

# Master Services Agreement

## 1 Relationship Documents

- 1.1 The Relationship Documents govern the provision of the Services. In the event of any conflict among the Relationship Documents, the following order of priority shall apply:
- the applicable Country Conditions;
  - the applicable Supporting Documents;
  - any relevant Appendix;
  - any relevant Annex;
  - any relevant Services Schedule; and
  - the Terms.
- 1.2 In the event of any conflict between any of the terms of the Relationship Documents that rank equal in order of priority in accordance with Clause 1.1, the term which applies to a specific Service shall prevail in relation to the provision of that Service by the Bank to the Customer.
- 1.3 The Relationship Documents contain the whole agreement between the Parties relating to the transactions contemplated by the Relationship Documents and replace all previous agreements between the Parties relating to the Services and each Party confirms that in agreeing the terms of the Relationship Documents it has not relied on any express or implied warranties, representations, collateral contracts or other assistance made by or on behalf of the other Party unless set out in the Relationship Documents. Each Party waives all rights and remedies which, but for this Clause 1.3, might otherwise be available to it in respect of any such express or implied representation, warranty, collateral contract or other assurance. Nothing in this Clause 1.3 limits or excludes any liability for fraud.
- 1.4 In the Relationship Documents, references to the singular include the plural and vice versa. Clause headings are included for convenience only and do not affect interpretation. Unless otherwise defined in a Relationship Document, any capitalised term in the Relationship Documents shall have the meaning given to it in the Terms. Each reference to a document or agreement (whether online or in hard copy) is a reference to that document or agreement as amended or restated from time to time.

## 2 Authority

- 2.1 The Customer or any party duly authorised by the Customer to act on its behalf shall provide to the Bank documents identifying the Authorised Persons. The Bank is authorised to rely upon any such documents provided by any means, including electronically, and accepted by the Bank.
- 2.2 Subject to any written restriction received and accepted by the Bank, the Customer confirms that each Authorised Person shall be authorised to:
- perform all lawful acts on behalf of the Customer in connection with any Account or Service, including, but not limited to, opening, closing and operating Accounts, signing any agreements (including facility agreements), declarations or other documents relating to any Accounts or Services and execution of any guarantees, indemnities or other undertakings to the Bank; and
  - delegate their authority to perform such acts to any person indicated in any document provided to the Bank by any means, including electronically, and accepted by the Bank.
- 2.3 The Customer confirms that each Authorised Person is authorised to act as described in Clauses 2.2(a) and 2.2(b) until the Bank has received written notice, in form and substance acceptable to the Bank, of any change to an Authorised Person, or to a person to whom authority has been delegated in accordance with this Clause, and the Bank has had a reasonable opportunity to act on it.

## 3 Communications, Instructions and Security Procedures

- 3.1 The Parties will comply with the Security Procedures. The Customer shall follow the Security Procedures upon accessing communication channels provided by the Bank and issuing Instructions or Communications via such channels. The Bank shall follow the Security Procedures upon receipt of such Instructions or Communications to establish their validity.
- 3.2 The Bank is not obliged to do anything outside of the Security Procedures to establish and rely upon the authority or identity of any person sending an Instruction or Communication on behalf of the Customer. The Bank is not responsible for errors or omissions made by the Customer or the duplication of any Instruction by the Customer and may act on any Instruction by reference to a bank identification or account number only, even if a bank or account name is provided. An authenticated SWIFT message issued to the Bank in the name of the Customer (or of an entity authorised by the Customer to issue SWIFT messages on its behalf) may be relied on by the Bank as having been issued by an Authorised Person.
- 3.3 If the Bank doubts the legality, origination or authorisation of an Instruction, it shall take such steps as it considers appropriate to investigate the matter. If such investigation results or, in the opinion of the Bank, is likely to result in the Instruction being declined or executed outside the applicable value date or other agreed time period, the Bank will notify the Customer as soon as practicable, provided it is not prohibited from doing so by any law, regulation, order or Authority.
- 3.4 The Bank will use its reasonable efforts to comply with any request made by the Customer to vary or cancel an Instruction and, subject to the Bank using such efforts, the Customer shall be responsible for any Losses related to such an Instruction.
- 3.5 The Customer is responsible for the accuracy, completeness and correct transmission of its Instructions and for ensuring they will achieve the Customer's intended purpose, including when the Customer requests the Bank to forward information to a third party. The Bank will not be liable to the Customer where the Bank chooses to comply with such a request and the Customer must take reasonable steps to ensure that its request will not give rise to any claim against the Bank. If the Bank accepts a manually initiated Instruction (being an Instruction which is not submitted through electronic communication channels provided by the Bank, but, for example, by telephone, fax or physical delivery), then, provided the Bank acts in accordance with the applicable Security Procedures, the Customer is responsible for any Losses related thereto.
- 3.6 Without prejudice and subject to the foregoing provisions of Clause 3, if the Bank acts on an Instruction which the Customer claims was unauthorised, the Bank shall only be responsible for acting on such Instruction if:
- the Bank cannot demonstrate that it acted in accordance with the Security Procedures, or
  - the Bank demonstrates that it acted in accordance with the Security Procedures, but the Customer can demonstrate that the unauthorised Instruction was not caused by a person (i) entrusted at any time to act for the Customer with respect to Instructions or the applicable Security Procedures or (ii) who obtained access to the Customer's premises, equipment, systems or transmitting facilities or (iii) who obtained from a source controlled by the Customer, information (such as keys and passwords) which facilitated breach of the Security Procedures.

Unless one of the conditions set out in paragraphs (a) and (b) of this Clause is satisfied, the Bank shall be entitled to enforce or retain payment from the Customer with respect to such an Instruction.

3.7 In some circumstances, Communications (including electronic mail, voicemail, SMS, telephone calls and website usage) as well as paper correspondence received by either Party such as envelopes or packages may be monitored, recorded or inspected (as appropriate) using monitoring devices or other technical or physical means. Such monitoring may take place where necessary insofar as required or allowed by and for purposes permitted by any applicable law, regulation, order or Authority from time to time, including, without limitation, to record evidence of business transactions and so as to ensure compliance with the Parties' respective policies and procedures. Subject to any applicable laws and regulations, all telephone conversations may be recorded by or for either Party without warning. Such records or recordings are and shall remain the sole property of the Party that made them and either Party may produce them as evidence in any proceedings brought in connection with the Relationship Documents.

3.8 Communication channels provided by the Bank may be suspended by the Bank for maintenance or for any other reason where it reasonably considers it necessary to do so. The Bank will provide the Customer with reasonable prior notice of the suspension where it is practical to do so.

## 4 Credits and Debits

4.1 If an Account is credited in error or in anticipation of receiving funds, where those funds are not received or the underlying funds transfer is reversed, the Bank may reverse all or part of such credit including any interest accrued thereon, make the appropriate entry to the Account, and, except in case of the Bank's error, debit or demand immediate repayment of any Losses incurred by the Bank in connection therewith, as appropriate.

4.2 The Bank is not obliged to carry out an Instruction which would result in a debit to an Account where this causes the Account to be overdrawn without the Bank's approval or to exceed any agreed or advised overdraft facility, or where the Account is subject to a right of a third party that has been enforced, such as a freezing order in favour of a creditor.

4.3 If the Customer gives Instructions which would result in multiple debits on an Account which would in aggregate cause the Account to be overdrawn or an agreed or advised facility to be exceeded, the Bank may decide the order in which to make those debits and whether to make any of them in whole or in part.

4.4 If an Account is overdrawn without the Bank's approval or if an overdraft limit is exceeded due to (i) any debit or (ii) such limit being withdrawn or varied by the Bank in accordance with applicable terms, the Customer shall immediately upon demand, or otherwise becoming aware thereof, transfer sufficient cleared funds to bring such Account into credit or within the overdraft limit. For the avoidance of doubt, the Bank is not hereby offering the Customer, or agreeing an increase to, any overdraft facility and, unless otherwise provided in an agreement executed by the Bank and the Customer, any extension of credit can be cancelled by the Bank at any time.

## 5 Statements

The Customer shall notify the Bank, as soon as practicable and in any case within 30 days of delivery of a statement of account or report of transactions, of any errors (including any errors arising as a result of fraudulent or unauthorised transactions) in that statement or report. If notice is received by the Bank after this time period, the Bank shall not be responsible for any Loss resulting from the delay by the Customer in providing such notice.

## 6 Interest

Any interest will accrue or, if applicable, be charged on the applicable credit balance of an Account on the days and at the applicable rate for those days as set out in any relevant guide or as the Bank may agree with the Customer from time to time. Unless agreed otherwise by the Parties, the Bank may change such rates and the Bank shall notify the Customer or otherwise make available such changes. The Customer acknowledges that, as applicable:

- (a) interest payments made by the Bank may be made net of taxes and subject to deduction or withholding; and
- (b) the Bank may debit from an Account any interest to be charged to such Account as and when due and such payment will be free of any deduction or withholding of tax or other charges so the Bank receives the full amount of such interest.

## 7 Security Interest

The Customer shall not grant any security interest over or transfer or assign its rights in connection with any Account without prior written consent from the Bank, such consent not to be unreasonably withheld or delayed.

## 8 Set-Off

The Bank may set off any of the Customer's obligations owed to the Bank that are due and payable against any obligations of the Bank owed to the Customer.

## 9 Representations, Warranties and Undertakings

9.1 Each Party represents and warrants, solely as to itself, that:

- (a) it is duly incorporated or, if the Party is not a body corporate, is otherwise validly constituted and existing under the laws of the jurisdiction of its incorporation or constitution (as the case may be);
- (b) it has all necessary corporate or equivalent power and legal capacity to execute (where applicable) and deliver, and to perform its obligations under, the Relationship Documents; and
- (c) the execution and performance of the Relationship Documents by it will not violate its constitutional documents, organisational documents or bylaws, the terms of any material contract or other instrument (including, for the avoidance of doubt, any trust instrument) to which it is a party or by which it is bound or any duty, obligation, limitation or prohibition imposed on it by any law or regulation applicable to it; and
- (d) the terms of the Relationship Documents constitute legal, valid and binding obligations, enforceable against it.

9.2 Each Party furthermore warrants and undertakes to take all reasonable steps to ensure that its warranties and representations in Clause 9.1 shall remain valid and effective in all respects until such time as all Relationship Documents are terminated or expire in accordance with their terms.

9.3 A breach of Clause 9.1 or 9.2 shall constitute a material breach of the Relationship Documents. If a Party becomes aware that it is in breach of Clause 9.1 or 9.2 it shall notify the other Party as soon as reasonably practicable.

- 9.4 The Customer undertakes to:
- (a) comply with all reasonable requests of the Bank necessary to provide the Customer with the Services, including but not limited to, promptly providing to the Bank all documents and other information reasonably requested by it from time to time in relation to any Account or Service; the Bank may rely on the documents and information provided until the Customer notifies the Bank in writing of any changes and the Bank has had a reasonable opportunity to act thereon; and
  - (b) notify the Bank as soon as possible if it becomes aware of any theft, fraud, illegal activity, loss, damage or other misuse in relation to the Services or in relation to any associated documentation, Instruction, Communication or payment instrument.
- 9.5 Where multiple Customer Parties acting pursuant to an arrangement without separate legal capacity (such as participants in an unincorporated joint venture) are identified on an Application Form as joint holders of an Account and/or joint recipients of the Services, each Customer Party undertakes and agrees that:
- (a) it shall be jointly and severally liable with each Customer Party for any obligation owed by the Customer to the Bank under the Relationship Documents;
  - (b) any demand, notice, agreement, Instruction or Communication given by the Bank to one or more Customer Parties, or received by the Bank from one or more Customer Parties, in connection with the Relationship Documents will be deemed to be a demand, notice, agreement, Instruction or Communication (as the case may be) given to or received from all Customer Parties;
  - (c) if the Bank becomes aware of or reasonably suspects a dispute between any of the Customer Parties, the Bank may decline to act on any Instruction until all Customer Parties have confirmed the Bank's authority to act on it in form and substance satisfactory to the Bank; and
  - (d) to the extent any Customer Party ceases to exist for any reason, the Relationship Documents shall continue to bind the remaining Customer Parties.
- 9.6 The Bank undertakes to maintain a business continuity plan setting out contingency arrangements for the continuing performance of the Bank's services, including the Services, in the event of a Force Majeure Event. The Bank shall test and review such business continuity plan at least once in each calendar year.
- 10 Confidentiality and Data Protection**
- 10.1 The Parties agree that Confidential Information shall be kept confidential, except as disclosed in accordance with the Confidentiality and Regulatory Annex.
- 10.2 The Parties will process and transfer Customer Information in accordance with the Confidentiality and Regulatory Annex.
- 11 Performance and Liability**
- 11.1 The Bank will perform its obligations under the Relationship Documents using such level of skill and care as would be considered commercially reasonable by reference to the standards and practices of the banking industry.
- 11.2 Neither Party shall be liable for any:
- (a) consequential, incidental or indirect Loss including, without limitation, fines, penalties or punitive damages; or
  - (b) any direct or indirect loss of (i) profit (actual or anticipated), (ii) goodwill or (iii) business opportunity,
- whether or not foreseeable, even if one Party advised the other of the possibility of such loss or damage.
- 11.3 Any obligation of the Bank with respect to an Account shall be enforceable only at the Bank.
- 11.4 The Bank is only required to perform its obligations in the currency in which those obligations are denominated. Unless otherwise agreed in writing, the Bank, may make any currency conversion in connection with the exercise of its rights and obligations pursuant to the Relationship Documents, using exchange rates that are reasonable in the relevant market at the time and for the size and type of foreign exchange transaction.
- 11.5 The Parties shall not be liable for any Loss caused by a Force Majeure Event. If either Party is prevented or delayed in the performance of any of its obligations under the Relationship Documents by a Force Majeure Event, such Party shall as soon as reasonably practicable notify the other of the existence of the Force Majeure Event. The Bank's duty to act upon any Instruction or Communication, or perform any obligation, shall be suspended to the extent that and for as long as the Bank is prevented or restricted from doing so by a Force Majeure Event.
- 11.6 In providing the Services, the Bank may use certain Infrastructure Providers and the Services are therefore subject to the rules and regulations of those Infrastructure Providers as well as the guidelines and procedures of relevant regulatory or industry bodies. The Bank shall not be liable for any Loss suffered as a result of the acts or omissions of an Infrastructure Provider, but will provide commercially reasonable assistance to the Customer in the recovery of any such Loss.
- 11.7 The Customer shall indemnify the Bank in full against any Loss arising from or in connection with a third party making a claim or demand against the Bank as a result of the Bank processing an Instruction or otherwise performing its obligations hereunder in accordance with the Relationship Documents.
- 11.8 The Bank is not obliged to perform any of the Services or any other obligation under the Relationship Documents, including without limitation any obligation to give notice or provide information to the Customer, if to do so would result in the Bank being in breach of any Law.
- 12 Fees and charges**
- 12.1 The Customer shall pay to the Bank fees, costs, charges, interest and expenses in connection with the Services. These will be the Bank's standard fees and charges unless the Bank separately agrees different fees and charges with the Customer. Unless otherwise stated, all amounts payable pursuant to this Clause are exclusive of value added, sales, use, goods and services, business, stamp or any similar taxes or duties that may be applicable. All such taxes or duties will be applied in accordance with applicable legislation and the Bank will issue valid invoices or other documents as appropriate. The Bank may change the fees and charges either with reasonable notice to the Customer or immediately with the Customer's agreement. Payment of all amounts due pursuant to this Clause will be clear and free of any deduction or withholding for or on account of tax, set-off, counterclaim or other charges so the Bank receives such amounts in full. If a deduction or withholding for or on account of tax is required to be made by law, the payment shall be

increased to an amount which after making any deduction or withholding leaves an amount equal to the payment which would have been made if no deduction had been required. The Customer shall make any payment required in connection with such tax deduction or withholding within the time allowed by law.

**12.2** The Bank may debit fees, costs, charges, interest and expenses owed by the Customer to the Bank from any account advised by the Customer for such purposes. However, in the event of the Customer's breach of the Relationship Documents, the Customer's insolvency (which includes, where the Customer acts as a trustee, the insolvency of the trust and which may also include the Customer's bankruptcy in certain jurisdictions), or where acting in accordance with the Customer's advice is not possible, the Bank may debit fees, costs, charges, interest and expenses owed by the Customer to the Bank from any account the Customer has with the Bank. If the Customer fails to pay any amount due under the Relationship Documents, the Customer shall, to the extent permitted under applicable law, pay to the Bank interest and charges on the overdue amount at the rate the Bank determines, unless otherwise agreed, acting reasonably and in good faith.

## **13 Amendments and Assignment**

**13.1** If at any time the Bank makes amendments to terms governing the provision of services which include any of the Services to its customers generally or to customers belonging to the same market segment as the Customer, the Bank may, by written notice to the Customer, make the same (or substantially the same) amendments to the Relationship Documents. Such amendments will become effective on the expiry of no less than 45 days after delivery of such notice.

**13.2** Notwithstanding the provisions of Clause 13.1, the Bank may, by written notice to the Customer, make amendments to the Relationship Documents at any time in order to comply with any law or regulation, which will become effective in accordance with the terms of such notice. The Bank will use reasonable efforts to give the Customer as much advance notice as possible in such circumstances.

**13.3** Neither Party may assign its rights or transfer its obligations under these Relationship Documents without the written consent of the other, such consent not to be unreasonably withheld or delayed. However, the Bank may, without the Customer's consent, assign the Bank's rights and/or transfer the Bank's obligations to:

- (a) to the Bank's successor following a merger, consolidation or disposal of all or substantially all of the Bank's shares, capital, assets or the business to which the Relationship Documents relate,

provided that such assignment does not adversely affect the provision of the Services to the Customer.

## **14 Termination**

**14.1** Either Party can terminate any or all Relationship Documents and/or, in the case of the Bank, withdraw any or all of the Services or close any Account by giving 30 days prior written notice to the other. Any liabilities owing to the Bank thereunder will become immediately due and payable on termination of the terms of the relevant Relationship Document.

**14.2** Subject to any applicable legal or regulatory restriction, either Party can terminate any or all Relationship Documents and/or, in the case of the Bank, withdraw any or all of the Services or close any Account immediately if:

- (a) the other Party commits a material breach of the Relationship Documents which is incapable of remedy or not remedied within a reasonable time period;

- (b) any step is taken by or in respect of the other Party for a moratorium, composition, compromise or arrangement with creditors, administration, bankruptcy, liquidation, dissolution (other than for the purposes of amalgamation or reconstruction), receivership, distress or execution, debt relief orders, interim orders or the other Party becomes insolvent (including, where a Party acts as a trustee, the insolvency of the trust and which may also include the Customer's bankruptcy in certain jurisdictions) or is deemed unable to pay its debts as they fall due, or anything analogous to the foregoing occurs in any applicable jurisdiction;

- (c) it is or may become unlawful for that Party to perform its obligations under any of the Relationship Documents or if to do so would result in that Party or, in the case of the Bank, being in breach of any regulation or requirement or request of any governmental or other authority; or

- (d) the Customer has provided false or misleading information, or failed to provide Customer Information reasonably requested by the Bank, in connection with any know-your-customer or financial due diligence performed by the Bank or if otherwise required, in the Bank's reasonable opinion, in connection with any Compliance Activity.

**14.3** Termination of the Terms by either Party shall have the immediate effect of terminating each of the Relationship Documents.

**14.4** Termination shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or continuation in force of any other Clauses and provisions of the Relationship Documents which are expressly or by implication intended to come into force or continue in force on or after termination or expiry of the Relationship Documents including, without limitation Clauses 1, 3.5, 9.5, 10, 11, 13.3, 14.1, 14.4, 15-21 inclusive, and the Confidentiality and Regulatory Annex.

## **15 Waiver**

In the event that any Party fails or delays to exercise a right under the Relationship Documents, that Party may still exercise that right later. Any waiver of any right shall be in writing and limited to the specific circumstances.

## **16 Severability**

Each provision of the Relationship Documents is severable and if any provision is or becomes illegal, invalid or unenforceable in any jurisdiction or in relation to any particular Service, then that provision is severed only in that particular jurisdiction or in relation to that particular Service. All other provisions shall continue to have effect.

## **17 Third Party Rights**

Any law, statute or regulation which may bestow upon a person who is not a Party the right to enforce any of the terms of the Relationship Documents shall be disapplied to the fullest extent permitted.

## 18 Notices

Notices in writing from the Bank shall be effective if delivered to an address specified by the Customer on an Application Form or to such other address as the Customer may specify in writing from time to time as effective for delivery of notices pursuant to the Relationship Documents, including an address for notices to be sent electronically. Notices in writing from the Customer shall be effective if delivered to the Bank's address specified on the most recent statement for the relevant Account or to such other address as the Bank may specify in writing from time to time as effective for delivery of notices pursuant to the Relationship Documents, including an address for notices to be sent electronically.

## 19 Governing Law and Jurisdiction

19.1 The Relationship Documents and any non-contractual obligations arising out of or in connection with them shall be governed by and construed in accordance with the law of the jurisdiction in which the relevant Account is maintained or the relevant Service is provided unless specified otherwise in any applicable Relationship Document.

19.2 Unless otherwise mutually agreed by the Parties, they submit to the non-exclusive jurisdiction of the courts of the jurisdiction whose governing law applies.

## 20 Counterparts

The Relationship Documents may be entered into by the execution of any number of copies of the relevant Application Form, all of which taken together shall form one document.

## 21 Definitions

- **Account** means any account which is to be opened or which has been opened by the Customer with the Bank under the Relationship Documents.
- **Annex** means an annex to a Services Schedule or the Terms which sets out additional terms in relation to the particular Services being provided.
- **Appendix** means an appendix to an Annex which sets out additional terms in relation to the particular Services being provided.
- **Application Form** means any form that must be completed to apply for the provision of a Service including without limitation the Relationship Acceptance Form and the Service Amendment Form.
- **Authorised Person** means any person identified to the Bank and authorised to act on behalf of the Customer in accordance with Clause 2.
- **Authority** means any judicial, administrative or regulatory body, any government, or public or government agency, instrumentality or authority, any Tax Authority, securities or futures exchange, court, central bank or law enforcement body, or any agents thereof, having jurisdiction over the relevant Party or a member of its group.
- **Bank** means a Party to the Relationship Documents and that provides the Customer with Services as specified in an Application Form.
- **Clause**, whenever used in a Relationship Document and not defined or identified otherwise therein, means a clause of that Relationship Document.
- **Communication** means communication (in any form) between Customer and Bank, but which shall not include Instructions.
- **Compliance Activity** means any activity performed by the Bank considered appropriate, acting reasonably, to meet Compliance Obligations relating to or in connection with the detection, investigation and prevention of Financial Crime, international and national guidance
- **Compliance Obligations** means obligations to comply with:
  - (a) Laws, or international guidance and the Bank's mandatory policies or procedures,
  - (b) any demand from Authorities or reporting, regulatory trade reporting, disclosure or other obligations under Laws or
  - (c) any Laws requiring the Bank to verify the identity of its Customers.
- **Confidential Information** means any information, about or relating to either Party, received or accessed by the other Party in the course of the relationship established by them pursuant to the Relationship Documents, including without limitation, the business, operations, Personal Data or customers of the disclosing Party and the provisions of the Relationship Documents.
- **Confidentiality and Regulatory Annex** means the Annex to the Terms which sets out each Party's obligations in relation to Confidential Information, Customer Information and tax compliance.
- **Connected Person** means a person or entity whose information (including Personal Data or Tax Information) is provided by, or on behalf of, the Customer to the Bank or otherwise received by the Bank in connection with the provision of the Services and any owner, controlling person, substantial owner or beneficial owner of the Customer in relation to whom the Bank considers, acting reasonably, Tax Information is required to be provided to any Tax Authority to comply with the Bank's Compliance Obligations.
- **Country Conditions** means, for each relevant jurisdiction, the specific terms which supplement and/or amend any Relationship Document.
- **Customer** means the Customer Party and, where there is more than one Customer Party, refers to the Customer Parties jointly and severally.
- **Customer Information** means Personal Data, Confidential Information, and/or Tax Information of or in relation to either the Customer or a Connected Person.
- **Customer Party** means an entity or person receiving the Services identified as a customer on an Application Form.
- **Data Protection Legislation** means all data protection, privacy and other laws to the same or similar purpose in all relevant jurisdictions applicable to a Party.
- **Financial Crime** means money laundering, terrorist financing, bribery, corruption, tax evasion, fraud, evasion of economic or trade sanctions, and/or violations, or attempts to circumvent or violate any laws or regulations relating to these matters.
- **Force Majeure Event** means any event beyond the reasonable control of a Party affecting that Party's ability to comply with the Relationship Documents, such as:
  - (a) any natural event such as flood, storm or earthquake,
  - (b) war, civil disturbance or act of terrorism,
  - (c) industrial action,
  - (d) Act of God,

- (e) action of a government or governmental agency,
- (f) change of law or regulation (or change in the interpretation of law or regulation),
- (g) power or equipment failure or interruption, or
- (h) interruption, failure or delay in receiving or acting on any Communication or Instruction caused by an Infrastructure Provider,

PROVIDED ALWAYS that any non-compliance with the Relationship Documents resulting from such an event could not be avoided by the exercise of commercially reasonable skill and care by the affected Party which, in the case of the Bank, may include invocation of the business continuity plan referred to in Clause 9.6.

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- **Infrastructure Provider** means any third party providing shared market infrastructure necessary for a Party to perform its obligations under the Relationship Documents including any communications, clearing, settlement or payment system, or intermediary or correspondent bank.
- **Instruction** means any communication which is received by the Bank in relation to a Service which:
  - (a) contains the necessary information for the Bank to carry out the payment or other act on the Customer's behalf; and
  - (b) has or, in the reasonable opinion of the Bank, appears to have been provided by an Authorised Person.
- **Law** means any applicable local or foreign statute, law, regulation, ordinance, rule, judgment, decree, voluntary code, directive, sanctions regime, court order, agreement between the Bank and an Authority, or agreement or treaty between Authorities and applicable to the Bank.
- **Loss** means any loss, damages, liability, costs, claims, demands and expenses of any kind whether or not foreseeable.
- **Party** means the Customer or the Bank, and **Parties** means the Customer and the Bank.
- **Personal Data** means any data relating to an individual and allowing the identification of that individual, and such other data which is protected by local Data Protection Legislation.
- **Purposes** means the circumstances in connection with which Customer Information will be processed, transferred and disclosed by the Bank, as set out in Clause 2.2 of the Confidentiality and Regulatory Annex.
- **Relationship Acceptance Form** means the Application Form in which the Customer agrees to the provision of the Services by the Bank.
- **Relationship Documents** means, separately and together, as the case may be:
  - (a) the Terms,
  - (b) any Services Schedules,
  - (c) any Annexes,
  - (d) any Appendices,
  - (e) each of the applicable Country Conditions, and
  - (f) the applicable Supporting Documents,as amended or supplemented from time to time.

- **Security Procedures** means security measures or protocols governing the Customer's access to the communication channels made available to the Customer by the Bank from time to time and used to verify the origination of Instructions or Communications between them transmitted via such channels. A Security Procedure may include, but is not limited to, one or more of the following measures: encryption algorithms or other codes, user entitlements, identifying words and numbers, and similar security devices.
- **Service Amendment Form** means the Application Form in which the Customer agrees to the provision of any additional Services by the Bank at any time after the Relationship Acceptance Form has been executed.
- **Services** means the services provided by the Bank under the Relationship Documents and requested in an Application Form.
- **Services Schedule** means a schedule to the Terms or a separate agreement between the Parties that expressly incorporates the Terms and relates to a specific Service.
- **Supporting Documents** means any document, agreement or Application Form which the Bank requires the Customer to enter into in connection with the receipt or maintenance of any Services in a particular jurisdiction, other than Country Conditions, Appendices, Annexes, Service Schedules or the Terms.
- **Tax Authorities** means domestic or foreign tax, revenue, fiscal or monetary authorities.
- **Tax Information** means any documentation or information relating, directly or indirectly, to a Customer and any owner, controlling person, substantial owner or beneficial owner of the Customer, that the Bank considers, acting reasonably, is needed to comply with the Bank's obligations to any Tax Authority.
- **Terms** means this Master Services Agreement.

## 1 Disclosure of Confidential Information

1.1 Subject to Clauses 1, 2 and 6 of this Annex, the Parties agree that any Confidential Information shall be kept confidential. The Customer may disclose the Bank's Confidential Information as set out in Clause 1.2 of this Annex. The Bank may disclose the Customer's Confidential Information as set out in Clause 2 of this Annex.

1.2 The Customer may disclose the Bank's Confidential Information to:

- (a) service providers, sub- contractors, agents, and any Infrastructure Provider provided always that the Customer may only make such disclosure on a confidential basis, and in connection with receipt of the Services under the Relationship Documents;
- (b) Authorities, auditors, professional advisers or as otherwise required or reasonably necessary under law, regulation, order of a court, or binding request from an Authority; and
- (c) any other person with the Bank's written consent.

1.3 Restrictions on the disclosure of Confidential Information by either Party shall not apply to information that:

- (a) is in or enters into the public domain other than in breach of the Relationship Documents;
- (b) is lawfully obtained by the recipient party from a third party or is already known by the recipient party, in each case without notice or duty to maintain it as confidential; or
- (c) was independently developed by the recipient party without reference to the disclosing party's Confidential Information.

## 2 Collection and Use of Customer Information (including Confidential Information)

### 2.1 Collection

The Bank may collect, use and share Customer Information, which may be requested from a person acting on the Customer's behalf. Customer Information may also be collected by or on behalf of the Bank from other sources, and generated or combined with other information available to the Bank. Processing and Sharing

Customer Information will be processed, transferred and disclosed by the Bank in connection with the following Purposes:

- (a) the provision of services and as necessary for the Bank to approve, manage, administer or effect any transactions requested or authorised by the Customer;
- (b) meeting Compliance Obligations;
- (c) conducting Compliance Activity;
- (d) the collection of any amounts due and outstanding from the Customer;
- (e) conducting credit checks and obtaining or providing credit references;
- (f) to enforce or defend the Bank's rights;
- (g) for internal operational requirements of the Bank (including, without limitation, credit and risk management, system or product development and planning, insurance, audit and administrative purposes); and

(h) the maintenance of the Bank's overall relationship with the Customer.

By using the Services, the Customer agrees that the Bank may also, as necessary and appropriate for the Purposes, transfer and disclose any Customer Information to the following recipients globally (who may also process, transfer and disclose such Customer Information for the Purposes):

- (a) any sub-contractors, agents, service providers, or associates of the Bank (including their employees, directors and officers);
- (b) in response to any requests from any Authorities;
- (c) persons acting on behalf of the Customer, Infrastructure Providers, payment recipients, beneficiaries, account nominees, intermediary, correspondent and agent banks, clearing houses, clearing or settlement systems, market counterparties, upstream withholding agents, swap or trade repositories, stock exchanges, and companies in which the Customer has an interest in securities (where such securities are held by the Bank for the Customer);
- (d) any party to a transaction acquiring interest in or assuming risk in or in connection with the Services; and
- (e) other financial institutions, credit reference agencies or credit bureaus, for the purposes of obtaining or providing credit references;

wherever located, including in jurisdictions which do not have data protection laws that provide the same level of protection as the jurisdiction in which the Services are supplied.

### 2.2 Protection of Customer Information

Whether it is processed in a home jurisdiction or overseas, in accordance with Data Protection Legislation, Customer Information will be protected by a strict code of secrecy and security which the Bank, their staff and third parties are subject to. Customer Information will be treated with the same degree of care that the Bank exercises to protect its own Confidential Information of a similar nature.

2.3 Under relevant Data Protection Legislation, an individual has the right to request copies of certain categories of Personal Data which may be held and to request that any errors in such data are corrected.

## 3 Customer Obligations

3.1 The Customer confirms, warrants and has responsibility for ensuring that every person whose information (including Personal Data or Tax Information) they have provided to the Bank has (or will at the relevant time have) been notified of and agreed to the processing, disclosure and transfer of their information as set out in the Relationship Documents. The Customer shall advise such persons that they may have rights of access to, and correction of, their Personal Data.

3.2 The failure of a Customer to supply its, or its Connected Person's, Tax Information and accompanying statements, waivers and consents, as may be requested, may result in the Bank making its own decision with respect to the status of the Customer and/or its Connected Persons, including whether such Customer and/or its Connected Persons is reportable to a Tax Authority. Such failure may require the Bank or other persons to withhold amounts as may be legally required by any Tax Authority and paying such amounts to the appropriate Tax Authority.

## 4 Tax Compliance

The Customer acknowledges that it is solely responsible for understanding and complying with its tax obligations in all jurisdictions in which those obligations arise, and relating to the opening and use of accounts and/or services provided by the Bank. Except to the extent required otherwise by applicable law, the Customer shall be responsible for the deduction or withholding on account of any tax with respect to any amount paid, transferred or held by the Bank pursuant to any Service and shall be responsible for the payment and proper reporting of any such tax. The Customer confirms that, whenever required by applicable law and regulation, it has reported and will continue to report the assets deposited at the Bank as well as the income generated by those assets to the competent tax authorities.

## 5 Bearer Shares

- 5.1 Except to the extent that the Customer has either provided such confirmation to the Bank or received written confirmation from the Bank that it is on notice to the contrary, the Customer confirms on behalf of itself and any shareholder and affiliates (the “Associated Entities”) that none of its shares or shares of Associated Entities have been issued in, or are held in a form that assigns or entitles ownership to whomever has possession of the physical share certificates, warrants or equivalent instruments (“Bearer Shares”).
- 5.2 If the Customer or any of the Associated Entities issues, or converts existing shares to, Bearer Shares, the Customer undertakes to:
- (a) notify the Bank immediately and include the name of the beneficial owners of such Bearer Shares; and
  - (b) comply with the Bank’s requirements regarding issued Bearer Shares.

## 6 Compliance Activity

The provision of Services by the Bank may be affected by Compliance Activity and any impact on the performance of the Bank’s obligations due to Compliance Activity or any actions taken by the Bank as a result thereof shall not constitute a breach of the Bank’s agreements with the Customer.