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The German Master Agreement for Financial Derivatives Transactions (2018) – Annotated version and background information*

I. Introduction

The German Master Agreement for Financial Derivatives Transactions (often referred to as "DRV" – an abbreviation of its German title "**d**eutscher **R**ahmen**v**ertrag für Finanztermingeschäfte") was first published in 1993 replacing the Master Agreement for SWAP Transactions of 1990.

The DRV has established itself as the standard market documentation for OTC-derivatives transactions within the German market. The documentation is also commonly used for cross-border transactions involving German counterparties.

Apart from minimal adjustments in connection with the introduction of the Euro (effectively limited to the replacement of references to Deutsche Mark with Euro) resulting in a re-publication of the document in 2001, the DRV master agreement (DRV 1993/2001) as such has remained unchanged. The body of documents accompanying the master agreement has, however, expanded over time and currently comprises about 20 separate elements, including product annexes (e.g. the FX, Commodities and Securities (Equities) Derivatives Addenda), regulatory annexes (e.g. the EMIR and Clearing Addendum), suggested wordings ("Formulierungsvorschläge"), as well as other supplemental documents (e.g. the Supplemental Agreement Relating to the Contractual Recognition of Resolution Action and the General (Umbrella) Agreement for Investment Companies – both potentially covering the DRV and other types of master agreements, such as the German Clearing Framework Agreement or the master agreements for securities lending and repurchase transactions).

The recently published new version of the DRV (DRV 2018) is intended to serve as an alternative to the existing DRV (DRV 1993/2001). It is meant to provide market participants with the opportunity to use a modernised DRV with a number of new features while retaining the conceptual approach and contractual structure (including most of the provisions and the numbering) of the existing DRV 1993/2001. The DRV 2018 is accompanied by an Amendment Agreement which allows counterparties to update an existing DRV to a DRV 2018 if they wish to benefit from the new features introduced with the DRV 2018. In addition, a number of the accompanying documents have been re-published with certain adjustments (mainly adoption of certain new terms used in the DRV 2018 and adjustment of some references) all of these adjusted documents bearing 2018 in their title in order to distinguish them from the existing versions for the DRV 1993/2001.

The annotated version of the DRV 2018 included in this document intends to provide an overview of the provisions of the DRV 2018 and also highlights the differences between the DRV 2018 and the DRV 1993/2001.

II. Background

The DRV and its accompanying documents reflect international market practice and standards. As German language and law documents they are, however, strongly influenced by German law and legal principles, in particular German insolvency and contract law. Therefore, the DRV possesses a number of features distinguishing it from other international standard market documentations for financial derivatives transactions.

This section provides background information on the German insolvency law framework for netting agreements and the recent changes enacted. It further sets out a general overview of the structure and the main distinguishing features of the DRV master agreement (both the new 2018 and the 1993/2001 versions).

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1. German insolvency law framework for netting agreements

The development of the DRV 2018 was mainly prompted by the recent adoption of a revised Sec. 104 of the German Insolvency Act (§ 104 Insolvenzordnung – InsO). This statutory provision sets out the general legal framework for netting under German (insolvency) law. Contrary to the approach chosen by many other jurisdictions it does not specifically govern contractual netting agreements. Even though master agreements are mentioned and their purpose and function acknowledged, Sec. 104 InsO was – first and foremost – a statutory netting provision intended to apply where no contractual agreement was in place. It thus addressed and protected contractual netting agreements implicitly, by setting out the statutory netting model which defined the space in which contractual netting agreements were able to operate under German insolvency law. This approach continues a legal tradition predating the current German Insolvency Act and even its predecessor, the German Bankruptcy Act (Konkursordnung), according to which financial contracts are terminated by statutory law in the event of an insolvency.

The new Sec. 104 InsO – while maintaining the general structure and the original conceptual approach – has fundamentally changed the way it deals with contractual netting agreements as it now addresses master agreements and their key contractual provisions explicitly and in greater detail. In particular, the new Sec. 104 InsO now expressly states that contractual netting agreements can include provisions which deviate from the statutory netting model and also identifies certain typical (non-exhaustive/ illustrative) examples for permissible deviations, including the choice of an earlier termination date in advance of the opening of the insolvency proceedings as well as calculation/valuation methods and applicable time periods.

This revision of Sec. 104 InsO had - in turn - been triggered by a Federal Court decision in 2016 which questioned the compatibility of contractual netting agreements with certain tenets of German insolvency law (namely Sec. 119 InsO protecting the exclusive right of the insolvency administrator to continue or terminate agreements in the case of an insolvency). The law amending Sec. 104 InsO was enacted within six months after said decision with the specific intention to resolve the legal uncertainties generated by the judgement and to safeguard the validity and enforceability of standard contractual netting agreements such as the DRV.

2. Overview of the structure of the DRV Master agreement

The DRV is a German language and German law agreement. It therefore follows German contractual practice and also builds on established German law principles and statutory law, which explains the approach taken for certain key provisions, in particular the termination provisions, and also why the master agreement as such is comparatively short (12 Clauses / 4 pages).

a) Structure/ central provisions

The master agreement sets out the framework for the contractual relationship and all transactions concluded thereunder.

Its central provisions are

- the definition of the material scope of the agreement (namely financial derivatives transactions: ”Finanztermingeschäfte” - this term being then further explained by setting out examples and descriptions of key characteristics of financial derivatives transactions – Clause (1 (1)), and
- the (core) netting provisions, consisting of
  - the single agreement provision in Clause 1 (2),
  - the provision concerning the termination of the agreement (Clause 7) and
  - the provisions addressing the technical aspects of netting, in particular the determination/calculation of the close-out amount and related matters (Clauses 8 and 9).

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In addition, the master agreement contains certain general provisions addressing operational aspects and other general issues, such as:

- individual transactions concluded under the agreement and confirmations (Clause 2),
- payments and deliveries, in particular due dates and payment netting (Clause 3),
- use of a reference basis/benchmarks (Clause 5),
- consent requirement regarding any transfer of obligations (Clause 10),
- severability (Clause 11 (1)),
- governing law (Clause 11 (2)),
- choice of venue (Clause 11 (3)) and
- application to transactions under a previous version of the master agreement (Clause 11 (4)).
- Elections/additional clauses (Clause 12)

In contrast to other comparable agreements, the DRV also includes a set of specific provisions for interest rate derivatives (Clause 6) – which the DRV was primarily used for when it was first published. Specific provisions for other products are addressed by way of product specific annexes to the master agreement.

b) Summary of main/distinguishing features

The main/distinguishing features of the DRV can be summarized as follows:

- Language/ governing law

  The DRV is governed by German law (Clause 11 (2)). Consequently, all terms have to be construed applying German law principles of contract interpretation and against the background of German law (as to choice of court/venue, see further below).

- Reliance on German law concepts/terminology

  The DRV incorporates and relies on established German legal concepts. The most pertinent examples are the concepts of:
  - "Wichtiger Grund" = material cause/reason as grounds for termination of the agreement, as elaborated below.
  - "Unverzüglich" = without undue delay as a diligence standard for the time in which a party has to react.

  Both are German law concepts central to German contract law and supported by statutory law (Sec. 314 and Sec. 121 of the German Civil Code) as well as a large body of court decisions.

  The DRV 1993/2001 also relies on references to general German compensation/tort law concepts (Schadensrecht - in particular the concept of compensation of benefits gained (Vorteilsausgleich) which under German law apply to contractual and non-contractual relations).

  German legal concepts and statutory law are consequently also reflected in the terminology. For example, the close-out provisions in the DRV 2018 use the statutory term "claim for non-performance" for the close-out amount (thereby demonstrating the link to Sec. 104 InsO). The DRV 1993/2001 uses the term single compensation claim which again underlines the connection to German compensation/tort law concepts applicable to contractual and non-contractual compensation claims.

- Parties to the agreement: Designation as "Bank" or "Counterparty"

  The DRV distinguishes between a party assuming the role of the "Bank" and the party assuming the role of "Counterparty". These designations are of a functional nature and only serve to allocate certain

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contractual responsibilities under the agreement, including those of the role of calculation agent (if not agreed otherwise).

- Choice of court/venue

  The master agreement does not provide for an exclusive choice of a certain court. Rather – unless agreed otherwise by the parties - it provides for the non-exclusive choice of venue in favour of the courts having jurisdiction at the place of the branch through which the party designated as Bank for the purposes of the agreement has entered into the agreement. Because of the non-exclusive character of this choice, it does not affect any mandatory/ statutory venues available to the other party. In addition, should the party designated as Bank act through a branch located outside Germany, jurisdiction could (also) lie with a non-German court. Parties should therefore carefully consider this aspect when designating the roles of Bank and Counterparty.

- Definitions

  The DRV master agreement does not have a separate definitions section and does not rely as much as other comparable agreements on definitions as operational provisions in order to determine the content and scope of contractual rights and obligations. Definitions are included in the provision where the defined term is used for the first time. One exception is the definition of Bank Working Day which is the subject of a separate Clause of the DRV (Clause 4).

- Limited set of elections/deviations from standard settings

  The DRV only provides for a limited range of elections in Clause 12 permitting the parties to change some of the "standard settings" in the previous Clauses. Parties can in addition amend the agreement by way of individual provisions under sub-Clause (6) - DRV 1993/2001 and sub-Clause (7) - DRV 2018.

- Hierarchy of provisions

  The DRV acknowledges the general legal principle that additional and more specific provisions prevail over the general provisions. Consequently, the provisions in an addendum or supplemental agreement prevail over master agreement provisions; and provisions agreed in the terms of a transaction prevail over both. Likewise, it also presupposes that any more specific provision overrides the more general one and that any standard provision of the master agreement can be displaced or adjusted by a more specific additional provision agreed by the parties (not requiring any express reference to the possibility to agree otherwise).

- Termination rights/AET

  The DRV does not distinguish between termination rights and events of default. More importantly, it does not set out an extended list of specific events resulting in a termination or giving a party a right to terminate the agreement. Rather, the DRV differentiates between contractual termination rights (termination for cause) on the one hand and automatic early termination (AET) on the other. With regard to termination rights, the DRV relies on the German legal concept of material cause ("wichtiger Grund") by permitting only a termination for material cause. Under German law, the right to terminate contracts for the performance of continuing obligations ("Dauerschuldverhältnis" - the master agreement qualifying as such) for material cause cannot be contractually waived. It is, however, possible to circumscribe its scope and reach (i.e. by including positive examples of events constituting a material causes triggering the termination right in an agreement). The DRV only sets out one specific (albeit very relevant) example of such a material cause, namely failure to pay or deliver following notification and a cure period (5 Bank Working Days under the DRV 1993/2001 and 3 Bank Working Days under the DRV 2018). A further express example of a material cause (failure to post collateral in time) is addressed in the standard

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collateral addenda (collateral addendum of 2001 and VM-collateral addendum) to the master agreement. However, these examples of material causes are non-exhaustive so that any other event qualifying as material cause (taking into account the relevant case groups developed over time by the courts) grants the affected party the right to terminate the agreement for cause.

The automatic early termination is limited to one single event, namely the insolvency (as defined in Clause 7 of the DRV) of the other party.

- Close-out amount

  Under the DRV, the close-out amount (single compensation claim under the DRV 1993/2001 and claim for non-performance under the DRV 2018) is primarily to be determined on the basis of actual or potential replacement transactions. The DRV 2018 also addresses the possibility to rely on models for the purpose of the calculation of the close-out amount under certain circumstances (where market conditions prevent the conclusion of replacement transactions within the relevant periods). Under both the DRV 2018 and the DRV 1993/2001, the calculations are made by the non-insolvent party or the terminating party (non–defaulting party), referred to as calculating party under the DRV 2018 and as party entitled to compensation under the DRV 1993/2001. The DRV 1993/2001 addresses the possibility that the resulting amount calculated by the party entitled to compensation may present itself as a net loss or gain by making a reference to the German compensation/tort law concept of compensation of benefits gained ("Vorteilsausgleich") and determining that a net gain is owed to the other party, however capped by the actual loss sustained by that other party. The DRV addresses this issue in a more technical/neutral manner by expressly providing that the resulting amount can either be positive or negative from the perspective of the calculating party and that this may mean that the other party may be owed the claim (without providing for a cap)

  In the DRV 2018 and the DRV 1993/2001, unpaid amounts are then included in a second step, reducing or increasing the calculated amount. The DRV 1993/2001 also contains a provision postponing the due date for a payment owed to other party until any counterclaims by the party entitled to compensation become due and payable and can be set-off against the payment owed. The DRV 2018 only provides for a general set-off right and has moved the potential postponement of the due date to the elections in Clause 12 (making it an optional feature).

- No representations/ warranties section

  As a German law agreement the DRV does not include a set of express representations, continuous or otherwise, or warranties (in view of general principles of German law regarding implied contractual obligations of counterparties and the already mentioned established concepts of German contract law, in particular material cause).

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III. Annotated version of the DRV 2018

The main differences between the new DRV 2018 and the existing DRV 1993/2001 are summarized in a short overview at the beginning of the annotated version. They are explained in more detail in the annotations (always at the end of the comments on the relevant section and marked by an arrow ➔ and the use of *italics.* The sections in the text of the DRV 2018 affected by the changes and deviations are marked by red lettering.

The German Master Agreement for Financial Derivatives Transactions (2018)

Overview over key differences between the DRV 2018 and the DRV 1993/2001

- Clause 1: Modernisation of Clause 1 (1) – modernisation of the examples and illustrative key characteristics used to circumscribe the term financial derivatives transaction (e.g. now expressly referencing credit derivatives)
- Clause 2: Introduction of text form as general standard for communications/ deletion of reference to now obsolete forms of communication.
- Clause 3 Adjustment of terminology (“deliveries” instead of “other obligations”) and reversal of standard setting regarding payment netting (now transaction based payment netting as standard, however with an option to elect agreement based payment netting in the elections under Clause 12 (2)).
- Clause 5
  - Slight amendment/ modernisation of sub-Clause (1) – terminological streamlining/ deletion of redundant definition.
  - Replacement of sub-Clause (2) by new general fallback provision concerning the potential case that a benchmark (reference basis) is no longer available or can no longer be used.
- Clause 7: terminological adjustments (“deliveries” instead of “other obligations”/ “claim for non-performance” instead of “single compensation claim”), introduction of text form and deletion of reference to now obsolete forms of communication, shortening of cure period for terminations for cause, clarification regarding insolvency proceedings initiated by a competent authority, addition of a half sentence clarifying due date for the claim for non-performance.
- Clauses 8 and 9: Completely new structure and approach:, Concentration of all key elements of provision in Clause 8 (sub-divided into three sub-Clauses), closer terminological and structural alignment with new statutory netting provision and departure from references to German compensation/tort law concepts, introduction of new features (in particular the applicable periods for conclusion of actual or potential replacement transactions, including the possibility to significantly extend the period where necessary)
- Clause 10: Introduction of text form as general standard for communications/ deletion of reference to now obsolete forms of communication (corresponding to the adjustments in same issue in Clause 2).
- Clause 12:
  - sub-Clause (2): now setting out the option to choose agreement based payment netting,
  - sub-Clause (4): replacement by completely new option to elect special provisions regarding insolvency proceedings against qualified branches),
  - sub-Clause (5) (C): modernisation and clarification.
  - sub-Clause (6): new option to include a provision postponing the due date in view of counterclaims (included in Clause 9 (2) DRV 1993/2001)

The following is agreed between:

Name and address of the Counterparty (hereinafter referred to as “Counterparty”)	■ Designation of parties as either “Bank” or “Counterparty” The DRV distinguishes between a party designated as Bank on the one hand and a party designated as Counterparty on the other. These designations only serve as a means to allocate (as agreed by the parties) certain contractual roles (that is, functions and responsibilities under the agreement). Due to the functional nature of these designated roles, any party can assume the role of the Bank or Counterparty. Specifically, the function of Bank can be assumed by a counterparty, which does not qualify as a bank for regulatory purposes.
and	

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Name and address of the Bank (hereinafter referred to as „Bank“)	Likewise, the role of the Counterparty can be assumed by a party which is a bank for regulatory purposes. The role of the Bank is usually assumed by the party which is best equipped to fulfill the various operational and technical functions and responsibilities allocated to the Bank, which - in the case of an agreement between a bank and a non-bank - is often the bank. The parties may agree to allocate the functions and responsibilities associated therewith in a different manner by way of special provisions under Clause 12 (7).

wird Folgendes vereinbart:

1. Purpose and Scope of Agreement (1) The parties intend to enter into financial derivatives transactions for any of the following purposes: (a) The exchange of amounts of money denominated in various currencies. (b) The payment of amounts of money where the obligation to make such payment or the amount of such payment is dependent on market conditions, credit risks or other events or circumstances, such as the level of interest rates, exchange rates, securities prices, commodity prices, or other rates, prices, indices or any other reference basis. (c) The delivery or transfer of securities, other financial instruments or precious metals, or the performance of comparable obligations.	■ Underlying purpose / material scope of transaction types covered by the agreement: ▪ The provision states as purpose of the agreement the conclusion of financial derivatives transactions (“Finanztermingeschäfte”). ▪ The term “Finanztermingeschäfte” (“financial derivatives transactions”) was deliberately chosen (and retained in the DRV 2018) instead of other terms (such as the term “Finanzleistungen”/ “financial transactions” used in the German Insolvency Act (InsO)) as a long-established concept in German banking/market practice. It also better reflects the close connection between insolvency law rules concerning netting agreements and the regulatory framework for netting agreements and the transactions concluded thereunder (in the regulatory space the relevant transactions are more commonly referred to as financial derivatives, (OTC) derivatives contracts or financial contracts). ▪ The term is necessarily open in order to allow for an evolutionary development of its understanding in line with the continuously evolving market practice. Thus, in order to circumscribe the purpose and material scope to some extent while maintaining the necessary openness to new developments, the term financial derivatives transactions/ Finanztermingeschäfte) is described by using a combination of non-exhaustive and generic illustrative examples of typical financial derivatives transactions and descriptions of key characteristics/elements of financial derivatives transactions. These examples and descriptions have been sub-divided into three subsections which reference the most common and typical types of derivatives transactions (lit. (a) to (c) – reflecting to some extent the corresponding list of illustrative (non-exhaustive) examples used in Sec. 104 of the German Insolvency Act to describe the term financial transactions (“Finanzleistungen”): ▪ Lit. (a) addresses currency related transactions, ▪ Lit.(b) addresses interest rate, exchange rate, securities prices, commodity prices, credit risk or other rate, price, indices/reference base related transactions (the latter underscoring the open/non-exhaustive character of these examples). ▪ Lit. (c) addresses securities/financial instruments and precious metals related transactions (and other comparable transactions - again underscoring the open/non-exhaustive character).

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Financial derivatives transactions also include options, interest rate protection and comparable transactions requiring a party to perform obligations in advance, or where a performance of obligations is subject to a condition. (2) The provisions set out below shall apply to each transaction that is entered into on the basis of this Master Agreement (hereinafter referred to as "Transaction"). All Transactions shall - in relation to each other and together with this Master Agreement - constitute a single agreement (hereinafter referred to as the "Agreement"); they shall be entered into in view of an integrated risk assessment and on the basis of and in reliance on this understanding.	▪ The final sub-paragraph of sub-Clause (1) addresses options, interest rate protection transactions and other transactions where one party performs its obligations in advance, clarifying that these types of transactions are also covered by the term financial derivatives transaction. ▪ The first sentence of sub-Clause (2) addresses the (individual) transactions entered into under the master agreement and clarifies that the provisions of the master agreement apply to every transaction concluded under/ with reference to the master agreement. ▪ The second sentence of sub-Clause (2) contains the single agreement clause (together with Clause 7 and 9 constituting the central / core netting provisions) – clarifying that all transactions together with the master agreement constitute a single and indivisible agreement. ▪ In addition the provision also addresses the underlying motive for this single agreement concept, namely to ensure a unified/integrated risk assessment. ➔ *Differences between DRV 2018 and DRV 2001/1993:* ▪ *Sub-Clause (1) has been modernised while retaining the original structure and approach (circumscription of the purpose and material scope by way of non-exhaustive examples and descriptions of typical features/elements) as well as including most of the examples/descriptions used in the corresponding provision of the DRV 2001/1993.* ▪ *The main new features are* – *a modernisation of the list of illustrative examples and description of key features/ elements typical to financial derivatives transactions, in particular by expressly addressing credit derivatives (by referring to credit risks) and* – *the omission of a reference to the subjective underlying motive of the intention to the (subjective motivation) to "manage interest and exchange rate risks" as this objective is inherent to financial derivatives transactions (now described in greater detail). The underlying risk mitigation /management motivation has, in any event, already been addressed in sub-Clause (2) so that the reference in sub-Clause 1 has always been duplicative to some extent.* ▪ *The last subpara. of sub-Clause (1) addressing options as well as interest rate protection transactions and Sub-Clause (2) with the single agreement provision (including the reference to the underlying motivation of an integrated risk assessment) have both been retained without any changes.*
2. Transactions (1) Where the parties have agreed on the terms of a Transaction, the Bank shall confirm the terms thereof to the Counterparty in text form or in any other form conforming to market practice.	■ Confirmation of transactions: ▪ Clause 2 addresses the confirmations to be issued in relation to transactions concluded under/referencing the master agreement. ▪ Sub-Clause 1 sets out an obligation for the Bank to provide the Counterparty with a confirmation of the terms of the transaction. This confirmation is to be in "text form" or any other form conforming to market practice. ▪ "Textform" is a reference to the German law concept of text form within the meaning of Sec. 126a of the German Civil Code BGB which covers the written form as well as other electronic forms of

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	communication. The key requirement to qualify as text form is that the communication is storable on a durable medium and can be reproduced in a readable format. Facsimile and E-Mail qualify as text form. ▪ The further reference to other forms of communication "conforming to market practice" was included to allow for a certain degree of flexibility in view of potential future technical developments and developments in market practice. The additional qualification that the relevant other form of communication has to conform to market practice ensures that the chosen format can only be one that is acceptable and also in compliance with regulatory requirements (forms of communications not acceptable under regulatory requirements cannot conform to market practice).
(2) Each party shall be entitled to request a signed confirmation of the Transaction, provided, however, that such confirmation shall not be a condition precedent to the legal validity of the Transaction.	▪ Sub-Clause (2) clarifies that while the Counterparty has a right to demand a written confirmation (i.e. where this is an internal/ administrative requirement) the lack of a written confirmation does not affect the legal effectiveness/ validity of the transaction.
(3) The terms of the Transaction shall prevail over the provisions of this Master Agreement.	▪ Sub-Clause (3) addresses the hierarchy of provisions by establishing the rule that any specific provision in the terms of the transaction overrides any (conflicting) provision of the master agreement. This provision only reflects/confirms the general legal principle whereas the additional, more specific term completes and overrides the general one. ▪ This legal principle, of course, also applies to the more specific provisions contained in annexes, special provisions or any additional or supplemental agreements in relation to the master agreement. ▪ Thus, the provisions in an annex generally complete and override those of the master agreement, and those of the terms of a transaction complete and override both. ➔ *Differences between DRV 2018 and DRV 2001/1993:* ▪ *Sub-Clause (1) has been modernised by replacing the requirements regarding the format of the confirmation by the more modern requirement of "text form" (at the same time allowing the deletion of references to now obsolete means of communication such as telex. As to the German law concept of "text form" see above.* ▪ *Sub-Clauses (2) and (3) of the DRV 2018 have been retained without any changes.*
3. Payments and Deliveries	■ Payments and deliveries owed under transactions - payment netting, interest in case of late payments and payment dates:
(1) Each party shall make the payments and deliveries it owes to the other party no later than on the Due Dates specified in the relevant terms of the Transaction.	▪ Sub-Clause (1) sets out the contractual obligation to make payments and deliveries owed under the terms of a transaction by the agreed due date.
(2) All payments shall be made to the account of the recipient of the payment and in the <u>contractual</u> currency owed under the terms of the Transaction, free of all costs, in the manner customary for payments in such currency, and in funds which are freely available on the Due Date.	▪ Sub-Clause (2) specifies the obligation of both parties to make such payments in full (free of cost etc.) and to the accounts of the relevant recipient. ▪ The master agreement does not have dedicated provision for the designation of the relevant accounts. The relevant accounts thus have to be designated by the parties elsewhere (in the terms of the transaction or under Clause 12 (7) as special provision).
(3) In the event both parties are obligated under the same Transaction to make payments in the same <u>contractual</u> currency on the same day, the party owing the higher of the amounts	▪ Sub-Clause (3) contains the general/ standard provision on payment netting. The standard setting for payment netting in the DRV 2018 is a transaction-based payment netting (limitation of payment

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shall pay to the other party the difference between the amounts owed. The Bank shall, in due time before such payment becomes due, notify the Counterparty of the difference to be paid.	netting to same day and same currency payments under the same transaction). This standard setting can, however, be changed into an agreement-based payment netting (netting of payments under all transactions) via the election option in Clause 12 (2).
(4) If a party fails to make a payment in due time, interest shall accrue on the amount outstanding, until such amount is received, at a rate which shall be equal to the interbank interest rate charged by leading banks to each other for call deposits at the place of payment and in the currency of the amount outstanding for each day on which such interest is to be charged, plus the interest surcharge referred to in Clause 12 sub-Clause (3). Any right to assert further claims for damages shall remain unaffected.	▪ Sub-Clause (4) addresses interest in the case of late payments. The applicable interest rate is the interbank interest rate between leading banks plus the surcharge agreed under Clause 12 (3). ▪ The parties are not prevented from claiming further damages, costs or charges caused by a late payment.
(5) If a Due Date is not a Bank Working Day, each payment and delivery shall be made in accordance with the terms of the relevant Transaction, as follows: (a) on the immediately preceding Bank Working Day, or (b) on the immediately following Bank Working Day, or (c) on the immediately following Bank Working Day, unless that day falls into the next calendar month, in which case on the immediately preceding Bank Working Day.	▪ Sub-Clause (5) contains the provisions regarding the determination of the alternative payment day (date) should the original due day fall on a holiday (a day, which is not a Bank Working Day). It sets out three options and the parties are required to select the applicable option in the relevant terms of the transaction.
	➔ *Differences between DRV 2018 and DRV 2001/1993:* ▪ *Modernisation of terminology: Replacement of the terms* – *"other obligations" in the title and text with the term "deliveries" in line with corresponding changes of terminology in the netting clauses (see below) and* – *"prime banks" with "leading banks".* ▪ *Reversal of the standard setting for payment netting in sub-Clause (3): The standard setting in the DRV 2001/1993 is agreement-based payment netting with the option to change to transaction-based payment netting via the election in Clause 12 (2). In the DRV 2018 the standard setting is now the other way around.* ▪ *The standard setting was reversed as the vast majority of users of the documentation tend to elect transaction-based payment netting.*
4. Bank Working Day "Bank Working Day" for the purpose of this Agreement means each day (other than a Saturday or a Sunday) on which banks are open for business, including for trading in foreign currencies and acceptance of foreign currency deposits, at the financial centre(s) specified in the terms of the relevant Transaction.	■ Definition of Bank Working Day: ▪ Clause 4 defines the Bank Working Day (banking day) for the purposes of the Agreement. ➔ *Differences between DRV 2018 and DRV 2001/1993: None - provision has been retained without any changes*
5. Reference Basis	■ Provisions regarding benchmarks and any other reference basis: ▪ Clause 5 sets out the modalities for determining and informing the other party of the applicable reference basis as well as a fallback provision on how to deal with the event that a reference basis is no longer available or can no longer be used, and a provision on rounding. ▪ The term "reference basis" was chosen as it is a long-established term and also potentially wider than the term "benchmark", which is now primarily used in a specific regulatory context of the EU-Benchmark-Regulation.

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(1) Where a floating interest rate, exchange rate, price or other calculation basis has been agreed in the terms of the relevant Transaction as reference basis, the Bank shall notify the Counterparty of this reference basis on the same day as that on which it is to be determined ("Calculation Date") or without undue delay thereafter.	▪ Sub-Clause (1) sets out that it is the obligation of the Bank to determine the any reference basis needed in accordance with the terms of the transaction on the day it is required, and to inform (notify) the Counterparty of the reference basis it determined on the same day or, if a same-day notification is not possible, without undue delay thereafter (reliance on the established German law concept “unverzüglich”).
(2) Unless agreed otherwise, the following shall apply in the event of a disruption of a reference basis:	▪ Sub-Clause 2 is meant to serve a general fallback-provision for all potential cases where an agreed reference basis is no longer available, materially changes or can no longer be used for whatever reason. ▪ The fallback provision is only intended to be relied upon if/to the extent there is no other, more specific provision in place. Such other, more specific provisions can be found in some of the product annexes (primarily addressing product specific market disruption scenarios) or may be developed (or agreed upon) in the future in order to address specific constellations or types of a reference basis. The introductory and somewhat redundant phrase “unless agreed otherwise” was specifically included to underscore this fallback character of the provision.
(a) In the event the reference basis agreed in the relevant terms of the Transaction is no longer provided or it is no longer permitted to be used during the term of this Transaction, or where there has been a material change to the reference basis, the Bank shall replace this reference basis with another alternative reference basis it deems to be economically appropriate. For this purpose, the Bank shall take into account the market practice which can be observed at this point in time. It shall in particular take into account to what extent an alternative reference basis is available. Where the Bank expects that the development of the value of the alternative reference basis will not correlate or would not have correlated with the agreed reference basis to a high degree, it shall make adjustments to other terms of the relevant Transaction which adequately compensate the expected changes to the present value of the Transaction. In the event of a material change to the reference basis the Bank may also determine that the Transaction shall be continued without any adjustments.	▪ The fallback provision of sub-Clause (2) sets out a two-tiered mechanism consisting of the following two elements: – Determination of a replacement reference basis: The primary and preferred solution (addressed in lit. (a)) is the identification of an appropriate replacement reference basis: To this end the party assuming the role of the Bank for the purposes of the agreement is tasked with identifying an appropriate replacement reference basis (taking into account market practice and any then available potential alternative reference basis), if possible. If / to the extent necessary to achieve that the identified replacement reference basis produces an economic result which is as close as possible to the one the parties originally agreed upon, the Bank can – in this connection - make adjustments to terms of the affected transactions. An additional option exists in the case of a material change of a reference basis: Here, the Bank can also come to the conclusion that a continued use of the materially changed reference basis is the most appropriate solution. Such a continuation can be the most appropriate solution if it is not possible to identify an appropriate replacement reference basis (even with adjustments) and where a continuation with the materially changed reference basis is still preferable to the only other available alternative, the termination with cash settlement of the affected transactions (secondary solution under lit. (b)).
(b) In the event the Bank determines that the replacement or adjustment would not produce an economically reasonable result, it shall inform the Counterparty accordingly. The Transaction shall be terminated upon receipt of this notification. The payments and deliveries which would have become due after the day of the receipt of the notification shall be replaced by an amount of money in the contractual currency corresponding to the present value of this Transaction. The relevant amount shall be calculated by applying Clause 12 sub-Clause (5) (C) (b) mutatis mutandis.	– Early termination with cash-settlement: The secondary solution (addressed in lit. (b), only to be resorted to if it is not possible to identify an appropriate replacement reference basis (or where a continuation of the materially changed reference basis is not an appropriate option), is the termination of the affected transactions with cash-settlement. The calculations to determine the value of the terminated transactions are to be made in accordance with Clause 12 sub-Clause (5) (C) which sets out a mechanism to determine a median value.
(c) Where the adjustment of the Transaction requires calculations based on the reference basis, the last available quote of such reference basis shall be used as calculation basis. (d) To the extent the Bank is afforded discretionary or judgmental latitude in relation to the execution of its obligations under lit. (a) to (c) above, it shall exercise this discretion or latitude after careful assessment and balancing the interests of both parties.	▪ The provisions in lit. (c) and (d) delineate the obligations and discretionary room for the Bank in the exercise of its responsibilities under lit.(a) and (b): – Lit. (c) prescribes the use of the last available quote in all calculations in connection with any adjustments to be made. – Lit. (d) sets out the general framework in which the party designated as Bank operates in this context by clarifying that the Bank has to take into account and balance the interest of both parties. This provision underlines the fact that the Bank’s discretionary room is

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	clearly limited as the Bank is under the obligation to find the most reasonable solution serving the interests of both parties and their original intent.
(3) An interest rate used as a reference basis ("Base Rate") shall, if necessary, be rounded up to the nearest $^{1}/_{100.000}$ of a percentage point.	➔ *Differences between DRV 2018 and DRV 2001/1993:* ▪ *sub-Clause (1): Modernisation of terminology and simplification:* – *Introduction of the term "reference basis" as the central and overarching term for all types of indicators serving as a reference basis* – *Deletion of the redundant definition of "floating rate"* ▪ *Sub-Clause (2): Replacement with a more general, broader fallback provision: While sub-Clause (2) in the DRV 2001/1993 also provides for solutions in the case a necessary reference basis cannot be determined in time (and thus by and large fulfills similar function), it was primarily designed to address the case that the information on the relevant reference basis is not accessible or is not provided in time.*
6. Calculation Method for Interest-Rate Related Transactions	■ Product specific provision on calculation methods for interest rate transactions: ▪ Clause 6 sets out the provisions with the formulas and calculation methods applicable to interest rate derivatives. ▪ These are the only product specific provisions in the master agreement itself and they reflect the historical origins of the master agreement which initially was primarily used for interest rate derivatives. ▪ The product specific provisions for other products such as securities (equities) derivatives, exchange rate derivatives, commodity derivatives are addressed in addenda to the master agreement.
(1) Each floating amount payable under the terms of a Transaction shall be the product of (a) the notional amount agreed, (b) the floating interest rate ("Floating Rate") calculated in accordance with Clause 5 and the terms of the relevant Transaction, expressed as a decimal figure, and (c) the Day Count Fraction within the meaning of sub-Clause (5) below. (2) Each fixed amount to be paid in accordance with the terms of a Transaction shall be the amount stated in the terms of the Transaction, if the amount is specified as a figure. Otherwise it shall be the product of (a) the notional amount agreed for such Transaction, (b) the fixed interest rate ("Fixed Rate") agreed for such Transaction, expressed as a decimal figure, and (c) the Day Count Fraction within the meaning of sub-Clause (5) below. (3) In the case of interest rate protection transactions, the Floating Rate shall be – in each case, subject to the terms of the relevant Transaction and without prejudice to the provisions of sub-Clause (4) below – (a) for payments by the party designated as surplus payer (or Cap or FRA seller), the agreed Base Rate less the rate stated in the terms of the Transaction as the maximum rate (or cap rate) or as the forward rate, and	

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(b) for payments by the party designated as deficit payer (or Floor seller or FRA buyer), the rate stated in the terms of the Transaction as the minimum rate (or floor rate) or as the forward rate, less the agreed Base Rate. (4) Where a payment is not made upon expiration of the relevant Calculation Period, but at the beginning thereof, the amount to be determined in accordance with sub-Clauses (1) or (2) above shall be discounted by dividing such amount by an amount which is calculated, in the case of a Calculation Period of one year or less in accordance with the formula $$1+\frac{L\times D}{B}$$ and in the case of a Calculation Period of more than one year in accordance with the formula $$(1+L)^{\frac{D}{B}}$$ For the purposes of these formulas L means the Base Rate determined, or other discount rate agreed, in respect of the relevant Calculation Period, expressed as a decimal figure (i. e. 0.07, for instance, in the case of a Base Rate or discount rate of 7 %); D means the number of days comprised in such Calculation Period; B means 360, unless the agreed contractual currency is a currency for which it is market practice to calculate the Base Rate or other agreed discount rate on the basis of 365 or, for leap years, 366 days; in such case B means 365 or 366, respectively. The provisions set forth above shall, unless agreed otherwise, generally apply to Forward Rate Agreements. In the case of other transactions, they shall apply only if the terms of the Transaction provide for discounting. (5) "Day Count Fraction" means, in accordance with the terms of the relevant Transaction, any of the following: (a) the number of days actually elapsed within the Calculation Period for which the amount is to be calculated, divided by 360, ("365/360") or (b) the number of days elapsed within such Calculation Period, calculated on the basis of a 360-day year with 12 months of 30 days each, divided by 360, ("360/360") or (c) the number of days actually elapsed within such Calculation Period, divided by 365 or, in the case of a leap year, 366, ("365/365") or (d) the number of days actually elapsed within such Calculation Period, divided by 365 ("366/365"). (6) "Calculation Period" means the period beginning with, and including, the effective date of the Transaction, or a Payment Date, and ending with, but excluding, the next following Payment Date or the termination date, or, where the parties have specified "Due Date/Due	

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Date" in the terms of the Transaction with respect to floating amounts, the period beginning with, and including, the effective date of the Transaction, or a Due Date, and ending with, but excluding, the next following Due Date or the termination date. For the purposes of this Agreement, "Payment Date" means the day on which the payment is actually to be made, where applicable after adjustment in accordance with Clause 3 sub-Clause (5), and "Due Date" means the contractually agreed day for payment, without any such adjustment. (7) If the payment of a floating amount, or a fixed amount to be calculated pursuant to sub-Clause (2) above, sentence 2, is due, the Bank shall notify the Counterparty of such amount, in the first case together with the applicable reference basis.	➔ *Differences between DRV 2018 and DRV 2001/1993: None - provision has been retained without any changes*
7. Termination	■ Automatic early termination and termination for material cause
	▪ Clause 7, together with the single agreement provision in Clause 1 (2) and Clauses 8 and 9, constitute the core netting provisions of the master agreement.
	▪ Clause 7 addresses the termination of the agreement (as a whole). It distinguishes between the regular termination for cause (sub-Clause (1)) and the automatic early termination in the event of an insolvency (sub-Clause (2)).
(1) Where Transactions have been entered into and not yet fully settled, the Agreement can only be terminated for material cause. A material cause shall also exist, where a payment or delivery which has become due is not received – for whatever reason – by the party to whom it is owed within three Bank Working Days following receipt by the party owing the payment or delivery of a notification of its failure to pay or deliver. The notification and the notice of the termination have to be made in text form. A partial termination, in particular a termination of some, but not all Transactions, is not permissible. Clause 12 sub-Clause (5) (B) shall remain unaffected.	▪ Termination for cause: sub-Clause (1) sets out that the agreement can only be terminated for material cause (material cause / “wichtiger Grund”) being an established German law concept central to German contract law based on statutory law (Sec. 314 of the German Civil Code) and shaped by a large body of court decisions. Under German law, the right to terminate contracts for the performance of continuing obligations (“Dauerschuldverhältnis” - the master agreement qualifying as such) for material cause cannot be contractually waived. It is, however, possible to circumscribe its scope and reach (i.e. by including positive examples of events constituting a material causes triggering the termination right in the agreement).
	▪ Since the parties to the agreement can rely on the established principles and concepts concerning the understanding of material cause developed over time by German courts, the provision does not contain a list of specific events triggering the right to terminate for material cause and limits itself to only setting out one express example of a material cause, namely late payments or deliveries not cured within three days following a notification of the failure to pay or deliver (the illustrative (non-exhaustive) character of this example underlined by the use of the word “also”).
	▪ The standard collateral addenda add one further (again, a particularly relevant) example of a material cause: the non-/late delivery of collateral (Clause 10 of the Collateral Addendum and Clause 12 of the VM-Collateral Addendum).
	▪ The provision also sets out the formal requirements for a termination (notification of failure to pay in text form, cure period of three Bank Working Days and termination notice in text form). As to the text form-requirement, see comments on Clause 2 (1) above. In view of the potential evidentiary aspects involved, the formal requirements for a termination intentionally do not foresee a similar opening to other forms of communication as Clause 2 (1).

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	▪ The penultimate sentence of sub-Clause (1) – confirming the single agreement character addressed in Clause 1 (2) – contains a provision expressly prohibiting a partial termination (termination of some but not all transactions). The last sentence names one exception to this rule: partial termination in the case of certain tax events in accordance with Clause 12 (5) (B). Further exceptions can be found in some addenda.
(2) The Agreement shall terminate without notice of termination in the event of insolvency. An event of insolvency exists, where an application for the commencement of an insolvency proceeding or any other comparable proceeding is filed in respect of the assets of a party, and ~~such party has~~ either (i) <u>such party has</u> filed the application itself or an authority or public entity which is entitled to file for such proceedings in relation to this party has filed for such proceedings, or (ii) the relevant party is generally unable to pay its debts or is otherwise in a situation that justifies the commencement of such proceedings.	▪ Automatic early termination: Sub-Clause (2) contains the automatic early termination provisions: ▪ Sentence 1 provides for the automatic early termination in the event of insolvency. ▪ Sentence 2 defines the event of insolvency, which triggers the automatic early termination (AET): According to this definition, the triggering event is the application for commencement of insolvency proceedings or other comparable proceedings. The reference to other comparable proceedings is included to clarify that the term insolvency proceedings does not only cover proceedings designated as such but also other proceedings with substantially the same purpose and effect. The definition sets out certain qualifications concerning the person making the application and, to this end, distinguishes between different types of applications: Only applications filed by either the party itself or those filed by a public entity/authority with the specific competency to file for the application of these proceedings in relation to this particular party, trigger the AET outright without any further requirements. Applications filed by any other (third) party trigger an AET only subject to a materiality test: The filing of an application by a third party only results in an AET, if there are objective/ material grounds for the commencement of the proceedings (general inability to pay or other situations justifying the commencement of these proceedings). This materiality test for applications by third parties serves to avoid the inadvertent triggering of the terminations by spurious/ opportunistic/ unfounded applications. ▪ The application by qualified competent authorities was included to address the fact that more and more regulatory regimes now expressly (and sometimes exclusively) confer the power to initiate insolvency proceedings against qualified financial market participants to the certain regulatory authorities (of course, such an application would generally also be captured by the provision for third party applications and meet the materiality test).
(3) In the event of a termination in accordance with sub-Clause (1) or (2) (hereinafter referred to as “Termination”), neither party shall be obligated to make any payments or deliveries under the Agreement which would have become due on the same day or thereafter. These obligations shall be replaced by the claim for non-performance in accordance with Clause 8, which claim becomes due upon Termination.	▪ Sub-Clause (3) simply confirms the effects of the termination, namely that all continuing obligations end and are replaced by the claim for non-performance (that is, they are incorporated at their value into the close-out amount determined in accordance with Clause 8 (see below)). The last half sentence addresses the issue of the due date of the claim for non-performance: it clarifies, that this claim becomes due immediately with/upon termination. This provision needs to be read together with Clause 8 sub-Clause (3) setting out the timeline for the payment of the claim to the party it is owed to after its calculation, and the trigger for any claims for interest due in case of late payments (see below). ➔ *Differences between DRV 2018 and DRV 2001/1993:* ▪ *Termination for material cause/sub-Clause (1): Shorter cure period (three instead of five Bank Working Days) – alignment with international market practices which is accustomed to much shorter periods (EMA).* ▪ *AET/sub-Clause (2): (express) mentioning of applications filed by qualified authorities as an event triggering AET without materiality test.* ▪ *Express provision regarding the due date for the claim for non-performance*

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	▪ *Modernisation/ simplification of terminology as well as alignment with terminology of new statutory provision (Sec. 104 German Insolvency Act) and formal requirements* – *Replacement of "other obligations" by delivery* – *Modernisation of formal requirement for notices: introduction of text form-requirement (without any opening for other forms of communication)* – *Deletion of reference to now outdated German legal term for insolvency proceedings ("Konkursverfahren")*
8. Claims for Non-Performance	■ Determination/calculation of close-out amount (claim-for non-performance) ▪ Clause 8 sets out the provisions concerning the determination / calculation of the claim for non-performance arising in the event of a termination in accordance with Clause 7 (termination for material cause or AET). The provision is closely modeled on the calculation method for the statutory claim for non-performance set out in the new Sec. 104 German Insolvency Act and makes use of some of the additional features and deviations expressly permitted by this statutory provision for contractual netting provisions. ▪ Structure of the provision: – Sub-Clause (1) lays out the mechanisms for the determination of the claim arising from the termination of all transactions, including their valuation and the method on how these are to be netted (the core close-out amount). – Sub-Clause (2) addresses (other) payments and deliveries owed, interest and costs (unpaid amounts). – Sub-Clause (3) addresses operational issues (information of the other party of the results (which amount owed o which party, timeframe granted for the payment of the claim so determined, consequences of late payments):
(1) In the event of Termination, the party giving notice of termination or the solvent party, as the case may be, (hereinafter referred to as "Calculating Party") shall determine the claim for non-performance. The claim for non-performance will be determined by the Calculating Party on the basis of market or exchange prices of replacement transactions which are entered into in place of the terminated Transactions. The Calculating Party is required to enter into these replacement transactions without undue delay but at the latest by the end of the fifth Bank Working Day following the Termination, or, where this is necessary for a value-conserving ~~execution of the transactions~~ settlement of the open positions, by the end of the twentieth Bank Working Day following the Termination. Where market or exchange prices of the replacement transactions are denominated in currencies other than the Euro, the Calculating Party shall convert them into Euro on the basis of currency exchange rates offered by leading market participants for selling the relevant currencies. To the extent the Calculating Party refrains from entering into such replacement transactions, it is entitled to determine the claim for non-performance on the basis of the amounts it would have received or expended for such replacement transactions on the basis of market exchange prices ~~entered into~~ at the time of Termination, however, not later than by the end of the fifth Bank Working Day following the Termination. Where market conditions prevent or would have prevented the execution of replacement transactions in accordance with sentences 2 or 5 within the relevant time limits, the Calculating Party is entitled to determine the value of the terminated Transactions in accordance with methods and procedures which sufficiently ensure an adequate valuation. The market or exchange prices obtained for the replacement transactions in accordance with sentence 2, the amounts determined in accordance with sentence 5 and the amounts applied	▪ Calculating Party: The claim is determined by and from the perspective the terminating/ solvent party (that is the party, which has not given the cause for the termination = non-defaulting party). This party is referred to as "Calculating Party". This term was intentionally chosen since it reflects and underscores the key function to be performed by the relevant party. ▪ Replacement cost (actual/potential)/ market-prices and possibility to resort to model prices: The claim (close-out amount) is - first and foremost - to be determined on the basis of replacement transactions at market/exchange prices for the transactions which have been terminated. The Calculating Party can (at its choice) either base its calculations on actual replacement transactions or on hypothetical replacement transactions. ▪ Model prices: The Calculating Party can resort to model prices where it was not/would not have been possible to enter into replacement transactions because of the market conditions at the relevant time. ▪ Time periods for replacement transactions: The replacement transactions have to be concluded (actual transactions) or are supposed to have been concluded (hypothetical transactions) without undue delay within five Bank Working Days following termination. In exceptional circumstances (if in the interest of conserving the values) the period for the conclusion of actual replacement transactions can be extended up to 20 Bank Working Days. The provisions on the relevant periods make use of two options expressly granted in the new Sec. 104 German Insolvency Act for contractual netting agreements (possibility to extend the period to up to 20 days (such possibility does not exist in case of the statutory netting) and the 5-day period for hypothetical replacement transactions (the statutory period for hypothetical replacement transactions is two days)).

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in accordance with sentence 6, shall be netted against each other. Where the resulting amount after such netting is -from the perspective of the Calculating Party - ultimately positive, the Calculating Party is entitled to a claim for non-performance corresponding to this amount. Where the resulting amount after such netting is - from the perspective of the Calculating Party - ultimately negative, the other party is entitled to the claim for non-performance corresponding to this absolute amount.	▪ Conversions into contractual currency: Any amounts denominated in a currency other than EUR (the contractual currency) are to be converted by the Calculating Party into EUR on the basis of rates offered by leading market participants. ▪ Netting and determination of the party owing the claim: The provision prescribes in detail, how the potentially positive and/or negative amounts are to be netted against each other, and which party is ultimately the one obligated to pay the other (depending on whether the final amount determined after netting is positive or negative from the perspective of the Calculating Party).
(2) The following applies to payments and deliveries owed, interest accrued in accordance with Clause 3 sub-Clause 4 and costs and expenses incurred in connection with the determination of the claim for non-performance (all as of the time of the Termination): Where the party obligated to pay the claim for non-performance also owes payments, deliveries, costs, expenses or interest to the other party, the claim for non-performance shall be increased by these unpaid amounts; otherwise the claim is reduced by such unpaid amounts. Sub-Clause 1 sentence 4 shall apply correspondingly to payments not denominated in Euro. For any unperformed deliveries an equivalent value in Euro shall be determined accordance with sub-Clause 1 sentences 2 to 6.	▪ Unpaid amounts: Any payments/deliveries owed, interest accrued and costs incurred (unpaid amounts) are to be added to/deducted from (as the case may be) the amount determined in accordance with sub-Clause (1) ▪ The provisions concerning the conversion into EUR and the determination of the value of the terminated transactions in sub-Clause (1) apply correspondingly.
(3) The Calculating Party shall without undue delay following the calculation notify the other party as to which party is owed the claim for non-performance and as to the amount of such claim and shall in this connection provide information on the central elements on which the calculations were based. The claim for non-performance shall be payable within two Bank Working Days following receipt of the notification. In the event the claim is not paid within this period, interest shall accrue in accordance with Clause 3 sub-Clause 4 from the end of the time limit until the date such payment is received.	▪ Information of other party and time periods for payment owed/consequences of late payment: The Calculating Party is obligated to inform the other party of the results its determinations/calculations (specifically: which party owes what amount). In this connection it is obligated to provide the other party with certain background information (central elements on which the calculation were based). ▪ Time when claim becomes payable//late payment: The claim (which is becomes due upon termination in accordance with Clause 7 (3)) only becomes payable two Bank Working Days following the receipt of the notification by the other party. Payments after this date are late payments and trigger a claim for interest accrued (at the interest rate agreed for the purposes of Clause 3 (4) as of the end of this two day period. ➔ *Differences between DRV 2018 and DRV 2001/1993:* ▪ *Modernisation of terminology: Alignment with terminology of new Sec. 104 of the German Insolvency Act / departure from terms and concepts associated with German compensation/ tort law (such as compensation of damages and re-compensation financial benefits)* ▪ *New structure: concentration of the key elements of the netting provision in one provision (Clause 8 now combining elements of the Clauses 8 and 9 of the DRV 2001/1993).* ▪ *Modernised approach for determination of close-out amount: Completely new approach to describe the manner/ methods in which the claim for non-performance is to be determined.* ▪ *Introduction of new features (20 day extension/ five day period for potential replacement transactions/ possibility to resort to model prices)) in view of options for contractual deviations from the statutory standard provided in the new Sec. 104 of the German Insolvency Act.* ▪ *Modernisation regarding quotes: Quotes can now be obtained from leading market participants (not limited to banks in the regulatory sense).* ▪ *No equivalent to the cap of any financial benefits gained at the level of damages incurred by other party provided in Clause 8 (2) sentence 1 last half sentence of the DRV 1993/2001 (no practical relevance and founded on compensation/tort law principles which have been abandoned in the DRV 2018).* ▪ *Clarification of the distinction between the time the claim becomes due (Clause 7 (3)) and the time it becomes payable (Clause 8 (3)).*
9. Set-Off	■ Set-off rights (other claims)

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Existing rights to set-off claims against the claim for non-performance shall remain unaffected. Clause 8 sub-Clause 1 sentence 4 shall apply mutatis mutandis with regard to any payments not denominated in Euro. For any unperformed deliveries an equivalent value in Euro shall be determined in accordance with Clause 8 sub-Clause 1 sentences 2 to 6.	▪ Clause 9 clarifies that any set-off rights with other claims can be raised against a claim for non-performance determined in accordance with Clause 8 (the methods/rules regarding the valuation and conversion of non-EUR amounts of Clause 8 apply correspondingly). ➔ *Differences between DRV 2018 and DRV 2001/1993:* ▪ *Reduction of Clause 9 to provision on set-off rights with counterclaims (other elements have been integrated into Clause 8).* ▪ *No equivalent to Clause 9 (2) of the DRV 2001/1993 concerning the postponement of the due date of the single compensation claim until counterclaims become due – however new election right in Clause 12 (6) to include an equivalent provision (see below).*
10. Transfer	■ Transfer of rights and obligations
The transfer of rights or obligations arising from the Agreement shall require in each case the prior consent of the other party, such consent to be given in text form. Clause 2 sub-Clause (2) shall apply mutatis mutandis.	▪ Clause 10 prohibits any transfer of rights and obligations arising under the agreement unless consented to by the other party (in text form). ▪ The restriction are imposed in the interest of preserving the single agreement character. ➔ *Differences between DRV 2018 and DRV 2001/1993:* ▪ *Modernisation of formal requirement for consent (text form – in line with similar changes to other provisions concerning formal requirements, see above)* ▪ *Otherwise retained without any changes.*
11. Miscellaneous	■ Standard Provisions: Governing law, jurisdiction, severability, earlier versions
(1) If any provision of the Agreement is invalid or unenforceable, the remaining provisions shall remain unaffected. Any ~~resulting~~ gaps in the Agreement resulting herefrom shall be addressed by way of supplementary construction ("ergänzende Vertragsauslegung") of the relevant provisions, taking appropriate account of the legitimate interests of the parties.	▪ Sub-Clause (1) sets out a standard severability clause, which refers to the general German legal principle of "ergänzende Vertragauslegung" / "supplementary construction", that is, the interpretation of provisions affected by partial invalidity or ineffectiveness and/or their completion to cover the resulting gaps in accordance with the original intentions and legitimate interest of the parties.
(2) The Agreement is subject to the laws of the Federal Republic of Germany.	▪ Sub-Clause (2) determines German law as governing law.
(3) The courts at the location of the Bank's branch which entered into this Agreement shall have non-exclusive jurisdiction.	▪ Sub-Clause (3) determines as non-exclusive place of jurisdiction the courts at the location of the specific branch of the Bank which entered into the agreement.
(4) The Master Agreement in the version hereby agreed shall also apply to all transactions, if any, the parties may have entered into under an earlier version of the Master Agreement, if any. Such transactions shall be regarded as Transactions entered under this new version of the Master Agreement. However, the terms of the previous version of the Master Agreement shall remain applicable to these transactions to the extent this is necessary for the interpretation of the terms agreed therein.	▪ Sub-Clause (4) concerns the treatment of transactions which may have been entered under an earlier version of the master agreement: With the execution of this new master agreement they become part of the new master agreement version. ▪ Notwithstanding the inclusion in the new master agreement the relevant terms of the affected transactions are to be interpreted taking into account the provisions of the old master agreement. ➔ *Differences between DRV 2018 and DRV 2001/1993:* ▪ *None: retained without any changes.*

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12. Special Provisions	■ **Elections and additional provisions agreed between the parties**
(1) The following sub-Clauses (2) to (6) shall apply only to the extent that the relevant boxes have been completed or ticked.	▪ Clause 12 sets out a selection of provisions which parties may elect to apply in addition to or in order to modify the standard setting/provisions of the master agreement by ticking the relevant boxes.
☐ (2) In Clause 3 sub-Clause (3) the words "*under the same Transaction*" are substituted by the words "*under the Agreement*".	▪ Sub-Clause (2) allows parties to reverse the standard setting in Clause 3 (3) from transaction-based payment netting to agreement-based payment netting (see already above). ➔ *Differences between DRV 2018 and DRV 2001/1993:* ▪ *Relation between standard setting in Clause 3 (3) and election option in Clause 12 (2) in DRV 2001/1993 is exactly the other way around.*
☐ (3) The interest surcharge provided for in Clause 3 sub-Clause (4) shall be _____% p.a	▪ Sub-Clause (3) allows the parties to agree on a surcharge for interest accrued for the purposes of Clause 3 (4) and, by way of reference, also late payment of claim for non-performance under Clause 8. ➔ *Differences between DRV 2018 and DRV 2001/1993:* ▪ *None/unchanged*
☐ (4) Restriction of the effects of an automatic early termination: The following shall be added at the end of Clause 7 sub-Clause 2 sentence 2: *"; however, this shall only apply subject to the proviso that the insolvency proceedings or comparable proceedings are filed at the location of the head office or a relevant branch of the party. Location of the head office shall be the location where the party has its registered office in accordance with its articles of association, its centre of main interest or its place of residence. Relevant branches shall be branches established in Germany, Japan and Switzerland where such party maintains branches in these countries. Where insolvency proceedings or any comparable proceedings are filed in respect of the assets of the party located in a place other than that of the head office or a relevant branch, the right to terminate the agreement for material cause in accordance with Clause 7 sub-Clause 1 shall remain unaffected."*	▪ Sub-Clause (4) allows the parties to agree on a modification of Clause 7 (2) limiting the effects of the AET to the application of insolvency proceedings in relation to branches to proceedings against qualified branches (main branch and branches in major jurisdictions (Germany, Switzerland, Japan). ▪ This election may be of interest to parties with an extended and international network of branches. ➔ *Differences between DRV 2018 and DRV 2001/1993:* ▪ *New election option replacing the election option in Clause 12 (4) of the DRV 2001/1993 which added further conditions for taking into account financial benefits gained by the insolvent party when determining the single compensation claim.* ▪ *Election option in DRV 2001/1993 is no longer used as it may be considered to constitute a walk-away-clause.*
☐ (5) International transactions	▪ Sub-Clause (5) allows the parties to agree on special provisions regarding cross-border transactions in view of certain tax issues (tax deductions/ withholding tax/gross-up), changes in law. The provision is subdivided into six subparagraphs (A) to (F)
(A) If a party is or will be obligated to deduct or withhold a tax amount or other fiscal charge from a payment which it is to make, it shall pay to the other party such additional amounts as are necessary to ensure that the other party receives the full amount to which it would have been entitled at the time of such payment if no deduction or withholding had been required. This shall not apply if the tax or fiscal charge concerned is imposed or levied by the home state	▪ Subpara. (A) addresses tax issues (withholding taxes and deductions) stipulating a gross-up obligation (with certain exceptions)

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of the payee or by a tax authority located in such state. Home state means the state in which the payee has its domicile or is considered to be located or in which the office of the payee through which it is acting under the relevant Transaction is located.	
(B) If, as a result of any change in law, or in the application or official interpretation thereof, which occurs after the trade date of a Transaction	▪ Subpara. (B) addresses changes in law causing additional payments or resulting in an illegality and provides for the possibility of an early termination of the affected transactions or a termination of the agreement in its entirety.
(a) it is to be anticipated that, on the next Due Date, either party will have to pay additional amounts pursuant to the preceding sub-Clause (A) with regard to a payment which it is required to make, other than with regard to interest payable pursuant to Clause 3 sub-Clause (4), or (b) either party is no longer permitted to perform the Agreement, such party (hereinafter referred to as the "Affected Party"), and in the case of (b) also the other party (hereinafter referred to as the "Other Party"), may, by giving at least two weeks' notice, terminate the Transaction affected by such change with effect as from a date to be designated by it, provided that such date may not be earlier than one month before the date on which such change becomes effective. In the event of such termination, Clause 7 sub-Clause (3) shall apply only with respect to the Transaction(s) concerned. However, the Other Party or, in the event of the termination notice being given by the Other Party, the Affected Party may, within one week after receipt of the notice of termination, decide, by a declaration to that effect addressed to the party having given the notice of termination, that the Agreement as a whole is terminated. For the form of the notice of termination and the declaration pursuant to sentence 3, Clause 7 sub-Clause (1), sentence 3 shall apply.	
(C) In the event of a termination because of any of the grounds for termination set out in sub-Clause (B), Clause 8 shall be applicable; however, Clause 8 sub-Clause 1 shall apply subject to the following:	▪ Subpara. (C) contains the provisions regarding the calculations/valuations in case of a termination (calculations/valuations to be made in accordance with Clause 8, however, providing for a special mechanism to arrive at median value in case both parties are to make the calculations and valuations regarding the terminated transactions. ▪ As Clause 5 (2) with the fallback-provision for all potential cases where an agreed reference basis is no longer available, materially changes or can no longer be used for whatever reason, calls for the application of the above special calculation/valuation mechanism (by way of a reference to this subpara. (C)), the provision has a much greater practical relevance than it may appear at first glance.
(a) The Other Party shall be Calculating Party. (b) Where both parties are Affected Parties, each party shall be Calculating Party and the claim for non-performance shall be an amount corresponding to half of the difference between the two amounts calculated as follows: Where the amount determined by one party is positive and the amount determined by the other party is negative, the sum of both absolute amounts shall be the calculation basis. Where the amounts determined by parties are either both positive or both negative, the calculation basis shall be the difference between both absolute amounts. In the event the amount determined by one party is positive and the amount determined by the other party is negative, the claim for non-performance shall be paid by the party which determined a negative amount. Where both amounts determined are positive, it shall be paid by the party which determined the lower of the two amounts; and where both amounts	

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determined are negative, it shall be paid by the party which determined the higher of the two absolute amounts. Clause 8 sub clause 2 remains unaffected.	
(D) For any legal dispute or other proceedings before German courts, the Counterparty hereby appoints as authorised agent for service of process the person specified for such purpose below or the person, if any, specified for such purpose in relation to at least one Transaction.	▪ Subpara. (D) requires the Counterparty to appoint an authorised process agent based in Germany for the purposes of accepting the service of any court papers, such person to be specified either under subpara (F) or in the terms of a transaction. ▪ The provision assumes in this context that the party acting as Counterparty for the purposes of the agreement is not located in Germany and that the party acting as Bank is located in Germany. Should this not be the case, the parties should agree on a modification under Clause 12 (7) special provisions.
(E) Each party hereby irrevocably undertakes not to claim, and hereby irrevocably waives, with respect to any proceedings regarding itself or its assets, any immunity based on sovereignty or comparable rights from legal action, judgment, execution, attachment (whether before or after judgment) or any other proceedings.	▪ Subpara. (E) provides for a waiver of immunity.
(F) Address of the person authorised to accept service of process in the Federal Republic of Germany:	▪ Subpara. (F) allows the Counterparty to designate the process agent required under subpara. (D) (if not designated here, it is to be designated in the terms of a transaction).
	➔ *Differences between DRV 2018 and DRV 2001/1993:* ▪ *Subpara. (C) has been modernised:* – *Alignment of terminology to the new terminology in Clause 8* – *More detailed description of the calculation method to arrive at median values, in particular, provisions addressing the various potential constellations (both parties - from their respective perspectives - arriving at positive or negative yet differing amounts, or one party arriving at a positive and the other at a negative amount (again from their respective perspectives).* ▪ *No changes to subparas. (A), (B) and (D) to (F).*
☐ (6) Extended Set-Off Right: Clause 9 shall be replaced by the following provision: *"Where the claim for non-performance is owed to the other party, this claim shall – in deviation from Clause 7 sub-Clause (3) - only become due, when the Calculating Party does not have any claims – for whatever legal reason – against the other party (counterclaims). Where such counterclaims exist, their value shall be subtracted from the claim for non-performance in order to determine the portion of the claim for non-performance, which is due and payable. For the purpose of calculating the value of the counterclaims, the Calculating Party shall (i) where these refer to currencies other than Euro, convert them into Euro on the basis of currency exchange rates offered by leading market participants for selling the relevant currencies, (ii) where these are not claims for payment of money, convert them into claims expressed in Euro, and (iii) where these are not due, take them into account on the basis of their present value (also taking into account claims for interest accrued). The Calculating Party shall be entitled to set off the*	▪ Sub-Clause (6) allows parties to replace Clause 9 with a provision that postpones the due date of the claim for non-performance until counterclaims have become due and payable and can be included in the set-off under Clause 9.

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claim for non-performance of the other party against the value of the amounts of the counterclaims calculated in accordance with sentence 3. Where the Calculating Party fails to do so, the claim for non-performance shall become due when and as far as the Calculating Party is no longer exposed to counterclaims." (7) Special Provisions	➔ *Differences between DRV 2018 and DRV 2001/1993:* ▪ *In the DRV 1993/2001 Clause 9 already contains an equivalent provision.* ▪ *The newly structured Clauses 8 and 9 of the DRV 2018 do not contain a similar provision. The election option was added in order to allow the parties to include this feature if/where appropriate.*

Unterschrift(en) des Vertragspartners
Signature(s) of the Counterparty

Unterschrift(en) der Bank
Signature(s) of the Bank

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Title of Document/ affected provision	Changes	
Collateral Documentation		
Collateral Addendum (2001) – BsA 2001	Collateral Addendum - BsA (2018)	
Clause 1 (1) last sentence	Adjustment of reference to Clause 9 DRV 2018	
Clause 2 "Exposure"	Alignment of terminology (adoption of new term „claim for non-performance")	
Clause 6 (3)	Adjustment of formal requirements (introduction of text form)	
Clause 6 (5)	Adjustment of formal requirements (introduction of text form)	
Clause 9	Alignment of terminology and references (new terms used in and references to Clause 8 DRV 2018)	
BsA 2001 proposed wording (negative interest) (2015)	BsA 2018 proposed wording (negative interest)	
Lit, (e)	Adjustments in view of changes to Clause 9 BsA 2001	
Collateral Addendum for Variation Margin VM-BsA (2016)	Collateral Addendum for Variation Margin VM-BsA (2018)	
Clause 1 (1) last sentence	Adjustment of reference to Clause 9 DRV 2018	
Clause 2 "VM-Exposure"	Alignment of terminology (adoption of new term „claim for non-performance")	
Clause 11	Alignment of terminology and references (new terms used in and references to Clause 8 DRV 2018)	
Clause 14 (10) (b)	Consequential adjustments in view of adjustments in Clause 11 VM-BsA	
VM-BsA Supplemental Agreement (2016)	VM-BsA (2018) Supplemental Agreement	
Alternative 1 b) VM-Exposure – first election	Adjustment of reference to Clause 9 DRV 2018	
Alternative 1 b) VM-Exposure – second election	Adjustment of reference to Clause 9 DRV 2018	
Alternative 2 a)	Simplification of selection of relevant dates (only one selection/reference to above chosen date)	
Alternative 2 b) VM-Exposure, second election	Adjustment of reference to Clause 9 DRV 2018	
Alternative 2 c) – first election	Adjustment of reference to Clause 9 DRV 2018	
Alternative 2 c) – second election	Adjustment of reference to Clause 9 DRV 2018	
Alternative 2 d)	Adjustment of reference to Clause 9 DRV 2018	
Product Annexes		
Addendum for Securities (Equities) Derivatives (2010)	Addendum for Securities (Equities) Derivatives (2018)	
Clause 4 (6)	Adjustment of formal requirements (introduction of text form)	
Clause 9 (7)	Adjustment of formal requirements (introduction of text form)	
Clause 9 (10) (a)	Adjustment to new Clause 8 DRV 2018	
Clause 14 (2) (c) last sentence	Adjustment of terminology (reference to deliveries owed)	
Clause 22 (1) sentence 3	Adjustment to new Clause 8 DRV 2018	

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Clause 22 (1) sentence 4	Adjustment of reference to Clause 12 (5) (C) (b) DRV 2018	
Addendum for Commodities Transactions (2013)	Addendum for Commodities Transactions (2018)	
Clause 8 (2) (d)	Adjustment of terminology (reference to deliveries owed)	
Addendum for FX Transactions and FX Options (2001)	No changes/adjustments required	
Addenda for Cover Transactions (2010)	Addenda for Cover Transactions (2018)	
Clause 3 last sentence	Alignment of terminology (adoption of new term „calculating party")	
Clause 5 sentence 2	Adjustment of reference to Clause 7 DRV 2018	
Clause 6	Adjustment of reference to Clause 9 DRV 2018	
Annex for Emission Rights (2010)	*No changes implemented – documents needs further review and adjustments*	
Regulatory Annexes		
Clearing-Addendum (2015)	Clearing-Addendum (2018)	
Clause 4 (2) sentence 2	Adjustment of terminology (reference to deliveries owed)	
Clause 4 (2) sentence 3	Adjustment of reference to Clause 12 (5) (C) (b) DRV 2018	
FATCA-Addendum (2016)	FATCA-Addendum (2018)	
Clause 3 (1)	Adjustment to new Clause 8 DRV and inclusion of reference to new VM-BsA	
Sec 871(m)-Addendum (2017)	No changes/adjustments required	
Proposed wording: Sec 871(m)-Supplemental Agreement (2017)	No changes/adjustments required	
SAG-Supplemental Agreement (2016) - contractual recognition	SAG-Supplemental Agreement (2018)	
Clause 2 definition national resolution authority	Adjustment of reference to national resolution authority (replacement of FMSA by BaFin)	
Clause 4 b)	Alignment of terminology (adoption of new term „claim for non-performance")	
Clause 4 c)	Alignment of terminology (adoption of new term „claim for non-performance")	
Clause 5 (1) (a)	Adjustment of title of master agreement (addition of "(2018)")	
Supplemental Agreements and other documents		
Supplemental Agreement (2002) - Clause 6 (5)	No changes/adjustments required	
Addendum for Early Termination (2001)	Addendum for Early Termination (2018)	
Clause 3 (3)	Alignment of terminology (adoption of new term „deliveries")	
Clause 4 (2)	Alignment of terminology ("leading banks" / "deliveries")	
General (Umbrella) Agreements		
General (Umbrella) Agreement D (2014)	General (Umbrella) Agreement D (2018)	
Clause 6	Alignment of terminology (adoption of new term „claim for non-performance")	
Clause 7 (3)	Adjustment of formal requirements (introduction of text form)	
Clause 8 (1)	Adjustment of formal requirements (introduction of text form)	
Overview over annexes (documents to be included and list of funds)	Adjustment of overview over annexes: replacement of Annex 1 (list of funds) by reference to sample-annex (Excel-Sheet) and replacement of Annex 2 (list of documents) by reference to sample annex (Excel-Sheet).	

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Supplemental Agreement Segments (2017)	No changes/adjustments required	
KAGB-Addendum (2014)	No changes/adjustments required	
General (Umbrella) Agreement LUX (2016)	General (Umbrella) Agreement LUX (2018)	
Clause 6	Alignment of terminology (adoption of new term „claim for non-performance")	
Clause 7 (3)	Adjustment of formal requirements (introduction of text form)	
Clause 8 (1)	Adjustment of formal requirements (introduction of text form)	
Overview over annexes (documents to be included and list of funds)	Adjustment of overview over annexes: replacement of both Annex 1 (list of funds) and Annex 2 (list of documents) by references to sample-annexes (Excel-Sheet) which can be adapted individually by the counterparties.	

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