

Clearing Agent Agreement

concluded between

CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH
Strauchgasse 1-3
A-1010 Vienna

(hereinafter referred to as "CCP.A" or "Clearing House") and

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(hereinafter referred to as "Clearing Agent") as follows:

PREAMBLE

The Clearing Agent shall be

- a) An Austrian credit institution;
- b) A credit institution licensed to operate in a Member State insofar as the applicable EC Directive for credit institutions applies in full to said credit institution including any of its branch offices in third countries;
- c) A company whose business consists of receiving cash or other repayable monies from the public for deposit and to grant loans on their own account and that have been licensed to carry on this business in other Member States, in all full Member States of the Organization for Economic Cooperation and Development (OECD) as well as in countries that have entered into agreements with the International Monetary Fund (IMF), in particular, lending agreements in connection with IMF's Special Agreement to Borrow, including their branch offices;
- d) A recognized investment firm within the scope set out in Art. 2 fig. 31 of the Austrian Banking Act; and
- e) Recognized clearing houses pursuant to Art. 2 fig. 33 Austrian Banking Act with its seat or license in an EEA member state that has signed the European Code of Conduct for Clearing and Settlement

and has own funds as defined by Article 23 BWG of at least EUR 50,000,000.00. It concludes this agreement in order to act as clearing agent pursuant to Article 4 of the "Rules for the Clearing through CCP Austria (CCP.A Clearing Rules)" (hereinafter "CCP.A Clearing

Rules") for its customers, which participate in the clearing as participating clearing members ("Participating Clearing Members").

CCP.A is commissioned with the task of a clearing house in the clearing of CCP-eligible transactions ("CCP-eligible Transactions") pursuant to Article 26 para 3 Stock Exchange Act (*BörseG*). The CCP-eligible Transactions shall take place exclusively between CCP.A as central counterparty and one customer of the Clearing Agent respectively, which directly participates in the clearing. The Clearing Agent shall not enter into the transactions of its customers with the Clearing House, nor shall it assume any liability for their performance.

§ 1 Object of the Agreement

- (1) CCP.A authorises the Clearing Agent to act, on the basis of this agreement, as a clearing agent pursuant to Article 4 of the CCP.A Clearing Rules for its customers, which directly participate in the clearing and with which it entered into a corresponding processing obligation in its function as clearing agent ("Clearing Customers").
- (2) The contracting parties confirm that they are aware of the "Rules for the Clearing through CCP Austria (CCP.A Clearing Rules)" of Wiener Börse AG ("WBAG"), which form part of the General Business Conditions of WBAG pursuant to Article 13 Stock Exchange Act, that the current version of the CCP.A Clearing Rules is available to the Clearing Agent and that this clearing agent agreement ("Clearing Agent Agreement") is concluded on the basis of the CCP.A Clearing Rules as amended. The contracting parties hereby agree to comply with the CCP.A Clearing Rules as amended.
- (3) The Clearing Agent shall be under the obligation to process the CCP eligible transactions by those Clearing Customers with which it has entered into a corresponding processing obligation as Clearing Agent. In case that the Clearing Agent opens accounts and deposits for the Clearing Customer at the clearing bank ("Clearing Bank") (or in case of cash accounts a recognised bank) and/or deposits collateral for the Clearing Customer, the Clearing Agent shall be under the obligation vis-à-vis CCP.A to cover the cash accounts and securities deposits, and to deposit collateral, in at least the amount it has received in corresponding cash amounts, securities and/or collateral from the Clearing Customer. A declaration of the Clearing Agent, in which the Clearing Agent undertakes to process the transactions of the Clearing Customer in its function as Clearing Agent, shall be submitted to CCP.A.

§ 2 Commissioning Third Parties

- (1) The Clearing House has commissioned WBAG and Oesterreichische Kontrollbank Aktiengesellschaft ("OeKB") with operating the technical clearing systems. In addition, in its capacity as Clearing Bank the latter is entrusted with making the book entries for securities and payment transactions (the settlement), including the maintaining of deposits and accounts as well as credit investigations.
- (2) The Clearing House is authorized to commission further parties to act on its behalf.

§ 3 Cash Accounts and Securities Accounts, Collateral Data Protection and Banking Secret

- (1) The cash accounts and securities deposits required for clearing are to be opened by the Clearing Customers directly at the Clearing Bank (or in case of cash accounts, at a recognized bank, as the case may be). Alternatively, should CCP.A consent, it is possible for these cash accounts and securities deposits to be opened by the Clearing Agent. The Clearing Agent shall maintain such cash accounts and securities deposits for the duration of clearing membership of its Clearing Customers. The accounts and deposits, including collateral deposits and collateral accounts, opened by the Clearing Agent for its Clearing Customers at the Clearing Bank in conformity with the requirements of the CCP.A Clearing Rules are shown in the form which is enclosed with this Clearing Agent Agreement as Annex ./2. The contents of the pledge, the direct collection order, and (if applicable) the guarantee to be submitted by the Clearing Agent for its Clearing Customers (as an alternative to corresponding declarations and instructions by the Clearing Customers) are laid down in the samples enclosed with this Clearing Agent Agreement as annexes ./3, ./4 and ./5. The Clearing House shall be authorized to realize the collateral deposited by the Clearing Agent pursuant to the CCP.A Clearing Rules, if and when, the requirements for a realization of collateral posted directly by the Clearing Customer are met. Delays of the Clearing Agent in performing obligations of the Clearing Customer shall be attributable to the Clearing Customer. Such delays shall be deemed an event of default of the Clearing Customer pursuant to the CCP.A Clearing Rules.
- (2) The Clearing Agent explicitly agrees to the transmission of data by CCP.A, the exchange operating company and the Clearing Bank to the Austrian Financial Market

Authority ("FMA") as well as any competent foreign supervisory authorities for the purposes of exercising their supervisory tasks over exchange members.

- (3) The Clearing Agent releases the Clearing Bank from the banking secrecy if this is necessary for the purposes of fulfilling the tasks of the Clearing Bank pursuant to the CCP.A Clearing Rules or the supervisory tasks of FMA or of any competent foreign supervisory authorities.

§ 4 Term of the Agreement

- (1) The Clearing Agent Agreement may be terminated by the Clearing Agent at any time in writing upon one month's notice without stating any reasons. The termination shall only become effective after all transactions and positions for whose processing the Clearing Agent is responsible have been fulfilled pursuant to the CCP.A Clearing Rules. The Clearing Agent shall inform its Clearing Customers immediately of the termination of the Clearing Agent Agreement so that they can take the appropriate measures either by instructing another clearing agent or by opening own cash accounts and securities deposits with the Clearing Bank (or another recognized bank).
- (2) CCP.A shall be permitted to terminate the Clearing Agent Agreement with immediate effect without observing a notice period if there is a material reason. A breach of any obligation contained in this Agreement and in the CCP.A Clearing Rules by the Clearing Agent shall constitute a material reason. The termination by CCP.A shall be made in writing, with the reasons being stated.
- (3) The termination of the Clearing Agent Agreement shall not release the Clearing Agent from its obligations in connection with such CCP-eligible transactions already concluded, for whose processing it is responsible.
- (4) The exchange operating company shall immediately be informed by the contracting parties of a termination of the Clearing Agent Agreement.

§ 5 Assignability

An assignment of rights or a transfer of obligations under the Clearing Agent Agreement by the Clearing Agent shall only be possible with the consent of CCP.A.

§ 6 Liability

- (1) Any liability of CCP.A, of OeKB, of WBAG or other parties acting on CCP.A's behalf for damages due to circumstances for which they are not responsible or for damages

whose cause is outside of the sphere of CCP.A, OeKB, WBAG or other third parties acting on CCP.A's behalf shall be excluded.

- (2) CCP.A, OeKB, WBAG and other parties acting on CCP.A's behalf shall not be liable for losses, lost profits or damages, unless these losses, lost profits or damages are the result of their intentional or gross negligent conduct. Liability for consequential damages shall be excluded in any case.
- (3) CCP.A, OeKB, WBAG and other parties acting on CCP.A's behalf shall not be liable to third parties who are not Participating Clearing Members for any losses, damages, consequential damages or lost profits that may occur as a result of, or in connection with, the clearing of CCP-eligible transactions.
- (4) CCP.A, OeKB, WBAG and other parties acting on CCP.A's behalf shall not be liable for damages caused by a disruption of operations due to force majeure, riot, war and natural disasters or due to other events or incidents for which they are not responsible (e.g. strikes, lawful lock-outs, traffic disruptions) or restraints/acts of princes.
- (5) The same shall apply to damages suffered by an exchange member due to technical problems or due to a partial or full failure of the EDP system used by it or suffered by exchange members due to errors in the entering of data in the course of trading or clearing and the administration of the records on the collateral deposited, insofar as these damages do not result from intentional or gross negligent conduct of CCP.A, OeKB, WBAG or other parties acting on CCP.A's behalf.
- (6) The Clearing Agent shall be liable to CCP.A, and gives a warranty, acting as a prudent businessperson pursuant to the Austrian Civil Code and Companies Act.

§ 7 Choice of Law, Jurisdiction

- (1) This Clearing Agent Agreement shall be governed by, and construed in conformity with, Austrian law, with the exception of its conflict of laws provisions.
- (2) Any disputes arising from or in connection with this Clearing Agent Agreement shall be subject to the exclusive jurisdiction of the competent courts in commercial matters in Vienna. CCP.A may, however, bring an action against the Clearing Agent before any other court that may have jurisdiction.

§ 8 Supplements, Severability

- (1) Should any individual provisions of this Clearing Agent Agreement be or become fully or partially invalid or unenforceable, the validity or enforceability of the other provisions shall not be impaired.

- (2) Invalid provisions shall be replaced by such provisions that come as close as possible to the intended economic effect. The same shall apply to the lacking provisions in this Clearing Agent Agreement.

§ 9 Addresses

Except in case of a change of address notified in writing, all notices intended for CCP.A shall be sent to:

CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH
Strauchgasse 1-3
A-1010 Vienna

and any notices intended for the Clearing Agent shall be sent to

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§ 10 Languages, Counterparts, Form

- (1) This Clearing Agreement shall be executed in two counterparts in German and English respectively. These counterparts shall be legally binding. In case of a deviation between the English and the German version, the German text shall prevail. Any translations into other languages are only for information purposes and shall not be binding.
- (2) Amendments of the Clearing Agent Agreement, including a deviation from the requirement of the written form, shall only be valid if in written form.
- (3) The annexes referred to below shall form an integral part of this Clearing Agent Agreement:

Annex .I/2

**CCP Austria Abwicklungsstelle
für Börsengeschäfte GmbH ("CCP.A") and
Oesterreichische Kontrollbank Aktiengesellschaft**
Strauchgasse 1-3
A – 1010 Vienna

Notification of Accounts and Deposits

pursuant to Article 13 of the "Rules for the Clearing through CCP Austria (CCP.A Clearing Rules)" for the Participating Clearing Member

(Corporate Name and Seat of Clearing Customer)

Type of Account or Deposit	Details of Account and/or Deposit
Cash Clearing Account	
Securities Clearing Account	
Cash Collateral Account	
Securities Collateral Account	

The Business Terms of the Clearing Bank (or in case of cash accounts kept by a recognized bank, of the recognized bank) shall apply to the above clearing accounts and collateral accounts.

The Clearing Agent hereby declares to release the Clearing Bank from the bond to banking secrecy pursuant to Article 38 Banking Act and to the Data Protection Act for the purposes of executing clearing and for reporting suspicious incidents of breaches of the Clearing Rules or of the Clearing Agreement.

(Place, Date)

(Corporate Signature Clearing Agent)

Annex .I/3

**CCP Austria Abwicklungsstelle
für Börsengeschäfte GmbH ("CCP.A")**

Strauchgasse 1-3

A – 1010 Vienna

Bankgarantie

for the benefit of CCP.A pursuant to the "Rules for the Clearing through CCP Austria (CCP.A Clearing Rules)"

Ladies and Gentlemen,

(Corporate Name and Seat of Credit Institution)

as guarantor hereby unconditionally and irrevocably undertakes, as security for the settlement of any obligations and liabilities of

(Corporate Name and Seat of Exchange Member)

as Participating Clearing Member pursuant to the CCP.A Clearing Rules, to pay the requested amount of up to

Euro

(in words: _____)

upon first written demand by CCP.A, at the latest to be issued and sent and pre-advised via facsimile (fax no.) on DD.MM.YYYY, whereas the payment shall take place upon receipt of the original demand note waiving any objections and defenses and without examination of the underlying legal ground or legal relationship, to an account named by CCP.A.

Non-exclusive place of jurisdiction shall be Vienna. This guarantee shall be governed by, and shall be interpreted in conformity with, Austrian substantive law.

After termination of your contractual relationship with the Participating Clearing Member and complete settlement of the obligations arising thereunder, you will return this guarantee to us.

Kind regards,

(Corporate Name and Seat of Credit Institution)

(Place, Date)

(Corporate Signature)

Annex ./4

Return to:

CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH**Strauchgasse 1-3****A - 1010 Vienna****Authorization of Withdrawals by Direct Collection Order
Clearing Agent**

We hereby **irrevocably** authorize you for the term of the clearing membership of [corporate name and address of Participating Clearing Member] ("Participating Clearing Member") and until any open transactions that concern the Participating Clearing Member are cleared, to withdraw any payments to be made by the Participating Clearing Member by way of a direct debit from our account when due. This shall also authorize our bank maintaining the account, currently, to fulfill the direct debit. We shall ensure that our account has sufficient coverage. In case of an insufficient coverage the recipient of the payment (=CCP.A) shall be notified. The funds to be withdrawn from the account shall not be subject to any limitations with regard to their amount.

Name and Address of the Payer (= Contracting Party of CCP.A and Accountholder)

Name of the Bank:

City:

Account Routing Code:

Account Number of

Payer:

Payments for

(Exchange) Transactions and Fees

Annex ./5

PLEDGE Clearing Agent

(Corporate Name and Seat of Participating Clearing Member)

(hereinafter referred to as "Participating Clearing Member")

is authorized to participate as Participating Clearing Member with all rights and obligations in the clearing of CCP eligible transactions pursuant to the "Rules for the Clearing through CCP Austria (CCP.A Clearing Rules)" (hereinafter "CCP.A Clearing Rules"). [Corporate name and address of the Clearing Agent] acts as clearing agent ("Clearing Agent") pursuant to the CCP.A Clearing Rules for the Participating Clearing Member.

For the Participating Clearing Member, the Clearing Agent has opened the account no. (blocked account for cash deposits) and the securities deposit no. at Oesterreichische Kontrollbank Aktiengesellschaft ("OeKB") as clearing bank ("Clearing Bank"), which are to be used for the deposit of the collateral pursuant to the CCP.A Clearing Rules.

The Clearing Agent hereby pledges any cash deposits and securities on the account no. as well as on the securities deposit no. at OeKB to CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH ("CCP.A" or "Clearing House") as a security for all liabilities of the Participating Clearing Member as well as its own liabilities pursuant to the CCP.A Clearing Rules and the Clearing Agent Agreement, which currently and in the future arise. In case of a contribution to the solidarity fund pursuant to the CCP.A Clearing Rules by way of a cash deposit, the part of a cash deposit intended to serve as contribution to the solidarity fund shall also serve as a security for the open liabilities of other Participating Clearing Members pursuant to the CCP.A Clearing Rules.

CCP.A shall be authorized to satisfy its claims upon the occurrence of an event of default pursuant to the CCP.A Clearing Rules or a default of the Clearing Agent pursuant to the Clearing Agent Agreement ("Event of Default") from the pledged cash deposits and the pledged securities. The Clearing House shall irrevocably be authorized pursuant to Article 6 Financial Collateral Act (*Finansicherheitsgesetz* – FinSG) to realize the collateral provided at its discretion without further consent of the Participating Clearing Member or the Clearing Agent, without approval or consent by a court to the terms of realization and without an auction, without a warning about the intended realization and without a waiting period. The realization or appraisal of the collateral shall be made by the Clearing House pursuant to the principles of fair business dealings according to the market or stock price of the collateral on the day of realization or appraisal. Any surplus will be transferred to the Clearing Agent or credited in its favor after full satisfaction of all open liabilities and fulfillment of any obligation to provide additional collateral.

In case of an Event of Default, the Clearing House shall be authorized to sell the securities provided as a pledge without any obligation that the sales price be paid immediately and in cash, or to have them transferred to one of its securities deposits for the purposes of an appropriation pursuant to Article 5 para 2 FinSG and thereafter to set off their value against the open liabilities of the Participating Clearing Member or the Clearing Agent or to use them in lieu of payment. Pledged cash deposits may be set off against the open liabilities of the Participating Clearing Member or the Clearing Agent or may be used in lieu of payment.

Realization shall also be permitted, if bankruptcy or liquidation proceedings, composition or reorganization proceedings, business supervision or any similar proceedings are opened over the assets of the Participating Clearing Member or the Clearing Agent or if such proceedings are still pending.

In case of a realization or termination, the collateral provided or the value representing it may be included into the close-out netting pursuant to Article 58 of the CCP.A Clearing Rules.

Also pledged and (if the need arises) to be realized pursuant to the above provisions are all cash credit balances (cash credit balances within the meaning of Article 4 para 1 FinSG) and the securities to be delivered to the Participating Clearing Member or the Clearing Agent on its behalf (delivery balances, securities balances within the meaning of Article 4 para 1 FinSG), which shall be retained by CCP.A as additional collateral pursuant to Article 38 para 4 of the CCP.A Clearing Rules in case of an Event of Default. The Clearing Agent irrevocably instructs OeKB as holder of the pledge to enter the pledge on the accounts and deposits as well as on its books, to allow disposals with regard to the collateral provided only if also

signed by CCP.A, and in an Event of Default to transfer the securities and the cash deposits according to the instructions of CCP.A to CCP.A or a third party named by it.

The Clearing Agent releases OeKB from the banking secret, insofar as this is required for the fulfilment of its tasks as Clearing Bank by OeKB pursuant to the CCP.A Clearing Rules of Wiener Börse AG as amended or the supervisory function of the Financial Market Supervision (FMA) as well as of any competent foreign supervisory authorities. The Clearing Agent consents to the use and transmission of personal data by and to OeKB.

OeKB herewith declares that it waives any statutory as well as contractual (individually agreed or in general business conditions) pledge, retention and netting rights with respect to all assets deposited on the account no. (blocked account for cash deposits) and the securities account no.

This agreement shall be governed by Austrian law. For any disputes arising under this agreement the parties agree on the exclusive jurisdiction of the courts in Vienna with jurisdiction in commercial matters.

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Place, Date Corporate Signature of Clearing Agent

CCP.A accepts the pledge pursuant to this pledge agreement as pledgee.

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Place, Date Corporate Signature CCP.A

OeKB also signs this pledge agreement as holder of the pledge.

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Place, Date Corporate Signature OeKB