evidence Event” should be defined in the CSA (or an amendment thereto).

<sup>140</sup> Parties should ensure that this language is consistent with the provisions contained in the body of the Control Agreement if it is included here.

[You are hereby instructed to forward this notice to Secured Party promptly in accordance with the Control Agreement.]<sup>141</sup>

Very truly yours,

[Pledgor]

By: \_\_\_\_\_  
Authorized Signatory

cc: [Secured Party]

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<sup>141</sup> To be included only if the parties have incorporated a requirement in the Control Agreement for Securities Intermediary to forward this Pledgor Access Notice to Secured Party. Please note that this requirement may not be appropriate where the parties are utilizing an automated notification system. Parties should not include a forwarding address unless they are certain that it will be correct at the time of notice and be consistent with the notice information that Securities Intermediary has on file.

**Notice "C1"**

**Applicable for parties having chosen the following options:**

<b>1. Calculation of IA Return Amount:</b>	<b>OPTION 2 (TWO STAGE PROCESS)</b>
<b>2. First Stage of Two Stage Process:</b>	<b>Specifying "Estimated Excess IA"</b>

[Letterhead of Pledgor]

Date: \_\_\_\_\_

[SECURITIES INTERMEDIARY]  
[ADDRESS LINE 1]  
[ADDRESS LINE 2]  
Attention:

Re: Control Agreement

## PLEDGOR ACCESS NOTICE

We refer to the ISDA 2013 Account Control Agreement, dated as of [\_\_\_\_\_] [\_\_\_\_\_, 201\_] (as amended and in effect from time to time, the “**Control Agreement**”), between [Secured Party] (the “**Secured Party**”), [Pledgor], and you, as Securities Intermediary. Unless otherwise provided herein, capitalized terms used in this notice have the meanings assigned to them in the Control Agreement or the ISDA Master Agreement (as defined in the Control Agreement), as applicable.

We hereby issue a Pledgor Access Notice pursuant to Section 5(b) of the Control Agreement.

We certify that [an Event of Default][a Specified Condition]<sup>142</sup> has occurred with respect to Secured Party [due to the occurrence of an event under [Section [●]][Part [●]] of the [ISDA Master Agreement][Schedule]].<sup>143</sup> [In addition, we certify that such event constitutes an Indisputable Event.]<sup>144</sup>

We certify that, as a result of such [Event of Default][Specified Condition], an Early Termination Date under the ISDA Master Agreement has occurred with respect to all Transactions thereunder, and therefore we are entitled to exercise certain rights and remedies provided to us under the Control Agreement.<sup>145</sup>

We hereby instruct you to transfer, in accordance with Part 3 of the Annex to the Control Agreement, Collateral with a value equal to the Estimated Excess IA<sup>146</sup> specified below pursuant to the transfer instructions indicated below.

1. Estimated Excess IA: \_\_\_\_\_
2. Transfer Instructions for Estimated Excess IA: [*Specify Delivery Instructions*]
- [3. Evidence of Filing (if applicable)<sup>147</sup>

<sup>142</sup> Parties will need to modify this form by choosing the bracketed language (or inserting other relevant language) that reflects the parties’ agreement as to the circumstances giving rise to a Pledgor’s right to deliver a Pledgor Access Notice. If multiple circumstances may result in a Pledgor’s right to deliver a Pledgor Access Notice, then the various options should be included (in brackets), with the following footnote: “These bracketed provisions are alternatives, and Pledgor must include one of these alternatives and delete the others.”

<sup>143</sup> Parties may elect to require the notifying party to specify the event giving rise to the notice if they so choose.

<sup>144</sup> “Indisputable Event” should be defined in the CSA (or an amendment thereto). This language should be included (with brackets) if the parties have incorporated the concept of an “Indisputable Event” in the Control Agreement (e.g., dispute rights, Release Time). If this bracketed language is included, the following footnote should be included: “This bracketed sentence is optional and should only be included if in fact an Indisputable Event has occurred. If an Indisputable Event has not occurred, this sentence should be deleted.”

<sup>145</sup> Parties wanting to conform to the CFTC Segregation Regime should consider the following addition to satisfy CFTC regulation 23.702(c)(2), which requires that turnover of control be made promptly upon presentation of a statement in writing made under oath or under penalty of perjury as specified in 28 U.S.C. 1746:

If executing without the U.S.: “I, the undersigned authorized representative of Pledgor, certify under penalty of perjury under the laws of the United States of America that the statements included in this Pledgor Access Notice are true and correct.”

If executing within the U.S., its territories, possessions, or commonwealths: “I, the undersigned authorized representative of Pledgor, certify under penalty of perjury that the statements included in this Pledgor Access Notice are true and correct.”

<sup>146</sup> “Estimated Excess IA” should be defined in the CSA (or an amendment thereto).

If we have certified above that an Indisputable Event has occurred, then, as indicated below, documents satisfying at least one of the following categories are attached to this Pledgor Access Notice as Evidence of Filing:

- Copies of relevant excerpts of publications (including any on-line publication) published by two of the following sources: Wall Street Journal, Bloomberg News, New York Times, Thomson Reuters, Dow Jones or the Financial Times Ltd. (or any successors thereto) reporting an Indisputable Event with respect to such entity.
- A copy of a petition or filing instituting any proceeding described in Section 5(a)(vii)(4) of the ISDA Master Agreement duly filed by or against such entity with an authorized judicial authority (or a comparable filing duly filed in the applicable jurisdiction if such jurisdiction is not in the United States of America).
- A copy of an order of a court of competent jurisdiction that has not been appealed or stayed that evidences that an Indisputable Event exists with respect to such entity.
- A copy of an official announcement of the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for such entity or for all or substantially all of its assets including any such announcement that is published on the website of any relevant governmental authority.
- Announcements (including any website announcements) published by such entity or its affiliates with respect to the occurrence of an Indisputable Event with respect to such entity.]

In accordance with the Control Agreement, we will deliver a subsequent notice specifying the remaining Excess IA,<sup>148</sup> if any, to be transferred to us in accordance with the terms of the Control Agreement and the Required IA,<sup>149</sup> if any, to be transferred to Secured Party in accordance with the terms of the Control Agreement.

[As provided in the Control Agreement, this Pledgor Access Notice shall be effective regardless of whether the specified Evidence of Filing is complete or attached, and Securities Intermediary shall have no obligation to verify or review the attached Evidence of Filing.]<sup>150</sup>

[You are hereby instructed to forward this notice promptly to Secured Party in accordance with the Control Agreement.]<sup>151</sup>

Very truly yours,

[Pledgor]

By: \_\_\_\_\_  
Authorized Signatory

cc: [Secured Party]

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<sup>147</sup> To be included only if the parties have incorporated the concept of an “Indisputable Event” in the Control Agreement and “Indisputable Event” is defined as “Bankruptcy Filing Evidence Event”. The terms “Evidence of Filing”, “Indisputable Event” and “Bankruptcy Filing Evidence Event” should be defined in the CSA (or an amendment thereto).

<sup>148</sup> “Excess IA” should be defined in the CSA (or an amendment thereto).

<sup>149</sup> “Required IA” should be defined in the CSA (or an amendment thereto).

<sup>150</sup> Parties should ensure that this language is consistent with the provisions contained in the body of the Control Agreement if it is included here.

<sup>151</sup> To be included only if the parties have incorporated a requirement in the Control Agreement for Securities Intermediary to forward this Pledgor Access Notice to Secured Party. Please note that this requirement may not be appropriate where the parties are utilizing an automated notification system. Parties should not include a forwarding address unless they are certain that it will be correct at the time of notice and be consistent with the notice information that Securities Intermediary has on file.

**Notice "C2"**

**Applicable for parties having chosen the following options:**

<b>1. Calculation of IA Return Amount:</b>	<b>OPTION 2 (TWO STAGE PROCESS)</b>
<b>2. Second Stage of Two Stage Process:</b>	<b>Specifying "Excess IA" and "Required IA"</b>



[Letterhead of Pledgor]

Date: \_\_\_\_\_

[SECURITIES INTERMEDIARY]  
[ADDRESS LINE 1]  
[ADDRESS LINE 2]  
Attention:

Re: Notification of Excess IA

Ladies and Gentlemen:

We refer to (i) the ISDA 2013 Account Control Agreement, dated as of [\_\_\_\_\_, 201\_] (as amended and in effect from time to time, the “**Control Agreement**”), between [Secured Party] (the “**Secured Party**”), [Pledgor], and you, as Securities Intermediary, and (ii) the Pledgor Access Notice, dated as of [\_\_\_\_\_, 201\_], transmitted by us to you (the “**Pledgor Access Notice**”). Unless otherwise provided herein, capitalized terms used in this notice have the meanings assigned to them in the Control Agreement or the ISDA Master Agreement (as defined in the Control Agreement), as applicable.

You have transferred Estimated Excess IA<sup>152</sup> in the amount of [\$X] to us. We have determined the amount of remaining Excess IA<sup>153</sup> and Required IA<sup>154</sup> and specify such amounts below. In accordance with the Control Agreement, we instruct you to transfer Collateral with a value equal to the Excess IA specified below pursuant to the transfer instructions indicated below. Collateral with a value equal to the Required IA specified below may be transferred to Secured Party.

1. Excess IA: \_\_\_\_\_
2. Required IA: \_\_\_\_\_
3. Transfer Instructions for Excess IA: [*Specify Delivery Instructions*]

[You are hereby instructed to forward this notice to Secured Party promptly in accordance with the Control Agreement.]<sup>155</sup>

Very truly yours,

[Pledgor]

By: \_\_\_\_\_  
Authorized Signatory

cc: [Secured Party]

<sup>152</sup> “Estimated Excess IA” should be defined in the CSA (or an amendment thereto).

<sup>153</sup> “Excess IA” should be defined in the CSA (or an amendment thereto).

<sup>154</sup> “Required IA” should be defined in the CSA (or an amendment thereto).

<sup>155</sup> To be included only if the parties have incorporated a requirement in the Control Agreement for Securities Intermediary to forward this Pledgor Access Notice to Secured Party. Please note that this requirement may not be appropriate where the parties are utilizing an automated notification system. Parties should not include a forwarding address unless they are certain that it will be correct at the time of notice and be consistent with the notice information that Securities Intermediary has on file.

**EXHIBIT C**  
**ELIGIBLE INVESTMENTS**

FUND CHOICES:

- [FUND A]
- [FUND B]
- [FUND C]
- [FUND D]

OTHER SECURITIES: