

## USD 3,500,000,000 Subordinated Tier 2 Notes of 2020

### Global Registered Note Certificate

representing 17,500 Notes

with a principal amount of

USD 200,000 (in words: United States dollar two hundred thousand)  
per Note

and an aggregate principal amount  
of

**USD 3,500,000,000**

issued on 18 November 2020

This certificate (the "**Certificate**") represents 17,500 notes with a principal amount of USD 200,000 each (the "**Notes**"), issued by

#### **J.P. Morgan SE**

Taunustor 1 (TaunusTurm)

60310 Frankfurt am Main

Federal Republic of Germany (the "**Issuer**")

and having the provisions specified in the terms and conditions, as amended and restated by way of the amendment agreement between the Issuer and the Initial Noteholder (as defined below) dated 29 February 2024, as annexed hereto (the "**Terms and Conditions**").

This Certificate shall replace the original global registered note certificate dated 18 November 2020 representing the Notes. On 18 November 2020, J.P. Morgan Bank Luxembourg S.A. (the "**Original Issuer**") issued the Notes to the Initial Noteholder (as defined below). Effective 22 January 2022, the Original Issuer has been merged into J.P. Morgan Bank AG, which then effectively transformed from a German stock corporation (*Aktiengesellschaft* – AG) into a European public company (*societas europaea* – SE), J.P. Morgan SE. Upon such merger and transformation, the Issuer became the universal legal successor of the Original Issuer.

The Notes are intended to qualify as Tier 2 capital of the Issuer.

The Initial Noteholder (as defined below) having paid the Issuer for the Notes in full on 18 November 2020, the Issuer agrees to pay to the Noteholders the amounts payable in respect of the Notes, in particular interest, and perform such other duties as set out in the Terms and Conditions which form an integral part of this Certificate.

"**Noteholders**" means the Initial Noteholder and, following an assignment or multiple assignments, any person who is at any time registered in the Register (as defined below) kept by the Issuer as holder of a Note.

The Issuer confirms that J.P. Morgan International Finance Limited of 500 Stanton Christiana Road, Newark, Delaware, 19713, United States of America is duly registered in the Register as Noteholder of the Notes (the "**Initial Noteholder**") in each case in the Aggregate Principal Amount.

The rights and claims arising out of the Notes will be transferred solely on the basis of assignment and due registration in the register (the "**Register**") maintained by the Issuer. Solely a duly registered Noteholder in the Register may claim payments under the Notes.

This Certificate shall not be valid unless it bears the manual signature of one duly authorised signatory of the Issuer.

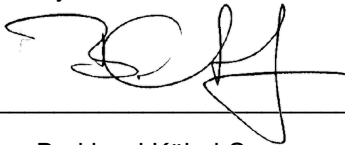
This Certificate is written in the English language only.

The Notes as well as any rights and duties arising therefrom are governed by the laws of the Grand Duchy of Luxembourg.

1 March 2024

**J.P. Morgan SE**

represented by:



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*Name:* Burkhard Kübel-Sorger  
*Title:* Chief Financial Officer

The amended and restated Terms and Conditions are annexed hereto as Annex 1.

The form of assignment agreement for the transfer of rights and claims arising out of the Notes is annexed hereto as Annex 2

**Annex 1**  
**TERMS AND CONDITIONS OF THE NOTES**

**§ 1**  
**Currency, Denomination, Form**

- (1) *Currency; Denomination.* This issue of subordinated notes (the "**Notes**") of J.P. Morgan SE (the "**Issuer**") is being issued in United States Dollars ("**USD**", "**U.S. dollars**" or "**U.S.\$**") in the aggregate principal amount of USD 3,500,000,000 (in words: USD three billion five hundred million) (the "**Aggregate Principal Amount**") in a denomination of USD 200,000 (the "**Specified Denomination**").
- (2) *Form.*
- (a) The Notes are issued in registered form (*titres nominatifs*).
  - (b) Each certificate representing a Note or several Notes bears the manual signature of one duly authorised signatory of the Issuer and will manually be authenticated by or on behalf of the Issuer.
  - (c) The rights of the relevant Noteholder arising from a Note pass by registration in the Register (as further specified in § 1(2)(d) below). Except as ordered by a court of competent jurisdiction or as required by law, the Issuer will deem and treat the registered holder of each Note as the absolute owner of the relevant certificate and holder of the rights arising from the relevant Note.
  - (d) The Notes may be transferred in whole or in part. No partial transfer or assignment of any individual Note will be permitted. The rights of any Noteholder arising from a Note may be transferred by way of an assignment of the relevant rights under the relevant Note by the then current Noteholder to the new Noteholder and the surrender of the relevant certificate, together with the form of the notice of assignment attached to it duly completed and executed, at the specified office of the Issuer and the entry of the new Noteholder with the register by the Issuer.
  - (e) The date stated in the duly completed form of assignment as the date on which the economic effects of the assignments will occur will be the "**Transfer Date**" to be entered into the Register by the Issuer.  
  
In the case of a transfer of any Note and provided the requirements specified above have been met, a new certificate will be delivered to the transferee upon request.
  - (f) Each new certificate to be issued upon transfer of any Note will, within 14 business days (being, for the purposes of this subsection, a day, other than a Saturday or Sunday, on which banks are open for business in the place of the specified office of the Issuer) of submission of such certificate and the duly completed and executed form of assignment, be available for collection at the specified office of the Issuer or, at the request of the Noteholder making such submission and as specified in the relevant form of assignment, be mailed at the risk of the Noteholder entitled to the new certificate to such address as may be specified in the form of assignment.
  - (g) Transfers will be effected without charge by or on behalf of the Issuer, but upon payment (or the giving of such indemnity as may be required from the Issuer) in respect of any tax or other duties which may be imposed in relation to it.
  - (h) No Noteholder may require the transfer of a Note to be registered during a period of 15 days ending on any due date for any payment of principal or interest. Any registration of transfer required during

such period will be deemed to have been required on the business day (as referred to in (f) above) immediately following the relevant due date.

- (i) For the purpose of these Terms and Conditions:

**"Register"** means the register to be maintained by the Issuer at its specified office in relation to the Notes.

**"Noteholder"** means the registered holder of any Note. Any reference therein to "Noteholders" in plural form will constitute a reference to "Noteholder" in singular form.

## § 2

### Status

- (1) **Rank.** The Notes constitute direct, unsecured and subordinated obligations of the Issuer and intended to qualify as Tier 2 Instruments pursuant to Article 63 CRR (as defined in § 5(4)). In the event of resolution measures imposed on the Issuer and in the event of the insolvency, dissolution, liquidation, composition or other proceedings for the avoidance of insolvency of, or against, the Issuer,
- (a) the obligations under the Notes rank *pari passu* among themselves and *pari passu* with all other present or future subordinated obligations of the Issuer under instruments which, pursuant to their terms or mandatory provisions of law rank *pari passu* with the obligations of the Issuer under the Notes;
  - (b) the obligations under the Notes rank senior to all present or future subordinated obligations of the Issuer resulting from own funds items that pursuant to their terms or mandatory provisions of law rank subordinated to the Notes, including the obligations of the Issuer under any Additional Tier 1 instruments of the Issuer pursuant to Article 52 et seq. CRR (as defined in § 5(4)), if any; and
  - (c) the obligations under the Notes will be fully subordinated to the present or future Issuer's Senior Ranking Obligations (as defined below), so that in any such event the claims of the Noteholders in respect of the Notes (in particular the claims for payment of principal and interest, if any) will only be satisfied if all of the Issuer's Senior Ranking Obligations have first been satisfied in full.

Where:

**"Issuer's Senior Ranking Obligations"** means

- (i) the unsubordinated obligations of the Issuer within the meaning of § 38 of the German Insolvency Code (*Insolvenzordnung* – "**InsO**") (including obligations of the Issuer under its non-preferred unsubordinated debt instruments within the meaning of § 46f(6) sentence 1 of the German Banking Act (*Kreditwesengesetz* – "**KWG**") or any successor provision thereto);
- (ii) the legally subordinated obligations of the Issuer within the meaning of § 39(1) Nos. 1-5 InsO or any successor provision thereto;
- (iii) the contractually subordinated obligations of the Issuer within the meaning of § 39(2) InsO or any successor provision thereto that, at the relevant point in time, do not result from an own funds item of the Issuer; and
- (iv) any other obligations of the Issuer which, pursuant to their terms or mandatory provisions of law, rank senior to the Notes.

- (2) *No Set-off/Netting.* No Noteholder may set off its claims arising under the Notes against any claims that the Issuer may have against it. The Notes are not subject to any set off arrangements or netting rights that would undermine their capacity to absorb losses in resolution, insolvency or liquidation of the Issuer.
- (3) *No security or guarantee.* No security or guarantee of whatever kind is, or shall at any time be, provided by the Issuer or any other person securing rights of the Noteholders under the Notes; the Notes are not subject to any other arrangement that enhances the seniority of the claims under the Notes.
- (4) *No compensatory payment.* If the Note are redeemed or repurchased otherwise than (i) in the circumstances described § 2(1), (2) and (3) or (ii) as a result of a redemption or repurchase in accordance with the Conditions (requiring that the conditions to redemption or repurchase set out in § 5(4) are met), then the amounts paid must be returned to the Issuer irrespective of any agreement to the contrary.

### **§ 3** **Interest**

- (1) The Notes bear interest from and including 18 November 2020 (the "**Interest Commencement Date**") to but excluding the first Interest Payment Date and thereafter from and including each Interest Payment Date to but excluding the next succeeding Interest Payment Date.

If any Interest Payment Date would otherwise fall on a day which is not a U.S. Government Securities Business Day, it shall be postponed to the next day which is a U.S. Government Securities Business Day unless it would thereby fall into the next calendar month, in which event the Interest Payment Date shall be brought forward to the immediately preceding U.S. Government Securities Business Day.

- (2) The rate of interest for each Interest Period shall be the sum of (i) the Benchmark and (ii) the applicable Margin (as defined in § 3(6)). The Calculation Agent shall calculate (i) the rate of interest payable on the Notes for each Interest Period based on the Benchmark for that Interest Period, and (ii) the amount of interest to be paid on the Notes for each Interest Period, by multiplying the outstanding principal amount of the Notes by the product of (a) the rate of interest payable on the Notes for that Interest Period multiplied by (b) the quotient of the actual number of calendar days in the Interest Period divided by 360. All calculations of the Calculation Agent, in the absence of manifest error, will be conclusive for all purposes and binding on the Issuer and the Noteholders.
- (3) The resulting figure shall be rounded to the nearest cent (half a cent being rounded upwards) and multiplied by a fraction the numerator of which is the principal amount of such Note and the denominator of which is the Calculation Amount.
- (4) If the Issuer or its Designee determines that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the then-current Benchmark at any time when the Notes are outstanding, then the calculation and payment of interest on the Notes will be modified in accordance with §3(5). The Issuer or an Affiliate of the Issuer may assume the duties of the Calculation Agent.
- (5) Notwithstanding the foregoing, if the Issuer or its Designee determines on or prior to the relevant Reference Time that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Compounded SOFR or the then-current Benchmark at any time when the Notes are outstanding, then this § 3(5) will thereafter apply to all determinations of the rate of interest payable on the Notes. In accordance with this § 3(5), after a Benchmark Transition Event and its related Benchmark Replacement Date have occurred, the amount of interest that will be payable for each Interest Period on the Notes will be an annual rate equal to the sum of (i) the Benchmark Replacement and (ii) the Margin.

If the Issuer or its Designee determines that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred on or prior to the Reference Time in respect of any determination of the Benchmark on any date, then the Benchmark Replacement will replace the then-current Benchmark for all purposes relating to the Notes in respect of such determination on such date and all determinations on all subsequent dates.

In connection with the implementation of a Benchmark Replacement, the Issuer will have the right to make Benchmark Replacement Conforming Changes from time to time.

The Issuer is expressly authorised to make certain determinations, decisions and elections hereunder, including under this § 3(5). In addition, the Issuer is authorised to appoint a Designee (which may be an Affiliate of the Issuer) to make certain of those determinations, decisions and elections. Such determinations, decisions and elections include any determination that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred, and the related determinations of the Benchmark Replacement and Benchmark Replacement Adjustment. Any determination, decision or election that may be made by the Issuer or its Designee (including by any Affiliate of the Issuer acting as the Issuer's Designee) hereunder, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection:

- (i) will be conclusive and binding absent manifest error;
- (ii) if made by the Issuer, will be made in its sole discretion;
- (iii) if made by the Issuer's Designee, will be made after consultation with the Issuer, and the Designee will not make any such determination, decision or election to which the Issuer reasonably objects; and
- (iv) notwithstanding anything to the contrary herein, shall become effective without consent from the Noteholders or any other party.

If the Issuer appoints a Designee to make any determination, decision or election and that Designee fails to make any determination, decision or election that it is required to make hereunder, then the Issuer will make that determination, decision or election on the same basis as described above.

- (6) For the purpose of this § 3:

**"Affiliate"** of any specified person means any other person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified person. For the purposes of this definition, "control" when used with respect to any specified person means the power to direct the management and policies of such person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

**"Benchmark"** means, initially, Compounded SOFR; provided that if the Issuer or its Designee determines on or prior to the Reference Time that a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to Compounded SOFR or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement.

**"Benchmark Replacement"** means the Interpolated Benchmark with respect to the then-current Benchmark, plus the Benchmark Replacement Adjustment for such Benchmark; provided that if the Issuer or its Designee cannot determine the Interpolated Benchmark as of the Benchmark Replacement Date, then

"Benchmark Replacement" means the first alternative set forth in the order below that can be determined by the Issuer or its Designee as of the Benchmark Replacement Date:

- (1) the sum of: (a) the alternate rate that has been selected or recommended by the Relevant Governmental Body as the replacement for the then-current Benchmark for the applicable Corresponding Tenor and (b) the Benchmark Replacement Adjustment;
- (2) the sum of: (a) the ISDA Fallback Rate and (b) the Benchmark Replacement Adjustment;
- (3) the sum of: (a) the alternate rate that has been selected by the Issuer as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to any industry-accepted rate as a replacement for the then-current Benchmark for U.S. dollar-denominated floating rate securities at such time and (b) the Benchmark Replacement Adjustment.

**"Benchmark Replacement Adjustment"** means the first alternative set forth in the order below that can be determined by the Issuer or its Designee as of the Benchmark Replacement Date:

- (1) the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected or recommended by the Relevant Governmental Body for the applicable Unadjusted Benchmark Replacement;
- (2) if the applicable Unadjusted Benchmark Replacement is equivalent to the ISDA Fallback Rate, then the ISDA Fallback Adjustment; or
- (3) the spread adjustment (which may be a positive or negative value or zero) that has been selected by the Issuer giving due consideration to any industry-accepted spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the then-current Benchmark with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated floating rate securities at such time.

**"Benchmark Replacement Conforming Changes"** means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definitions of "Interest Period", "Observation Period" and "Interest Reset Date", timing and frequency of determining rates with respect to each Interest Period and making payments of interest, rounding of amounts or tenors, and other administrative matters) that the Issuer decides may be appropriate to reflect the adoption of such Benchmark Replacement in a manner substantially consistent with market practice (or, if the Issuer decides that adoption of any portion of such market practice is not administratively feasible or if the Issuer determines that no market practice for use of the Benchmark Replacement exists, in such other manner as the Issuer determines is reasonably necessary).

**"Benchmark Replacement Date"** means the earliest to occur of the following events with respect to the then-current Benchmark:

- (1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event", the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of the Benchmark permanently or indefinitely ceases to provide the Benchmark; or
- (2) in the case of clause (3) of the definition of "Benchmark Transition Event" the date of the public statement or publication of information referenced therein.

For the avoidance of doubt, if the event giving rise to the Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination.

**"Benchmark Transition Event"** means the occurrence of one or more of the following events with respect to the then-current Benchmark:

- (1) a public statement or publication of information by or on behalf of the administrator of the Benchmark announcing that such administrator has ceased or will cease to provide the Benchmark, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark;
- (2) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark, the central bank for the currency of the Benchmark, an insolvency official with jurisdiction over the administrator for the Benchmark, a resolution authority with jurisdiction over the administrator for the Benchmark or a court or an entity with similar insolvency or resolution authority over the administrator for the Benchmark, which states that the administrator of the Benchmark has ceased or will cease to provide the Benchmark permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Benchmark; or
- (3) a public statement or publication of information by the regulatory supervisor for the administrator of the Benchmark announcing that the Benchmark is no longer representative.

**"BRRD"** means Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, as amended or replaced from time to time (including, without limitation, by Directive (EU) 2017/2399 and by Directive (EU) 2019/879).

**"Calculation Agent"** means JPMorgan Chase Bank, N.A. or such other bank or other entity (which may be the Issuer or an Affiliate of the Issuer) as may be appointed by the Issuer to act as Calculation Agent for the Notes.

**"Calculation Amount"** means USD 200,000 in principal amount of Notes.

**"Capital Regulations"** means, at any time, the laws, regulations, requirements, guidelines and policies relating to capital adequacy and/or minimum requirements for own funds and eligible liabilities of the European Banking Authority, the Regulator and/or of the European Parliament or of the Council of the European Union (including, without limitation, as to leverage) then in effect in the Grand Duchy of Luxembourg including, without limitation to the generality of the foregoing, any delegated or implementing acts (such as regulatory technical standards) adopted by the European Commission then in effect in the Grand Duchy of Luxembourg and any regulations, requirements, guidelines and policies relating to capital adequacy and/or minimum requirements for own funds and eligible liabilities adopted by the European Banking Authority and/or the Regulator from time to time (whether or not such requirements, guidelines or policies are applied generally or specifically to the Issuer).

**"Compounded SOFR"** means the rate for all or part of an Interest Period that is a rate of return of a daily compounded interest investment calculated in accordance with the formula below, with the resulting



percentage being rounded, if necessary, to the nearest one hundred-thousandth of a percentage point (0.00000005 being rounded upwards):

$$\left[ \prod_{i=1}^{d_0} \left( 1 + \frac{SOFR_i \times n_i}{360} \right) - 1 \right] \times \frac{360}{d}$$

where:

"**d**" is the number of calendar days in the relevant Observation Period;

"**d<sub>0</sub>**", for any Observation Period, means the number of U.S. Government Securities Business Days in the relevant Observation Period;

"**i**" is a series of whole numbers from one to d<sub>0</sub>, each representing the relevant U.S. Government Securities Business Days in chronological order from, and including, the first U.S. Government Securities Business Day in the relevant Observation Period;

"**n<sub>i</sub>**" means the number of calendar days from and including the U.S. Government Securities Business Day "**i**" to, but excluding, the following U.S. Government Securities Business Day ("**i** + 1"); and

"**SOFR<sub>i</sub>**", for any day "**i**" in the relevant Observation Period, is equal to SOFR in respect of that day "**i**".

For the avoidance of doubt, the calculation of Compounded SOFR shall exclude the Margin. In addition, when calculating Compounded SOFR for any Interest Period, if SOFR attributable to a particular US Government Securities Business Day during that Interest Period is negative, then the amount of interest attributable to that day may be less than zero; provided that in no event will the amount of interest payable on the Notes for any Interest Period be less than zero. The interest rate on the Notes will in no event be higher than the maximum rate permitted by applicable law.

"**Corresponding Tenor**" with respect to a Benchmark Replacement means a tenor (including overnight) having approximately the same length (disregarding business day adjustment) as the applicable tenor for the then-current Benchmark.

"**Designee**" means any party appointed by the Issuer (which may be one of the Issuer's Affiliates) to make specified determinations, decisions or elections hereunder.

"**Interest Payment Date**" means the 18<sup>th</sup> of each month to and including 18 February 2024, 1 March 2024 and the 18<sup>th</sup> of each month from and including 1 March 2024.

"**Interest Period**" means the period from and including an Interest Payment Date to but excluding the next Interest Payment Date.

"**Interest Reset Date**" means each U.S. Government Securities Business Day during an Observation Period.

"**Interpolated Benchmark**" with respect to the Benchmark means the rate determined for the Corresponding Tenor by interpolating on a linear basis between: (1) the Benchmark for the longest period (for which the Benchmark is available) that is shorter than the Corresponding Tenor and (2) the Benchmark for the shortest period (for which the Benchmark is available) that is longer than the Corresponding Tenor.

**"ISDA Definitions"** means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time.

**"ISDA Fallback Adjustment"** means the spread adjustment (which may be a positive or negative value or zero) that would apply for derivatives transactions referencing the ISDA Definitions to be determined upon the occurrence of an index cessation event with respect to the Benchmark for the applicable tenor.

**"ISDA Fallback Rate"** means the rate that would apply for derivatives transactions referencing the ISDA Definitions to be effective upon the occurrence of an index cessation date with respect to the Benchmark for the applicable tenor excluding the applicable ISDA Fallback Adjustment.

**"Margin"** means,

- (i) for each Interest Period ending prior 18 February 2024 and for the (short) Interest Period from and including 18 February 2024 to but excluding 1 March 2024, 1.24 per cent. *per annum*; and
- (ii) for the (short) Interest Period from and including 1 March 2024 to but excluding 18 March 2024 and each Interest Period commencing on or after 18 March 2024, 1.46 per cent. *per annum*.

**"Observation Period"** means, in respect of each Interest Period, the period from, and including, the date two U.S. Government Securities Business Days preceding the first day in such Interest Period to, but excluding, the date two U.S. Government Securities Business Days preceding the Interest Payment Date for such Interest Period.

**"Reference Time"** with respect to any determination of the Benchmark means (1) if the Benchmark is Compounded SOFR, the SOFR Determination Time and (2) if the Benchmark is not Compounded SOFR, the time determined by the Issuer or its Designee after giving effect to the Benchmark Replacement Conforming Changes.

**"Regulator"** means (a) the competent supervisory authority pursuant to Article 4(1)(40) CRR and/or Article 9(1) of Council Regulation (EU) No 1024/2013, as applicable; and (b) the competent resolution authority pursuant to the BRRD (as implemented into German law) and/or Regulation (EU) No 806/2014 (being the Single Resolution Board), as applicable.

**"Relevant Governmental Body"** means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

**"SOFR"** means, with respect to any Interest Reset Date, the rate determined in accordance with the following provisions:

- (1) the Secured Overnight Financing Rate published with respect to such Interest Reset Date as such rate appears on the SOFR Administrator's Website at 3:00 p.m. (New York time) on the immediately following U.S. Government Securities Business Day (the **"SOFR Determination Time"**); and
- (2) if the rate specified in (1) above does not so appear, the Secured Overnight Financing Rate as published in respect of the first preceding U.S. Government Securities Business Day for which the Secured Overnight Financing Rate was published on the SOFR Administrator's Website.

For the purposes of calculating interest due on the Notes, SOFR applicable to any day during an Interest Period if such day is not a U.S. Government Securities Business Day will be the rate with respect to the

immediately preceding Interest Reset Date. The interest payable on the Notes for any Interest Period will be calculated as of the date two U.S. Government Securities Business Days before the Interest Payment Date for that Interest Period.

**"SOFR Administrator"** means the Federal Reserve Bank of New York (or a successor administrator of the Secured Overnight Financing Rate).

**"SOFR Administrator's Website"** means the website of the SOFR Administrator.

**"U.S. Government Securities Business Day"** means any day except for a Saturday, Sunday or a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in U.S. Government securities.

**"Unadjusted Benchmark Replacement"** means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

- (7) Notwithstanding any other provision of this § 3, no substitute or successor rate or adjustment factor will be adopted, nor will any other amendment be made pursuant to this § 3, if and to the extent that, in the determination of the Issuer, the same could reasonably be expected to prejudice the qualification of the Notes as Tier 2 capital (as defined in the Capital Regulations) and/or as eligible liabilities or loss absorbing capacity instruments for the purposes of the Capital Regulations.

#### **§ 4 Payments**

- (1) *General.* Any sums due for payment hereunder on a day which is not a Business Day, and any Interest Period due to expire on a day which is not a Business Day, will be paid on or extended to (as the case may be) the next succeeding Business Day or, if that Business Day falls in the next following month, the preceding Business Day, but if an Interest Period is extended or shortened by the application of the above, the following Interest Period will (without prejudice to the application of this § 4) still end on the day on which it would have ended if the preceding Interest Period had not been so extended or shortened. Payments shall be made, subject to § 4(2), on the respective due date thereof to the person shown on the Register as the Noteholder at the close of business on the fifteenth day before such due date.

**"Business Day"** means a day on which commercial banks and foreign exchange markets settle payments and are open for general business (including dealing in foreign exchange and foreign currency deposits) in Luxembourg, New York City and London.

- (2) *Manner of payment.* Subject to applicable fiscal and other laws and regulations, payments of amounts due in respect of a Note will be made in U.S. dollars to the account of the Noteholder specified in the Register. The Issuer shall be discharged by payment to the Noteholder.
- (3) *References to principal and interest.* Reference in these terms and conditions of the Notes to principal in respect of the Notes will be deemed to include, as applicable, the Redemption Amount of the Notes and any other amounts which may be payable under or in respect of the Notes. Reference in these terms and conditions of the Notes to interest in respect of the Notes will be deemed also to refer to any Additional Amounts which may be payable in respect of the Notes.
- (4) *Waiver of termination rights.* The Noteholders expressly, unconditionally and irrevocably waive all rights of termination under article 1184 of the Luxembourg Civil Code and under article 470-21 of the Luxembourg

Act of 10 August 1915 regarding commercial companies and, more generally, of claiming early termination or early repayment of the Notes in case of any failure by the Issuer to perform its obligations under the Notes, save as otherwise provided in these Terms and Conditions.

## § 5 Redemption

- (1) *Maturity.* The Notes will be redeemed at the Redemption Amount (as defined in § 5(5)), together with accrued and unpaid interest (if any), on the Interest Payment Date falling on or around 18 March 2034.
- (2) *Redemption for regulatory reasons.* If the Issuer determines that as a result of any amendment to, or change in the regulatory classification of the Notes under, the Capital Regulations (or official interpretation thereof), in any such case becoming effective on or after the issue date of the Notes, the Notes are, or are likely to be, partly or fully excluded from Tier 2 capital (as defined in the Capital Regulations) of the Issuer, the Issuer may, subject to the Conditions to Redemption and Repurchase pursuant to § 5(4) being met, redeem the Notes, in whole but not in part, at any time upon not less than 10 and not more than 60 days' prior notice.

If the Issuer exercises its call right in accordance with this § 5(2), and if the Conditions to Redemption and Repurchase pursuant to § 5(4) are fulfilled on the date fixed for redemption, the Issuer will redeem the Notes at their Redemption Amount (as defined in § 5(5)) together with interest (if any) accrued to but excluding the date fixed for redemption on the date fixed for redemption.

- (3) *Redemption for reasons of taxation.* If the tax treatment of the Notes, due to a material and at the time of the issuance not reasonably foreseeable change in applicable legislation, including a change in any fiscal or regulatory legislation, rules or practices, which takes effect on or after the issue date of the Notes, changes (i.e. any changes to the tax deductibility of interest payable on the Notes or any changes in the tax treatment of the Notes resulting in an obligation to pay Additional Amounts (as defined in § 7)) and the Issuer determines, in its own discretion, that such change has a material adverse effect on the Issuer, the Issuer may, subject to the Conditions to Redemption and Repurchase pursuant to § 5(4) being met, redeem the Notes, in whole but not in part, at any time upon not less than 10 and not more than 60 days' prior notice.

If the Issuer exercises its call right in accordance with this § 5(3), and if the Conditions to Redemption and Repurchase pursuant to § 5(4) are fulfilled on the date fixed for redemption, the Issuer will redeem the Notes at their Redemption Amount (as defined in § 5(5)) together with interest (if any) accrued to but excluding the date fixed for redemption on the date fixed for redemption.

- (4) *Conditions to Redemption and Repurchase.* Any redemption pursuant to § 5(2) or § 5(3) and any repurchase is subject to the following conditions (the "**Conditions to Redemption and Repurchase**"):
  - (a) The Issuer has obtained the prior consent of the competent supervisory authority for the redemption or any repurchase in accordance with Article 78 CRR (or any successor provision). At the time of the issuance of the Notes, any prior consent pursuant to Article 78 CRR requires that either:
    - (i) before or at the same time as the redemption or repurchase, the Issuer replaces the Notes with own fund instruments of equal or higher quality at terms that are sustainable for the income capacity of the Issuer; or
    - (ii) the Issuer has demonstrated to the satisfaction of the competent supervisory authority that the own funds and eligible liabilities of the Issuer would, following such redemption or repurchase,

exceed the requirements set out in CRR and Directive 2013/36/EU by a margin that the competent supervisory authority considers necessary; and

- (b) In respect of a redemption or repurchase prior to the fifth anniversary of the issue date of the Notes, if and to the extent then required under Article 78 (4) CRR (or any successor provision) or otherwise required under the Capital Regulations, one of the following conditions is met:
- (i) in the case of redemption for regulatory reasons pursuant to § 5(2), the competent supervisory authority considers such change to be sufficiently certain and the Issuer has demonstrated to the satisfaction of the competent supervisory authority that the change in the regulatory classification of the Notes was not reasonably foreseeable as at the date of issuance of the Notes; or
  - (ii) in the case of redemption for reasons of taxation pursuant to § 5(3), the Issuer has demonstrated to the satisfaction of the competent supervisory authority that the change in the applicable tax treatment of the Notes is material and was not reasonably foreseeable as at the date of issuance of the Notes; or
  - (iii) in the case of any repurchase prior to the fifth anniversary of the issue date of the Notes, the Issuer has, before or at the same time as such repurchase, replaced the Notes with own funds instruments of an equal or higher quality at terms that are sustainable for its income capacity and the competent supervisory authority has permitted that action on the basis of the determination that it would be beneficial from a prudential point of view and justified by exceptional circumstances.

Notwithstanding the above conditions, if, at the time of any redemption or repurchase, the prevailing applicable law or regulations permit the redemption or repurchase only after compliance with one or more alternative or additional pre-conditions to those set out above, the Issuer shall comply with such other and/or, as appropriate, additional pre-conditions, if any.

For the avoidance of doubt, any refusal of the competent supervisory authority of the Issuer to grant prior consent in accordance with the applicable law or regulations shall not constitute a default for any purpose.

Notice pursuant to § 5(2) and (3) shall be given in accordance with § 10. Such notice shall state the date fixed for redemption and the reason for the redemption.

"CRR" means Regulation (EU) No 575/2013, as amended or replaced from time to time, including by Regulation (EU) 2019/876; to the extent that any provisions of the CRR are amended or replaced, the reference to provisions of the CRR as used in the terms and conditions of the Notes shall refer to such amended provisions or successor provisions from time to time.

- (5) *Redemption Amount.* If the Issuer redeems the Notes pursuant to § 5(1), § 5(2) or § 5(3), the "**Redemption Amount**" of each Note shall be its Specified Denomination.
- (6) *No Call Right of the Noteholders.* The Noteholders shall have no right to terminate or otherwise accelerate the redemption of the Notes.

**§ 6**  
**Registrar**

- (1) *Appointment; Specified Office.* The Register shall be held by the Issuer.

The Issuer reserves the right at any time to change its specified office to some other specified office in the same country.

- (2) *Appointment.* The Issuer reserves the right at any time to appoint a registrar, which shall hold and maintain the Register on behalf of the Issuer (the "**Registrar**"), in which case all references to the specified office of the Issuer provided herein shall be replaced by a reference to the specified office of the Registrar, as agreed between the Issuer and the Registrar. Any variation, termination, appointment or change shall only take effect (other than in the case of insolvency, when it shall be of immediate effect) after not less than 30 nor more than 45 days' prior notice thereof shall have been given to the Noteholders in accordance with § 10.

In case of an appointment of a Registrar, the Issuer will also maintain a register at its registered office. In case of any inconsistency between the register held by a Registrar and the register held at the registered office of the Issuer, the register at the registered office of the Issuer will prevail.

- (3) *Agent of the Issuer.* The Registrar acts solely as agent of the Issuer and does not assume any obligations towards or relationship of agency or trust with any Noteholder.

**§ 7**  
**Taxation**

The Issuer shall make all payments of principal and interest without any deduction or withholding for or on account of any present or future tax, duty, assessment or governmental charge of whatsoever nature imposed, levied, collected, withheld or assessed by or on behalf of Germany or the Grand Duchy of Luxembourg or any political subdivision or authority thereof or therein having the power to tax the Issuer, unless such withholding or deduction is required by law. In that event, the Issuer shall pay such additional amounts in respect of the payment of any interest in respect of the Notes (but not in respect of the payment of any principal in respect of the Notes) ("**Additional Amounts**") as will result (after such withholding or deduction) in receipt by the Noteholders of the sums that would have been receivable (in the absence of such withholding or deduction) by them in respect of the Notes.

**§ 8**  
**Prescription**

The obligations of the Issuer to pay principal and interest in respect of a Note shall be prescribed (i) in respect of principal upon the expiry of ten years following the due date for the payment of principal and (ii) in respect of interest upon the expiry of five years following the due date for the relevant payment of interest.

**§ 9**  
**Further Issues, Purchases and Cancellation**

- (1) *Further Issues.* The Issuer may from time to time, without the consent of the Noteholders, issue further Notes having the same terms and conditions as the Notes in all respects (or in all respects except for the issue date, interest commencement date and/or issue price) so as to form a single series with the Notes.
- (2) *Purchases.* Only if the Conditions to Redemption and Repurchase are met, the Issuer may purchase Notes.

**§ 10**  
**Notices**

Notices to the Noteholder may be given, and are valid if given, by post or fax at the address or fax number of the Noteholder appearing in the Register. If sent by post, notices will be deemed to have been received on the third Business Day after the mailing. If sent by fax, notices will be deemed to have been given upon receipt of a confirmation of the transmission.

**§ 11**  
**Tier 2 Instruments**

The Notes, on the date of issuance, constitute Tier 2 instruments of the Issuer pursuant to Article 63 CRR.

**§ 12**  
**Applicable Law, Place of Jurisdiction and Point of Non Viability**

- (1) *Applicable Law.* The Notes, as to form and content, and all rights and obligations of the Noteholders and the Issuer shall be governed by Luxembourg law.
- (2) *Submission to Jurisdiction.* The courts of Luxembourg-City, Grand Duchy of Luxembourg, shall have non-exclusive jurisdiction for any action or other legal proceedings ("**Proceedings**") arising out of or in connection with the Notes.
- (3) *Point of Non Viability.* Notwithstanding and to the exclusion of any other term of the Notes or any other agreements, arrangements, or understanding between the Issuer and any Noteholder, by its acquisition of the Notes, each Noteholder acknowledges and accepts that any amount due arising under the Notes may be subject to the exercise of any Write-down or Conversion by the Regulator in the event the Issuer or the Group is deemed to be at the point of non-viability (meaning either that the conditions for a resolution are met or that the Regulator or the relevant resolution authority deems that the Issuer or the Group is not viable without writing-down or converting the Notes), and acknowledges, accepts, consents to and agrees to be bound by:
  - (a) the effect of the exercise of any Write-down or Conversion by the Regulator, which exercise may include and result in any of the following, or some combination thereof:
    - (i) the reduction or cancellation of all, or a portion, of the amounts due;
    - (ii) the conversion of all, or a portion, of the amounts due on the Notes into shares, other securities or other obligations of the Issuer or another person (and the issue to or conferral on the holder of such shares, securities or obligations), including by means of an amendment, modification or variation of the terms of the Notes;
    - (iii) the cancellation of the Notes; and
    - (iv) the amendment or alteration of the provisions of the Notes by which the Notes have no maturity or the amendment of the amount of interest payable on the Notes, or the date on which the interest becomes payable, including by suspending payment for a temporary period; and
  - (b) the variation of the terms of the Notes, as deemed necessary by the Regulator, to give effect to the exercise of any Write-down or Conversion by the Regulator.

**"Conversion"** means the conversion power referred to in Article 59(1) of the BRRD and Article 21(1) of the SRMR.

**"Group"** means the Issuer together with each entity within the prudential consolidation (as that term or its successor is used in the Capital Regulations) of the Issuer pursuant to the Capital Regulations.

**"SRMR"** means Regulation 2014/806/EU of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation 2010/1093/EU.

**"Write-down"** means the write-down power referred to in Article 59(1) of the BRRD and Article 21(1) SRMR.

### **§ 13 Language**

These terms and conditions of the Notes are written in the English language.

### **§ 14 Replacement of the certificate representing this Note**

If the certificate representing this Note is lost, stolen, mutilated, defaced or destroyed, it may be replaced at the specified office of the Issuer upon payment by the applicant of such costs and expenses as may be incurred in connection therewith and on such terms as to evidence and indemnity as the Issuer may reasonably require. A mutilated or defaced certificate must be surrendered before a replacement certificate will be issued.



**Annex 2  
Form of Assignment**

**[•]  
USD Denominated Subordinated Tier 2 Notes of 2020**

**Form of Assignment**

This assignment agreement (the "**Assignment Agreement**") is dated [•] and entered into  
BETWEEN

.....  
(the "**Noteholder**")

and

.....  
(the "**Transferee**").

The Noteholder and the Transferee are hereinafter also referred to as the "Parties" and each of them as a "Party".

**§ 1 Definitions**

Capitalised terms will have the meaning as defined in the Certificate of the Notes.

**§ 2 Assignment**

- (a) The Noteholder hereby assigns (*cession*) to the Transferee [all] [part of] its rights and claims under the Notes [in a principal amount of USD [•]], including the relevant claims for payment of principal and any other amount under the Notes and all other rights by contract and by operation of law (including in particular any termination right or other ancillary right) as against the Issuer (the "**Assigned Claims**").
- (b) The Transferee hereby accepts such assignment.
- (c) The aforementioned assignment shall become effective on [*insert scheduled transfer date.*]

**§ 3 Account of Transferee**

The details of the USD denominated cash account of the Transferee are as follows:

Bank: [•]  
Account Number: [•]  
Bank Sorting Code: [•]  
Account Name: [•]  
Reference: [•]

#### **§ 4 Notification to the Issuer, Miscellaneous**

- (a) The Noteholder and the Transferee hereby notify the Issuer of the Assignment and instruct the Issuer to proceed with the changes to the Register on the Transfer Date.
- (b) Amendments to this Assignment Agreement (including this Section 4(b)) require the prior written consent of all Parties hereto.
- (c) Remedies and Waivers
  - (i) A Party's failure to exercise, or any delay in exercising of, a right or remedy shall not operate as a waiver thereof. A partial exercise of any right or remedy shall not prevent any further or other exercise thereof or the exercise of any other right or remedy.
  - (ii) Except as otherwise provided herein, the rights and remedies provided in this Assignment Agreement are cumulative to, and not exclusive of, any rights or remedies provided by law
- (c) Partial Invalidity

If any provision of this Assignment Agreement is declared by any judicial or other competent authority to be void or otherwise unenforceable, that provision shall be severed from this Assignment Agreement and the remaining provisions of this Assignment Agreement shall remain in full force and effect. The Assignment Agreement shall, however, thereafter be amended by the Parties in such reasonable manner so as to achieve, without illegality, the intention of the Parties with respect to that severed provision.

#### **§ 5 Language**

This Assignment Agreement is written in the English language

#### **§ 6 Governing Law; Jurisdiction**

- (a) Governing Law

This Assignment Agreement is governed by the laws of the Grand Duchy of Luxembourg. Any non-contractual rights and obligations arising out of or in connection with this Assignment Agreement shall also be governed by the laws of the Grand Duchy of Luxembourg.

- (b) Jurisdiction

The competent courts in Luxembourg-City, Grand Duchy of Luxembourg, shall, to the extent legally permissible, have exclusive jurisdiction over any action or other legal proceedings arising out of or in connection with this Assignment Agreement.

## SIGNATURES TO THE ASSIGNMENT AGREEMENT

[•]

(as *Noteholder*)

Address: [•]

Attention: [•]

Fax: [•]

Telephone: [•]

E-mail: [•]

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Name:

Position/Title:

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Name:

Position/Title:

[•]

(as *Transferee*)

Address: [•]

Attention: [•]

Fax: [•]

Telephone: [•]

E-mail: [•]

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Name:

Position/Title:

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Name:

Position/Title: