TEMPLATE 4 - FULL-LENGTH OMNIBUS
(FOR USE BETWEEN NON-U.S. G-SIBS
AND CORPORATE COUNTERPARTY GROUP)

(*IECA VERSION* 3-14-2019)

IECA ANALYSIS AND COMMENTARY TO IECA VERSION OF BILATERAL QFC AMENDMENT (TEMPLATE COPY ATTACHED)

The International Energy Credit Association ("**IECA**") offers the following analysis and commentary, together with the attached IECA Version of the Bilateral Agreement To Amend Certain Qualified Financial Contracts ("**Bilateral QFC Amendment**"), which may be used as a template by market participants seeking to amend, on a bilateral basis, those agreements by and between such market participants and various global systemically important banking organizations ("**G-SIBs**") meeting the US bank regulators' definition of Qualified Financial Contracts ("**QFCs**"). The IECA's drafting team prepared this Bilateral QFC Amendment template with reference to the Agreement to Amend Certain Qualified Financial Contracts prepared by a group of lawyers from various G-SIBs working together to draft such a template and then published by the International Swaps and Derivatives Association, Inc. ("**ISDA®**") on November 2, 2018 ("**ISDA® Bilateral Amendment**"). Capitalized terms used in this commentary which are not otherwise defined in this commentary have the meaning given to those terms in the attached Bilateral QFC Amendment.

EXECUTIVE SUMMARY OF IECA ANALYSIS AND COMMENTARY:

Section 3.1(d) of the attached Bilateral QFC Amendment contains a representation by the non-G-SIB party (the "**Counterparty**") that it has obtained all consents needed to amend all of its QFCs that are amended by this Bilateral QFC Amendment. Paragraph 2(a)(iv) of the ISDA® 2018 US Resolution Stay Protocol ("**ISDA® Protocol**") contains this same representation by the Counterparty - that it has obtained all consents needed to amend all of its QFCs that are amended by the ISDA® Protocol.

Section 3.1(f) of the attached Bilateral QFC Amendment contains a representation by the Counterparty that amending all of its QFCs that are amended by this Bilateral Amendment will not adversely affect any of the credit support arrangements underlying those QFCs. Paragraph 2(a)(vi) of the ISDA® Protocol contains this same representation by the Counterparty - that amending all of its QFCs that are amended by the ISDA® Protocol will not adversely affect any of the credit support arrangements underlying those QFCs.

Both the Bilateral Amendment and the ISDA® Protocol incorporate those two representations into each amended QFC that contains the right to declare a default if a representation is breached. As a result, a breach of either representation will now be a breach of the underlying amended QFCs.

<u>For this reason, prior to signing any Bilateral QFC Amendment, and prior to adhering to the ISDA® Protocol, every Counterparty needs to review all its QFCs (and all underlying credit support) with any G-SIB that will be amended by the Bilateral Amendment or the ISDA® Protocol to determine (i) whether any consent of a third party must be obtained prior to amending each such QFC and (ii) whether amending any QFC will adversely affect the credit support securing the Counterparty's obligations thereunder to each of the G-SIBs that are parties to those QFCs.</u>

We recognize that while a G-SIB that is a party to any QFC with a Counterparty might never exercise its default rights under an amended QFC based on a breach of either of these two representations, a trustee in a G-SIB's bankruptcy may have a fiduciary obligation to exercise such default rights. Therefore, since both the Bilateral QFC Amendment and the ISDA® Protocol are being entered into in order to address a potential insolvency of one or more G-SIBs, we recommend (i) performing this due diligence review and (ii) taking steps to minimize the risk of any breach of these two representations.

To address this risk in the attached Bilateral QFC Amendment, the IECA's drafting team has modified Section 3.5 of the original ISDA® Bilateral Amendment in order to minimize further the risk of any breach of the two representations described above in Sections 3.1(d) and 3.1(f) with respect to an amendment of a Counterparty's existing QFCs. With this revision of Section 3.5, as more fully described below in the Detailed Analysis and Commentary portions of this document, the relief provided for any existing in-scope QFC sought to be amended by the attached Bilateral QFC Amendment will provide slightly more complete relief than is available under the ISDA® Bilateral Amendment, and substantially more relief than is provided under the ISDA® Protocol.

As we have discovered, the ISDA® Protocol provides no protection from such a breach with respect to its amendment of any existing in-scope QFC, that is not a Credit Enhancement, if such in-scope QFC was entered into prior to the pertinent Implementation Date of the ISDA® Protocol. That finding more than any other accounts for our recommendations in the following section of this document regarding "Recommended Use" of the IECA version of the Bilateral QFC Amendment.

As a convenience, we have also added an optional Schedule to the IECA version of the Bilateral QFC Amendment, on which the parties can list each of the specific existing in-scope QFCs that the parties are amending under their Bilateral QFC Amendment.

RECOMMENDED USE OF THE IECA VERSION OF THE BILATERAL QFC AMENDMENT

We appreciate that many Counterparties intend to adhere to the ISDA® Protocol in order to capture the "creditor protection" benefit arising from an administrative preference granted to a Counterparty in a G-SIB bankruptcy, which benefit can only be obtained pursuant to a provision in the ISDA® Protocol.

If, however, a Counterparty needs to comply with the QFC Rules by a specific date with a specific G-SIB, in order to continue trading with that G-SIB on and after such date, and will not have time to complete the recommended due diligence review of its QFCs and underlying credit support arrangements prior to such date, then that Counterparty should consider entering into the attached Bilateral QFC Amendment with a specific G-SIB and subsequently, after completing such due diligence review, that Counterparty can more safely adhere to the ISDA® Protocol.

Other Counterparties may simply prefer to comply with the US Bank Regulators' QFC Rules via a Bilateral Amendment on a G-SIB by G-SIB basis, instead of adhering to the ISDA® Protocol, which will automatically amend all of that Counterparty's QFCs with any and all G-SIBs on a "universal" basis. Such Counterparties should consider entering into the attached Bilateral QFC Amendment with one or more specific G-SIBs in lieu of using the ISDA® Bilateral Amendment, due to the benefits of the revision to Section 3.5 provided in the IECA version of the Bilateral QFC Amendment (which is attached hereto).

IECA OFFERS 4 SEPARATE BILATERAL QFC AMENDMENT TEMPLATES

The IECA's drafting team has prepared the following four separate Bilateral QFC Amendment templates:

Template 1 – For use between U.S. G-SIB Groups and a Corporate Counterparty Entity;

Template 2 – For use between U.S. G-SIB Groups and a Corporate Counterparty Group;

Template 3 – For use between Non-U.S. G-SIBs and a Corporate Counterparty Entity; and

Template 4 – For use between Non-U.S. G-SIBs and a Corporate Counterparty Group.

DETAILED ANALYSIS AND COMMENTARY

I. Problematic Representations in Sections 3.1(d) and (f) and Undertaking in Section 3.5 of Bilateral QFC Amendment.

There are two representations and an undertaking (i.e., an obligation) in the Bilateral QFC Amendment, which are also explicitly set forth as representations and an undertaking in the ISDA® 2018 U.S. Resolution Stay Protocol ("**ISDA® Protocol**"), that need to be carefully considered by market participants prior to either signing the Bilateral QFC Amendment or adhering to the ISDA® Protocol.

All the representations in Sections 3.1 and 3.2 of the Bilateral QFC Amendment will be brought into each of the Covered Agreements (i.e., each in-scope QFC) amended by this Bilateral QFC Amendment by application of Section 3.3 of the Bilateral QFC Amendment, which Section 3.3 states "[if] a Covered Agreement contains a Default Right based on a misrepresentation or other analogous provision, the Parties hereto agree that, for purposes of such provisions, <u>each of the foregoing representations will be deemed to be a representation under such Covered Agreement</u>." (Emphasis added.)

Accordingly, any breach by a Counterparty Entity of either or both of the representations in Sections 3.1(d) and 3.1(f) of the Bilateral QFC Amendment could give rise to a claim by the applicable Covered Entity that such Counterparty Entity is in default under the amended Covered Agreement(s) as a result of such representation being incorporated into such Covered Agreement(s).

We note that the representation in Section 3.1(d) of the Bilateral QFC Amendment is explicitly set forth in Paragraph 2(a)(iv) of the ISDA® Protocol and the representation in Section 3.1(f) of the Bilateral QFC Amendment is explicitly set forth in Paragraph 2(a)(vi) of the ISDA® Protocol. In addition, just like in the Bilateral QFC Amendment, Paragraph 2(b) of the ISDA® Protocol also incorporates both representations into each Protocol Covered Agreement (i.e., each in-scope QFC) that is amended by the ISDA® Protocol.

Accordingly, any breach by a Counterparty Entity of either or both of the representations in Paragraphs 2(a)(iv) or 2(a)(vi) of the ISDA® Protocol could give rise to a claim by the applicable Covered Entity that such Counterparty Entity is in default under the amended Covered Agreement(s) as a result of such representation being incorporated into such Covered Agreement(s).

We also note that while a Covered Entity may not likely have any reason to declare a Counterparty Entity to be in default under an amended Covered Agreement amended by the Bilateral QFC Amendment or the ISDA® Protocol, if that Covered Entity is in a bankruptcy proceeding and a trustee has been appointed by the applicable Bankruptcy Court to protect the interests of all unsecured creditors, then that trustee may be obligated, pursuant to its fiduciary duty as a trustee, to exercise any such default rights that may be available to the bankrupt Covered Entity under the amended Covered Agreement(s).

<u>We therefore recommend that Counterparty Entities proceed with caution in addressing, or electing not to address, these issues, regardless of whether such Counterparty Entity is considering entering into a Bilateral QFC Amendment or adhering to the ISDA® Protocol.</u>

A. Representation in Section 3.1(d) that all consents have been obtained.

Section 3.1(d) of the Bilateral QFC Amendment contains the following representation by each Counterparty Entity:

> "<u>(d) Consents.</u> All governmental and other consents that are required to have been obtained by it with respect to this Agreement and the Covered Agreement, as amended by this Agreement, have been obtained and are in full force and effect and all conditions of any such consents have been complied with."

The same representation is also explicitly set forth in Paragraph 2(a)(iv) of the ISDA® Protocol.

B. Representation in Section 3.1(f) that no adverse impact on underlying credit support arrangements arises as a result of amending the Covered Agreements.

Section 3.1(f) of the Bilateral QFC Amendment contains the following representation by each Counterparty Entity:

> "(f) Credit Support. Its amendment under this Agreement (other than any amendments affecting when rights in respect of a Credit Enhancement or Third Party Credit Enhancement may be exercised) will not, in and of itself, adversely affect the enforceability, effectiveness or validity of any obligations owed, whether by it or by any Third Party, under any Credit Enhancement or Third Party Credit Enhancement in respect of its obligations relating to the Covered Agreement as amended by this Agreement."
>
> The same representation is also explicitly set forth in Paragraph 2(a)(vi) of the ISDA® Protocol.

C. Section 3.5 of the Bilateral QFC Amendment contains a further "undertaking" by a Counterparty Entity with respect to any required "consent."

Section 3.5 of the Bilateral QFC Amendment specifies that:

> "[as to] any Covered Agreement or Third Party Credit Enhancement that expressly requires the consent, approval, agreement authorization or other action (each a "consent") of a Third Party to be obtained, each Party whose obligations under such arrangements are secured, guaranteed or otherwise supported by such Third Party Credit Enhancement undertakes that it has obtained the consent of such Third Party…" (Emphasis added.)

Such quoted portion of Section 3.5 of this Bilateral QFC Amendment is also explicitly set forth in Paragraph 2(c) of the ISDA® Protocol.

D. Relief for Counterparty Entities from a Potential Breach of these Representations and Undertaking is Broadly Provided in Section 3.5 of the IECA's version of the Bilateral QFC Amendment, but such Relief is More Narrowly Provided in Section 3.5 of the ISDA® Bilateral Amendment.

Section 3.5 of the ISDA® Bilateral Amendment, as originally published on November 2, 2018, contains the statement "To the extent any such required consent has not been obtained, the relevant Covered Agreement supported by such Third Party will not be amended hereby." (Emphasis added.) This provision in Section 3.5 of the ISDA® Bilateral Amendment will afford some relief with respect to the potential risk to a Counterparty Entity that a misrepresentation under Section 3.1(d) could cause a default under the Covered Agreements amended by the ISDA® Bilateral Amendment, if the Counterparty Entity has not, in fact, obtained all of the consents required to amend its Covered Agreements.

This provision in Section 3.5 of the ISDA® Bilateral Amendment does not explicitly address the additional circumstances, not expressly requiring a Counterparty Entity to obtain a "consent" from a Third Party, that could result in a breach of the representation in Section 3.1(f). The relief-providing sentence in Section 3.5 of the ISDA® Bilateral Amendment is limited to "Third Party Credit Enhancement that expressly requires the consent" of a third party, and therefore may not be adequate to forestall a breach of the Section 3.1(f) representation if the underlying guaranty, even if not "expressly" requiring third party consent, does not, for example, contain an express waiver by the guarantor of its suretyship defenses, thereby allowing the beneficiary of the guaranty and the company whose obligations are guaranteed to amend the underlying agreement without obtaining the consent of the guarantor. For example, California Civil Code §2819 provides: "A surety is ***exonerated***, ... if by any act of the creditor, without the consent of the surety, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal [are] ... in any way impaired or suspended." This is not a requirement of consent; it is a consequence of consent not being obtained.

Therefore, a guaranty governed by the law of any state, with a comparable suretyship doctrine to the California example shown above, that does not contain a waiver by the guarantor of suretyship defenses could result in the guarantor being "exonerated" (i.e., relieved of its obligations as a guarantor) as a result of a Counterparty

Entity amending the applicable Covered Agreement by either adhering to the ISDA® Protocol or entering into a Bilateral QFC Amendment. As a further consequence of such exoneration, Section 5(a)(iii)(2) of the 2002 ISDA® Master Agreement provides that "the ceasing of such Credit Support Document ... to be in full force and effect" is an Event of Default. Section 5.1(h)(iv) of the EEI Master Power Purchase and Sale Agreement (EEI Master Agreement) and Section 22.1(e)(iv) of the WSPP Agreement contain comparable provisions if the in-scope QFC under consideration is an EEI Master Agreement or a WSPP Agreement.

Plus, there are other types of provisions that could also adversely affect the continued effectiveness of the underlying Credit Enhancement or Third Party Credit Enhancement as a result of the amendment of a Covered Agreement hereunder. For example, a provision in a loan agreement, a guarantee, or other Credit Enhancement that specifies that any amendment of the underlying supported agreement will cause one or more elements of the loan agreement, guarantee or other Credit Enhancement to be null and void.

To address this further issue, the IECA version of the Bilateral QFC Amendment attached hereto includes the following additional sentence:

> "To the extent that any amendment of a Covered Agreement would "adversely affect the enforceability, effectiveness or validity of any obligations owed under any Credit Enhancement or Third Party Credit Enhancement" as specified in Section 3.1(f), the relevant Covered Agreement supported by such Credit Enhancement or Third Party Credit Enhancement will not be amended hereby."

The IECA drafting team added this provision into Section 3.5 of the IECA's version of the Bilateral QFC Amendment in order to minimize the risk of a Counterparty Entity violating the representation in Section 3.1(f) of the Bilateral QFC Amendment. As a result, the text of Section 3.5 of the IECA's version of the Bilateral QFC Amendment now protects Counterparty Entities from a potential breach of the representations in both Section 3.1(d) and Section 3.1(f) of the Bilateral QFC Amendment.

<u>Nevertheless, prior to signing this IECA version of the Bilateral QFC Amendment or the ISDA® Bilateral Amendment, each Counterparty Entity should perform a due diligence review of whether any consents are required to amend any of its Covered Agreements or whether any such amendment of a Covered Agreement could otherwise adversely affect the enforceability, effectiveness or validity of any obligations owed under any Credit Enhancement or Third Party Credit Enhancement.</u>

Under the QFC Rules, a Covered Entity (i.e., a G-SIB and certain affiliates of such G-SIB) must require its Counterparty under any existing in-scope QFCs to amend such Covered Agreement to comply with the QFC Rules of such Covered Entity's U.S. bank regulator. While the provisions of Section 3.5 of the IECA's version of the Bilateral QFC Amendment have been revised to minimize the risk of any breach of such representations, by declaring that such QFCs are not "Covered Agreements," the Covered Entity is still obligated to amend such existing in-scope QFCs. Accordingly, some additional arrangement will need to be negotiated between the applicable Covered Entity and such Counterparty Entity in order to address the necessary amendment of such an in-scope QFC to comply with the QFC Rules.

<u>In order to minimize the risk of a breach of the representation in Section 3.1(f) of the ISDA® Bilateral Amendment, we encourage Counterparty Entities contemplating entering into the ISDA® Bilateral Amendment, to consider entering into the IECA version of the Bilateral QFC Amendment in lieu of the ISDA® Bilateral Amendment.</u>

E. Relief for Counterparty Entities from a potential breach of these Representations and the related Undertaking is broadly provided in Section 3.5 of the IECA's version of the Bilateral QFC Amendment, but such relief appears to be extremely restricted in the ISDA® Protocol.

With respect to Counterparty Entities contemplating adhering to the ISDA® Protocol, we note that neither the two relief-providing sentences found in Section 3.5 of the IECA's version of the Bilateral QFC Amendment, nor the single relief-providing sentence found in Section 3.5 of the ISDA® Bilateral Amendment, are found in the corresponding Paragraph 2(c) of the ISDA® Protocol.

In lieu of the above-referenced two relief-providing sentences or one relief-providing sentence found, respectively, in Section 3.5 of the IECA version of the Bilateral QFC Amendment or Section 3.5 of the ISDA® Bilateral Amendment, the definitions of "Covered Agreement" and "Covered Credit Enhancement" in the ISDA® Protocol appear to be intended to provide some comparable measure of relief from such a breach of the representations in Paragraphs 2(a)(iv) and 2(a)(vi) of the ISDA® Protocol, but, depending on how such provisions are to be interpreted, such relief in the ISDA® Protocol appears to be extremely limited when compared to the relief provided in the ISDA® Bilateral Amendment or the IECA version of the Bilateral QFC Amendment.

In the ISDA® Protocol, "Covered Credit Enhancement" and "Covered Agreement" are defined as follows:

"**Covered Agreement** means, with respect to an Adhering Party and a Regulated Entity, subject to an Adhering Party's right to deliver a Revocation Notice pursuant to paragraph 1(f) above:—

(a) an In-scope QFC, other than a Credit Enhancement, between such Adhering Party and such Regulated Entity, provided by such Regulated Entity to such Adhering Party or provided by such Adhering Party to such Regulated Entity, in each case, entered into by the Adhering Parties on or prior to the Implementation Date (and including all outstanding transactions thereunder);

(b) an In-scope QFC, other than a Credit Enhancement, that is an ISDA Master Agreement entered into at any time after the Implementation Date and prior to the Cut-off Date by execution by such Adhering Party and such Regulated Entity of a confirmation pursuant to which such Adhering Party and such Regulated Entity are deemed to have entered into such ISDA Master Agreement until such time as an ISDA Master Agreement has been executed by such Adhering Party and such Regulated Entity, provided that if:

(i) any consent, approval, agreement, authorization or other action of any Third Party is expressly required, under the terms of a Third Party Credit Enhancement or such ISDA Master Agreement, to amend or otherwise modify such ISDA Master Agreement; or

(ii) such Third Party Credit Enhancement or such ISDA Master Agreement includes express terms to the effect that any amendment or modification of such ISDA Master Agreement without the consent, approval, agreement, authorization or other action of any such Third Party would void, impair or otherwise adversely affect existing or future obligations owed under such Third Party Credit Enhancement; or

(iii) such ISDA Master Agreement, if amended or modified in accordance with this Protocol without the consent, approval, agreement, authorization or other action of any such Third Party would void, impair or otherwise adversely affect existing or future obligations owed under such Third Party Credit Enhancement,

then such ISDA Master Agreement shall not be a Covered Agreement unless such consent, approval, agreement, authorization or other action has been obtained or is deemed to have been given under paragraph 2(d) above; and

(c) an Agent Covered Agreement signed by the Agent and the Regulated Entity prior to adherence by both the Regulated Entity and the Agent on behalf of the relevant Client (and including all outstanding transactions thereunder and outstanding Credit Enhancements entered into in connection therewith),

provided that an Excluded Agreement shall not be a Covered Agreement."

"**Covered Credit Enhancement** means, subject to an Adhering Party's right to deliver a Revocation Notice pursuant to paragraph 1(f) above any (a) Credit Enhancement that is an In-Scope QFC executed by two Adhering Parties or entered into by such Adhering Parties on or prior to the Implementation Date or (b) Credit Enhancement that is an In-Scope QFC executed by an Adhering Party and provided to another

Adhering Party on or prior to the Implementation Date, or in the case of an Agent Covered Credit Enhancement, executed by the Agent and an Adhering Party, or by the Agent and provided to an Adhering Party or by an Adhering Party and provided to the Agent, prior to adherence by both the Adhering Party and the Agent on behalf of the relevant Client provided that if:—

(a) any consent, approval, agreement, authorization or other action of a Third Party is expressly required under the terms of such Credit Enhancement or a Third Party Credit Enhancement, to amend or otherwise modify such Credit Enhancement; or

(b) such Credit Enhancement or a Third Party Credit Enhancement includes express terms to the effect that any amendment or modification of such Credit Enhancement without the consent, approval, agreement, authorization or other action of a Third Party would void, impair or otherwise adversely affect existing or future obligations owed under such Credit Enhancement or such Third Party Credit Enhancement; or

(c) such Credit Enhancement, if amended or modified in accordance with this Protocol without the consent, approval, agreement, authorization or other action of a Third Party would void, impair or otherwise adversely affect existing or future obligations owed under a Third Party Credit Enhancement,

then such Credit Enhancement shall not be a Covered Credit Enhancement unless such consent, approval, agreement, authorization or other action has been obtained or is deemed to have been given under paragraph 2(d) above, provided further that an Excluded Agreement shall not be a Covered Credit Enhancement."

In the definition of "Covered Agreement" in the ISDA® Protocol, there are three clauses (i), (ii) and (iii), each of which describes a circumstance in which a "consent, approval, agreement, authorization or other action of a Third Party" is required to be obtained for the amendment of an "In-Scope QFC, other than a Credit Enhancement, that is an ISDA Master Agreement entered into at any time after the Implementation Date" of the ISDA® Protocol, and if such "consent, approval, agreement, authorization or other action of a Third Party" is not obtained, then such "ISDA Master Agreement shall not be a Covered Agreement." These clauses (i), (ii) and (iii), however, only apply to an ISDA Master Agreement in the unique circumstance of clause (b) of the definition of "Covered Agreement," a circumstance in which the Covered Entity and a Counterparty Entity have entered into a long-form confirmation "at any time after the Implementation Date" of the ISDA® Protocol, and such parties are "deemed to have entered into such ISDA Master Agreement."

In this unique circumstance described in clause (b) of the definition of "Covered Agreement," failure to obtain such "consent, approval, agreement, authorization or other action of a Third Party" will cause such ISDA Master Agreement to not be a Covered Agreement, thereby avoiding a breach of the representation in Paragraph 2(a)(iv) of the ISDA® Protocol and a breach of the undertaking in Paragraph 2(c) of the ISDA® Protocol that all consents necessary to amend all Covered Agreements have been obtained.

However, no such relief is available for the circumstance described in clause (a) of the definition of "Covered Agreement," which describes "an In-Scope QFC, other than a Credit Enhancement, between such Adhering Party and such Regulated Entity, provided by such Regulated Entity to such Adhering Party or provided by such Adhering Party to such Regulated Entity, in each case, entered into by the Adhering Parties on or prior to the Implementation Date…" Accordingly, if an In-Scope QFC, other than a Credit Enhancement, was entered into on or prior to the Implementation Date of the ISDA® Protocol and such In-Scope QFC requires a "consent, approval, agreement, authorization or other action of a Third Party," which was not obtained, then the Counterparty Entity has breached the representation in Paragraph 2(a)(iv) of the ISDA® Protocol and it has breached the undertaking in Paragraph 2(c) of the ISDA® Protocol.

In the definition of "Covered Credit Enhancement" in the ISDA® Protocol, a comparable exclusion is provided so that a "Credit Enhancement shall not be a Covered Credit Enhancement unless such consent, approval, agreement, authorization or other action" has been obtained and this exclusion, as described in the circumstances set forth in clauses (a), (b) and (c), does appear to apply to "any (a) Credit Enhancement that is an In-Scope QFC executed by two Adhering Parties or entered into by such Adhering Parties on or prior to the Implementation Date or (b) Credit Enhancement that is an In-Scope QFC executed by an Adhering Party and provided to another Adhering Party on or prior to the Implementation Date."

As shown above, the definitions of "Covered Agreement" and "Covered Credit Enhancement" in the ISDA® Protocol, as shown above, are written differently and neither definition is completely unambiguous. However, as described in the preceding four paragraphs, it is clear that the relief-providing text in these two definitions, which we believe was intended to provide some measure of relief to avoid a breach of the representations in Paragraphs 2(a)(iv) and 2(a)(vi) and the undertaking in Paragraph 2(c) are very limited and, certainly do not provide any relief for any In-Scope QFC, not a Credit Enhancement, that was entered into prior to the Implementation Date of the ISDA® Protocol.

As a result of this different approach to the definition of "Covered Agreement" in the ISDA® Protocol, this relief-providing text in the definition of "Covered Agreement" in the ISDA® Protocol provides absolutely no relief for any Covered Agreement, that is not a Credit Enhancement, if such Covered Agreement was entered into prior to the Implementation Date under the ISDA® Protocol (i.e., no relief is provided for any existing Covered Agreement, that is not a Credit Enhancement, if the Counterparty Entity, as Adhering Party under the ISDA® Protocol, has not obtained any required "consent, approval, agreement, authorization or other action of a Third Party").

In the circumstance described in the immediately preceding paragraph, a Counterparty Entity (as the applicable Adhering Party) will have breached the representation in Paragraph 2(a)(iv) and the undertaking obligation in Paragraph 2(c) of the ISDA® Protocol, which could have significant adverse consequences for the Counterparty Entity.

From our perspective, we do not understand why the relief-providing text in the definition of "Covered Agreement" of the ISDA® Protocol was so narrowly written in the ISDA® Protocol, but we have confirmed that the definitions of Covered Agreement and Covered Credit Enhancement in the ISDA® Protocol in 2018 are unchanged from the words used to define those terms in the two prior ISDA® protocols for dealers in 2014 and 2015.[1] We therefore urge entities considering adhering to the ISDA® Protocol to pay special attention to the definition of "Covered Agreement" and its impact on the potential for a breach of the representation in Paragraph 2(a)(iv) of the ISDA® Protocol that all required consents have been obtained and a breach of the related undertaking in Paragraph 2(c) of the ISDA® Protocol.

<u>Based on the preceding paragraphs of this analysis and commentary, before electing to adhere to the ISDA® Protocol, we urge each Counterparty Entity to complete its due diligence review with respect to the representations in Paragraphs 2(a)(iv) and 2(a)(vi) of the ISDA® Protocol (which correspond to the representations in Sections 3.1(d) and 3.1(f) of this Bilateral QFC Amendment), the undertaking in Paragraph 2(c) of the ISDA® Protocol (which corresponds to the undertaking in Section 3.5 of the Bilateral QFC Amendment), and the underlying documents to be amended by such ISDA® Protocol in order to avoid (i) breaching such representations, (ii) breaching such undertaking, and (iii) thereby giving the Covered Entity the right to declare the Counterparty Entity to be in default under the ISDA® Protocol and in default under the corresponding amended Covered Agreement(s) or amended Covered Credit Enhancement(s).</u>

II. Additional Arrangements may need to be negotiated between a Counterparty Entity and a Covered Entity (i.e., a G-SIB) with respect to any in-scope QFCs that may be excluded from the amendments intended to be accomplished under the ISDA® Protocol, the ISDA® Bilateral Amendment, or the (attached) IECA version of the Bilateral QFC Amendment.

[1] The definitions of "Covered Agreement" and "Covered Credit Enhancement" in the ISDA® Protocol, published on July 31, 2018, are unchanged from the two prior ISDA® protocols for Dealers produced by ISDA®, namely the ISDA® 2015 Universal Dealers Protocol, published on November 4, 2015, and the ISDA® 2014 Resolution Stay (Dealers) Protocol, published on November 4, 2014, which suggests that such definitions were not likely subjected to much, if any, review when the ISDA® Protocol was produced in 2018.

For the reasons discussed above, prior to entering into the IECA's version of the Bilateral QFC Amendment or the ISDA® Bilateral Amendment, and prior to adhering to the ISDA® Protocol, each Counterparty Entity is urged to perform a due diligence review of any and all Covered Agreements that will be amended, and any Credit Enhancement or Third Party Credit Enhancement that supports the Counterparty Entity's obligations to the Covered Entity under such amended Covered Agreement(s).

If, as a result of such due diligence, a Counterparty Entity concludes that its amendment of any Covered Agreement may require the prior consent of a Third Party, which has not been obtained, or may otherwise adversely affect the continued effectiveness of any Credit Enhancement or Third Party Credit Enhancement, then any such existing Covered Agreement may be excluded (and therefore will not be amended), by the terms of the relief-providing text discussed above, from the amendments intended to be effected under the US Bank Regulators' QFC Rules.

This exclusion from any such amendments may occur pursuant to the relief-providing text of the IECA's version of the Bilateral QFC Amendment, or, to a lesser extent, by the relief-providing text of the ISDA® Bilateral Amendment, or, to an even lesser extent, under the relief-providing text of the ISDA® Protocol. Nevertheless, such amendments are required to be addressed in some fashion in order to allow the applicable Covered Entity (G-SIB) to comply with its US Bank Regulators' QFC Rules.

As a result of any such exclusion, <u>each applicable Counterparty Entity will likely be required to negotiate one or more additional accommodations with the applicable Covered Entity (or Covered Entities), which additional accommodations will ensure that: (i) all the Counterparty Entity's in-scope QFCs are amended in order to allow the applicable Covered Entity(s) to comply with the US Bank Regulators' QFC Rules, (ii) the Counterparty Entity obtains all consents of any Third Party(s) required to effect the amendment of all such in-scope QFCs, (iii) the enforceability, effectiveness or validity of any obligations owed under any Credit Enhancement or Third Party Credit Enhancement are not adversely affected by such amendments, and (iv) the Counterparty Entity has not breached, or the Covered Entity has waived, the representations under Sections 3.1(d) and 3.1(f) of the Bilateral QFC Amendment and the undertaking under Section 3.5 of the Bilateral QFC Amendment</u>.

III. Deletion of Bracketed Sentence in Section 4.5(c).

As we note in the footnote to Section 4.5(c) of the attached IECA version of the Bilateral QFC Amendment, various regulatory requirements applicable to some regulated utilities under the State or Federal regulatory compliance laws applicable to such utility, may prohibit such a utility, as a Counterparty Entity under the Bilateral QFC Amendment, from complying with the obligation imposed on such entity by Section 4.5(c) of this Bilateral QFC Amendment. This prohibition may arise due to limitations on its interactions with its non-utility affiliates.

If so, such a Counterparty Entity may want to delete the bracketed sentence in Section 4.5(c) of the attached Bilateral QFC Amendment in order to reduce the risk of its failure to comply with its applicable utility regulatory requirements.

IV. Miscellaneous and Conclusion

Based on the foregoing Detailed Commentary and Analysis, we have revised Section 3.5 of the ISDA® Bilateral Amendment to produce the attached IECA version of the Bilateral QFC Amendment and we have provided our suggestions for the "Recommended Use of the IECA Version of the Bilateral QFC Amendment," as shown on page 2 of this document.

In addition to the above-discussed revisions to Section 3.5 and the various conforming revisions necessary for separate group-to-group and group-to-entity versions of each template, we have also:

(A) added an optional Schedule to each template whereby the parties can list each of the Covered Agreements that the parties are amending with their Bilateral QFC Amendment; and

(B) revised the joinder process from that set forth in the ISDA® Bilateral Amendment to ensure that, in addition to having any new party sign the form of Joinder Agreement attached as Exhibit A, that new party must also deliver a signed copy to the other party/group, in order to become a party to this Bilateral QFC Amendment.

We invite your feedback and comments to the IECA with respect to the above analysis and commentary or the four separate templates we have prepared.

(See the IECA's version of the Bilateral QFC Amendment, which begins on the following page.)

BILATERAL AGREEMENT TO AMEND CERTAIN QUALIFIED FINANCIAL CONTRACTS[2]

This BILATERAL AGREEMENT TO AMEND CERTAIN QUALIFIED FINANCIAL CONTRACTS (this "**Agreement**" or this "**Bilateral Amendment**") is entered into as of [●], 20[__] (the "**Execution Date**") by and among each of the entities listed on [the signature pages hereof as a Covered Foreign Organization/Schedule 1 hereto][3] (together with any additional entities that execute a Joinder Agreement as a Covered Foreign Organization, the "**Covered Foreign Organizations**")[4]], and [Name of Counterparty Entity], a company incorporated under the laws of [●], and each of its Counterparty Affiliates listed on the signature pages hereof (together with [Name of Counterparty Entity] and any

[2] **IECA NTD**: The original ISDA® version of this Bilateral Amendment was drafted to amend all in-scope QFCs (other than QFCs that benefit from an exemption/exclusion under the applicable provisions of the QFC Stay Rules) between those subsidiaries, branches, and agencies of a global systemically important foreign banking organization that are subject to the requirements of the QFC Stay Rules (but no other entities within the foreign banking organization's group) and members of the consolidated counterparty group. This IECA version of the Bilateral Amendment is to be used between subsidiaries, branches, and agencies of a global systemically important foreign banking organization that are subject to the requirements of the QFC Stay Rules and members of the consolidated counterparty group (i.e., amending all in-scope QFCs between any of the Covered Foreign Organizations and any member of the Counterparty Group), so no conforming changes were required to be made to the original ISDA® version as was envisioned in footnote 1 to the original ISDA® version, but "customized" changes have been made to the original ISDA® version, which also acknowledged that: "In addition, please note that this is a standard form agreement and that it can be customized as needed." Entities signing this IECA version of the Bilateral Amendment are urged to read and carefully consider the "IECA Notes to Drafters" (marked as "IECA NTD") found in this footnote and the footnotes to Sections 3.1(d) and (f), 3.5, and 4.5(c) of this Bilateral Amendment, each of which refer to the IECA Commentary and Analysis ("IECA Commentary"), which has been distributed with this Bilateral Amendment. This form of agreement is not intended to amend QFCs between Regulated Entities in two groups.

[3] **NTD**: Consider whether one Covered Foreign Organization will be signing the Agreement on behalf of all of the Covered Foreign Organizations or whether each Covered Foreign Organization will sign the Agreement separately.

[4] **NTD**: This defined term could be customized to reflect the name of the Foreign Organization group, if desired.

additional Counterparty Affiliates of [Name of Counterparty Entity] that execute a Joinder Agreement, the "**Counterparty Group**")[5]].

Capitalized terms used but not otherwise defined herein (including, for example, the words "Party" and "Parties") have the meanings specified in the Appendix.

The Parties acknowledge and agree that this Agreement hereby amends [SELECT ONE OF THE FOLLOWING: ____ (A) any and all Covered Agreements between any member of the Counterparty Group and any of the Covered Foreign Organizations (note that (A) is the default election if no selection is made on this Agreement); ____ (B) that certain _______________, dated ______ [PARTIES TO INSERT NAME AND DATE OF SINGLE COVERED AGREEMENT]; or ____ (C) the Covered Agreements listed in Schedule 3 to this Agreement.

RECITALS

1. Each Covered Foreign Organization is, or has a branch or agency that is, subject to the requirements of the QFC Stay Rules. These rules require that all Covered Agreements between (i) any entity that is, or that has a branch or agency that is, subject to the requirements of the QFC Stay Rules and (ii) members of the Counterparty Group, be amended to expressly recognize the stay-and-transfer powers of the FDIC under the FDI Act and OLA and limit the exercise of certain default rights and transfer restrictions related to a BHCA Affiliate of a Covered Entity entering into insolvency or resolution proceedings.

2. Under the QFC Stay Rules, if a Covered Entity or any BHCA Affiliate of such Covered Entity that is itself a Regulated Entity enters into a new QFC with a member of the Counterparty Group after January 1, 2019, all existing Covered Agreements between (i) such Covered Entity or a BHCA Affiliate of such Covered Entity that is a Regulated Entity and (ii) members of the Counterparty Group must be amended to comply with the requirements of the QFC Stay Rules by the Applicable Compliance Date.

3. The Parties wish to enter into this Agreement to amend the Covered Agreements on the terms provided herein in order to comply with requirements of the QFC Stay Rules.

Now, therefore, the Parties hereto agree as follows:

SECTION 1 RECOGNITION OF U.S. SPECIAL RESOLUTION REGIMES

Each Covered Agreement shall be modified as follows:

1.1. Recognition of U.S. Special Resolution Regimes.

(a) In the event that a Covered Entity becomes subject to a proceeding under the FDI Act or OLA (together, the "**U.S. Special Resolution Regimes**"), the transfer of the Covered Agreement, and any interest and obligation in or under, and any property securing, the Covered Agreement, from a Covered Entity will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Covered Agreement, and any interest and obligation in or under, and any

[5] NTD: This defined term could be customized to reflect the name of the counterparty group, if desired.

property securing, the Covered Agreement, were governed by the laws of the United States or a State of the United States. In the event a Covered Entity or a BHCA Affiliate of such Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights with respect to the Covered Agreement that may be exercised against the Covered Entity are permitted to be exercised to no greater extent than such Default Rights could be exercised under such U.S. Special Resolution Regime if the Covered Agreement were governed by the laws of the United States or a State of the United States.

(b) The terms of this Section 1.1 shall not apply to any Covered Agreement described in 12 C.F.R. 252.83(a), 12 C.F.R. 382.3(a) or 12 C.F.R. 47.4(a).

SECTION 2 LIMITATIONS ON EXERCISE OF CERTAIN DEFAULT RIGHTS

Each Covered Agreement shall be modified as follows:

2.1. Limitation on Exercise of Certain Default Rights Related to a BHCA Affiliate's Entry Into Insolvency Proceedings. Notwithstanding anything to the contrary in the Covered Agreement or any other agreement, the Parties expressly acknowledge and agree that:

(a) Subject to Sections 2.2, 2.3 and 2.4, a Counterparty Entity shall not be permitted to exercise any Default Right with respect to such Covered Agreement that is related, directly or indirectly, to a BHCA Affiliate of the Direct Party becoming subject to an Insolvency Proceeding, and

(b) Nothing in a Covered Agreement shall prohibit the transfer of any Covered Affiliate Credit Enhancement, any interest or obligation in or under such Covered Affiliate Credit Enhancement, or any property securing such Covered Affiliate Credit Enhancement to a Transferee upon or following a BHCA Affiliate of the Direct Party becoming subject to an Insolvency Proceeding, unless the transfer would result in the Counterparty Entity being the beneficiary of such Covered Affiliate Credit Enhancement in violation of any law applicable to the Counterparty Entity.

2.2. General Creditor Protections. Nothing in Section 2.1 shall restrict the exercise by a Counterparty Entity of any Default Right with respect to a Covered Direct QFC or a Covered Affiliate Credit Enhancement that supports a Covered Direct QFC that arises as a result of:

(a) the Direct Party becoming subject to an Insolvency Proceeding;

(b) the Direct Party not satisfying a payment or delivery obligation pursuant to (A) such Covered Agreement or (B) another contract between the relevant Covered Entity and the relevant Counterparty Entity that gives rise to a Default Right in the Covered Agreement, or

(c) the failure of a Covered Affiliate Support Provider, or any Transferee thereof, to satisfy a payment or delivery obligation pursuant to any Covered Affiliate Credit Enhancement that supports the Covered Direct QFC.

2.3. Additional Creditor Protections. With respect to a Covered Direct QFC that is supported by a Covered Affiliate Credit Enhancement, nothing in Section 2.1 shall restrict the exercise by a Counterparty Entity after the QFC Stay Period of a Default Right that is related, directly or indirectly, to a Covered Affiliate Support Provider becoming subject to an Insolvency Proceeding if:

(a) the Covered Affiliate Support Provider that remains obligated under the Covered Affiliate Credit Enhancement becomes subject to an Insolvency Proceeding other than a Chapter 11 Proceeding;

(b) subject to Section 2.4, the Transferee, if any, becomes subject to an Insolvency Proceeding;

(c) the Covered Affiliate Support Provider does not remain, and a Transferee does not become, obligated to the same, or substantially similar, extent as the Covered Affiliate Support Provider was obligated immediately prior to entering such Insolvency Proceeding with respect to:

(i) such Covered Affiliate Credit Enhancement;

(ii) all other Covered Affiliate Credit Enhancements provided by the Covered Affiliate Support Provider in support of other Covered Direct QFCs between the Direct Party and the supported Counterparty Entity under the Covered Affiliate Credit Enhancement referenced in (i) above; and

(iii) all Covered Affiliate Credit Enhancements provided by the Covered Affiliate Support Provider in support of Covered Direct QFCs between the Direct Party and Counterparty Affiliates of the supported Counterparty Entity referenced in (ii) above; or

(d) in the case that the Covered Affiliate Credit Enhancement is transferred to a Transferee:

(i) all of the ownership interests of the Direct Party directly or indirectly held by the Covered Affiliate Support Provider are not transferred to the Transferee; or

(ii) reasonable assurance has not been provided that all or substantially all of the assets of the Covered Affiliate Support Provider (or net proceeds therefrom), excluding any assets reserved for the payment of costs and expenses of administration in the Insolvency Proceeding, will be transferred or sold to the Transferee in a timely manner.

2.4. Limitation on Exercise of Certain Default Rights Upon Entry of a BHCA Affiliate into FDI Act Proceedings. Notwithstanding anything to the contrary in Sections 2.1, 2.2 or 2.3, with respect to a Covered Direct QFC that is supported by a Covered Affiliate Credit Enhancement, the Counterparty Entity supported by such Covered Affiliate Credit Enhancement may exercise a Default Right that is related, directly or indirectly, to the Covered Affiliate Support Provider becoming subject to proceedings under the FDI Act:

(a) after the FDI Act Stay Period, if such Covered Affiliate Credit Enhancement is not transferred pursuant to 12 U.S.C. 1821(e)(9)–(e)(10) and any regulations promulgated thereunder; or

(b) during the FDI Act Stay Period, if the Default Right may only be exercised so as to permit such Counterparty Entity to suspend performance with respect to such Counterparty Entity's obligations under the Covered Direct QFC to the same extent as such Counterparty Entity would be entitled to do so if the Covered Direct QFC were with such Covered Affiliate Support Provider and were treated in the same manner as such Covered Affiliate Credit Enhancement.

2.5. Scope of Application of Sections 2.1, 2.2, 2.3 and 2.4. The terms of Sections 2.1, 2.2, 2.3 and 2.4 shall not apply to any Covered Agreement described in 12 C.F.R. 252.84(a), 12 C.F.R. 382.4(a) or 12 C.F.R. 47.5(a).

2.6. Burden of Proof. After a BHCA Affiliate of a Covered Entity has become subject to an Insolvency Proceeding, if a Counterparty Entity seeks to exercise any Default Right with respect to a Covered Agreement with such Covered Entity, such Counterparty Entity shall have the burden of proof, by clear and convincing evidence, that the exercise of such Default Right is permitted under the Covered Agreement, as amended hereby.[6]

2.7. Relationship Between Sections 1 and 2. The requirements of Section 1 apply notwithstanding Sections 2.2, 2.3 and 2.4.

SECTION 3 REPRESENTATIONS AND UNDERTAKINGS

3.1. Each Counterparty Entity represents to each Covered Entity with which it has entered into a Covered Agreement or to which it has provided or from which it has received a Covered Agreement, and each Covered Entity represents to each Counterparty Entity with which it has entered into a Covered Agreement or to which it has provided or from which it has received a Covered Agreement, that, as of the date such Person became a Party:

(a) Status. It is, if relevant, duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing or, if it otherwise represents its status in or pursuant to the Covered Agreement, has such status.

(b) Powers. It has the power to execute and deliver this Agreement and to perform its obligations under this Agreement and the Covered Agreement as amended by this Agreement, and has taken all necessary action to authorize such execution, delivery and performance.

(c) No Violation or Conflict. Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.

(d) [Consents. All governmental and other consents that are required to have been obtained by it with respect to this Agreement and the Covered Agreement, as amended by this Agreement, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.][7]

(e) Obligations Binding. This Agreement has been duly executed and delivered by it and its obligations under this Agreement and the Covered Agreement, as amended by this Agreement, constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to

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[6] *See* 12 C.F.R. 47.5(i)(1); 12 C.F.R. 252.84(i)(1); 12 C.F.R. 382.4(i)(1).

[7] **IECA NTD**: Please review the IECA Commentary distributed with this IECA version of the Bilateral Amendment template regarding the issues raised by the representation set forth in this Section 3.1(d), the due diligence review recommended to be performed by each Counterparty Entity prior to execution of this Bilateral Amendment to avoid an unintentional breach of this representation, and the additional arrangements that may need to be negotiated between a Covered Entity and a Counterparty Entity to address such issues. See also in the IECA Commentary a discussion of the same issues that arise under the ISDA® 2018 US Protocol and the due diligence review that is recommended to be performed by a Counterparty Entity prior to adhering to such protocol.

applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(f) [Credit Support. Its amendment under this Agreement (other than any amendments affecting when rights in respect of a Credit Enhancement or Third Party Credit Enhancement may be exercised) will not, in and of itself, adversely affect the enforceability, effectiveness or validity of any obligations owed, whether by it or by any Third Party, under any Credit Enhancement or Third Party Credit Enhancement in respect of its obligations relating to the Covered Agreement as amended by this Agreement.][8]

3.2. [[Name of Covered Foreign Organization] represents to each Counterparty Entity that it has the power and authority to enter into this Agreement on behalf of all entities listed in Schedule 1 hereto.][9]

3.3. In the case of a Covered Agreement that contains a Default Right based on a misrepresentation or other analogous provision, the Parties hereto agree that, for purposes of such provisions, each of the foregoing representations will be deemed to be a representation under such Covered Agreement that is made as of the date on which such Party executes this Agreement.

3.4. Each Counterparty Entity agrees, and each Covered Entity agrees, to do all such further things and execute such further documents as the other may reasonably request to ensure that this Agreement and the amendments described herein extend to, and are effective and enforceable under applicable law with respect to, all Covered Agreements to which such Counterparty Entity is a party or provided by or to such Counterparty Entity. Without limiting the generality of the foregoing, with respect to any Covered Agreement between a Covered Entity and a Counterparty Entity to which a Third Party is also a party, each such Counterparty Entity and Covered Entity agrees (i) that this Agreement amends and modifies the rights of the Counterparty Entity under such Covered Agreement on the terms provided herein as between such Counterparty Entity and Covered Entity, and (ii) to exercise any rights it may have to direct such Third Party to execute such further documents as may be necessary to give effect to the provisions of this Agreement.

3.5. With respect to any Covered Agreement or Third Party Credit Enhancement that expressly requires the consent, approval, agreement, authorization or other action (each, a "consent") of a Third Party to be obtained prior to the amendment thereof by this Bilateral Amendment, each Party whose obligations under such arrangements are secured, guaranteed or otherwise supported by such Third Party Credit Enhancement undertakes that it has obtained the consent of such Third Party and that it will, upon demand, deliver evidence thereof. To the extent any such required consent has not been obtained, the relevant Covered Agreement supported by such Third Party will not be amended hereby. To the extent

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[8] **IECA NTD**: Please review the IECA Commentary distributed with this IECA version of the Bilateral Amendment template regarding the issues raised by the representation set forth in this Section 3.1(f), the due diligence review recommended to be performed each Counterparty Entity prior to execution of this Bilateral Amendment to avoid an unintentional breach of this representation, and the additional arrangements that may need to be negotiated between a Covered Entity and a Counterparty Entity to address such issues. See also in the IECA Commentary a discussion of the same issues that arise under the ISDA® 2018 US Protocol and the due diligence review that is recommended to be performed by a Counterparty Entity prior to adhering to such protocol.

[9] **NTD**: Omit if each Covered Foreign Organization will sign this Agreement on its own behalf.

that any amendment of a Covered Agreement would "adversely affect the enforceability, effectiveness or validity of any obligations owed under any Credit Enhancement or Third Party Credit Enhancement," the relevant Covered Agreement supported by such Credit Enhancement or Third Party Credit Enhancement will not be amended hereby.[10] Each Party that is also a Third Party in relation to a Third Party Credit Enhancement is hereby deemed to have consented to the amendments imposed by this Agreement on the Covered Agreements supported by such Third Party Credit Enhancement.

3.6. Notwithstanding any provision in a Covered Agreement to which a Third Party is also a party or a Third Party Credit Enhancement that, in each case, expressly requires the consent of, or a writing signed by, all parties (including a Third Party) in order to amend such Covered Agreement or Third Party Credit Enhancement, each Party agrees and consents to (i) amend such Covered Agreement or Third Party Credit Enhancement as herein provided; (ii) such Third Party providing its consent to such amendment in a separate writing; and (iii) the amendment of such Covered Agreement or Third Party Credit Enhancement as between such Third Party and the relevant Covered Entity in such form as is consistent with this Agreement.

SECTION 4 GENERAL CONDITIONS

4.1. Effectiveness. The amendments contemplated by this Agreement, on the terms and conditions set forth herein, shall become effective between a Counterparty Entity and a Covered Entity as of the applicable Effective Date.

4.2. Entire Agreement; Restatement; Survival.

(a) This Agreement constitutes the entire agreement and understanding of each Party with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto. Each Party acknowledges that in executing this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to elsewhere in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a Party for fraud.

(b) Except for any amendment made or deemed made pursuant to this Agreement in respect of any Covered Agreement, all terms and conditions of each Covered Agreement will continue in full force and effect in accordance with its provisions as in effect immediately prior to the date on which it first becomes subject to this Agreement. Except as explicitly stated in this Agreement, nothing herein shall constitute a waiver or release of any rights of any Party under any Covered Agreement to which it is a party or a provider or recipient of any Credit Enhancement. This Agreement will, with respect to its subject matter, survive, and any amendments made or deemed made pursuant to this Agreement will form a part of each Covered Agreement, notwithstanding any statements in a Covered Agreement to the effect that such Covered Agreement constitutes the entire agreement and understanding between the parties to such Covered Agreement with respect to the subject of such Covered Agreement.

4.3. Amendments. An amendment, modification or waiver in respect of the matters contemplated by this Agreement will be effective in respect of a Covered Agreement only if made in

[10] **IECA NTD**: Please review the IECA Commentary distributed with this IECA version of the Bilateral Amendment template regarding the changes made to Section 3.5.

accordance with the terms of the Covered Agreement and then only with effect between the parties to that Covered Agreement (and will only be effective to amend or override the provisions set forth in this Agreement if it expressly refers in writing to this Agreement). No amendment of any provision of this Agreement, other than an amendment pursuant to Section 4.5 below, shall be valid unless made by a document in writing signed by all Parties.

4.4. Subsequent Adherence to the ISDA® Protocol. In the event a Counterparty Entity adheres to the ISDA® Protocol after becoming a Party hereto, then, effective on the date of acceptance by ISDA®, as agent, of such Counterparty Entity's Adherence Letter (in accordance with paragraph 1(c) of the ISDA® Protocol), the terms of the ISDA® Protocol will supersede and replace the terms of this Agreement with respect to such Counterparty Entity and its Protocol Covered Agreements (as defined under the ISDA® Protocol) with all Covered Entities that are adhering parties to the ISDA® Protocol.

4.5. Addition of New Parties.

(a) Additional BHCA Affiliates of a Covered Foreign Organization may be added as Covered Entities to this Agreement by execution of a Joinder Agreement in the form of Exhibit A hereto and delivery of such signed Joinder Agreement to the Counterparty Group in the manner provided in Section 4.7.

(b) [Additional BHCA Affiliates of a Covered Foreign Organization may also be added as Parties to this Agreement by the delivery by [Name of Covered Foreign Organization signing as agent] of an amended Schedule 1 to the Counterparty Group in the manner provided in Section 4.7.][11]

(c) Additional Counterparty Affiliates of [Name of Counterparty Entity] may be added as additional Counterparty Entities to this Agreement by execution of a Joinder Agreement in the form of Exhibit A hereto and delivery of such signed Joinder Agreement to the Covered Foreign Organizations in the manner provided in Section 4.7. [If [Name of Counterparty Entity] becomes aware of any Counterparty Affiliate that is not a Party hereto but is a party to one or more Covered QFCs with any Regulated Entity that is a BHCA Affiliate of a Covered Entity, [Name of Counterparty Entity] shall use its best efforts to cause such Counterparty Affiliate to execute and deliver a Joinder Agreement or adhere to the ISDA® Protocol.][12]

4.6. Governing Law. This Agreement will, as between the Parties and in respect of each Covered Agreement between them or provided by one of them to the other, be governed by and construed in accordance with the laws of the State of New York, without reference to choice of law doctrine, *provided* that the amendments to each Covered Agreement shall be governed by and construed in accordance with the law specified to govern that Covered Agreement and otherwise in accordance with the applicable choice of law doctrine.

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[11] **NTD**: Include if a Covered Foreign Organization will sign this Agreement on behalf of all Covered Foreign Organizations.

[12] **IECA NTD**: As more fully discussed in the IECA Commentary, a Counterparty Entity that is a regulated utility may need to consider deleting the bracketed sentence in this Section 4.5(c) if the obligation imposed on such Counterparty Entity by this sentence in Section 4.5(c) is seen as imposing an obligation that is contrary to the regulatory requirements otherwise applicable to such Counterparty Entity as a regulated utility.

4.7. Notice.[13] Any notice, demand or other communication hereunder, shall be delivered in writing and shall be effective upon receipt:

If to any Covered Foreign Organization, at:

[●]

If to any member of the Counterparty Group, at:

[●]

4.8. Headings. The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

[*Remainder of page intentionally left blank*]

[13] **NTD**: This contemplates a centralized notice address.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized representatives as of the Execution Date.

[Covered Foreign Organization][, on behalf of itself and as agent for each of the entities listed on Schedule 1 hereto][14]

By: *\/S/*
Name:
Title:

[Covered Foreign Organization 1, etc.][15]

By: *\/S/*
Name:
Title:

[14] **<u>NTD</u>**: Delete the bracketed language if each Covered Foreign Organization will sign this Agreement on its own behalf.

[15] **<u>NTD:</u>** Delete if one Covered Foreign Organization will sign as agent for all.

[COUNTERPARTY ENTITY]

By: *\/S/*
Name:
Title:

[COUNTERPARTY AFFILIATE 1, etc.]

By: *\/S/*
Name:
Title:

Schedule 1[16]

[Insert list of Covered Foreign Organizations Party to the Agreement]

1. [____________];

2.[____________]

[16] **NTD**: This Schedule 1 should not be included if each Covered Foreign Organization will be a separate signatory to this Agreement.

Schedule 2

[Insert list of Foreign Bank Multi-Branch Master Agreements that you wish to remediate despite their having no agreements or transactions booked, as of [the date hereof], at a "Federal branch," "Federal agency," "U.S. branch," or "U.S. agency."]

[The [___] agreement dated [____] and entered into or deemed to be entered into between [____] and [____][17]

[17] If you do not want to engage in ensuring no transaction is booked to a U.S./Federal branch or agency in the future, you could scope back into this bilateral agreement every Multi-Branch Master Agreement by listing them all out, or including the following language: "Each Multi-Branch Master Agreement that permits a "Federal branch" or "Federal agency" (each of which has the meaning given to such term in the OCC Rule) or a "U.S. branch" or "U.S. agency" (each of which has the meaning given to such term in the FRB Rule) and another place of business of a Foreign Bank to enter transactions under the Agreement." There is a danger that if you were to simply carve back in "Each Multi-Branch Master Agreement" without the extra language suggested in this footnote, you might bring into scope a non-multi-branch master agreement entered into by a foreign branch of a Foreign Bank.

<u>Schedule 3</u>[18]

[Insert list of Covered Agreements Amended by this Agreement]

1. [____________]

2. [____________]

[18] **<u>NTD</u>**: This Schedule 3 should only be included if the parties have elected, on page 2 of this Agreement, to list each Covered Agreement amended by this Agreement.

<u>Appendix</u>

1. <u>Defined Terms</u>. As used in this Agreement, the following terms have the meanings specified below:

"*Applicable Compliance Date*" means, (a) for a Covered Entity that was subject to the requirements of the QFC Stay Rules on January 1, 2018, with respect to a Covered Agreement: (1) if the Counterparty Entity is itself subject to the requirements of the QFC Stay Rules, January 1, 2019; (2) if the Counterparty Entity is a Financial Counterparty (other than a Small Financial Institution) that is not itself subject to the requirements of the QFC Stay Rules, July 1, 2019 and (3) if the Counterparty Entity is an entity not described in clause (a)(1) or (a)(2) above, January 1, 2020; and (b) for a Covered Entity that becomes subject to the requirements of the QFC Stay Rules after January 1, 2018, with respect to a Covered Agreement: (1) if the Counterparty Entity is itself subject to the requirements of the QFC Stay Rules, the first day of the calendar quarter immediately following one year after the Covered Entity first became subject to the QFC Stay Rule, (2) if the Counterparty Entity is a Financial Counterparty (other than a Small Financial Institution) that is not itself subject to the requirements of the QFC Stay Rules, the first day of the calendar quarter immediately following 18 months from the date the Covered Entity first became subject to the QFC Stay Rule, and (3) if the Counterparty Entity is an entity not described in clause (b)(1) or (b)(2) above, the first day of the calendar quarter immediately following two years from the date the Covered Entity first became subject to the QFC Stay Rule.

"*BHCA Affiliate*" has the same meaning as the term "affiliate" as defined in, and shall be interpreted in accordance with, 12 U.S.C. 1841(k).

"*Chapter 11 Proceeding*" means a proceeding under Chapter 11 of the United States Bankruptcy Code.

"*Consolidated Affiliate*" has the same meaning specified in, and shall be interpreted in accordance with, 12 C.F.R. 252.81, 12 C.F.R. 382.1 and 12 C.F.R. 47.2.

"*Counterparty Entity*" means a Party to this Agreement that is a member of the Counterparty Group.

"*Counterparty Group*" has the meaning specified in the Recitals hereto.

"*Counterparty Affiliate*" means a Consolidated Affiliate of a Counterparty Entity.

"*Covered Affiliate Credit Enhancement*" means a Credit Enhancement provided by a Covered Entity that is a BHCA Affiliate of a party to a Direct QFC that the Credit Enhancement supports.

"*Covered Affiliate Support Provider*" means an obligor on any Covered Affiliate Credit Enhancement, provided that it is not a Transferee.

"C*overed Agreement*" means:

(a) any Covered Direct QFC that is an In-Scope QFC that has been entered into (or deemed entered into) between a Covered Entity and the Counterparty Entity;

(b) any Multi-Branch Master Agreement; or

(c) any Credit Enhancement that is an In-Scope QFC that has been entered into (or deemed entered into) between a Covered Entity and a Counterparty Entity, provided by a Covered Entity to a Counterparty Entity or provided by a Counterparty Entity to a Covered Entity in respect of a QFC, including without limitation any Covered Affiliate Credit Enhancement;

in each case, on or prior to the Execution Date (or, if later, the date such Counterparty Entity or relevant Covered Foreign Organization became a Party to this Agreement), but does not include (i) an Excluded Multi-Branch Agreement or (ii) any QFC that meets one of the exclusions or exemptions contained in 12 C.F.R. 252.88 (a), (c)-(d), 12 C.F.R. 382.7(a), (c)-(d) or 12 C.F.R. 47.8(a), (c)-(d).

"*Covered Direct QFC*" means a Direct QFC between a Counterparty Entity and a Covered Entity (including all transactions thereunder).

"*Covered Entity*" means in respect of a Covered Foreign Organization that is, or has a branch or agency that is, a Regulated Entity, such Regulated Entity.[19]

"*Credit Enhancement*" means any credit enhancement or credit support arrangement in support of the obligations of a party to a Direct QFC under or with respect to that Direct QFC, including any guarantee, collateral arrangement (including any pledge, charge, mortgage or other security interest in collateral or title transfer arrangement), trust or similar arrangement, letter of credit, transfer of margin, reimbursement obligation or any similar arrangement.

"*Direct Party*" means a Covered Entity that is a party to a Covered Direct QFC.

"*Direct QFC*" means a QFC that is not a Credit Enhancement. For a QFC that is a master agreement that includes a Covered Affiliate Credit Enhancement as a supplement to the master agreement, the Direct QFC does not include such Covered Affiliate Credit Enhancement.

"*Default Right*" means, with respect to a Covered Agreement, any:

(a) right of a party, whether contractual or otherwise (including, without limitation, rights incorporated by reference to any other contract, agreement, or document, and rights afforded by statute, civil code, regulation, and common law), to liquidate, terminate, cancel, rescind, or accelerate such agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure), suspend, delay, or defer payment or performance thereunder, or modify the obligations of a party thereunder, or any similar rights; and

[19] The definition of Covered Entity here seeks to align the concept of Covered Entity in this template with the concept of Covered Entity/Bank/FSI in the QFC Rules, such that it refers to the relevant U.S. branch or agency (rather than the entity as a whole). This is different to the Protocol, where the term "Regulated Entity" refers to the Adhering Party that is, or that has a branch or agency that is, subject to the QFC Rules.

(b) right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral, or any similar amount, that entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure;

provided that, as used in Sections 2.1, 2.2, 2.3 or 2.4 hereof, the term "Default Right" does not include any right under a contract that allows a party to terminate the contract on demand or at its option at a specified time, or from time to time, without the need to show cause.

References to the "exercise" of a Default Right or the entitlement "to exercise" a Default Right shall include the automatic or deemed exercise of a Default Right.

"*Effective Date*" means, with respect to a Covered Agreement entered into by, or provided by or to, a Counterparty Entity, the latest of the Applicable Compliance Date and the date such Counterparty Entity or the relevant Covered Foreign Organization becomes a Party to this Agreement.

"*Excluded Multi-Branch Master Agreement*" means a Multi-Branch Master Agreement under which no agreements or transactions are booked, as of [the date hereof], at:

(a) a "Federal branch" or "Federal agency," each of which has the meaning given to such term in the OCC Rule; or

(b) a "U.S. branch" or "U.S. agency," each of which has the meaning given to such term in the FRB Rule.

[other than those Foreign Bank Multi-Branch Master Agreements listed at Schedule 2 hereto.][20]

"*Execution Date*" has the meaning set forth in the Recitals hereto.

"*FDI Act*" means the Federal Deposit Insurance Act and the regulations promulgated thereunder.

"*FDI Act Stay Period*" has the same meaning specified in, and shall be interpreted in accordance with, 12 C.F.R. 252.81, 12 C.F.R. 382.1 and 12 C.F.R. 47.2.

"*FDIC*" refers to the Federal Deposit Insurance Corporation.

[20] The intention here is to exclude from the scope of agreements being amended those multi-branch master agreements to which a Covered Foreign Organization that has a U.S. or Federal branch or agency is a party, but that has no agreements or transactions booked to that branch or agency as of the date of this Agreement. There is an option to bring back into scope multi-branch master agreements (by listing them at Schedule 2) if you want to amend them because, for example, (a) you think you will book to such a branch or agency in the future despite not having any transaction currently booked there, or (b) you have not scoped out whether transactions are currently booked there, but you think you might have, or will in the future have, transactions booked there, or (c) you do not want to engage in ensuring no transaction is booked there in the future, and so you wish to scope back in every Multi-Branch Master Agreement.

"*Financial Counterparty*" has the meaning given to such term in, and shall be interpreted in accordance with, 12 C.F.R. 252.81, 12 C.F.R. 382.1 and 12 C.F.R. 47.2.

"*Foreign Bank*" means an entity that is not organized under the laws of the United States of America or of a State that has:

(a) a "U.S. branch" or "U.S. agency," each of which has the meaning given to such term in the FRB Rule; or

(b) a "Federal branch" or "Federal agency," each of which has the meaning given to such term in the OCC Rule.

"*In-Scope QFC*" has the meaning given to such term in, and shall be interpreted in accordance with, 12 C.F.R. 252.82(d), 12 C.F.R. 382.2(d) and 12 C.F.R. 47.3(d).

"*Insolvency Proceeding*" means a receivership, insolvency, liquidation, resolution, or similar proceeding.

"*ISDA®*" refers to International Swaps and Derivatives Association, Inc.

"*ISDA® Protocol*" means the ISDA® 2018 U.S. Resolution Stay Protocol, as published by ISDA® as of July 31, 2018.

"*Joinder Agreement*" means a joinder agreement substantially in the form of <u>Exhibit A</u> hereto.

"*Multi-Branch Master Agreement*" means an In-scope QFC where one party is a Foreign Bank.

"*OLA*" means Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

"*Party*" refers to a Person that is: (i) listed on the signature pages hereof as a party to this Agreement, (ii) any Covered Foreign Organization that is listed on Schedule 1 hereto, as amended from time to time, or (iii) in the case of any Person that becomes a party hereto after the Execution Date, listed as a signatory to a Joinder Agreement provided pursuant to Section 4.5. "*Parties*" refers to all such Persons in clauses (i), (ii) and (iii) of the preceding sentence.

"*Person*" includes an individual, bank, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

"*QFC*" has the meaning assigned to the term "qualified financial contract" as defined in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"*QFC Stay Rules*" means, (i) with respect to a Covered Entity described in 12 C.F.R. 252.82(b), the regulations that are codified at 12 C.F.R. 252.2, 252.81–8 (the "**FRB Rule**"); (ii) with respect to a Covered Entity described in 12 C.F.R. 382.2(b), the regulations that are codified at 12 C.F.R. 382.1-7 (the "**FDIC Rule**"); and (iii) with respect to a Covered Entity described in 12 C.F.R 47.3(b), the regulations that are codified at 12 C.F.R. 47.1-8 (the "**OCC Rule**"). All references in this Agreement to specific provisions of the FRB Rule, the FDIC Rule and the OCC Rule shall be construed, in respect of a Covered Entity or a Covered Agreement to which such Covered Entity is a party or provided by or to such Covered Entity, to refer to the QFC Stay Rules applicable to such Covered Entity.

"*QFC Stay Period*" means, in the event of an Insolvency Proceeding, the period of time beginning on the commencement of such Insolvency Proceeding and ending at the later of 5:00 p.m. (Eastern Time) on the first day on which commercial banks in the jurisdiction of the proceeding are open for general business (including dealings in foreign exchange and foreign currency deposits) following the date of the commencement and 48 hours after the commencement of such Insolvency Proceeding.

"*Regulated Entity*" means a covered entity as defined in 12 C.F.R. 252.82(b), a covered FSI as defined in 12 C.F.R. 382.2(b) and a covered bank as defined in 12 C.F.R. 47.2(b).

"*Small Financial Institution*" has the meaning given to such term in, and shall be interpreted in accordance with, 12 C.F.R. 252.81, 12 C.F.R. 382.1 and 12 C.F.R. 47.2.

"*State*" means any state, commonwealth, territory, or possession of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

"*Third Party Credit Enhancement*" means, with respect to a Party and a Covered Agreement, any Credit Enhancement that is executed or provided by one or more Third Parties (whether or not a Party is also a party thereto), regardless of whether or not such document is identified as a Third Party Credit Enhancement.

"*Third Party*" means any Person other than the Parties to this Agreement.

"*Transferee*" means, in respect of a Covered Affiliate Credit Enhancement, a Person to whom such Covered Affiliate Credit Enhancement is transferred upon the Covered Affiliate Support Provider entering Insolvency Proceeding or thereafter as part of the resolution, restructuring, or reorganization involving such Covered Affiliate Support Provider.

"*U.S. Bank Regulators*" refers to the Federal Deposit Insurance Corporation ("**FDIC**"), the Office of the Comptroller of the Currency ("**OCC**") and the Board of Governors of the Federal Reserve System ("**FRB**").

"*U.S. Special Resolution Regimes*" has the meaning set forth in Section 1.1(a).

2. Terms Generally. The definitions of terms herein (including those incorporated by reference to another document) apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun includes the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise, (i) any definition of or reference to any agreement, schedule, instrument or other document herein shall be construed as referring to such agreement, schedule, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Schedules shall be construed to refer to Sections of, and Schedule to, this Agreement, unless otherwise noted, and (v) the word "property" shall be construed to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Exhibit A

[Form of]
JOINDER AGREEMENT

This joinder agreement (this "**Joinder Agreement**") to the Bilateral Agreement to Amend Certain Qualified Financial Contracts dated as of [●], 20[__] (as amended and in effect from time to time, the "**Agreement**") among [Name of Covered Foreign Organization] and each of the entities listed on [the signature pages thereto / Schedule 1 thereto][21] (together, the "**Covered Foreign Organizations**")] and [Name of Counterparty Entity] and each of its Counterparty Affiliates listed on the signature pages thereto (together with [Name of Counterparty Entity], "**Counterparty Group**") is executed and delivered as of [●], 20[●] by the undersigned Person.

Capitalized terms used herein, but not otherwise defined herein, are defined as set forth in the Agreement.

WITNESSETH:

WHEREAS, pursuant to Section 4.5 of the Agreement, any Person that is a Counterparty Affiliate or BHCA Affiliate of a party to the Agreement, but that is not itself a party to the Agreement, may execute and deliver this Joinder Agreement, as provided in such Section 4.5, and become a Party to the Agreement; and

WHEREAS, the undersigned Person (the "**New Party**") wishes to become a Party to the Agreement.

NOW, THEREFORE, the New Party hereby agrees as follows:

1. Joinder. In accordance with Section 4.5 of the Agreement, the New Party by its signature to this Joinder Agreement and its delivery of the signed Joinder Agreement as provided in such Section 4.5, becomes a Party to the Agreement as a [Covered Foreign Organization] [Counterparty Entity] with the same force and effect as if originally named therein as a Party. The New Party hereby agrees to all the terms and provisions of the Agreement applicable to it as a [Covered Foreign Organization] [Counterparty Entity] thereunder.

2. Representations and Warranties. The New Party hereby represents and warrants that (a) the representations and warranties made by it as a Party to the Agreement are true and correct in all material respects on and as of the date hereof and (b) that [it is a BHCA Affiliate of a Covered Foreign Organization] [it is a Consolidated Affiliate of a Counterparty Entity that is a Party to the Agreement]. Each reference to a Party in the Agreement shall be deemed to include the New Party.

3. Notice. All notices, requests and demands to or upon the New Party shall be governed by the terms of Section 4.7 of the Agreement.

4. Governing Law. This Joinder Agreement will, as between the New Party and the [Covered Foreign Organization] [Counterparty Group] and in respect of each Covered Agreement

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[21] **NTD**: Customize depending on whether the Agreement will be signed by one Covered Foreign Organization as agent for the other Covered Foreign Organizations.

between them or provided by one of them to the other, will be governed by and construed in accordance with the laws of the State of New York, without reference to choice of law doctrine, *provided* that the amendments to each Covered Agreement shall be governed by and construed in accordance with the law specified to govern that Covered Agreement and otherwise in accordance with the applicable choice of law doctrine.

IN WITNESS WHEREOF, the undersigned has caused this Joinder Agreement to be duly executed and delivered by its duly authorized representative as of the day and year first written above.

[NEW COVERED / COUNTERPARTY ENTITY]

By: */S/*
Name:
Title:

Redlined Comparison to ISDA® Bilateral Amendment of 11-2-2018

TEMPLATE 4 - FULL-LENGTH OMNIBUS
(FOR USE BETWEEN NON-~~US~~U.S. G-SIBS
AND CORPORATE ~~GROUPS~~COUNTERPARTY GROUP)

(IECA VERSION 3-14-2019)

BILATERAL AGREEMENT TO AMEND CERTAIN QUALIFIED FINANCIAL CONTRACTS[1]

This BILATERAL AGREEMENT TO AMEND CERTAIN QUALIFIED FINANCIAL CONTRACTS (this ~~"~~"**Agreement**~~"~~" or this "**Bilateral Amendment**") is entered into as of [●], ~~2018~~20[___] (the ~~"~~"**Execution Date**~~"~~") by and among each of the entities listed on [the signature pages hereof as a Covered Foreign Organization/Schedule 1 hereto] [2] (together with any additional entities that execute a Joinder Agreement as a Covered Foreign Organization, the ~~"~~"**Covered Foreign Organizations**~~"~~")[3]], and [Name of Counterparty Entity], a company incorporated under the laws of [●], and each of its Counterparty Affiliates listed on the signature pages hereof (together with [Name of Counterparty Entity] and any additional Counterparty Affiliates of [Name of Counterparty Entity] that execute a Joinder Agreement, the ~~"~~"**Counterparty Group**~~"~~")[4]].

[1] ~~**NTD**: This Agreement is~~**IECA NTD**: The original ISDA® version of this Bilateral Amendment was drafted to amend all in-scope QFCs (other than QFCs that benefit from an exemption/exclusion under the applicable provisions of the QFC Stay Rules) between those subsidiaries, branches, and agencies of a global ~~systematically~~systemically important foreign banking organization that are subject to the requirements of the QFC Stay Rules (but no other entities within the foreign banking organization~~'~~'s group) and members of the consolidated counterparty group. ~~If this agreement~~This IECA version of the Bilateral Amendment is to be used ~~on an individual counterparty-by-counterparty basis (i.e., amending all in-scope QFCs~~ between subsidiaries, branches, and agencies of a global ~~systematically~~systemically important foreign banking organization that are subject to the requirements of the QFC Stay Rules and ~~a particular entity within a Counterparty Group), rather than on a Counterparty Group-wide basis, conforming changes will be required.~~ members of the consolidated counterparty group (i.e., amending all in-scope QFCs between any of the Covered Foreign Organizations and any member of the Counterparty Group), so no conforming changes were required to be made to the original ISDA® version as was envisioned in footnote 1 to the original ISDA® version, but "customized" changes have been made to the original ISDA® version, which also acknowledged that: "In addition, please note that this is a standard form agreement and that it can be customized as needed. ~~A different form is being prepared for use with investment managers and other agents acting on behalf of their clients~~" Entities signing this IECA version of the Bilateral Amendment are urged to read and carefully consider the "IECA Notes to Drafters" (marked as "IECA NTD") found in this footnote and the footnotes to Sections 3.1(d) and (f), 3.5, and 4.5(c) of this Bilateral Amendment, each of which refer to the IECA Commentary and Analysis ("IECA Commentary"), which has been distributed with this Bilateral Amendment. This form of agreement is not intended to amend QFCs between Regulated Entities in two groups.

[2] **NTD**: Consider whether one Covered Foreign Organization will be signing the Agreement on behalf of all of the Covered Foreign Organizations or whether each Covered Foreign Organization will sign the Agreement separately.

[3] **NTD**: This defined term could be customized to reflect the name of the Foreign Organization group, if desired.

[4] NTD: This defined term could be customized to reflect the name of the counterparty group, if desired.

Capitalized terms used but not otherwise defined herein (including, for example, the words “Party” and “Parties”) have the meanings specified in the Appendix.

The Parties acknowledge and agree that this Agreement hereby amends [SELECT ONE OF THE FOLLOWING: _____ (A) any and all Covered Agreements between any member of the Counterparty Group and any of the Covered Foreign Organizations (note that (A) is the default election if no selection is made on this Agreement); _____ (B) that certain ________________, dated _______ [PARTIES TO INSERT NAME AND DATE OF SINGLE COVERED AGREEMENT]; or _____ (C) the Covered Agreements listed in Schedule 3 to this Agreement.

RECITALS

1. Each Covered Foreign Organization is, or has a branch or agency that is, subject to the requirements of the QFC Stay Rules. These rules require that all Covered Agreements between (i) any entity that is, or that has a branch or agency that is, subject to the requirements of the QFC Stay Rules and (ii) members of the Counterparty Group, be amended to expressly recognize the stay-and-transfer powers of the FDIC under the FDI Act and OLA and limit the exercise of certain default rights and transfer restrictions related to a BHCA Affiliate of a Covered Entity entering into insolvency or resolution proceedings.

2. Under the QFC Stay Rules, if a Covered Entity or any BHCA Affiliate of such Covered Entity that is itself a Regulated Entity enters into a new QFC with a member of the Counterparty Group after January 1, 2019, all existing Covered Agreements between (i) such Covered Entity or a BHCA Affiliate of such Covered Entity that is a Regulated Entity and (ii) members of the Counterparty Group must be amended to comply with the requirements of the QFC Stay Rules by the Applicable Compliance Date.

3. The Parties wish to enter into this Agreement to amend the Covered Agreements on the terms provided herein in order to comply with requirements of the QFC Stay Rules.

Now, therefore, the Parties hereto agree as follows:

SECTION 1 RECOGNITION OF U.S. SPECIAL RESOLUTION REGIMES

Each Covered Agreement shall be modified as follows:

1.1. Recognition of U.S. Special Resolution Regimes.

(a) In the event that a Covered Entity becomes subject to a proceeding under the FDI Act or OLA (together, the “**U.S. Special Resolution Regimes**”), the transfer of the Covered Agreement, and any interest and obligation in or under, and any property securing, the Covered Agreement, from a Covered Entity will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Covered Agreement, and any interest and obligation in or under, and any property securing, the Covered Agreement, were governed by the laws of the United States or a State of the United States. In the event a Covered Entity or a BHCA Affiliate of such Covered Entity becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights with respect to the Covered Agreement that may be exercised against the Covered Entity are permitted to be exercised to no greater extent than such Default Rights could be exercised under such U.S. Special Resolution Regime if the Covered Agreement were governed by the laws of the United States or a State of the United States.

(b) The terms of this Section 1.1 shall not apply to any Covered Agreement described in 12 C.F.R. 252.83(a), 12 C.F.R. 382.3(a) or 12 C.F.R. 47.4(a).

SECTION 2 LIMITATIONS ON EXERCISE OF CERTAIN DEFAULT RIGHTS

Each Covered Agreement shall be modified as follows:

2.1. Limitation on Exercise of Certain Default Rights Related to a BHCA Affiliate's Entry Into Insolvency Proceedings. Notwithstanding anything to the contrary in the Covered Agreement or any other agreement, the Parties expressly acknowledge and agree that:

(a) Subject to Sections 2.2, 2.3 and 2.4, a Counterparty Entity shall not be permitted to exercise any Default Right with respect to such Covered Agreement that is related, directly or indirectly, to a BHCA Affiliate of the Direct Party becoming subject to an Insolvency Proceeding, and

(b) Nothing in a Covered Agreement shall prohibit the transfer of any Covered Affiliate Credit Enhancement, any interest or obligation in or under such Covered Affiliate Credit Enhancement, or any property securing such Covered Affiliate Credit Enhancement to a Transferee upon or following a BHCA Affiliate of the Direct Party becoming subject to an Insolvency Proceeding, unless the transfer would result in the Counterparty Entity being the beneficiary of such Covered Affiliate Credit Enhancement in violation of any law applicable to the Counterparty Entity.

2.2. General Creditor Protections. Nothing in Section 2.1 shall restrict the exercise by a Counterparty Entity of any Default Right with respect to a Covered Direct QFC or a Covered Affiliate Credit Enhancement that supports a Covered Direct QFC that arises as a result of:

(a) the Direct Party becoming subject to an Insolvency Proceeding;

(b) the Direct Party not satisfying a payment or delivery obligation pursuant to (A) such Covered Agreement or (B) another contract between the relevant Covered Entity and the relevant Counterparty Entity that gives rise to a Default Right in the Covered Agreement, or

(c) the failure of a Covered Affiliate Support Provider, or any Transferee thereof, to satisfy a payment or delivery obligation pursuant to any Covered Affiliate Credit Enhancement that supports the Covered Direct QFC.

2.3. Additional Creditor Protections. With respect to a Covered Direct QFC that is supported by a Covered Affiliate Credit Enhancement, nothing in Section 2.1 shall restrict the exercise by a Counterparty Entity after the QFC Stay Period of a Default Right that is related, directly or indirectly, to a Covered Affiliate Support Provider becoming subject to an Insolvency Proceeding if:

(a) the Covered Affiliate Support Provider that remains obligated under the Covered Affiliate Credit Enhancement becomes subject to an Insolvency Proceeding other than a Chapter 11 Proceeding;

(b) subject to Section 2.4, the Transferee, if any, becomes subject to an Insolvency Proceeding;

(c) the Covered Affiliate Support Provider does not remain, and a Transferee does not become, obligated to the same, or substantially similar, extent as the Covered Affiliate Support Provider was obligated immediately prior to entering such Insolvency Proceeding with respect to:

(i) such Covered Affiliate Credit Enhancement;

(ii) all other Covered Affiliate Credit Enhancements provided by the Covered Affiliate Support Provider in support of other Covered Direct QFCs between the Direct Party and the supported Counterparty Entity under the Covered Affiliate Credit Enhancement referenced in (i) above; and

(iii) all Covered Affiliate Credit Enhancements provided by the Covered Affiliate Support Provider in support of Covered Direct QFCs between the Direct Party and Counterparty Affiliates of the supported Counterparty Entity referenced in (ii) above; or

(d) in the case that the Covered Affiliate Credit Enhancement is transferred to a Transferee:

(i) all of the ownership interests of the Direct Party directly or indirectly held by the Covered Affiliate Support Provider are not transferred to the Transferee; or

(ii) reasonable assurance has not been provided that all or substantially all of the assets of the Covered Affiliate Support Provider (or net proceeds therefrom), excluding any assets reserved for the payment of costs and expenses of administration in the Insolvency Proceeding, will be transferred or sold to the Transferee in a timely manner.

2.4. Limitation on Exercise of Certain Default Rights Upon Entry of a BHCA Affiliate ~~Into~~into FDI Act Proceedings. Notwithstanding anything to the contrary in Sections 2.1, 2.2 or 2.3, with respect to a Covered Direct QFC that is supported by a Covered Affiliate Credit Enhancement, the Counterparty Entity supported by such Covered Affiliate Credit Enhancement may exercise a Default Right that is related, directly or indirectly, to the Covered Affiliate Support Provider becoming subject to proceedings under the FDI Act:

(a) after the FDI Act Stay Period, if such Covered Affiliate Credit Enhancement is not transferred pursuant to 12 U.S.C. 1821(e)(9)–(e)(10) and any regulations promulgated thereunder; or

(b) during the FDI Act Stay Period, if the Default Right may only be exercised so as to permit such Counterparty Entity to suspend performance with respect to such Counterparty Entity~~'~~'s obligations under the Covered Direct QFC to the same extent as such Counterparty Entity would be entitled to do so if the Covered Direct QFC were with such Covered Affiliate Support Provider and were treated in the same manner as such Covered Affiliate Credit Enhancement.

2.5. Scope of Application of Sections 2.1, 2.2, 2.3 and 2.4. The terms of Sections 2.1, 2.2, 2.3 and 2.4 shall not apply to any Covered Agreement described in 12 C.F.R. 252.84(a), 12 C.F.R. 382.4(a) or 12 C.F.R. 47.5(a).

2.6. Burden of Proof. After a BHCA Affiliate of a Covered Entity has become subject to an Insolvency Proceeding, if a Counterparty Entity ~~that~~ seeks to exercise any Default Right with respect to a Covered Agreement with such Covered Entity, such Counterparty Entity shall have the burden of proof, by clear and convincing evidence, that the exercise of such Default Right is permitted under the Covered Agreement, as amended hereby.[5]

2.7. Relationship Between Sections 1 and 2. The requirements of Section 1 apply notwithstanding Sections 2.2, 2.3 and 2.4.

SECTION 3 REPRESENTATIONS AND UNDERTAKINGS

3.1. Each Counterparty Entity represents to each Covered Entity with which it has entered into a Covered Agreement or to which it has provided or from which it has received a Covered Agreement, and each Covered Entity represents to each Counterparty Entity with which it has entered into a Covered Agreement or to which it has provided or from which it has received a Covered Agreement, that, as of the date such Person became a Party:

(a) Status. It is, if relevant, duly organized and validly existing under the laws of the jurisdiction of its organization or incorporation and, if relevant under such laws, in good standing or, if it otherwise represents its status in or pursuant to the Covered Agreement, has such status.

(b) Powers. It has the power to execute and deliver this Agreement and to perform its obligations under this Agreement and the Covered Agreement as amended by this Agreement, and has taken all necessary action to authorize such execution, delivery and performance.

(c) No Violation or Conflict. Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.

(d) [Consents. All governmental and other consents that are required to have been obtained by it with respect to this Agreement and the Covered Agreement, as amended by this Agreement, have been obtained and are in full force and effect and all conditions of any such consents have been complied with.][6]

(e) Obligations Binding. This Agreement has been duly executed and delivered by it and its obligations under this Agreement and the Covered Agreement, as amended by this Agreement, constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors'’ rights

[5] *See* 12 C.F.R. 47.5(i)(1); 12 C.F.R. 252.84(i)(1); 12 C.F.R. 382.4(i)(1).

[6] **IECA NTD**: Please review the IECA Commentary distributed with this IECA version of the Bilateral Amendment template regarding the issues raised by the representation set forth in this Section 3.1(d), the due diligence review recommended to be performed by each Counterparty Entity prior to execution of this Bilateral Amendment to avoid an unintentional breach of this representation, and the additional arrangements that may need to be negotiated between a Covered Entity and a Counterparty Entity to address such issues. See also in the IECA Commentary a discussion of the same issues that arise under the ISDA® 2018 US Protocol and the due diligence review that is recommended to be performed by a Counterparty Entity prior to adhering to such protocol.

generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(f) [Credit Support. Its amendment under this Agreement (other than any amendments affecting when rights in respect of a Credit Enhancement or Third Party Credit Enhancement may be exercised) will not, in and of itself, adversely affect the enforceability, effectiveness or validity of any obligations owed, whether by it or by any Third Party, under any Credit Enhancement or Third Party Credit Enhancement in respect of its obligations relating to the Covered Agreement as amended by this Agreement.][7]

3.2. [[Name of Covered Foreign Organization] represents to each Counterparty Entity that it has the power and authority to enter into this Agreement on behalf of all entities listed in Schedule 1 hereto.][~~6~~8]

3.3. In the case of a Covered Agreement that contains a Default Right based on a misrepresentation or other analogous provision, the Parties hereto agree that, for purposes of such provisions, each of the foregoing representations will be deemed to be a representation under such Covered Agreement that is made as of the date on which such Party executes this Agreement.

3.4. Each Counterparty Entity agrees, and each Covered Entity agrees, to do all such further things and execute such further documents as the other may reasonably request to ensure that this Agreement and the amendments described herein extend to, and are effective and enforceable under applicable law with respect to, all Covered Agreements to which such Counterparty Entity is a party or provided by or to such Counterparty Entity. Without limiting the generality of the foregoing, with respect to any Covered Agreement between a Covered Entity and a Counterparty Entity to which a Third Party is also a party, each such Counterparty Entity and Covered Entity agrees (i) that this Agreement amends and modifies the rights of the Counterparty Entity under such Covered Agreement on the terms provided herein as between such Counterparty Entity and Covered Entity, and (ii) to exercise any rights it may have to direct such Third Party to execute such further documents as may be necessary to give effect to the provisions of this Agreement.

3.5. With respect to any Covered Agreement or Third Party Credit Enhancement that expressly requires the consent, approval, agreement, authorization or other action (each, a ~~"~~“consent~~"~~”) of a Third Party to be obtained prior to the amendment thereof by this Bilateral Amendment, each Party whose obligations under such arrangements are secured, guaranteed or otherwise supported by such Third Party Credit Enhancement undertakes that it has obtained the consent of such Third Party and that it will, upon demand, deliver evidence thereof. To the extent any such required consent has not been obtained, the relevant Covered Agreement supported by such Third Party will not be amended hereby. To the extent that any amendment of a Covered Agreement would “adversely affect the enforceability, effectiveness or validity of any obligations owed under any Credit Enhancement or Third Party Credit

[7] **IECA NTD**: Please review the IECA Commentary distributed with this IECA version of the Bilateral Amendment template regarding the issues raised by the representation set forth in this Section 3.1(f), the due diligence review recommended to be performed each Counterparty Entity prior to execution of this Bilateral Amendment to avoid an unintentional breach of this representation, and the additional arrangements that may need to be negotiated between a Covered Entity and a Counterparty Entity to address such issues. See also in the IECA Commentary a discussion of the same issues that arise under the ISDA® 2018 US Protocol and the due diligence review that is recommended to be performed by a Counterparty Entity prior to adhering to such protocol.

[~~6~~8] **NTD**: Omit if each Covered Foreign Organization will sign this Agreement on its own behalf.

Enhancement," the relevant Covered Agreement supported by such Credit Enhancement or Third Party Credit Enhancement will not be amended hereby.[9] Each Party that is also a Third Party in relation to a Third Party Credit Enhancement is hereby deemed to have consented to the amendments imposed by this Agreement on the Covered Agreements supported by such Third Party Credit Enhancement.

3.6. Notwithstanding any provision in a Covered Agreement to which a Third Party is also a party or a Third Party Credit Enhancement that, in each case, expressly requires the consent of, or a writing signed by, all parties (including a Third Party) in order to amend such Covered Agreement or Third Party Credit Enhancement, each Party agrees and consents to (i) amend such Covered Agreement or Third Party Credit Enhancement as herein provided; (ii) such Third Party providing its consent to such amendment in a separate writing; and (iii) the amendment of such Covered Agreement or Third Party Credit Enhancement as between such Third Party and the relevant Covered Entity in such form as is consistent with this Agreement.

SECTION 4 GENERAL CONDITIONS

4.1. Effectiveness. The amendments contemplated by this Agreement, on the terms and conditions set forth herein, shall become effective between a Counterparty Entity and a Covered Entity as of the applicable Effective Date.

4.2. Entire Agreement; Restatement; Survival.

(a) This Agreement constitutes the entire agreement and understanding of each Party with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto. Each Party acknowledges that in executing this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to elsewhere in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a Party for fraud.

(b) Except for any amendment made or deemed made pursuant to this Agreement in respect of any Covered Agreement, all terms and conditions of each Covered Agreement will continue in full force and effect in accordance with its provisions as in effect immediately prior to the date on which it first becomes subject to this Agreement. Except as explicitly stated in this Agreement, nothing herein shall constitute a waiver or release of any rights of any Party under any Covered Agreement to which it is a party or a provider or recipient of any Credit Enhancement. This Agreement will, with respect to its subject matter, survive, and any amendments made or deemed made pursuant to this Agreement will form a part of each Covered Agreement, notwithstanding any statements in a Covered Agreement to the effect that such Covered Agreement constitutes the entire agreement and understanding between the parties to such Covered Agreement with respect to the subject of such Covered Agreement.

4.3. Amendments. An amendment, modification or waiver in respect of the matters contemplated by this Agreement will be effective in respect of a Covered Agreement only if made in accordance with the terms of the Covered Agreement and then only with effect between the parties to that Covered Agreement (and will only be effective to amend or override the provisions set forth in this Agreement if it expressly refers in writing to this Agreement). No amendment of any provision of this

[9] **IECA NTD**: Please review the IECA Commentary distributed with this IECA version of the Bilateral Amendment template regarding the changes made to Section 3.5.

Agreement, other than an amendment pursuant to Section 4.5 below, shall be valid unless made by a document in writing signed by all Parties.

4.4. Subsequent Adherence to the ISDA® Protocol. In the event a Counterparty Entity adheres to the ISDA® Protocol after becoming a Party hereto, then, effective on the date of acceptance by ISDA®, as agent, of such Counterparty Entity's Adherence Letter (in accordance with paragraph 1(c) of the ISDA® Protocol), the terms of the ISDA® Protocol will supersede and replace the terms of this Agreement with respect to ~~the~~such Counterparty Entity and its Protocol Covered Agreements (as defined under the ISDA® Protocol) with all Covered Entities that are adhering parties to the ISDA® Protocol.

4.5. Addition of New Parties.

(a) Additional BHCA Affiliates of a Covered ~~Entities and Counterparty Entities~~Foreign Organization may be added as Covered Entities to this Agreement by execution ~~and delivery~~ of a Joinder Agreement in the form of Exhibit A hereto~~.~~ and delivery of such signed Joinder Agreement to the Counterparty Group in the manner provided in Section 4.7.

(b) [Additional BHCA Affiliates of a Covered Foreign Organization may also be added as Parties to this Agreement by the delivery by [Name of Covered Foreign Organization signing as agent] of an amended Schedule 1 to the Counterparty Group in the manner provided in Section 4.7.][~~7~~10]

(c) Additional Counterparty Affiliates of [Name of Counterparty Entity] may be added as additional Counterparty Entities to this Agreement by execution of a Joinder Agreement in the form of Exhibit A hereto and delivery of such signed Joinder Agreement to the Covered Foreign Organizations in the manner provided in Section 4.7. [If [Name of Counterparty Entity] becomes aware of any Counterparty Affiliate that is not a Party hereto but is a party to one or more Covered QFCs with any Regulated Entity that is a BHCA Affiliate of a Covered Entity, [Name of Counterparty Entity] shall use its best efforts to cause such Counterparty Affiliate to execute and deliver a Joinder Agreement or adhere to the ISDA® Protocol.][11]

4.6. Governing Law. This Agreement will, as between the Parties and in respect of each Covered Agreement between them or provided by one of them to the other, be governed by and construed in accordance with the laws of the State of New York, without reference to choice of law doctrine, *provided* that the amendments to each Covered Agreement shall be governed by and construed in accordance with the law specified to govern that Covered Agreement and otherwise in accordance with the applicable choice of law doctrine.

4.7. Notice.[~~8~~12] Any notice, demand or other communication hereunder, shall be delivered in writing and shall be effective upon receipt:

If to ~~[~~any Covered Foreign Organization~~]~~, at:

[~~7~~10] **NTD**: Include if a Covered Foreign Organization will sign this Agreement on behalf of all Covered Foreign Organizations.

[11] **IECA NTD**: As more fully discussed in the IECA Commentary, a Counterparty Entity that is a regulated utility may need to consider deleting the bracketed sentence in this Section 4.5(c) if the obligation imposed on such Counterparty Entity by this sentence in Section 4.5(c) is seen as imposing an obligation that is contrary to the regulatory requirements otherwise applicable to such Counterparty Entity as a regulated utility.

[~~8~~12] **NTD**: This contemplates a centralized notice address.

[•]

If to ~~[~~any member of the Counterparty Group~~]~~, at:

[•]

4.8. Headings. The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

[*Remainder of page intentionally left blank*]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered by their proper and duly authorized representatives as of the Execution Date.

[Covered Foreign Organization][, on behalf of itself and as agent for each of the entities listed on Schedule 1 hereto]~~[9]~~[13]

By: /S/

Name:

Title:

[~~COVERED FOREIGN ORGANIZATION~~Covered Foreign Organization 1, etc.]~~[10]~~[14]

By: /S/

Name:

Title:

~~[9] **NTD**: Delete the bracketed language if each Covered Foreign Organization will sign this Agreement on its own behalf.~~

[13] **NTD**: Delete the bracketed language if each Covered Foreign Organization will sign this Agreement on its own behalf.

~~[10] **NTD:** Delete if one Covered Foreign Organization will sign as agent for all.~~

[14] **NTD:** Delete if one Covered Foreign Organization will sign as agent for all.

[COUNTERPARTY ENTITY]

By: */S/*
Name:
Title:

[COUNTERPARTY AFFILIATE 1, etc.]

By: */S/*
Name:
Title:

Schedule ~~1~~[11] 1[15]

[Insert list of Covered Foreign Organizations Party to the Agreement]

1. [_____________];

2.[_____________]

~~11~~15 **NTD**: This Schedule 1 should not be included if each Covered Foreign Organization will be a separate signatory to this Agreement.

~~[~~Schedule 2~~]~~

[Insert list of Foreign Bank Multi-Branch Master Agreements that you wish to remediate despite their having no agreements or transactions booked, as of [the date hereof], at a ~~"~~“Federal branch~~"~~, ~~"~~” “Federal agency~~"~~, ~~"~~” “U.S. branch~~"~~,” or ~~"~~“U.S. agency~~"~~.”]

[The [~~●~~___] agreement dated [~~●~~____] and entered into or deemed to be entered into between [~~●~~____] and [~~●~~____]~~]~~[~~12~~16]

~~12~~ 16 If you do not want to engage in ensuring no transaction is booked to a U.S./ Federal branch or agency in the future, you could scope back into this bilateral agreement every Multi-Branch Master Agreement by listing them all out, or including the following language: ~~"~~“Each Multi-Branch Master Agreement that permits a ~~"~~“Federal branch~~"~~” or ~~"~~“Federal agency~~"~~” (each of which has the meaning given to such term in the OCC Rule) or a ~~"~~“U.S. branch~~"~~” or ~~"~~“U.S. agency~~"~~” (each of which has the meaning given to such term in the FRB Rule) and another place of business of a Foreign Bank to enter transactions under the ~~agreement". ~~Agreement.” There is a danger that if you were to simply carve back in ~~"~~“Each Multi-Branch Master Agreement~~"~~” without the extra language suggested in this footnote, you might bring into scope a non -multi-branch master agreement entered into by a foreign branch of a Foreign Bank.

Schedule 3[17]

[Insert list of Covered Agreements Amended by this Agreement]

1. [____________]

2. [____________]

[17] **NTD**: This Schedule 3 should only be included if the parties have elected, on page 2 of this Agreement, to list each Covered Agreement amended by this Agreement.

Appendix

1. ~~1.~~ Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

~~"~~“*Applicable Compliance Date*~~"~~” means, (a) for a Covered Entity that was subject to the requirements of the QFC Stay Rules on January 1, 2018, with respect to a Covered Agreement: (1) if the Counterparty Entity is itself subject to the requirements of the QFC Stay Rules, January 1, 2019; (2) if the Counterparty Entity is a Financial Counterparty (other than a Small Financial Institution) that is not itself subject to the requirements of the QFC Stay Rules, July 1, 2019 and (3) if the Counterparty Entity is an entity not described in clause (a)(1) or (a)(2) above, January 1, 2020; and (b) for a Covered Entity that becomes subject to the requirements of the QFC Stay Rules after January 1, 2018, with respect to a Covered Agreement: (1) if the Counterparty Entity is itself subject to the requirements of the QFC Stay Rules, the first day of the calendar quarter immediately following one year after the Covered Entity first became subject to the QFC Stay Rule, (2) if the Counterparty Entity is a Financial Counterparty (other than a Small Financial Institution) that is not itself subject to the requirements of the QFC Stay Rules, the first day of the calendar quarter immediately following 18 months from the date the Covered Entity first became subject to the QFC Stay Rule, and (3) if the Counterparty Entity is an entity not described in clause (b)(1) or (b)(2) above, the first day of the calendar quarter immediately following two years from the date the Covered Entity first became subject to the QFC Stay Rule.

~~"~~“*BHCA Affiliate*~~"~~” has the same meaning as the term ~~"~~“affiliate~~"~~” as defined in, and shall be interpreted in accordance with, 12 U.S.C. 1841(k).

~~"~~“*Chapter 11 Proceeding*~~"~~” means a proceeding under Chapter 11 of the United States Bankruptcy Code.

~~"~~“*Consolidated Affiliate*~~"~~” has the same meaning specified in, and shall be interpreted in accordance with, 12 C.F.R. 252.81, 12 C.F.R. 382.1 and 12 C.F.R. 47.2.

~~"~~“*Counterparty Entity*~~"~~” means a Party to this Agreement that is a member of the Counterparty Group.

~~"~~“*Counterparty Group*~~"~~” has the meaning specified in the Recitals hereto.

~~"~~“*Counterparty Affiliate*~~"~~” means a Consolidated Affiliate of a Counterparty Entity.

~~"~~“*Covered Affiliate Credit Enhancement*~~"~~” means a Credit Enhancement provided by a Covered Entity that is a BHCA Affiliate of a party to a Direct QFC that the Credit Enhancement supports.

~~"~~“*Covered Affiliate Support Provider*~~"~~” means an obligor on any Covered Affiliate Credit Enhancement, provided that it is not a Transferee.

~~"~~“*Covered Agreement*~~"~~” means:

(a) any Covered Direct QFC that is an In-Scope QFC that has been entered into (or deemed entered into) between a Covered Entity and ~~a~~the Counterparty Entity;

(b) any Multi-Branch Master Agreement; or

(c) any Credit Enhancement that is an In-Scope QFC that has been entered into (or deemed entered into) between a Covered Entity and a Counterparty Entity, provided by a Covered Entity to a Counterparty Entity or provided by a Counterparty Entity to a Covered Entity in respect of a QFC, including without limitation any Covered Affiliate Credit Enhancement;

in each case, on or prior to the Execution Date (or, if later, the date such Counterparty Entity or relevant Covered Foreign Organization became a Party to this Agreement), but does not include (i) an Excluded Multi-Branch Agreement or (ii) any QFC that meets one of the exclusions or exemptions contained in 12 C.F.R. 252.88 (a), (c)-(d), 12 C.F.R. 382.7(a), (c)-(d) or 12 C.F.R. 47.8(a), (c)-(d).

~~"~~"*Covered Direct QFC*~~"~~" means a Direct QFC between a Counterparty Entity and a Covered Entity (including all transactions thereunder).

~~"~~"*Covered Entity*~~"~~" means in respect of a Covered Foreign Organization that is, or has a branch or agency that is, a Regulated Entity, such Regulated Entity.~~[13]~~[18]

~~"~~"*Credit Enhancement*~~"~~" means any credit enhancement or credit support arrangement in support of the obligations of a party to a Direct QFC under or with respect to that Direct QFC, including any guarantee, collateral arrangement (including any pledge, charge, mortgage or other security interest in collateral or title transfer arrangement), trust or similar arrangement, letter of credit, transfer of margin, reimbursement obligation or any similar arrangement.

~~"~~"*Direct Party*~~"~~" means a Covered Entity that is a party to a Covered Direct QFC.

~~"~~"*Direct QFC*~~"~~" means a QFC that is not a Credit Enhancement. For a QFC that is a master agreement that includes a Covered Affiliate Credit Enhancement as a supplement to the master agreement, the Direct QFC does not include such Covered Affiliate Credit Enhancement.

~~"~~"*Default Right*~~"~~" means, with respect to a Covered Agreement, any:

(a) right of a party, whether contractual or otherwise (including, without limitation, rights incorporated by reference to any other contract, agreement, or document, and rights afforded by statute, civil code, regulation, and common law), to liquidate, terminate, cancel, rescind, or accelerate such agreement or transactions thereunder, set off or net amounts owing in respect thereto (except rights related to same-day payment netting), exercise remedies in respect of collateral or other credit support or property related thereto (including the purchase and sale of property), demand payment or delivery thereunder or in respect thereof (other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure),

~~[13]~~[18] The definition of Covered Entity here seeks to align the concept of Covered Entity in this template with the concept of Covered Entity/Bank/FSI in the QFC Rules, such that it refers to the relevant U.S. branch or agency (rather than the entity as a whole). This is different to the Protocol, where the term ~~"~~"Regulated Entity~~"~~" refers to the Adhering Party that is, or that has a branch or agency that is, subject to the QFC Rules.

suspend, delay, or defer payment or performance thereunder, or modify the obligations of a party thereunder, or any similar rights; and

(b) right or contractual provision that alters the amount of collateral or margin that must be provided with respect to an exposure thereunder, including by altering any initial amount, threshold amount, variation margin, minimum transfer amount, the margin value of collateral, or any similar amount, that entitles a party to demand the return of any collateral or margin transferred by it to the other party or a custodian or that modifies a transferee's right to reuse collateral or margin (if such right previously existed), or any similar rights, in each case, other than a right or operation of a contractual provision arising solely from a change in the value of collateral or margin or a change in the amount of an economic exposure;

provided that, as used in Sections 2.1, 2.2, 2.3 or 2.4 hereof, the term “Default Right” does not include any right under a contract that allows a party to terminate the contract on demand or at its option at a specified time, or from time to time, without the need to show cause.

References to the “exercise” of a Default Right or the entitlement “to exercise” a Default Right shall include the automatic or deemed exercise of a Default Right.

“*Effective Date*” means, with respect to a Covered Agreement~~,~~ entered into by, or provided by or to, a Counterparty Entity, the latest of the Applicable Compliance Date and the date such Counterparty Entity or the relevant Covered Foreign Organization becomes a Party to this Agreement.

“*Excluded Multi-Branch Master Agreement*” means a Multi-Branch Master Agreement under which no agreements or transactions are booked, as of [the date hereof], at:

~~(a)~~ (a) a “Federal branch” or “Federal agency,” each of which has the meaning given to such term in the OCC Rule; or

~~(b)~~ (b) a “U.S. branch” or “U.S. agency,” each of which has the meaning given to such term in the FRB Rule~~,~~.

[other than those Foreign Bank Multi-Branch Master Agreements listed at Schedule 2 hereto.][~~14~~19]

“*Execution Date*” has the meaning set forth in the Recitals hereto.

“*FDI Act*” means the Federal Deposit Insurance Act and the regulations promulgated thereunder.

[~~14~~19] The intention here is to exclude from the scope of agreements being amended those multi-branch master agreements to which a Covered Foreign Organization that has a U.S. or Federal branch or agency is a party, but that has no agreements or transactions booked to that branch or agency as of the date of this ~~agreement~~Agreement. There is an option to bring back into scope multi-branch master agreements (by listing them at Schedule 2) if you want to amend them because, for example, (a) you think you will book to such a branch or agency in the future despite not having any ~~transactions~~transaction currently booked there, or (b) you have not scoped out whether transactions are currently booked there, but you think you might have, or will in the future have, transactions booked there, or (c) you do not want to engage in ensuring no transaction is booked there in the future, and so you wish to scope back in every Multi-Branch Master Agreement.

~~"~~"*FDI Act Stay Period*~~"~~" has the same meaning specified in, and shall be interpreted in accordance with, 12 C.F.R. 252.81, 12 C.F.R. 382.1 and 12 C.F.R. 47.2.

~~"~~"*FDIC*~~"~~" refers to the Federal Deposit Insurance Corporation.

~~"~~"*Financial Counterparty*~~"~~" has the meaning given to such term in, and shall be interpreted in accordance with, 12 C.F.R. 252.81, 12 C.F.R. 382.1 and 12 C.F.R. 47.2.

~~"~~"*Foreign Bank*~~"~~" means an entity that is not organized under the laws of the United States of America or of a State that has:~~—~~

~~(a) a "~~(a) a "U.S. branch~~"~~" or ~~"~~"U.S. agency,~~"~~" each of which has the meaning given to such term in the FRB Rule; or

~~(b)~~ (b) a ~~"~~"Federal branch~~"~~" or ~~"~~"Federal agency,~~"~~" each of which has the meaning given to such term in the OCC Rule.

~~"~~"*In-Scope QFC*~~"~~" has the meaning given to such term in, and shall be interpreted in accordance with, 12 C.F.R. 252.82(d), 12 C.F.R. 382.2(d) and 12 C.F.R. 47.3(d).

~~"~~"*Insolvency Proceeding*~~"~~" means a receivership, insolvency, liquidation, resolution, or similar proceeding.

~~"~~"*ISDA*~~"~~®" refers to International Swaps and Derivatives Association, Inc.

~~"~~ "*ISDA® Protocol*~~"~~" means the ISDA® 2018 U.S. Resolution Stay Protocol, as published by ISDA® as of July 31, 2018.

~~"~~"*Joinder Agreement*~~"~~" means a joinder agreement substantially in the form of Exhibit A hereto.

~~"~~"*Multi-Branch Master Agreement*~~"~~" means an In-scope QFC where one party is a Foreign Bank.

~~"~~"*OLA*~~"~~" means Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder.

~~"~~"*Party*~~"~~" refers to a Person that is: (i) listed on the signature pages hereof as a party to this Agreement, ~~[~~(ii) any Covered Foreign Organization that is listed on Schedule 1 hereto, as amended from time to time,~~]~~ or~~,~~ (iii) in the case of any Person that becomes a party hereto after the Execution Date, listed as a signatory to a Joinder Agreement provided pursuant to Section 4.5. "*Parties*" refers to all such Persons in clauses (i), (ii) and (iii) of the preceding sentence.

~~"~~"*Person*~~"~~" includes an individual, bank, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, or any other form of entity.

~~"~~"*QFC*~~"~~" has the meaning assigned to the term "qualified financial contract" as defined in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

~~"~~“*QFC Stay Rules*~~"~~” means, (i) with respect to a Covered Entity described in 12 C.F.R. 252.82(b), the regulations that are codified at 12 C.F.R. 252.2, 252.81–8 (the ~~"~~“**FRB Rule**~~"~~”); (ii) with respect to a Covered Entity described in 12 C.F.R. 382.2(b), the regulations that are codified at 12 C.F.R. 382.1-7 (the ~~"~~“**FDIC Rule**~~"~~”); and (iii) with respect to a Covered Entity described in 12 C.F.R 47.3(b), the regulations that are codified at 12 C.F.R. 47.1-8 (the ~~"~~“**OCC Rule**~~"~~”). All references in this Agreement to specific provisions of the FRB Rule, the FDIC Rule and the OCC Rule shall be construed, in respect of a Covered Entity or a Covered Agreement to which such Covered Entity is a party or provided by or to such Covered Entity, to refer to the QFC Stay Rules applicable to such Covered Entity.

~~"~~“*QFC Stay Period*~~"~~” means, in the event of an Insolvency Proceeding, the period of time beginning on the commencement of such Insolvency Proceeding and ending at the later of 5:00 p.m. (Eastern Time) on the first day on which commercial banks in the jurisdiction of the proceeding are open for general business (including dealings in foreign exchange and foreign currency deposits) following the date of the commencement and 48 hours after the commencement of such Insolvency Proceeding.

~~"~~“*Regulated Entity*~~"~~” means a covered entity as defined in 12 C.F.R. 252.82(b), a covered FSI as defined in 12 C.F.R. 382.2(b) and a covered bank as defined in 12 C.F.R. 47.2(b).

~~"~~“*Small Financial Institution*~~"~~” has the meaning given to such term in, and shall be interpreted in accordance with, 12 C.F.R. 252.81, 12 C.F.R. 382.1 and 12 C.F.R. 47.2.

~~"~~“*State*~~"~~” means any state, commonwealth, territory, or possession of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.

~~"~~“*Third Party Credit Enhancement*~~"~~” means, with respect to a Party and a Covered Agreement, any Credit Enhancement that is executed or provided by one or more Third Parties (whether or not a Party is also a party thereto), regardless of whether or not such document is identified as a Third Party Credit Enhancement.

~~"~~“*Third Party*~~"~~” means any Person other than the Parties to this Agreement.

~~"~~“*Transferee*~~"~~” means, in respect of a Covered Affiliate Credit Enhancement, a Person to whom such Covered Affiliate Credit Enhancement is transferred upon the Covered Affiliate Support Provider entering Insolvency Proceeding or thereafter as part of the resolution, restructuring, or reorganization involving such Covered Affiliate Support Provider.

“*U.S. Bank Regulators*” refers to the Federal Deposit Insurance Corporation (“**FDIC**”), the Office of the Comptroller of the Currency (“**OCC**”) and the Board of Governors of the Federal Reserve System (“**FRB**”).

~~"~~“*U.S. Special Resolution Regimes*~~"~~” has the meaning set forth in Section 1.1(a).

2. ~~2.~~ Terms Generally. The definitions of terms herein (including those incorporated by reference to another document) apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun includes the corresponding masculine, feminine and neuter forms. The words ~~"~~“include~~"~~”, ~~"~~“includes~~"~~” and ~~"~~“including~~"~~” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise, (i) any definition of or reference to any agreement, schedule, instrument or other document herein shall be construed as referring to such agreement, schedule, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (iv) all references herein to Schedules shall be construed to refer to Sections of, and Schedule to, this Agreement, unless otherwise noted, and (v) the word “property” shall be construed to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

Exhibit A

[Form of]
JOINDER AGREEMENT

This joinder agreement (this ~~"~~“**Joinder Agreement**~~"~~”) to the Bilateral Agreement to Amend Certain Qualified Financial Contracts dated as of [●], ~~2018~~20[__] (as amended and in effect from time to time, the ~~"~~“**Agreement**~~"~~”) among [Name of Covered Foreign Organization] and each of the entities listed on [the signature pages thereto / Schedule 1 thereto]~~[15]~~[20] (together, the ~~"~~“**Covered Foreign Organizations**~~"~~”)] and [Name of Counterparty Entity] and each of its Counterparty Affiliates listed on the signature pages thereto (together with [Name of Counterparty Entity], ~~"~~“**Counterparty Group**~~"~~”) is executed and delivered as of [●], 20[●] by the undersigned Person.

Capitalized terms used herein, but not otherwise defined herein, are ~~used as~~ defined as set forth in the Agreement.

WITNESSETH:

WHEREAS, pursuant to Section 4.5 of the Agreement, any Person that is a Counterparty Affiliate or BHCA Affiliate of a party to the Agreement, but that is not itself a party to the Agreement, may execute and deliver this Joinder Agreement, as provided in such Section 4.5, and become a Party to the Agreement; and

WHEREAS, the undersigned Person (the ~~"~~“**New Party**~~"~~”) wishes to become a Party to the Agreement.

NOW, THEREFORE, the New Party hereby agrees as follows:

1. Joinder. In accordance with Section 4.5 of the Agreement, the New Party by its signature to this Joinder Agreement and its delivery of the signed Joinder Agreement as provided in such Section 4.5, becomes a Party to the Agreement as a [Covered Foreign Organization] [Counterparty Entity] with the same force and effect as if originally named therein as a Party. The New Party hereby agrees to all the terms and provisions of the Agreement applicable to it as a [Covered Foreign Organization] [Counterparty Entity] thereunder.

2. Representations and Warranties. The New Party hereby represents and warrants that (a) the representations and warranties made by it as a Party to the Agreement are true and correct in all material respects on and as of the date hereof and (b) that [it is a BHCA Affiliate of a Covered Foreign Organization] [it is a Consolidated Affiliate of a Counterparty Entity that is a Party to the Agreement]. Each reference to a Party in the Agreement shall be deemed to include the New Party.

3. Notice. All notices, requests and demands to or upon the New Party shall be governed by the terms of Section 4.7 of the Agreement.

~~[15]~~[20] **NTD**: Customize depending on whether the Agreement will be signed by one Covered Foreign Organization as agent for the other Covered Foreign Organizations.

4. Governing Law. This Joinder Agreement will, as between the New Party and the [Covered Foreign ~~Organizations~~Organization] [Counterparty Group] and in respect of each Covered Agreement between them or provided by one of them to the other, will be governed by and construed in accordance with the laws of the State of New York, without reference to choice of law doctrine, *provided* that the amendments to each Covered Agreement shall be governed by and construed in accordance with the law specified to govern that Covered Agreement and otherwise in accordance with the applicable choice of law doctrine.

* * *

IN WITNESS WHEREOF, the undersigned has caused this Joinder Agreement to be duly executed and delivered by its duly authorized representative as of the day and year first written above.

[NEW COVERED / COUNTERPARTY ENTITY]

By: */S/*
Name:
Title:

Document comparison by Workshare Compare on Friday, March 15, 2019 9:06:32 PM

Input:	
Document 1 ID	netdocuments://4845-1057-6009/1
Description	(Non-US-GSIB-with Corporate-Entity)-Bilateral-Amendment (ISDA 11-2-2018)
Document 2 ID	netdocuments://4834-9987-7003/1
Description	(TEMPLATE 4-Non-US-GSIB)-Bilateral-QFC-Amendment (IECA CP Group Version) (FINAL 3-14-2019)
Rendering set	Standard

Legend:	
Insertion	
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Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
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Moved from	1
Moved to	1
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Format changed	0
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