

# Terms and Conditions of Business for

SMBC Bank International plc

and

Sumitomo Mitsui Banking Corporation, London  
Branch

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# Notice to Customers for SMBC UK

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This Notice to Customers is given to each person (a “**Customer**”) to whom SMBC Bank International plc (“**SMBC BI**”) and/or Sumitomo Mitsui Banking Corporation, London Branch (“**SMBC London Branch**”) (together, “**SMBC UK**”) provides any product or service and/or with whom SMBC UK enters into any transaction. Appended to (and listed following) this Notice to Customers are the documents which set out the terms for SMBC UK’s services. You will be notified which of SMBC BI or SMBC London Branch is providing you with any given service. Some services, for example Cash Management Services, have separate and additional on-boarding requirements and so SMBC UK may ask for further input from a Customer before a Customer can use these services.

**In the event of any conflict between a provision of this Notice to Customers and an express term of any other agreement between SMBC UK and the Customer, the relevant term in that other agreement shall prevail. Amendments to each appendix are governed by the terms stated within the relevant appendix.**

## GENERAL NOTICES

### 1. Regulations

In connection with the provision by SMBC UK of any product or service, SMBC UK may take or omit to take any action that it reasonably considers necessary or desirable to ensure compliance by any SMFG group company (meaning (i) Sumitomo Mitsui Financial Group, Inc., (ii) Sumitomo Mitsui Banking Corporation (“**SMBC**”) and (iii) any of their respective subsidiaries and affiliates (including SMBC UK)) with the rules and guidance in the FCA and PRA handbooks and any other relevant laws, rules, regulations, procedures, policies and guidance (together “**Regulations**”).

### 2. Prevention and Detection of Financial Crime

The Customer shall provide SMBC UK with any information it may reasonably request for any SMFG group company to undertake action considered necessary to comply with any Regulations relating to the prevention or detection of financial crime (including fraud, money laundering and/or sanctions). If such information relates to the Customer’s own due diligence on a third party, SMBC UK may decide to rely on such due diligence and requests that the Customer notifies SMBC UK if it does not consent to such reliance. SMBC UK further requests that the Customer notifies it of any failure to comply with any applicable anti-bribery and corruption laws and regulations (including, but not limited to, the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act of 1977) and of any conviction or charge relating to financial crime committed or in formal proceedings substantially alleged to be committed by it or its officers.

### 3. Information Sharing

SMBC UK may transmit to any SMFG group company any information regarding the Customer’s accounts, or any product or service provided to the Customer, or the Customer’s business, if SMBC UK reasonably thinks it necessary to do so and in accordance with applicable data protection laws in the United Kingdom and the European Economic Area (“**EEA**”).

SMBC UK may disclose any information regarding the Customer’s accounts, or any product or service provided to the Customer, or the Customer’s business, including confidential and price-sensitive information, to its professional advisers, auditors, service providers and to any person to whom information is required or requested to be disclosed by any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation, provided that any person receiving the information is either informed in writing by SMBC UK that the information is confidential and/or price-sensitive where applicable or the recipient is subject to professional obligations or otherwise bound to maintain the confidentiality of the information.

### 4. Data Protection

Any information relating to identifiable living individuals (“**Personal Data**”) SMBC UK holds will be used in accordance with applicable data protection laws in the United Kingdom and the EEA. Where the Customer is a legal entity or acts on behalf of other individuals, before providing SMBC UK with Personal Data, the Customer should ensure that those individuals concerned are provided with a copy of the Data Privacy Notice for Customers, Suppliers and Agents (“**Data Privacy Notice**”) (which is available at: <https://www.smbcgroup.com/emea/notices-reporting/privacy>) and are particularly made aware (i) of SMBC UK’s identity as a data controller, (ii) that SMBC UK may use Personal Data as set out in the

SMBC BI is authorised by the UK Prudential Regulation Authority and regulated by the UK Financial Conduct Authority and the UK Prudential Regulation Authority.

SMBC London Branch is authorised and regulated by the Financial Services Agency of Japan and, in the UK, is authorised by the UK Prudential Regulation Authority and subject to regulation by the UK Financial Conduct Authority and limited regulation by the Prudential Regulation Authority.

The UK Prudential Regulation Authority’s address is 20 Moorgate, London, EC2R 6DA. The UK Financial Conduct Authority’s registered office is 12 Endeavour Square, London, E20 1JN.

Data Privacy Notice and as part of its administration and operation of the Customer's account and that this may involve disclosure of the Personal Data and its transfer to countries outside the UK or EEA, subject to suitable safeguards for such transfers, and (iii) that the individual(s) concerned may have rights under applicable data protection laws. SMBC UK accepts Personal Data from the Customer on the express understanding that the Customer has advised the individual(s) concerned of points (i) – (iii) above and the Customer undertakes to provide a copy of the Data Privacy Notice to individuals.

## 5. Settlement/Administration of Accounts

SMBC UK shall be entitled to process credits and debits to any account in such order and at such time of day as it shall determine.

## 6. Conflicts of Interest

SMBC UK maintains a conflicts of interest policy and has implemented procedures to identify, prevent, and manage any actual or potential conflicts of interest that may arise between SMBC UK, its managers, employees, other SMFG group companies and its Customers, or between one Customer and another (each, a “**Conflict**”). Where a Conflict is identified, SMBC UK will take appropriate steps to prevent or manage such Conflict in order to prevent it from adversely affecting the interests of SMBC UK's Customers. Where SMBC UK's arrangements are not sufficient to ensure, with reasonable confidence, that the risks of damage to the Customer's interests will not be prevented, SMBC UK shall disclose the general nature and/or sources of the Conflict and the steps taken to mitigate those risks before undertaking business on the Customer's behalf. SMBC UK's conflicts of interest policy sets out the types of Conflicts which affect SMBC UK's business and provides details of how these are identified, prevented or managed. A summary of SMBC UK's conflicts of interest policy is available on SMBC's website. No conflict shall prevent any SMFG group company from being remunerated for the provision of any product or service or give rise to any liability of any SMFG group company provided that the nature and/or sources of conflicts of interest have been clearly disclosed to the customer and steps have been taken to mitigate any risk of damage to the Customer's interests.

## 7. Monitoring of Telephone and Electronic Communications

The Customer authorises SMBC UK to record or monitor telephone calls and electronic communications (including emails) for the purposes of training, quality assurance, confirming trades and complying with regulatory requirements and internal policies. The Customer is advised that SMBC UK may record telephone conversations without the use of a warning tone or other explicit notification. The Customer is further advised that all calls to and from SMBC UK Treasury Department, some front office departments and settlements departments are recorded. Any recordings shall remain SMBC UK's sole property. A copy of any recordings will be made available free of charge to the Customer, the FCA, the PRA or other relevant regulatory authority in accordance with the Regulations, or to individuals in accordance with applicable data protection laws in the United Kingdom.

## 8. Complaints

SMBC UK is required to put in place internal procedures for handling complaints fairly and promptly. A copy of SMBC UK's complaint handling procedure is available upon request. The Customer may submit a complaint to SMBC UK by letter, telephone, email or in person. SMBC UK will work with the Customer to resolve complaints in a timely manner. If requested, SMBC UK will provide the Customer with details of its complaints procedures, including when and how the Customer may be able to refer a complaint to the Financial Ombudsman Service in the UK.

## 9. Record Keeping

SMBC UK's records (including recordings as described in paragraph 7 above), unless shown to be manifestly wrong, will be conclusive evidence of the Customer's dealings with SMBC UK. The Customer shall not object to the admission of SMBC UK's records as evidence in any legal proceedings.

## 10. Compensation

SMBC UK is covered by the Financial Services Compensation Scheme (the “**FSCS**”), which is the compensation scheme for customers of UK authorised financial services firms. Certain Customers may have the right to claim compensation from the FSCS in the event that they suffer a financial loss as a direct consequence of the inability of the firm to satisfy a claim made against it. This depends on the type of business and the circumstances of the claim. Subject to the terms of the FSCS, there are limits on the maximum compensation payable by the FSCS in relation to investment business or deposits. Further information is available from the FCA, PRA and the Financial Services Compensation Scheme at 10th Floor Beaufort House, 15 St Botolph Street, London, EC3A 7QU or from the Scheme's official website at [www.fscs.org.uk](http://www.fscs.org.uk).

#### 11. Updates to Notice

This Notice may be amended by SMBC UK from time to time by publishing a notice on SMBC's website. Amendments shall take effect on the date specified in the relevant notice.

#### 12. Governing Law

This Notice shall be governed by and construed in accordance with English Law.

**GENERAL TERMS FOR INVESTMENT BUSINESS** (as defined under the FCA and PRA handbook)

#### 13. Customer Categorisation

SMBC UK will treat the Customer as either a professional client or an eligible counterparty. SMBC UK will notify the Customer of which categorisation it has attributed to the Customer by a separate client categorisation letter. The Customer is entitled to request a different categorisation.

#### 14. No Advice and Own Judgement

Unless otherwise agreed, SMBC UK shall not provide the Customer with advice (including, but not limited to, tax advice) or recommendations in relation to financial instruments. SMBC UK does not accept liability for any adverse tax implications of any product or service. The Customer represents that it has been solely responsible for making its own investigations into the risks associated with the Customer's orders in relation to financial instruments and that it has sufficient knowledge, market sophistication, professional advice and experience to evaluate those risks.

#### 15. Instructions

The Customer may instruct SMBC UK by any means agreed from time to time, in each case via an officer of SMBC UK authorised to receive such instructions. SMBC UK shall be entitled to rely upon any instruction from the Customer which SMBC UK reasonably believes in good faith to be from a person authorised to act on the Customer's behalf. Instructions given by the Customer via email or other electronic means will constitute evidence of the orders and instructions.

#### 16. Best Execution

If SMBC UK has categorised the Customer as a professional client, SMBC UK will take all sufficient steps to provide best execution in relation to the Customer's orders in financial instruments in accordance with SMBC UK's order execution policy. SMBC UK will need consent from the Customer who is classified as a professional client to SMBC UK's order execution policy and to execute the Customer's orders in financial instruments outside of regulated markets, multilateral trading facilities and organised trading facilities in the European Economic Area (together "**Trading Venues**"). SMBC UK will seek this consent from such Customer through a separate side letter.

#### 17. Confirmations and Periodic Reports

SMBC UK will provide the Customer with confirmations setting out the principal terms of each transaction in a financial instrument. Further information as required by regulations will be provided by the end of the following business day. SMBC UK will also send the Customer periodic reports on the services that SMBC UK provides where required by the Regulations and taking into account the type and the complexity of the financial instruments involved and the nature of the services provided to the Customer.

#### 18. Trade and Transaction Reporting

Under the Regulations, SMBC UK may be obliged to make information about certain transactions in financial instruments public and to report the details of transactions to the FCA or other competent authority. The Customer acknowledges that it is responsible for making public any information relating to transactions which is the Customer's obligation under the Regulations. If necessary, the Customer undertakes to provide in a timely fashion all such information (including, but not limited to, the Customer's Legal Entity Identifier) and documentation and to promptly take all such action as SMBC UK may from time to time reasonably require to enable SMBC UK to fulfil any reporting requirement under this paragraph 18.

#### 19. Charges

The Customer shall pay SMBC UK's charges as agreed from time to time at the rates set out on its website.

#### 20. Money received in the course of providing Investment Business to a customer

In the event that SMBC UK receives and holds money from a Customer whilst providing designated investment business to that Customer, the Customer should be aware that (1) the money held for that Customer is held by SMBC

UK as banker and not as trustee under the client money rules; and (2) if SMBC UK fails, the client money distribution and transfer rules will not apply to these sums and so the Customer will not be entitled to share in any distribution under the client money distribution and transfer rules.

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## Order Execution Policy

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Available via the SMBC website <https://www.smbcgroup.com/emea/notices-reporting/mifid-ii>

# Summary of Conflicts of Interest Policy

## INTRODUCTION

SMBC UK, together with other SMBC entities operating in the EMEA region (together “SMBC Group” or “we”) is required to maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps to identify, prevent, monitor and manage conflicts of interest.

SMBC Group have established a policy to safeguard our customers’ interests. The key information is summarised below, and more detailed information is available on request.

## CONFLICTS OF INTEREST POLICY

SMBC Group is a multi-service banking group, which is present in many countries, providing its customers with a wide range of banking services. Like any financial services group, SMBC Group is potentially exposed to conflicts of interest in relation to various activities. However, the protection of our customers’ interests and ensuring we conduct our business in an honest and professional manner is our primary concern and so, our Policy sets out how we:

- will identify circumstances which may give rise to conflicts of interest entailing a material risk of damage to our customers’ interests;
- have established appropriate mechanisms and systems to manage those conflicts; and
- will maintain appropriate processes in an effort to prevent damage to our clients’ interests through identified conflicts.

Conflicts of interest are impossible to rule out. Our policy defines conflicts of interest as: situations where the competing interests of the firm, its employees and/or customers mean that SMBC Group cannot fairly discharge its obligations to a customer and/or the market.

SMBC Group takes into account whether itself or a person directly or indirectly linked by control to the firm is in one of the following situations:

- is likely to make a financial gain, or avoid a financial loss, at the expense of the customer;
- has an interest in the outcome of a service provided to the customer or of a transaction carried out on behalf of the customer, which is distinct from the customer’s interest in that outcome;
- has a financial or other incentive to favour the interest of another customer or group of customers over the interests of the customer; or
- receives or will receive from a person other than the customer an inducement in relation to a service provided to the customer, in the form of monetary or non-monetary benefits or services.

The measures we have adopted to manage identified conflicts are summarised below. We consider them appropriate to our efforts to take reasonable care that, in relation to each identified potential conflict of interest, we act impartially to avoid a material risk of harming the interests of customers and/or the market.

## POLICIES AND PROCEDURES

We have adopted specific policies and procedures throughout our business activities designed to manage potential conflicts of interests. Our employees receive guidance and training in these policies and procedures, and they are subject to monitoring and review processes.

## CONFIDENTIAL INFORMATION AND INHERENT CONFLICTS OF INTEREST

SMBC Group respects and expects its employees to respect the confidentiality of customer information and not use it other than for the original purposes it was intended for and not disclose it or use it inappropriately. SMBC Group operates a “Need to Know” approach aimed at complying with all applicable rules with respect to handling of such information.

SMBC Group structures its business to manage conflicts of interest through the maintenance of information barriers in accordance with its Information Barrier Policy. This is designed to restrict information flows between different areas of SMBC Group and to ensure unauthorised exchange of information between employees and business areas does not take place. Information Barriers and other measures are put in place to enable SMBC Group and its employees to carry out business on behalf of customers without being influenced by other information held within SMBC Group which may give rise to any actual or potential conflict of interest.



## RESEARCH INDEPENDENCE

A conflict of interest may arise where the content of research reports or other public statements by a research analyst do not represent the analyst's genuinely held views as they may have been influenced by the interests of a particular business division of SMBC Group.

In order to manage conflicts of interest, SMBC Group has in place policies and procedures to safeguard the integrity of its research. No person(s) may place inappropriate pressure on a research analyst with respect to the content or timing of a research report or a public statement made by that analyst. The supervisory structure, reporting lines and compensation criteria for research and research analysts are designed to maintain the independence of research from other areas of SMBC Group.

In particular, research analysts are prohibited from undertaking any work that may conflict with their independence as a research analyst, including but not limited to, being prohibited from attending marketing pitches or participating in any investment banking related activities.

Research analysts are physically separated from other functions which may be reasonably be expected to conflict with their research functions.

Research reports contain specific regulatory disclosures in order to assist with the management of conflicts of interest. These include but are not limited to the disclosure of investment banking relationships and SMBC Group and/or affiliate holding disclosures.

SMBC Group has policies and procedures in place to ensure that research is distributed through the appropriate distribution channels.

## EXECUTION / CLIENT ORDER HANDLING

SMBC Group requires employees to act honestly, fairly and professionally in accordance with the best interests of a customer, including when executing, receiving or transmitting orders on behalf of a customer. A customer's interests are protected by SMBC Group's Order Execution and Allocation Policies, which prohibit improper conduct by SMBC Group's traders and in relation to allocation of assets or financial instruments including prioritisation of customer orders over trading for our own account.

## VENDORS AND THIRD PARTY REPRESENTATIVES

SMBC Group operates multiple systems, controls, policies and procedures to manage its interaction with vendors and third party representatives. SMBC Group carries out due diligence on vendors and third party representatives and has contractual arrangements in place to protect the interests of the SMBC Group and customers.

Conflicts of interest may arise with regards to vendors and third party representatives where, for example, an employee involved in the procurement or hiring process has a close relationship with a particular vendor / third party representative. Employees are expected to follow SMBC Group's Conflict of Interest Policy and identify, escalate and manage potential conflicts of interest accordingly.

## REMUNERATION

Remuneration policies for SMBC Group's employees are set out to ensure appropriate governance to prevent remuneration structures which may incentivise an employee to act contrary to their responsibilities and regulatory requirements. The purpose of the policies is to align the commercial interests of SMBC Group and employees with the effective management of conflicts of interest, and with risk management objectives regarding conduct of business standards, in order to ensure customer interests are not adversely affected by SMBC Group's incentive or remuneration practices.

## INDUCEMENTS

SMBC Group has established policies and procedures to meet its regulatory obligations to its customers, if in relation to the provision of an investment or ancillary service to the customer, SMBC Group pays or is paid any fee or commission, or provides or is provided with any non-monetary benefit (an "Inducement"). An Inducement is only permissible if it is designed to enhance the quality of the relevant service to the customer and does not impair compliance with SMBC Group's duty to act in the best interests of its customer. SMBC Group will ordinarily subject any Inducement to prior disclosure, where essential terms of the arrangements relating to the fee, commission or non-monetary benefit is provided.

## PERSONAL ACCOUNT DEALING

To prevent conflicts arising from the use of information obtained from customers, and market abuse in general, all employees are subject to personal account dealing rules.

**EMPLOYEES' OUTSIDE AFFILIATIONS**

Our employees are subject to rules designed to avoid conflicts of interest with activities they undertake outside of the SMBC Group.

**GIFTS AND ENTERTAINMENT**

SMBC Group employees should not accept any gifts or entertainment other than those considered normal in their line of business. Excessive gifts or entertainment from customers is prohibited, and SMBC Group is committed to avoiding any gifts or entertainment giving rise to conflicts of interest.

**CHARITABLE DONATIONS**

SMBC Group has policies in place in relation to Charitable Donations in particular avoiding these where an employee is a key decision maker and has a relationship with a named charity.

**DISCLOSURE**

Where there is no other way of managing a conflict, or where the measures in place do not sufficiently protect customers' interests, the conflict shall be disclosed to allow customers to make an informed decision on whether to continue using SMBC Group's services in the situation concerned.

Disclosure will never be used as the sole action to mitigate the risk of damage to our customers' interests. Disclosure shall only be used as a measure of last resort, and shall be used only where the effective organisational and administrative arrangements established by SMBC Group to prevent or manage conflicts of interest are not thought to be sufficient to ensure, with reasonable confidence, that risks of damage to the interests of the customer will be prevented.

The disclosure shall include specific description of the conflicts of interest that arise and include the general nature and sources of conflicts of interest, as well as the risks to the customer that arise, in sufficient detail to enable that customer to take an informed decision with respect to the investment or ancillary service in the context of which the conflicts of interest arise.

**DECLINING TO ACT**

SMBC Group may decline to act for a customer in cases where it believes the conflict of interest cannot be effectively managed or controlled.

# General Description of the Nature and Risks of Financial Instruments

This document contains a general description of the nature and risks of financial instruments. However, this document is not intended to be a complete listing of all financial instruments in which you may invest, nor is this document intended to provide an exhaustive description of all the risks that may be associated with all financial instruments. Rather, it is a description of the principal risks arising from those financial instruments, techniques and services that we generally offer to our clients. We may supplement these descriptions from time to time, including by providing information that relates to a particular financial instrument (for example in our marketing material).

In particular, the scope and content of the information provided takes into consideration (a) your categorisation as a professional or eligible counterparty client within the meaning of the Markets in Financial Instruments Directive and (b) given your categorisation our reasonable assessment of the scope and level of your knowledge and understanding of the nature and risks of financial instruments.

If you do not agree with your client categorisation please let us know as we will need to revisit our client relationship, the nature of the services that we provide to you and the information that we must provide to you with respect to the nature and risks of financial instruments. Similarly, please let us know if you do not understand any of the contents of the descriptions below.

## (A) General Introduction

You should not make an investment unless you are prepared to bear the risk of loss arising from that investment.

All financial instruments involve a certain degree of risk and even low-risk financial instruments and strategies contain an element of uncertainty and past performance is not a reliable indicator of future performance. The value of an investment and the income received from an investment can go down as well as up, and investors may not get back the amount that they invested. There can be no assurance that expected or targeted returns for any investor will be achieved. Even if a financial instrument performs as anticipated, changes in exchange rates or taxation may have an adverse effect on the price or value of, or income received from, the financial instrument. Investment returns may be constrained by charges levied and inflation may reduce the value of investments. Also, financial instruments (even those which share similar characteristics) may be exposed to different risks, different combinations of risk, or may exhibit or be exposed to those risks to different degrees. Furthermore, where an investor's portfolio holds two or more financial instruments, the aggregate risk of the portfolio may be different in nature or extent from the risks of the individual financial instruments of which the portfolio is comprised.

As set out in the descriptions below, certain principal risks typically impact particular financial instruments. However, they may be subject to other risks, for example, because of any specific features of the particular financial instrument. Further, many of the risks described below apply generally to financial instruments and individual financial instruments may be impacted by multiple risks. We may, from time to time, make available to you financial instruments that have additional terms and conditions. These may be included in various types of documents, including (without limitation) documents referred to as a **"final terms"** or **"terms and conditions"**. These documents may contain additional descriptions of risk that apply to the particular financial instrument and it is important that you read these. The terms and conditions of those financial instruments may also give rise to other risks and the relevant financial instrument to which they apply may have features that are not commonly found in the relevant category of financial instrument.

The terminology used to describe different types of financial instruments may not be used uniformly or consistently, may differ between markets or countries /jurisdictions, and may have different meanings in different contexts (for example, for the purposes of financial services regulation and taxation). The precise features (and, therefore, the risks) of a particular financial instrument will depend on the specific terms and conditions that apply to that financial instrument. A financial instrument might have peculiar features that distinguish it from similarly categorised financial instruments and those distinctions may only become apparent in certain market conditions or upon the occurrence of certain events that may be issuer-specific and therefore may result in unexpected outcomes. For example, without limitation, broad discretion may be granted to the issuer, counterparty or another person to (a) amend the terms and conditions of the financial instrument; (b) determine the economic outcome (which may include unilateral termination); (c) determine the value of the financial instrument; or (d) determine whether and in what form collateral must be provided (including the value of such collateral). Therefore, it is important to review and understand those terms before making any investment.

Certain financial instruments may be highly speculative and may be suitable only for experienced and financially sophisticated investors who are willing to bear the risks associated with such investments, which can include the loss of all or a substantial portion of any the value of or all such investments. Investors should ensure that they fully understand the features of the financial instrument and the risks involved, before deciding whether or not to invest in any such financial instrument.

Unless the context otherwise requires, the terms “**investments**” and “**financial instruments**” may be used interchangeably. Note: (i) The following risk disclosures relate to business that we usually undertake with clients and not to all of those we are permitted to carry on investment business in. (ii) Not all of the products are offered by each of our entities listed above.

## **(B) Types of Financial Instrument**

### **(1) Money Market Instruments**

Money market instruments are a class of short term instruments that are normally dealt on the money market and include treasury bills, certificates of deposit and commercial papers (including euro commercial paper). Money market instruments are similar to other fixed income securities where the investor becomes a creditor of the issue of the security. They have maturities at issuance of 397 days or less. They have a nominal value which should be returned to you when the investment matures at the end of its term. However if instruments are sold before reaching maturity a capital gain or loss may be realised.

A certificate of deposit is a promissory note issued by a bank in exchange for a deposit. Holders of the certificate of deposit have restricted access to the funds deposited until the maturity date, at which point the funds are returned with interest. The major risk of purchasing a certificate of deposit in the money markets, other than counterparty risk, is that there is greater uncertainty associated with holding the investment for a long period of time and the holder of the certificate foregoes the opportunity to invest in other instruments.

Commercial paper (including euro commercial paper) is an unsecured short-term debt instrument issued by a company to meet short-term liabilities. The maturity date on commercial paper is normally close to its issue date. Commercial paper is typically issued at a discount (for lower interest rates). Commercial paper is often unsecured meaning that counterparty default risk is higher than with other debt securities. As with certificates of deposit, there are risks associated with holding a more illiquid asset than a debt or equity security – however, the short maturity period for commercial paper mitigates this risk. Treasury bills are short-term debt instruments backed by governments with a maturity of less than one year. The principal and interest rates of bills are paid to investors cumulatively at the maturity date; as such investors do not receive regular interest payments. Bills are issued at relatively low value and are therefore accessible to a wide range of investors. However, due to their low risk they offer low returns and do not generate steady cash flows.

Money market instruments are exposed to a number of risks, including liquidity risk, interest rate risk, credit risk and FX risk.

### **(2) Derivatives**

There are many different types of derivative financial instruments, with different characteristics and subject to different conditions. As mentioned elsewhere, derivatives are sometimes combined or embedded in other financial instruments. Derivatives are complex instruments and individual transactions may comprise more than one derivative and may be tailored to the particular requirements of the parties. Certain of the risks arising from the use of derivatives may depend on whether the derivative is exchange traded or over-the-counter (“**OTC**”).

The main categories of derivatives are: options, futures (forwards) and swaps. The term “**contract for difference**” (used, in particular, in the UK) is sometimes used to describe certain types of cash settled derivatives transaction. The terminology used to describe the different types of derivatives may not be used uniformly or consistently, may differ between markets or countries and may have different meanings in different contexts (for example, for the purposes of financial services regulation and taxation). Derivatives are suitable only for sophisticated investors and investors should carefully review all the terms and conditions of the derivative transaction to ensure they have a comprehensive understanding of their rights and obligations and of how the derivative may function in different market conditions.

## OPTIONS

An option, in this context, is simply the right to buy or sell an underlying asset. Options are broadly divided into puts and calls. Simplistically:

- (a) a call option gives the purchaser (holder) the right to buy an underlying asset from the seller (writer) of the option, and imposes the obligation on the seller of the option to sell the underlying asset to the option purchaser; and
- (b) a put option gives the purchaser the right to sell an underlying asset to the seller of the option, and imposes the obligation on the seller of the option to buy the underlying asset from the option purchaser.

Instead of the physical delivery of an underlying asset, an option may give the purchaser the right to receive a cash amount (for example, an index option) or the right to require the seller to enter into another transaction with the purchaser (for example, a **“swaption”**, which is an option to enter into a swap transaction). The terms of the option will typically specify, as well as the identity and amount of the underlying asset, the price at which that asset will be purchased/sold (the **“strike price”**), whether it is physically or cash settled, the date(s) on which the option may be exercised (by the purchaser) and the date on which the option expires (after which the purchaser can no longer exercise the option). The purchase price payable by the purchaser for the option is called the **“premium”** and it is usually (but not necessarily) paid up front when the option is purchased.

Buying options generally involves less risk than selling (writing) options as the purchaser can allow the option to lapse (i.e., not exercise the option). For example, in the case of a call option, a purchaser of an option would likely not exercise the option if the market price of the underlying asset is less than the strike price.

However, selling (writing) options involves considerably more risk. The seller of an option assumes the legal obligation to purchase or sell the underlying asset (or pay the cash settlement amount) if the option is exercised, regardless as to the difference between the strike price and the market price prevailing at the time of exercise. In the case of call options, if the seller of the option does not own the underlying asset, the seller is exposed to unlimited risk as the seller will need to purchase the underlying asset in the market (or, as relevant, pay the cash settlement amount) and the market price may be significantly higher than the strike price. This risk could be increased further by other factors, for example, if the underlying asset is illiquid. If the option seller owns the underlying asset (a **“covered call”**), the risk is reduced.

The maximum loss arising from the purchase of an option is, essentially, the cost of that option (also known as the premium) plus any associated commissions and other transaction-related costs.

If an option is not exercised before expiry, in accordance with its terms, it may expire worthless.

Accordingly, it is important to identify the applicable terms for exercise, which may include specific provisions relating to time and method of notification. Failure to observe those terms may invalidate any purported exercise of the option.

## FUTURES

Futures involve the obligation to make, or to take, delivery of the underlying asset at a future date, or in some cases the payment of a cash amount. Futures transactions share the characteristics of forward transactions however, historically, the term **“futures”** has typically been used to describe standardised exchange traded transactions (whether physically or cash settled) and the term **“forwards”** has typically referred to individually negotiated over-the-counter physically settled transactions, in both cases where the delivery date is for a future date that is beyond the date on which a **“spot”** transaction for the relevant underlying asset commonly settles. However, this terminology is not consistently applied and, for example, currency forwards may be structured as **“non-deliverable forwards”** meaning that the relevant currencies in the currency pair are not exchanged on the settlement date. Where a future is physically settled, an investor who does not want to make or take physical delivery must close out the position (typically by entering into an equal and opposite position) before any applicable cut-off time. There can be no assurance that it will be possible to close out the position on advantageous terms or at all.

## SWAPS

This term typically describes a financial instrument under which the parties agree to exchange certain cash flows based on the value of, or return from, one or more underlying assets or other reference points (for example, an index or interest rate). Parties are exposed to the market risk of the relevant underlying.

The term **“contract for difference”** (or **“CFD”**) is generally used to describe a contract between two parties, typically described as **“buyer”** and **“seller”**, stipulating that the seller will pay to the buyer the difference between the value of an asset (often a share or an index) on one date and its value at a subsequent date (if the difference is negative, then

the buyer pays the difference to the seller). In effect CFDs are financial derivatives that allow traders to take advantage of prices moving up (long positions) or prices moving down (short positions) on underlying financial instruments and are often used to speculate on those markets.

The terms “**swap**” and “**contract for difference**” are sometimes used interchangeably to refer to the same financial instrument.

Some examples of swaps include the following:

- **Interest rate swaps** – Typically, these swaps involve the exchange of cash flows based on two or more interest rates, where the cash flows exchanged are calculated by reference to a notional principal amount. For example, one party might pay the other a floating or variable rate of interest (based on the notional principal amount) in return for the payment by the other party of a fixed rate of interest (based on the notional principal amount). Companies use interest rate swaps to alter their interest rate exposure. A company paying floating interest rate can obtain fixed rate exposure by entering into a swap. Therefore, the company can enter into a swap in which they receive floating rate and pay the fixed rate.
- **FX/currency swaps** – FX swaps are risk management tools that can be utilised in order to hedge FX risks and exposures generated through commercial activity. These products allow users to guarantee future cash-flows and remove the risks presented by market fluctuations for known future revenues or expenditures. Under a bilateral swap contract a party simultaneously borrows one currency and lends another in order to hedge against unfavourable movements in exchange rates. A cross currency swap is, similarly to an FX swap, a bilateral agreement, where two parties exchange interest payments and principal denominated in two different currencies. Depending on the market conditions at inception, the bid/offer spread of an FX or currency swap can vary. When market circumstances are negative the spread will be wider and vice versa when market circumstances are positive. During the lifetime of a product, the market conditions (positive or negative) will be reflected in the way the contract is marked to market. Whilst trading FX swaps companies can hedge against FX risk, inflation risks and interest rate risk but if interest rate developments differ from expectations, there is a risk that choosing a different strategy would have led to better financial results. In the event of (interim) termination, one party may be faced with an amount payable to the other party close to/equal to the negative market value of the FX swap taking into account normal market conditions.
- **Inflation linked swaps** – An inflation linked swap is a contract under which risk is transferred from one party to another. Party 1 pays a fixed cash flow to party 2, while party 2 pays a floating cash flow which is linked to inflation. The cash flow paid is linked to a notional amount, however the notional is not exchanged.
- **RPI swap** – An RPI swap is a swap which involves an exchange of interest calculated by reference to the Retail Prices Index (RPI) and another reference rate (e.g. SONIA). This swap allows parties to hedge the risk of inflation being lower or higher than expected.

OTC derivatives, such as the swaps described above, are typically documented under industry standard terms (for example, the ISDA Master Agreement) which contain key provisions governing the contractual relationship between the parties, including their respective rights, liabilities and obligations. These terms (which, in fact, comprise a number of documents, including a master agreement, a schedule, relevant definitions and the individual confirmation containing specific provisions relating to the particular transaction) govern how the derivative will operate in different circumstances, including where there is a market disruption event impacting the relevant underlying asset. In these circumstances, the investor may have no ability to influence the outcome. Although the terms and conditions used by banks, investment firms and other participants for these transactions may be based on industry standard terms, they may be tailored by the particular bank, investment firm or other participant and an investor may have limited ability to make amendments. These are often very technical and complex documents and the parties should ensure that they have appropriate expertise to review and understand them and/or seek independent advice before entering into a transaction.

Collateral (sometimes referred to as “**margin**”) is an important feature of derivatives transactions. This relates to the “**contingent liabilities**” that typically arise under a derivatives transaction and where one or both parties are exposed to the credit (or performance) risk of the other party. Collateral is used to manage the credit exposure between the parties to the derivatives transaction until the obligations of the parties have been completed. The risks arising from the provision of collateral are described further below.



### (3) Structured Deposits

Our structured product range is currently limited to structured deposits. We also offer dual currency investments, known as option linked premium deposits. These are not structured deposits and have their own risk warning set out at 4. below.

- **Structured deposits** – These are deposits where the interest rate or return is derived from or based on an underlying asset or index (similar to a structured product). The deposits are placed with a credit institution (such as a bank or building society) and, therefore, the investor is subject to the credit risk of that credit institution as well as other risks, principally the market risk relating to the underlying asset or index. The terms of structured deposits may prohibit termination prior to the scheduled maturity or provide that such termination can only occur upon payment of an exit fee that may not be a fixed amount or a percentage of the original amount invested. All structured deposits are capital protected but may be affected by withdrawal before maturity.

### (4) Dual currency investments

Dual currency investments – The dual currency investment (also known as option linked premium deposit) allows a client to earn interest over a flexible term with the added feature that if the prevailing spot market is at a pre-defined rate on maturity the deposit will convert. In this scenario the client will, on expiry, be returned their deposit plus interest in an alternate currency. Dual currency investments are “**capital at risk**” investments and are subject to the following main risks:

- **Market risk** – This can materialise due to macroeconomic factors and may have an impact on a particular instrument or more broadly on currency markets as a whole. The client deposit is subject to a potential conversion dependent upon pre-defined market conditions on expiry.
- **Credit risk** – When investing in a dual currency investment the client is taking on a credit risk to the deposit taking bank. In the event that bank should default on its obligations or become insolvent a client may receive back less, in original currency terms, than originally deposited. This is dependent upon market conditions on expiry.

Dual currency investments are also subject to volatility risk if there are adverse market conditions and this can increase market risk. Levels of volatility will depend on the currency pairs which are relevant for each dual currency deposit. Major currencies may be more stable than emerging market currencies.

FX risk arises when investing in dual currency investments. Fluctuations in the market will have a direct impact on the outcome for the client. Liquidity risk may also arise. FX markets are typically highly liquid but this may depend on the currency pairs selected.

## (C) Principal Investment Risks

This section contains a list of the principal categories of general investment risks that are typically associated with financial instruments. Not all of these risks will apply to all financial instruments and different financial instruments (including those which share similar characteristics) may exhibit some or all of these risks to different degrees.

### (1) Issuer Risk

This refers to the risks associated with the particular issuer of a particular financial instrument. The value of a financial instrument may decline because of a number of reasons, which directly relate to the issuer, such as (without limitation) insolvency, management performance, the availability and/or cost of financing, financial leverage, reputation, and reduced demand for the issuer's goods or services, as well as the historical and prospective earnings of the issuer and the value of its assets. The issuer may also fail to perform its obligations under the terms and conditions applicable to the financial instrument. Issuer risk also relates to the risk arising from corporate events such as mergers, acquisitions and takeovers (including the failure to execute any such transaction), as well as other events that may result in the dilution of any ownership interest of an investor in the issuer.

### (2) Credit / Counterparty Risk

Credit (or counterparty) risk arises from the inability or unwillingness of a counterparty, issuer or other relevant person (for example, a custodian or broker) to perform their contractual obligations, or the perception or expectation that this may be the case or may occur in the future. As such, there is some overlap with issuer risk, described above.

For example, an investor will be exposed to the credit risk of (a) the parties with whom it enters into transactions (including derivatives transactions and stock loans); (b) any person with whom it deposits its assets or funds or to whom it transfers collateral; (c) the issuer of a fixed income security; and (d) any person who owes monies to the investor.

This risk may arise in the course of the settlement of a transaction, for example, where the purchase price for a financial instrument has been paid but where the financial instrument has not been delivered.

### (3) Credit Ratings Risk

Credit ratings are opinions about credit risk. They express an opinion about the ability and willingness of an issuer, such as a company or state or government, to meet its financial obligations in full and on time. Credit ratings can also speak to the credit quality of an individual financial instrument, such as a corporate or government bond, and the relative likelihood that the issuer may default. Credit ratings are not an absolute measure of default probability. Since there are future events and developments that cannot be foreseen, the assignment of credit ratings is not an exact science. Credit ratings are not intended as guarantees of credit quality or as exact measures of the probability that a particular issuer or debt issue will (or will not) default.

As they are opinions, credit ratings assigned by different ratings agencies (or other ratings providers) may differ in respect of the same issuer or financial instrument.

### (4) Interest Rate Risk

Interest rates may fluctuate significantly at any time and from time to time. As a result of such fluctuations, the value of financial instruments may increase or decrease in value. For example, when interest rates increase, fixed income instruments will generally decline in value. Long-term fixed income securities or instruments will normally have more price volatility because of this risk than short-term fixed income instruments. A wide variety of market factors can cause interest rates to rise, including central bank monetary policy, rising inflation and changes in general economic conditions.

### (5) Market Risk

The term “**market risk**” is sometimes used generically to describe the systematic risk to which investors may be exposed and which may result in losses due to factors affecting financial markets generally, or particular geographies, countries, sectors or issuers. As such, many of the risks described elsewhere in this document may comprise components of market risk.

The value of a financial instrument may decline due to general market conditions which are not specifically related to a particular issuer, such as real or perceived adverse economic conditions, changes in the general outlook for corporate earnings, changes in interest or currency rates, inflation, adverse investor sentiment generally and the forces of supply and demand. The value of financial instruments may also be impacted by market disruptions and by the activities of other market participants which influence prices.

The value of particular financial instruments may be impacted by the price or value of other financial instruments (whether or not there is a direct relationship with those other financial instruments); and values may go up or down, sometimes rapidly or unpredictably.

### (6) Currency Risk

This refers to the risks relating to the currency in which the financial instrument is denominated. Where a financial instrument is denominated in a currency that is different from the investor's “**base currency**” (this generally refers to the currency in which the performance of the portfolio is measured and is typically, but not always, the currency in which the investor is located), the investor is exposed to the risk that the relative value of the two currencies (or exchange rate) may deviate over time. So, although the value of the financial instrument might increase when measured in the currency of denomination, when measured in (or converted into) the base currency, the investor might experience a loss. This would happen where the currency in which the financial instrument is denominated falls in value relative to the base currency. This risk also arises where the investor hold funds in a currency other than the base currency.

Currency rates may fluctuate significantly, including over short periods of time, for a number of reasons, including changes in interest rates; intervention (or the failure to intervene) by foreign governments; central banks or supranational entities such as the International Monetary Fund; or by the imposition of currency controls or other political developments.

Currency risk also refers to the risk that events may occur that adversely impact the currency in which a financial instrument is denominated. For example, a government may impose exchange controls (which may artificially impact the applicable exchange rate) or other restrictions on the repatriation of the proceeds of sale.



## (7) Legal and Regulatory Risk

Changes in, or the introduction of new, rules, regulations and laws (including with respect to particular categories of financial instruments, issuers, and taxation) or the way in which they are applied or interpreted may impact your financial instruments and/or the implementation of your investment strategies.

Investors may be exposed to the risks arising under the rules, laws and regulations of jurisdictions other than the jurisdiction in which the investor is located and/or with which the investor is familiar. For example, where you invest in financial instruments that are subject to the rules, laws and regulations in other jurisdictions and/or you invest in financial instruments traded in markets in other jurisdictions, it is important to recognise that those laws and regulations may differ from those with which you are familiar and may have unexpected consequences.

Further, such rules, regulations and laws may be subject to inconsistent or arbitrary application or interpretation and may be changed with retroactive effect. Both the independence of judicial systems and their immunity from economic, political or nationalistic influences remain largely untested in many countries. Judges and courts in many countries might not be experienced in the areas of business and corporate law. Legislatures might revise established law solely in response to economic or political pressure or popular discontent. There is no guarantee that an overseas investor would obtain a satisfactory remedy in local courts in case of a breach of local laws or regulations or a dispute over ownership of assets. An investor may also encounter difficulties in pursuing legal remedies or in obtaining and enforcing judgments in overseas courts. This may be exacerbated by the arrangements under which financial instruments are held in custody; for example, if an investor's ownership interest is not recognised in the overseas jurisdiction where the arrangements for holding the relevant financial instrument involve a nominee.

Governments or their agencies may also acquire distressed assets from financial institutions and acquire ownership interests in those institutions. The implications of government ownership and disposition of these assets will vary, and such a program may have positive or negative effects on the liquidity, valuation and performance of an investor's holdings.

## (8) Liquidity Risk

Liquidity risk exists when particular financial instruments are difficult to purchase or sell (e.g., if they are not publicly traded and/or have no market that is currently available or may become less liquid in response to market developments). This can reduce a portfolio's returns because the portfolio may be unable to transact at advantageous times or prices, or at all. Investments that are illiquid or that trade in lower volumes may be more difficult to value.

Liquidity risk may be attributable to a number of factors including: the particular terms and conditions of the instrument; legal, regulatory or contractual restrictions on their sale or transfer; the fact that the instrument is not publicly traded (for example, because it is not listed on an exchange); or in response to market developments or adverse investor perceptions. Liquidity risk may arise where ownership in a particular financial instrument is concentrated in one or a small number of investors, and this may impact the value of the instrument. Liquidity risk may also arise as the result of the reduced number and capacity of traditional market participants to make a market in the relevant financial instrument. Additionally, market participants may attempt to sell holdings at the same time as the investor, and there may be insufficient liquidity to accommodate all these intended sales. These factors may exist at the time of investment or may arise subsequently.

Certain financial instruments may be intended to be held until maturity. Although the issuer or another person (who may be associated with the issuer) may agree to act as market maker in the relevant financial instrument, they may place limitations on their responsibilities to make a market (for example, in certain market conditions). Also, if there is only one market maker (and, particularly if that person is associated with the issuer), it will be difficult to verify whether the price offered by the market maker represents fair value.

## (9) Call (or Redemption) Risk

Certain financial instruments, in particular fixed income securities (including hybrid investments such as structured products), will be subject to the risk that the issuer may exercise its right to redeem the security earlier than expected (a "call"). Issuers may redeem or call the financial instrument prior to the original scheduled maturity for a number of reasons (e.g., declining interest rates, changes in credit spreads and improvements in the issuer's credit quality and, in the case of structured products or hybrid investments, changes in the reference price of the relevant asset, reference rate or index). If an issuer redeems or calls a financial instrument before the original scheduled maturity, the investor's objective in acquiring that financial instrument may be frustrated and may receive a return that is lower than the return the investor would receive at maturity. The investor may not realise the full anticipated investment returns and may be forced to reinvest in lower-yielding financial instruments or financial instruments with greater credit risks or other less favourable features.

#### (10) Hedging Risk

The execution of certain strategies are intended to reduce (or “**hedge**”) one or more risks relating to one or more financial instruments held in the investor’s portfolio or certain risks in the portfolio as a whole. There can be no assurance that such risk reduction techniques will be successful or, indeed, that we will be able to execute the relevant transactions.

Hedging transactions (for example, through the use of derivatives) may not correlate perfectly with, or may be more sensitive to market events than, the exposure that is being hedged. Furthermore, hedging transactions will involve additional risks, for example (in relation to derivatives transactions) credit risk to the counterparty. Therefore, not only might hedging transactions fail to accomplish their objective, they may also result in additional or increased risks.

Hedging transactions (such as derivatives) typically have a defined termination or maturity date and this maturity date might not coincide with the period of time for which the underlying financial instrument is held. When the hedging transaction terminates, it might not be possible to execute a similar hedging transaction or an investor may only be able to enter into a similar hedging transaction on terms that are less advantageous.

#### (11) Leverage or Gearing Risk

Leverage and gearing describe various techniques and investment strategies that are typically intended to generate returns through increased exposure to financial instruments or other assets (including currencies and indices). Examples of these techniques include the following: borrowing (often using a portfolio of financial instruments as collateral) and investing the proceeds in financial instruments; and using derivatives to gain an (increased) exposure to a financial instrument, greater than the exposure that would be achieved by purchasing the financial instrument directly. These techniques and strategies may be applied to one or more financial instruments or may be embedded in a financial instrument (for example, a structured product or a hedge fund).

These techniques and strategies can magnify both profits and losses in a financial instrument or portfolio, even where there is a relatively small movement in the relevant underlying asset(s). Depending on the technique or strategy used and (as applicable) the terms and conditions of the financial instrument in which the technique or strategy is embedded, the amount of losses incurred by an investor could result in the loss of the entire amount committed. In certain circumstances, the investor may be liable to make further payments: for example, where an investor has borrowed money secured against a portfolio of financial instruments and uses the proceeds of the loan to make further investments, the investor would be liable to repay the loan even in the event of the entire loss of value of the portfolio.

#### (12) Non-Domestic Market Risk

Where an investment is made outside the investor’s domestic (or home) market, the investor will be exposed to the risks of that market, as well as practical issues, for example relating to local language considerations. The precise nature and extent of those risks will be specific to that market and the following describes, in general terms, some of the risks that might be encountered.

Even in developed markets, the laws, rules, regulations, trading conventions and practices may differ from those with which the investor is familiar. For example, the nature and extent of investor protections, the level of transparency (including with respect to accounting, auditing and reporting standards) and relevant corporate governance standards may be different.

Further, the rights typically associated with particular financial instruments, including with respect to the exercise of voting rights, may differ and these may be impacted by the arrangements under which financial instruments are held in custody. For example, an investor’s ownership interest may not be recognised in the overseas jurisdiction where the arrangements for holding the relevant financial instrument involve a nominee. Information relating to the financial instruments distributed from the issuer may not be received on a timely basis or at all. This may also impact the processing of corporate actions.

#### (13) Tax Risk

Dividends, interest and other amounts payable (including, without limitation, principal amounts) with respect to financial instruments and other funds held by an investor may be subject to taxes, including withholding taxes. The effect of taxation will reduce the return on the relevant financial instrument. Where tax is withheld (which may be effected by a tax authority in another jurisdiction), an investor may be able to recover the amount withheld or otherwise offset part or all of the amount withheld against the investor’s tax liability. However, there can be no assurance that any such recovery will be successful. The location of the custodian (or its nominee) may also impact the tax treatment and (where applicable) the process for recovery of tax withheld.

Tax laws and regulations, and their interpretation and application, may change from time to time, including with retroactive effect. As a result of such changes, investors might incur unanticipated tax liabilities and/ or may lose tax benefits previously attaching to particular financial instruments. As a result, the actual investment return may differ (potentially, significantly) from the expected return. Unless otherwise agreed in writing, we are not responsible for providing tax advice and are not responsible for and provide no guarantee or assurance with respect to the tax treatment of any financial instrument.

#### (14) **Bail-In Risk**

This is the risk that the financial instruments of certain issuers, including banking institutions, building societies, investment firms and certain banking group companies, may be subject to action taken by governmental, banking and/or other regulatory authorities, for example to address banking crises pre-emptively, whether or not the express terms of such financial instruments anticipate such action. The relevant authorities may have broad discretion on the action that they may take and their powers may be extended in response to particular events. Examples of the actions that they may be able to take could include the following:

- (a) The reduction, including to zero, of the principal of the fixed income instruments of such issuers;
- (b) The conversion of such fixed income instruments into equity securities or other instruments of ownership (resulting in the dilution of ownership interests of existing shareholders);
- (c) The variation of the terms, including with respect to maturity, of such fixed income instruments; and
- (d) Shareholders being divested of their shares.

In addition to bail-in risk, certain issuers (principally, banking institutions) may issue a hybrid form of subordinated fixed income security known as contingent convertible securities (“CoCos”). These financial instruments are intended to either convert into equity or have their principal written down upon the occurrence of certain “triggers” linked to regulatory capital thresholds or where the issuer’s regulatory authorities question the continued viability of the entity as a going concern. There may be broad discretion conferred on the issuer with respect to the determination as to whether any of these triggers have occurred and the specific features and characteristics of CoCos may vary significantly, as they are typically tailored to the particular issuer and its regulatory requirements. Therefore, it is particularly important to review the relevant terms and conditions. Some additional risks associated with CoCos are:

- (a) Typically, there is no stated maturity and the coupon is fully discretionary. This means coupons can potentially be cancelled at the issuer’s discretion or at the request of the relevant regulatory authority in order to help the issuer to absorb losses;
- (b) If the CoCos are converted into the issuer’s underlying equity securities following a conversion event, each holder will be subordinated due to their conversion from being the holder of a debt instrument to being the holder of an equity instrument;
- (c) The market value of the CoCos will fluctuate based on unpredictable factors including, without limitation:
  - (i) the creditworthiness of the issuer and/or fluctuations in such issuer’s applicable capital ratios;
  - (ii) supply and demand for the CoCos;
  - (iii) general market conditions and available liquidity; and
  - (iv) economic, financial and political events that affect the issuer, its particular market or the financial markets in general.

#### (15) **Unlisted (and Non-Exchange Traded) Financial Instruments Risk**

Financial instruments that are not traded or listed on an exchange may present greater risks. For example, these may include increased liquidity risk and lower levels of transparency with respect to accounting, auditing and reporting standards. It may also be more difficult to assess the value of such financial instruments; bid and offer prices might not be quoted, and even where they are, it may be difficult to establish a fair price.

#### (16) **Collateral Risk**

Financial instruments and/or strategies relating to financial instruments may involve exposure to the risks associated with the provision of collateral (sometimes referred to as “margin”). For example, if an investor enters into a derivatives transaction, the investor may be required to provide the counterparty with collateral to mitigate the risk that the investor might fail to perform the obligations arising under the derivatives transaction and, depending on the nature of the derivatives transaction and changes in the value of the underlying asset, the investor may be required to deposit

additional collateral. Failure to provide collateral may result in the termination of the relevant transaction and the investor will remain liable for any remaining losses.

Please note that the arrangements for the provision of collateral are typically not mutual or bilateral. This means that the investor might not receive collateral in circumstances where the investor is exposed to the counterparty to the transaction, but will be required to deliver collateral in circumstances where the counterparty is exposed to the investor.

Where collateral is provided, the recipient of the collateral may reserve the right to return “**equivalent**” collateral rather than the same collateral. In many circumstances, this right is primarily intended to address issues relating to the delivery of collateral that is “**fungible**” in nature. Assets are fungible where they are equivalent and, therefore, interchangeable. For example, ordinary shares of the same issuer are fungible with one another. However, those rights may entitle the counterparty to return other assets and/or cash.

Further, the investor may be exposed to the credit risk of the person (typically the counterparty to the transaction) to whom the collateral is provided in the event that the collateral is not returned and the investor may be an unsecured creditor with respect to any claim in the event of the insolvency of the person to whom the collateral has been provided.

In certain circumstances (for example, in the case of exchange traded derivatives), the investor's collateral may be passed on to third parties, including clearing houses and clearing brokers. In such circumstances, the investor may be exposed to the risk that the third party fails to return the collateral, for example in the event of that third party's insolvency.

The arrangements under which collateral is provided and held may be governed by the laws of jurisdictions other than the jurisdiction in which the investor is located and/or with which the investor is familiar.

A detailed analysis and explanation of the consequences of providing collateral (including the concept of fungibility) is beyond the scope of this document and involves complex legal concepts and analysis. Before entering into transactions that require (or may require) the provision of collateral, investors should ensure that they understand the arrangements applicable to the collateral, the circumstances in which they may be required to provide additional collateral, and the legal and practical consequences of such arrangements. Where necessary, investors should obtain their own independent advice.

#### (17) **Clearing House Risk**

On many exchanges, the performance of a transaction may be “**guaranteed**” by the exchange or a clearing house. However, in most circumstances, an end investor is unlikely to obtain the direct benefit of the guarantee and the investor may not be protected in the event that a broker or other intermediary involved in the execution or settlement and clearing of the transaction fails to perform its obligations. Investors are also exposed, although typically indirectly, to the credit or default risk of the exchange or clearing house, as well as any broker or other intermediary involved. In the event of the default of any of these persons, the investor's transactions may be terminated unilaterally and the investor may lose part or all of the amount invested.

# Standard Terms of Business for Equities and Fixed Income Securities and Customised Over the Counter Derivatives

For the purposes of these Terms, “we”, “us” and “our” means either SMBC BI or SMBC London Branch depending on which entity you engage to provide you with Services under these Terms and “you” and “your” means you, the client.

## 1. General Information

- 1.1 These Standard Terms of Business, together with any accompanying documents (including the cover letter), as amended from time to time (together, these “**Terms**”) set out the terms of the contract between you and us. These Terms constitute a contractual agreement having legal effect which you accept by beginning or continuing to undertake business with us following receipt of these Terms. These Terms prevail over any terms that you may send to us and supersede any previous agreement between you and us on the same subject matter.
- 1.2 Subject as otherwise stated herein, these Terms and the Notice to Customers supersede any previous written or oral agreement between the parties in relation to the matters dealt with in these Terms and contain the entire agreement between the parties relating to the subject matter of these Terms at the date hereof to the exclusion of any terms implied by law which may be excluded by contract.
- 1.3 Notwithstanding the foregoing, the terms of any Derivatives Transactions arranged or entered into by us will be separately governed and documented by the relevant ISDA Master Agreement, Global Master Repurchase Agreement, Global Master Securities Lending Agreement, or similar, (“**Relevant Derivative Agreement**”). To the extent there is a conflict between these Terms and the Relevant Derivative Agreement, the terms of the Relevant Derivative Agreement shall prevail.
- 1.4 To the extent there is a conflict between these Terms and any separate written agreement (including those referred to in Clause 11), the terms of such separate written agreement will prevail.
- 1.5 For any matter relating to Securities and Derivatives Business, in the event of any inconsistency between these Terms and the Notice to Customers, these Terms shall govern.
- 1.6 Unless otherwise specified, these Terms govern all business transacted by us with or for you and all Services provided by us to you, whether as principal, or as agent for our Affiliates, in connection with Securities trading and Derivatives Business.

## 2. Client Categorisation

- 2.1 We have separately notified you of your status as a “professional client” or an “eligible counterparty”. Subject to your right to request a different status referred to below, we will treat you as such for all purposes. Categorisation is undertaken on the basis of our internal client categorisation process. Different rules and different levels of protection apply to you depending upon your client categorisation.
- 2.2 You have the right to request a different client categorisation from our categorisation of you. In the event we intended to categorise you as a “professional client” and you request and confirm categorisation as an “eligible counterparty”, should we agree to such categorisation, you will lose the protection afforded by certain rules of the Financial Conduct Authority (“**FCA**”), including obligations to act in accordance with your best interests, restricting the payment or receipt by us of inducements, to achieve best execution in respect of your orders, to execute orders subject to other constraints on timing and handling relative to other clients’ orders, to assess the appropriateness of products and services proposed or provided to you, and to ensure that information provided by us is fair, clear and not misleading. If you request categorisation as a “retail client”, we will not provide you with any Services.
- 2.3 You agree that you are responsible for keeping us informed about any change that could affect your client categorisation. Should we become aware that you no longer fulfil the conditions that made you eligible for professional client or eligible counterparty treatment (as applicable), we will reassess your circumstances and reclassify you accordingly.

## 3. Agency

- 3.1 Unless otherwise agreed, if you are acting as agent on behalf of a Principal, we will treat you alone as our client for the purposes of the FCA rules and Applicable Regulations and you will be liable as such. You accept these Terms for yourself and on behalf of each of the Principals. No other person (whether identified to us or not) shall be our client nor have any rights under these Terms. The provisions of Schedule 2 shall additionally apply.

#### **4. Applicable Regulations and Infrastructure Action**

- 4.1 These Terms and all Transactions are subject to Applicable Regulations so that: (i) if there is any conflict between these Terms and any Applicable Regulations, the latter will prevail; and (ii) we may take or omit to take any action we consider reasonably necessary to ensure compliance with any Applicable Regulations and whatever we do or omit to do in order to comply with them will be binding on you and will not result in liability to us.
- 4.2 From time to time, an Infrastructure may require us, in respect of Transactions in Securities and Derivatives, to meet certain disclosure requirements or otherwise provide you with notice of certain Infrastructure requirements. Any such requirement or notice will be deemed to form part of these Terms when provided to you and will be binding on you accordingly.
- 4.3 If an Exchange (or intermediate broker, Clearing Member or agent, acting at the direction of, or as a result of action taken by, an Exchange) or other Infrastructure takes any action which affects a Transaction (including an action under an Exchange Transaction), then we may take any reasonable action which we, at our discretion, consider desirable to correspond with such action or to mitigate any risk raised or loss incurred as a result of such action. Any such action will be binding on you.
- 4.4 We may refuse to enter into, execute, transmit, deal in or otherwise arrange any Transaction or perform any obligation pursuant to these Terms, including (but not limited to) where such action or performance (i) would cause us to breach any prohibition or restriction imposed or specified by an Applicable Regulator; (ii) would be prohibited, or made impracticable to effect on reasonably commercial terms, by any suspension or removal from trading of a financial instrument imposed by an Applicable Regulator pursuant to Applicable Regulations; or (iii) where we have agreed with you or any other person that we are not obliged to, or shall not, make public or otherwise report a Transaction, but we are nonetheless required by Applicable Regulations to report, publish or arrange the publication of such Transaction (pursuant to a market transparency requirement or otherwise), however, notwithstanding such agreement, we may publish or arrange the publication of such Transaction and may delegate such reporting or publication to another person.

#### **5. Services**

- 5.1 Pursuant to these Terms, we may contemplate or execute Transactions in Securities and Derivatives Business with you and provide you with certain ancillary services in relation to Transactions in Securities and Derivatives Business, including dealing and brokerage services and introducing and arranging ("**Services**"). Our Services may be provided in relation to Securities traded on Exchanges, including in Europe, the United States of America and Japan/other Asian Exchanges.
- 5.2 We set out in Schedule 1 to these Terms a non-exhaustive list of the descriptions of the risks involved in Transactions in certain types of Securities and Derivatives. By entering into these Terms you acknowledge and confirm you have read, understand and accept the risk statements contained in Schedule 1 to these Terms.
- 5.3 We may, at our absolute discretion and at any time, determine that we either will or will not offer the Services (or any part of them).
- 5.4 We will not provide any investment advice or otherwise act on your behalf in deciding to effect Transactions nor do we recommend whether or not a particular Transaction is suitable for you. We will not make any investment or other decisions on your behalf. You have sole responsibility for making any investment decisions. We will not give you investment, legal or tax advice in relation to any Transactions or Services.
- 5.5 Notwithstanding Clause 5.4, we may, from time to time and at our own discretion, provide you with information about Securities and Derivatives. However, we are not obliged to provide you with continuous information nor advice in relation to any Securities or Derivatives purchased (or proposed to be purchased) by you pursuant to these Terms or otherwise and we give no representation, warranty or guarantee as to the accuracy or completeness of such information.

#### **6. Appropriateness**

- 6.1 In respect of the Services, we may require you to provide information in relation to your knowledge and experience in the investment field relevant to the specific type of product or service (and updates to such information as necessary) relating to you, your agents, employees, underlying principals or others and you agree to provide such information as we may require.
- 6.2 If you have been categorised as a "professional client" or an "eligible counterparty", we assume, as we are entitled to do, that you have the necessary experience and knowledge in order to understand the risks involved in Transactions



in respect of the Services for the purposes of assessing whether a Transaction is appropriate for you (where we have an obligation to make such an assessment).

- 6.3 Where you request at your own initiative the provision of Services in relation to the execution or reception and transmission of your orders in respect of Non-Complex Financial Instruments, then, unless otherwise agreed, we are not required to assess the appropriateness of such Transaction or Service for you and you therefore will not have the benefit of certain FCA conduct of business regulations relating to the assessment of appropriateness.

## **7. Use of Brokers, Introductory, Arranging and Order Routing Services**

- 7.1 To effect Transactions in Securities, we may instruct a broker. A broker instructed by us may be an Affiliate of ours. Unless agreed in writing to the contrary, we will remain your counterparty to Transactions, acting as principal.
- 7.2 Where agreed in writing, separately from the Terms, we may act solely in the role of an introducer and introduce you to a broker dealing in the relevant Securities for the purposes of marketing and/or effecting any transactions in Securities (an **"Introduced Broker"**). In such circumstances, the Introduced Broker will be acting as principal as your contractual counterparty to the transactions. For the avoidance of doubt, we will not be your contractual counterparty in respect of any transactions entered into by you when carried out by an Introduced Broker and in relation to any such transactions you will be the client of that Introduced Broker.
- 7.3 Where you deal with or through a Routing Broker or Introduced Broker, the terms of such broker and, where relevant, its execution policy, will apply to the execution of the order.
- 7.4 We may provide an order routing service in Securities. Orders will be routed to a Routing Broker. You are responsible for the proper entry and transmission of the data relating to an order.
- 7.5 We reserve the right to refuse to route an order at any time and shall be under no obligation to divulge the reason.
- 7.6 You understand that when you are responsible for placing, amending and cancelling orders, their placing, amendment and cancellation shall be governed by Applicable Regulations. Accordingly, amendment and/or cancellation of orders is not guaranteed.
- 7.7 You must ensure that all orders and Transactions made pursuant to this Clause 7 comply with Applicable Regulations.
- 7.8 All Transactions between you and an Introduced Broker, or a Routing Broker in respect of which we provide order routing services, shall be subject to the terms of business (if any) and any other agreement or arrangement between the relevant broker and you (**"Introduced/Routing Broker Terms"**). You may be required to enter into written Introduced/Routing Broker Terms as a pre-condition to us introducing/routing your orders to such a broker.
- 7.9 As between us and you, if there is inconsistency between these Terms and Introduced/Routing Broker Terms, these Terms will prevail.
- 7.10 We make no representation or warranty as to the services provided by, or creditworthiness of, Routing Brokers or Introduced Brokers. Where a broker, Introduced Broker or a Routing Broker is an overseas broker, Introduced Broker or Routing Broker then the services of that overseas broker, Introduced Broker or Routing Broker may not be regulated by the FCA.
- 7.11 You agree that:
- (a) the acceptance or rejection of orders routed by us is at the discretion of the broker, Routing Broker or Introduced Broker (as applicable), and we have no responsibility therefore; and
  - (b) we shall not be liable for breach by a broker, Routing Broker or an Introduced Broker of such broker's terms.

## **8. Third Party Services**

- 8.1 We may provide Services with or through our Affiliates or Third Party Providers. You authorise us to use the services of Third Party Providers in our provision of the Services without your further consent and on such terms as we may determine and without a diminution of our rights.
- 8.2 Third Party Providers may include Infrastructures. Infrastructures have certain rules and regulations with which we must comply. You must read such rules and regulations and represent and warrant to us that you shall comply with such rules and regulations (to the extent applicable) and any other terms and conditions that Third Party Providers require with respect to your use of Third Party Services.

## **9. Order Execution**

- 9.1 By entering into these Terms, you expressly consent to our execution policy, a summary of which has been provided to you separately. We will execute your orders in accordance with that policy.
- 9.2 In the context of Derivatives Business, we will be entering into Derivatives with you which are customised, bilateral agreements negotiated directly with you. As such, there is only one Execution Venue with which we will execute orders with you directly on a private basis in most circumstances (being us, or an Affiliate of ours, acting as your counterparty in a principal capacity), although, if required in accordance with EMIR, these orders will be cleared through a central counterparty. If you decide to proceed with any Derivatives Business quote we may give you, and to the extent best execution applies pursuant to the rules of the FCA, we will assume that we have provided the best possible result.
- 9.3 Please be aware that where we act in response to a request for a quote, we will meet our obligations to take all sufficient steps to obtain the best possible result for our clients by executing the order immediately after the quote is provided if the client accepts the order immediately, or if the quote is not accepted immediately, as soon as is reasonably practicable after the quote is accepted by the client, provided that, taking into account the changing market conditions and the time elapsed between the offer and acceptance of the quote, the quote is not manifestly out of date.
- 9.4 Unless otherwise agreed between the parties in writing, you expressly consent to our executing your orders outside of a regulated market, a multilateral trading facility or an organised trading facility (as such terms are defined in UK MiFIR).
- 9.5 You expressly instruct us not to make public any limit order relating to a transaction in Securities which is not immediately executed under prevailing market conditions.
- 9.6 We may, in certain circumstances, aggregate your order with our own orders and with orders of other clients. In some cases aggregation may result in you obtaining a less favourable price than would otherwise have been the case.

## **10. Basis of Dealing**

- 10.1 Except where otherwise required by Applicable Regulations or notified to you, we deal as principal and not as agent on your behalf.
- 10.2 If Applicable Regulations require us to act as your agent on an Exchange or other Infrastructure you undertake to sign and deliver any required additional customer documentation.

## **11. Direct Electronic Access**

- 11.1 Should we, or our Affiliates, provide you with direct electronic access, in relation to Securities trading, to a trading venue (i) without routing orders through our, or our Affiliates', internal electronic trading system, or (ii) through the use of a nominated technical system or technical connection between us, your rights and obligations arising from such provision will be set out in a separate, binding, written agreement.

## **12. Instructions**

- 12.1 Unless otherwise notified by us, you may transmit your Instructions to us by telephone and facsimile, in writing, or electronically, including by email or electronic message protocol or system via electronic links and Instructions shall be transmitted to us at your risk. Instructions shall not take effect unless actually received by us and, in the case of any Instructions transmitted to any system, formally acknowledged by us. We shall not be required to confirm any such Instruction prior to execution or otherwise, and you agree to indemnify us and hold us harmless if you suffer any loss in reliance thereon.
- 12.2 We are not obliged to accept or execute any Instruction nor need we give any reasons for declining to do so.
- 12.3 We shall be entitled to rely on and treat as binding any Instructions which we believe to be from you or a person authorised to act on your behalf, and which we have accepted in good faith. Without prejudice to the above, you acknowledge that we may rely conclusively on, and you shall be bound by, any Instructions or other communications which purport to originate from you without any duty to make any investigation or enquiry as to the validity of such reliance.
- 12.4 If any instruction is ambiguous or conflicts (in part or whole) with another Instruction, you agree that we are entitled to act in good faith on what we reasonably understand to be the Instruction and any action we take or omit to take as a result will be binding on you.

## **13. Unsettled Positions**

- 13.1 Except as otherwise stated, we will have no responsibility for taking or failing to take action in respect of any rights you may have under any Unsettled Position unless we receive timely Instructions from you.



- 13.2 Where any action is taken by us or a third party pursuant to any Applicable Regulations which affects any of your Unsettled Positions generally or corresponding Exchange Transactions to which we are a party, we will make such allocation amongst the affected customer Unsettled Positions as we think fit, to which allocation you shall be bound. We shall use commercially reasonable efforts promptly to notify you of such event, but will not be liable for any loss incurred by you as a result of such action or any failure to notify.

#### **14. Payment and Delivery**

- 14.1 By entering into a Transaction in Securities you become unconditionally obliged, in respect of each Unsettled Position resulting from such Transaction, to pay or deliver such amount of cash or Securities to us or at our direction as we are required to pay or deliver to (or at the direction of) the Clearing Member or the Infrastructure within such time as we may specify and undertake that you will effect such payment or delivery in sufficient time to enable us to meet our obligations to the Clearing Member or the Infrastructure on time.
- 14.2 You will not be entitled to receive delivery of Securities or payment of cash from us, nor to any right of ownership or other proprietary interest in or in relation to such Securities or cash, in settlement of a Transaction unless and until you have complied with Clause 14.1 and we have received unconditional and final delivery of such Securities (including, where relevant, payment or delivery of any cash amounts or other assets that the Infrastructure or Clearing Member is permitted to make in accordance with Applicable Regulations in lieu of, or in substitution for, its obligation to deliver Securities) or payment of cash from the Infrastructure or Clearing Member.
- 14.3 If you fail to pay any sum when due in respect of a Transaction, interest will be payable on the unpaid sum until payment is received. Interest will be calculated at one per cent. above the Bank of England's base rate. Such interest will be payable on demand and may be deducted by us from any amount due to you from us or our Affiliates.

#### **15. Position Limits**

- 15.1 We will have the right, whenever we in our absolute discretion deem such action necessary or desirable for the purposes of complying with Applicable Regulations, to limit or require the reduction of the size and number of Unsettled Positions (net or gross) which may at any time be outstanding, or to Close Out any one or more Unsettled Positions in order to reduce the Unsettled Positions carried with us.
- 15.2 The FCA or other national competent authorities will impose position limits in respect of certain commodity derivatives, and position management controls may be imposed by an Exchange. In order to ensure that such position limits and position management controls are complied with, we may require you to limit, terminate or reduce the positions which you may have with us at any time and we may in our sole and absolute discretion Close Out any one or more Transactions.

#### **16. Pre Hedging**

- 16.1 We may undertake pre-hedging activity in respect of Transactions conducted by us as principal with you by executing principal transactions in the market before and/or after executing your Transaction.
- 16.2 When you indicate your interest in a Transaction or seek a request for quote in a Transaction, we may use that information to engage in pre-hedging activity, which may include entering into transactions prior to executing your Transaction or request with a view to facilitating your Transaction or request. Any transactions entered into by us with a view to facilitating your Transaction will be entered into by us as principal, not as an agent for you.
- 16.3 Any pre-hedging or hedging transactions entered into by us may be commensurate with the size and nature of your order, could be at different prices from the price at which we execute your Transaction, may affect the market price of or liquidity of the product(s) you are buying and/or selling and may result in profit, or loss, to us.
- 16.4 When engaging in pre-hedging activity, we have in place procedures to ensure that your Transaction is executed in an orderly fashion and in a manner unlikely to disadvantage you or create undue market impact although there is no guarantee that these activities will result in the desired outcome.
- 16.5 Any pre-hedging will be in accordance with our internal guidelines and policies and the principles established by regulators and will take into consideration prevailing market conditions and the size and nature of your anticipated Transaction.

#### **17. ICMA Rules and Recommendations**

- 17.1 All Transactions in "international securities" as that term is defined in the rules and recommendations of the International Capital Market Association ("**ICMA**"), and unless agreed otherwise at the time of trade in non-US debt or convertible instruments, shall be subject to ICMA rules and recommendations.

## 18. Short-selling

- 18.1 You are required to advise us if any sale order given to us is a short sale and we shall have the right to refuse to accept any short sale order.

## 19. Late settlement and Settlement Fails

- 19.1 Without prejudice to any other remedy we may have under these Terms or Applicable Regulations, if at any time you fail to deliver Securities in compliance with any obligation which you may have under these Terms, you authorise (but without requiring) us:

- (a) to borrow or to buy (for your account) such Securities necessary to make delivery thereof and to deliver the same; and
- (b) to purchase or otherwise acquire (for your account) Securities equivalent to any Securities borrowed by us pursuant to our powers under sub-Clause (a) above and to use such Securities to perform our obligations to the lender of such Securities to deliver Securities equivalent to the borrowed Securities.

- 19.2 In connection with the requirements of the CSDR, we may be charged cash penalties ("Cash Penalties") or receive payments of cash penalties ("Penalty Credits") in connection with our provision of investment services to you which relate to a transaction executed by you that fails to settle ("Settlement Fails"). Unless otherwise agreed with you, we may, at our discretion, charge you an amount up to any Cash Penalties we incur for Settlement Fails or make a payment to you in connection with a Penalty Credit, in each case, that may arise in connection with transactions executed by you.

## 20. No holding of Client Money or Client Assets

- 20.1 Transactions will be settled on a delivery versus payment basis. Consequently, we will not hold Client Money or "client assets", as such terms are defined in the FCA rules, on your behalf in connection with Transactions carried out under these Terms including the requirement to segregate funds from our own funds and funds of other clients.
- 20.2 If, notwithstanding Clause 20.1, we hold any cash on your behalf at any time, we will do so as banker and not as trustee under the FCA rules on Client Money. If we fail (i.e. we are subject to the appointment of a liquidator, receiver, administrator, special administrator or trustee in bankruptcy, or any equivalent procedure in any relevant jurisdiction), the FCA's rules on the distribution and transfer of Client Money will not apply to such cash so you will not be entitled to share in any distribution under the FCA's rules on the distribution and transfer of Client Money.

## 21. Communications and Notices

- 21.1 Any notice or other communication in connection with these Terms shall be in writing and sent by electronic mail to the email address most recently given. A notice or other communication shall take effect from the time it is received. Notwithstanding the foregoing, you consent to us communicating with you via notices posted to our website. We will communicate with you, and you will communicate with us, in English.
- 21.2 The parties agree that electronic transmission of information cannot be guaranteed to be secure or error free and could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use and they will both use commercially reasonable procedures to check for the then most commonly known viruses before sending electronically. The parties recognise that such procedures cannot be a guarantee that transmissions will be virus free and they shall each be responsible for protecting their own interests in relation to electronic communications and for ensuring that an electronic communication is not misaddressed.

## 22. Reporting Trading Information

- 22.1 We will not make any trade or transaction reports for you in respect of Transactions, unless otherwise agreed with you in writing, or unless such obligation to report falls upon us whilst acting as a Systematic Internaliser.
- 22.2 We may be required to report details in respect of Transactions to a relevant regulatory authority pursuant to Applicable Regulations (including under Article 26 UK MiFIR) or to a trade repository or otherwise in accordance with Applicable Regulations ("**Transaction Reporting Requirements**").
- 22.3 We may from time to time require you to provide all information (and updates to such information as necessary) relating to you and your agents, employees, underlying principals or others as we may reasonably require in order to comply with any market transparency requirements and Transaction Reporting Requirements as we may reasonably believe may arise in respect of your Transactions. You agree to deliver to us such information and represent to us that such information as you deliver is, at the time of delivery, true, accurate and complete in every material respect and you

acknowledge and agree that we may rely on the information without investigation, unless and until you inform us otherwise. You undertake to provide us, on reasonable notice, with any material changes or updates to this information.

- 22.4 We may refuse to enter into, execute, transmit, deal in or otherwise arrange any Transaction where you have not provided such information (and waived or procured the waiver of any confidentiality or data protection/privacy obligations in respect of such information) as we may reasonably require: (a) in order for us to comply with any Transaction Reporting Requirements or market transparency requirements in respect of a Transaction; or (b) where our non-receipt of such information (including, without limitation, an applicable legal identifier code) would mean that we are prohibited by Applicable Regulations to enter into, execute, transmit, deal or otherwise arrange (as the case may be) such Transaction.
- 22.5 The parties shall, before concluding a Transaction outside the rules of an Exchange (whether acting as, or on behalf of, the buyer or seller thereof), confirm to each other whether each is a Systematic Internaliser in respect of the relevant Transaction.
- 22.6 Where you transmit an order relating to a Transaction to us, we shall be under no obligation (unless expressly agreed otherwise) to report the Transaction resulting from the order concerned or transmit the order details to another investment firm in accordance with Article 4 of UK MiFID2 RTS 22.
- 22.7 Unless otherwise agreed, we will provide you with trading confirmations promptly following the execution of an order with essential information concerning the execution of the order in accordance with the FCA rules on reporting information to clients. We will supply to you, on request, information about the status of your order.

### **23. Your Representations, Warranties and Undertakings**

- 23.1 You represent, warrant and undertake to us, as of the date of these Terms, the date of any Instruction and the date of each Transaction that:
- (a) you have all necessary authority, powers, capacity, consents, licences, approvals and authorisations, and have taken all necessary action to enable you lawfully to enter into and perform your obligations under these Terms and each Transaction;
  - (b) these Terms, each Transaction and the obligations created under them are binding upon you and enforceable against you in accordance with their terms and do not and will not violate the terms of any Applicable Regulations, charge or agreement by which you are bound;
  - (c) at the time of transfer by you of any Securities, you will have full and unqualified right to make such transfer and upon such transfer the transferee will receive all right, title and interest in and to those Securities free from any charge, lien, pledge, encumbrance or other adverse interest;
  - (d) all information which you have provided, and will provide, to us is true, complete, accurate and not misleading, and you will promptly provide us with any further information properly required from time to time by any competent authority, Infrastructure, Third Party Provider or us, as applicable;
  - (e) any person (including any third party) appointed by you to give and/or receive notices, Instructions and/or other communications on your behalf under these Terms has all the requisite power, authority and regulatory or governmental consents to give and receive such notices, Instructions and/or other communications;
  - (f) you are familiar with any relevant Infrastructure rules and you will not take any action or make any omission that will cause any person to be in breach of or in default under any relevant Infrastructure rules;
  - (g) to the extent that you are not acting as principal but as agent for a Principal:
    - (i) you are expressly authorised by the Principal to instruct us in respect of the Securities, the Services and any Transaction; and
    - (ii) the Principal can make the representations and warranties set out in sub-clauses (a) to (e) and (h) to (j) inclusive as if it were the party to these Terms and shall not cause you to be in breach of these Terms or cause you or us to be in breach of any Applicable Regulations;
  - (h) you are subject to, and are fully in compliance with, the UK Bribery Act 2010 (as amended from time to time) or are subject to, and are fully in compliance with, all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption in your jurisdiction;
  - (i) you have not relied, are not relying and will not rely on any communication or information (written or oral) from us as investment advice or as an assurance as to the expected performance of any Transaction, and

you have taken or will have taken such review and/or advice as you consider necessary to ensure that any Transaction meets your needs prior to entering into any Transaction;

- (j) in using the Services, you will comply at all times with, and not in any way violate, these Terms and any Applicable Regulations;
- (k) no Event of Default has occurred and is continuing or will occur by your entering into, or performing your obligations under, these Terms; and
- (l) you represent and warrant that your use of the Electronic Services, as applicable, will be for the purposes of your business, trade or profession. The parties acknowledge and agree that the requirements of the EU's Electronic Commerce Directive (2000/31/EC), as implemented in the United Kingdom, are excluded to the fullest extent permissible by law.

23.2 You will notify us promptly if there is any material change in any such information provided, or if any of the above representations shall materially change or cease to be true and correct.

## **24. Liability**

24.1 Our liability for any loss, liability, damage or expense arising out of or in connection with the Services, whether under any express or implied term of these Terms, shall be limited as described in Clauses 24.2 to 24.6 below, unless otherwise expressly provided in these Terms. References to negligence include negligence which causes death or personal injury.

24.2 We will not be liable for any loss, liability, damage or expense which may be sustained by you unless such loss arises solely and directly from negligence, wilful default, dishonesty or fraud by us or any of our officers, directors or employees.

24.3 We will have no liability for any partial or total non-performance of any Service if such partial or total non-performance results from any event or state of affairs beyond our reasonable control including, without limitation, any failure of communication or computer systems or equipment or suspension of trading by any Infrastructure, clearing bank or the Custodian or any other Third Party Provider.

24.4 We accept no liability for any loss, liability, damage or expense that arises out of a failure by you to provide information reasonably requested by us (or our Affiliates) or by reason of such information being incomplete or inaccurate.

24.5 We accept no liability for:

- (a) losses, whether direct or indirect, of profits, goodwill, revenue, anticipated savings or of data; or
- (b) any indirect, consequential or incidental losses,

regardless of whether the possibility of such losses was disclosed to, known by, or could reasonably have been foreseen by us.

24.6 Nothing in these Terms shall exclude or limit any duty or liability which we may have which may not be excluded or restricted pursuant to Applicable Regulations.

24.7 References in this Clause 24 and Clause 26 to us include references to our Affiliates and any Third Party Providers, and their respective officers, directors, employees, agents and licensors.

## **25. Indemnity**

You will indemnify, and keep indemnified, us and our Affiliates and respective personnel on demand against any and all acts, proceedings, claims, demands, obligations, charges, reasonable fees and expenses, taxes, payments, liabilities, losses, injuries, costs and damages whatsoever incurred or payable (including, without limitation, the reasonable costs of professional advisors, and all costs, charges, liabilities and expenses arising out of any claims, actions or proceedings brought against us by Third Party Providers) arising:

- (a) out of any breach by you of these Terms; and/or
- (b) pursuant to or in connection with these Terms (including in connection with any Transaction effected on your behalf, at your request or otherwise in order to comply with your Instructions) and the provision of the Services (including but not limited to any Third Party Services) unless due solely and directly to our wilful default, dishonesty or fraud.

## **26. Default**

- 26.1 You must notify us immediately upon becoming aware that an Event of Default has occurred.
- 26.2 Following the occurrence of an Event of Default we may, without prior notice to you, take any and all actions that we reasonably consider to be necessary or desirable in the circumstances, including (without limitation):
- (a) to declare any or all amounts owing by you (or, where you are acting as agent, your Principal) to us to be immediately due and payable (to the extent that this is not already the case at the relevant time);
  - (b) to withhold delivery of Securities or payment of cash to you that we would otherwise be required to make in connection with any Transactions;
  - (c) to buy-in or sell-out Securities for your account and at your risk in settlement of an Unsettled Position;
  - (d) to charge you interest on any payment which is overdue from you at such rate and on such basis as we customarily charge for unauthorised overdrafts accruing from the date such payment is due; and
  - (e) we reserve the right to Close Out any Transaction if we determine in our reasonable discretion that such action is required by Applicable Regulations or is otherwise necessary or reasonable for the purposes of limiting risk. If we Close Out any Transaction, you hereby agree to indemnify us for any loss we suffer as a result of taking such action. In each case, we shall use commercially reasonable efforts promptly to notify you of such event, but will not be liable for any loss incurred by you as a result of such action or any failure to notify.
- In each case, we may carry out any such action in such manner and on such terms as we in our absolute discretion think fit and we shall not be responsible for any losses occasioned by such action.
- 26.3 Following the occurrence of an Event of Default, we may by notice to you:
- (a) terminate or suspend these Terms in whole or with respect to one or more Exchanges with immediate effect;
  - (b) demand performance by you of your obligations to us in such manner as is determined by us; or
  - (c) seek repayment of any losses suffered by us in consequence of the Event of Default.
- 26.4 Upon the occurrence of an Event of Default, we shall have the right without prior notice to you, and without any obligation to exercise instead a power of sale under these Terms, to set-off or apply any obligation of yours owed to us or any of our Affiliates (whether or not arising under these Terms, matured or contingent and irrespective of currency, place of payment or booking office of the obligation) against any obligation owed to you by us or any of our Affiliates (whether or not arising under these Terms, matured or contingent and irrespective of currency, place of payment or booking office of the obligation). For the purpose of cross-currency set-off, we may convert either obligation at the applicable market exchange rate selected by us on the relevant date. If an obligation is unascertained, we may estimate that amount and set-off in respect of that estimate, subject to the relevant party accounting to the other when the amount of the obligation is ascertained. Nothing in this Clause will be effective to create a charge or other security interest.

## **27. Conflicts Policy**

- 27.1 We have policies and procedures to identify, consider and manage potential conflicts of interest and protect the integrity of our relationships with our clients. Our personnel are required to comply with such policies and procedures and may not do anything directly or indirectly that is prohibited thereunder. A summary of our conflicts policy is included herein.

## **28. Client Reports**

- 28.1 We shall provide reports to you in relation to the execution of Transactions as may be required in accordance with Applicable Regulations.

## **29. Fees, Charges and Payments**

- 29.1 We will notify our charges to you separately from time to time.
- 29.2 You agree that, notwithstanding our requirement to provide you with information on costs and associated charges under the rules of the FCA Handbook, and excluding any costs and charges in connection with any Transactions that embed a derivative, we may provide you with only certain details in respect of such costs and charges where agreed with you.

- 29.3 Where permitted by Applicable Regulations, we may share charges with, or receive remuneration from, third parties (including Affiliates) in respect of Transactions we carry out with or for you, or we may be acting on both sides of the Transaction. We will provide you with further details in respect of any such charges.
- 29.4 Without prejudice to Clauses 9 or 10, we may, in certain circumstances, apply a mark-up or mark-down in the price of a Transaction in Securities and Derivatives, which is likely to vary on a transaction-by-transaction basis. Any mark-up or mark-down applied to client Transactions by us will be fair and reasonable, and shall be included in the final price of a Transaction in order to compensate us (as the market participant) for a number of considerations, which might include risks taken, costs incurred, and services rendered.
- 29.5 Unless we agree otherwise, all money payable by you or your Principals will be paid using immediately available, freely convertible funds in the relevant currency on the due date regardless of any right of equity, set-off or counterclaim that you may allege against us.
- 30. Taxes**
- 30.1 All sums payable by you or your Principal will be paid free and clear of any taxes, unless you or your Principal are required by law to withhold or deduct tax. In this case, unless we agree otherwise, you or your Principal will pay an additional amount so that we receive an amount after withholding or deduction of tax that equals the amount that we would have received without such withholding or deduction.
- 30.2 You are responsible for paying any taxes due and making claims relating to taxes (such as for exemption from withholding tax), for filing any tax returns and for providing information to the tax authorities in relation to any business we carry on with or for you. You agree to reimburse us for any fees we incur on your behalf or otherwise in connection with the provision of the Services to you in accordance with these Terms.
- 31. Confidentiality and Privacy**
- 31.1 We are not obliged to disclose to you, or to take into consideration in providing the Services, information where the disclosure of it to you would be a breach of duty or confidence to any other person.
- 31.2 Neither party ("**Receiving Party**") will disclose any information (irrespective of whether it is marked "confidential" or not) relating to the other party ("**Disclosing Party**") obtained in connection with these Terms, including information relating to these Terms, the Services or any Transaction ("**Confidential Information**"), to any third party except (i) with the consent of the Disclosing Party, (ii) as is reasonably necessary to implement or perform these Terms, including (without limitation) disclosure to Infrastructures, brokers and other intermediaries and counterparties, (iii) as is required by court order or otherwise by Applicable Regulations, (iv) to Applicable Regulators, on their request, (v) to the Receiving Party's personnel, professional advisers, other service providers and insurers (each of whom shall be subject to confidentiality obligations where they are not an officer, employee or director of the Receiving Party, or are not under a professional duty to protect confidentiality), or (vi) to the Receiving Party's Affiliates which are subject to confidentiality obligations.
- 31.3 Clause 31.2 shall not apply to any information which:
- (a) is in or subsequently enters the public domain other than as a result of a breach of Clause 31.2;
  - (b) has been or is subsequently received by the Receiving Party from a third party which is under no confidentiality obligation in respect of that information;
  - (c) has been or is subsequently independently developed by the Receiving Party without use of the Disclosing Party's Confidential Information; or
  - (d) was previously known to the Receiving Party free of any obligation to keep it confidential.
- 31.4 Clauses 31.1 to 31.3 shall remain in full force and effect notwithstanding any termination of these Terms.
- 31.5 Where you are a legal entity or are acting on behalf of other individuals, in respect of the processing of any personal data pursuant to these Terms:
- (a) Each party acknowledges that:
    - (i) the status of each party is a question of fact determined under Data Protection Laws; and
    - (ii) without limiting Clause 31.5(a)(i), the parties acknowledge that, in relation to personal data processed under these Terms, it is their mutual understanding that they are each an independent data controller. Each party shall comply with its obligations under Data Protection Laws in relation to the processing of personal data under, or in connection with the performance of, these Terms.



- (b) Each party shall only process personal data for the purposes of performing its obligations, and exercising its rights under these Terms.
  - (c) Without limiting clause 4 (Data Protection) of the Notice to Customers, in respect of each individual whose personal data you provide to us, you shall ensure that you are able lawfully to provide those personal data to us and will, before doing so, ensure that the individuals to whom the personal data relates have:
    - (i) been informed of our identity, the personal data (or categories of personal data) to be disclosed and the information set out in our privacy notice for customers, which is available at <https://www.smbcgroup.com/emea/notices-reporting/privacy>; and
    - (ii) where relevant, any necessary consents required under Data Protection Law have been collected from those individuals.
  - (d) If a party receives a written request from an individual to exercise any of their rights under Data Protection Law, which concerns processing of personal data undertaken by the other party, the party receiving the request shall:
    - (i) promptly and without undue delay, and in any event within three days from the date on which it received the request, forward the request to other party; and
    - (ii) cooperate and provide reasonable assistance in relation to that request to enable the other party to respond in accordance with Data Protection Laws (including in compliance with applicable deadlines and information requirements).
  - (e) Each party shall, taking into account the state of the art, the costs of implementation and the nature, scope, context and purpose of processing, as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including the risk of unauthorised or unlawful processing of personal data, and of accidental or unlawful loss, alteration, unauthorised disclosure or destruction of, or damage to, personal data.
  - (f) Each party ("**Notifying Party**") shall promptly notify the other party ("**Notified Party**") after becoming aware of a personal data breach affecting personal data, and the Notifying Party shall:
    - (i) provide the Notified Party a reasonable description of the personal data breach; and
    - (ii) upon the Notified Party's written request, provided the Notified Party with reasonable cooperation and assistance in respect of the personal data breach.
  - (g) Each party shall only process or transfer personal data in or, in the case of transfer, to, any country or territory outside the United Kingdom and EEA (as applicable) if and for so long as:
    - (i) an Adequacy Decision is in place;
    - (ii) the transfer is subject to a derogation in accordance with Article 49 EU GDPR or Article 49 UK GDPR (as applicable);
    - (iii) it is made in accordance with Article 46 EU GDPR or Article 46 UK GDPR (as applicable), including where standard contractual clauses approved by the UK Information Commissioner's Office or European Commission (as applicable) are in place between the exporting party and the data recipient.
- 31.6 Each party consents to the monitoring and recording of all communications, including telephone conversations, with the other party with or without the use of a warning tone or other notification. Absent contrary evidence, our records of such communications shall be our sole property and accepted by you as conclusive evidence of their content. A copy of such recordings and communications will be available on request for a period of five years and, where requested by the FCA, for a period of up to seven years.
- 32. Termination**
- 32.1 These Terms shall continue in full force and effect until terminated by us or you by written notice from one party to the other. Such notice may be given no less than thirty (30) days prior to the date of termination, provided that such notice may be immediately effective following your Event of Default.
- 32.2 Termination shall be without prejudice to the completion of Transactions already initiated and will not affect outstanding rights or liabilities.

### 33. General

- 33.1 Notwithstanding any other provision of these Terms, we may delegate the performance of all or part of our duties and obligations to an Affiliate. Our liability under these Terms shall not be affected by any such delegation.
- 33.2 Neither the relationship between us and you, nor the Services to be provided by us nor any information provided to you, nor any other matter, shall give rise to any fiduciary or equitable duties on our part which would oblige us (or any of our Affiliates or agents) to accept responsibilities more extensive than those set out in these Terms.
- 33.3 These Terms may be amended or supplemented by us by delivery to you of the amendments or revised Terms. An amendment or supplement which is made to reflect a change of Applicable Regulations may take effect immediately or otherwise as we may specify. Any other amendment or supplement will take effect no earlier than 10 days after we deliver the notice. No other amendment to these Terms shall be effective unless in writing and signed by a duly authorised representative of us.
- 33.4 Neither these Terms nor any rights, powers, liabilities or obligations under or pursuant to these Terms may be transferred or assigned by you or by us without the prior consent of the other party (such consent not to be unreasonably withheld or delayed), save that we may, upon dispatch of written notice to you, transfer to an Affiliate any or all of our rights, powers, liabilities and obligations under or pursuant to these Terms. The parties agree that these Terms shall extend to and be binding upon their respective successors and assigns.
- 33.5 Our rights and remedies under these Terms are cumulative and are not exclusive of any rights or remedies provided by law or by any other agreement. No waiver by us of any Event of Default or breach of any obligation arising under these Terms shall constitute a waiver of any other such event or breach and no exercise or partial exercise by us of any remedy shall constitute a waiver of the right subsequently to exercise that or any other remedy.
- 33.6 Each provision of these terms is severable and if any provision (or any part of any provision) of these Terms is or becomes invalid under, or contravenes, any Applicable Regulations, the remaining provisions (and, where applicable, the remainder of the provision in question) shall not be affected and shall remain in full force.
- 33.7 So far as is permitted by Applicable Regulations and except in the case of fraud, you agree and acknowledge that your only rights and remedies in relation to any representation, warranty or undertaking made or given in connection with these Terms shall be for breach of the terms of these Terms, to the exclusion of all other rights and remedies (including those in tort or arising under statute).
- 33.8 Subject to Clauses 24 and 25 above (which shall confer rights upon third parties as contemplated therein), nothing in these Terms is intended to confer any rights on any person not a party under the Contracts (Rights of Third Parties) Act 1999. No consent of any third party shall be needed for the termination or amendment of any terms of these Terms.
- 33.9 These Terms and any non-contractual matters in connection with them will be governed by and construed in accordance with English law. The parties agree that the courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with these Terms (including a dispute regarding the existence, validity or termination of these Terms) or the consequences of their nullity (a "Dispute"). The parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and, accordingly, that they will not argue to the contrary.
- 33.10 If you do not have your registered office or principal place of business in the United Kingdom, you must immediately appoint a party as an agent for service in the United Kingdom and notify us of such appointment as soon as is practically possible.

### 34. Interpretation

- 34.1 In these Terms, the following words and expressions have the following meanings:

**Adequacy Decision** means, in respect of a third country, a territory, or one or more specified sectors within that third country, a finding of adequacy:

- (a) by the Secretary of State in the UK, as set out in adequacy regulations made pursuant to section 17A of the UK DPA; or
- (b) pursuant to Article 45 of the EU GDPR,

in each case to the extent applicable to a transfer of personal data outside the United Kingdom or EEA (as applicable) pursuant to these Terms.



**Affiliate** means any entity that directly or indirectly controls, is controlled by or is under common control with us, including, without limitation, joint ventures;

**Applicable Regulations** includes the FCA rules or the rules of any successor to the FCA or of any other relevant regulatory authority, any Infrastructure rules, any bilateral or tripartite agreement between us and any Infrastructure, and all other applicable laws, rules and regulations as are in force from time to time as they relate to us and/or you;

**Applicable Regulator** means the FCA or any other relevant regulatory authority regulating us and/or you in any jurisdiction;

**Clearing Member** means any third party which is a clearing member of any Exchange or clearing house and which has been appointed by us to provide us with clearing and settlement services in respect of orders placed by you;

**Client Money** has the meaning given to it in the Glossary of the FCA Handbook in respect of the rules under CASS 7;

**Close Out** means, in relation to a Transaction, to close out, unwind, cancel or otherwise terminate or allow to expire and Closing Out and Closed Out shall be interpreted accordingly;

**CASS** means the Client Assets Sourcebook of the FCA Handbook;

**COBS** means the Conduct of Business Sourcebook of the FCA Handbook;

**Confidential Information** has the meaning given in Clause 31.2;

**CSDR** means, as applicable:

- (a) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories;
- (b) Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories as it forms part of domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018;

**Custodian** means the person you have designated to safeguard and administer your assets;

**Data Protection Law** means any law, enactment, regulation or order applicable in the United Kingdom or EEA concerning the processing of personal data, including:

- (a) the EU GDPR as it forms part of retained EU law as defined in the European Union (Withdrawal) Act 2018 (**UK GDPR**);
- (b) the UK Data Protection Act 2018 (**UK DPA**);
- (c) the General Data Protection Regulation 2016/679 (**EU GDPR**);
- (d) any law, enactment, regulation or order transposing, implementing, adopting, supplementing or derogating from, the EU GDPR and the EU Directive 2002/58/EC in each Member State,

each to the extent applicable to the activities or obligations of the parties under or pursuant to these Terms;

**Derivatives** means customised over the counter derivatives;

**Derivatives Business** means all business, including the sale, purchase and trading of Derivatives, undertaken by us;

**EEA** means the European Economic Area from time to time which currently comprises the member states of the European Union, and Iceland, Liechtenstein and Norway;

**Electronic Services** includes all electronic communications between us including but not limited to access to and use of systems that route orders and any related software or hardware we may provide to you to enable you to use such services including those which may be provided pursuant to Clause 11;

**EMIR** means, as applicable:

- (a) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories; and
- (b) Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories as it forms part of domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018;

**Event of Default** means any of:

- (a) a material breach of any of your obligations under these Terms or any other agreement entered into with us;
- (b) any representation or warranty by you is incorrect when made or repeated or deemed to have been made or repeated;
- (c) the initiation of any criminal, disciplinary or enforcement action against you by any regulatory authority or Infrastructure;
- (d) the commencement of any insolvency, liquidation, administration, reorganisation or analogous proceeding with respect to you;
- (e) the entering into by you of any arrangement for a transfer of all or substantially all of your business, or any merger, amalgamation, consolidation or similar process with the effect that the recipient (in the case of transfers) or the surviving entity (in respect of mergers etc.) does not assume all of your obligations under these Terms;
- (f) the entering into by you of any general assignment, arrangement or composition with or for the benefit of your creditors;
- (g) an event of default or similar event occurs under any other agreement between us; or
- (h) where you act as agent on behalf of a Principal, any of the foregoing which occurs in relation to a Principal;

**Exchange** means any market (including a regulated market, multilateral trading facility or organised trading facility (as such terms are defined in UK MiFIR) or alternative trading system) on which we agree to provide dealing services to you under these Terms;

**Exchange Transaction** means a transaction entered into on an Exchange to which we are party as principal or agent;

**Execution Venue** means a trading venue (or its operator), a market maker (each within the meaning contemplated under the FCA Handbook), a Systematic Internaliser, or other liquidity provider;

**FCA Handbook** means the handbook of rules and guidance issued by the FCA from time to time;

**Infrastructure** means any Exchange, clearing house, payment system, settlement system, securities depository or trade repository.

**Instructions** means any instructions given by you or on your behalf in respect of your account, allocations to such accounts, or the Services provided to you by us pursuant to these Terms including, without limitation, an instruction to enter into a Transaction with or for you;

**loss** includes any loss, cost, liability, expense or damage (including without limitation all reasonable legal fees and expenses);

**Introduced Broker** has the meaning given in clause 7.2;

**Introduced/Routing Broker Terms** has the meaning given in clause 7.8;

**Non-Complex Financial Instrument** means a financial instrument which is considered to be non-complex for the purposes of COBS 10A.4.1R of the FCA Handbook;

**Principal** means any person for whom you act as agent in respect of Transactions under these Terms, excluding us where you act as our agent in respect of an Exchange Transaction;

**Routing Broker** means a broker specified by you to which you wish us to route an order;

**Securities** means any of debt instruments or shares sold, purchased or traded by us;

**Systematic Internaliser** has the meaning given to it in the Glossary of the FCA Handbook;

**Third Party Provider** means any third party appointed by us and/or our Affiliates to provide Services or access pursuant to Clauses 8 and/or 11;

**Third Party Services** means Services provided through our Affiliates or Third Party Providers;

**Transaction** means any transaction contemplated or executed by or between you and us, or any third party, pursuant to these Terms;

**UK MiFID2 RTS 22** means Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 as it forms part of domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018;

**UK MiFIR** means Regulation (EU) No. 600/2014 on markets in financial instruments as it forms part of domestic law of the United Kingdom by virtue of the European Union (Withdrawal) Act 2018; and

**Unsettled Position** means, at any time, any Transaction, in respect of which your obligations to either deliver Securities or to pay cash to us which remains to be fulfilled, either in full or in part.

#### 34.2 In these Terms

- (a) **data controller, personal data, personal data breach, and processing** shall have the meanings given to them in Data Protection Laws;
- (b) references to the singular include the plural and *vice versa*;
- (c) references to any provision of any Applicable Regulations includes a reference to that provision as amended, extended, consolidated, substituted or re-enacted from time to time; and
- (d) words defined in the Applicable Regulations shall have the same meaning as in those Applicable Regulations, unless otherwise defined herein or the context requires otherwise.

## Schedule 1

### Risk Factors and Warnings

This notice is provided to you in compliance with the rules of the Financial Conduct Authority (FCA). This notice (which should be read in conjunction with “General Description of the Nature and Risks of Financial Instruments” (Appendix 1.3)) cannot disclose all the risks and other significant aspects of trading under these Terms. You should not deal in these products unless you understand their nature and the extent of your exposure to risk. You should also be satisfied that the product is suitable for you in the light of your circumstances and financial position.

#### 1 Shares

A share is an instrument representing a shareholder's rights in a company. Shares may be issued in bearer or registered form and may be certificated or non-certificated. One share represents a fraction of a corporation's share capital. Dividend payments and an increase in the value of the security are both possible, although not guaranteed. The shareholder has financial and ownership rights which are determined by law and the issuing company's articles of association. Unless otherwise provided, transfers of bearer shares do not entail any formalities. However, transfers of registered shares are often subject to limitations.

Dealing in shares may involve risks including but not limited to the following:

- (a) Company risk: a share purchaser does not lend funds to the company, but becomes a co-owner of the company. He or she thus participates in its development as well as in chances for profits and losses, which makes it difficult to forecast the precise yield on such an investment. An extreme case would be if the company went bankrupt, thereby wiping out the total sums invested.
- (b) Price risk: share prices may undergo unforeseeable price fluctuations causing risks of loss. Price increases and decreases in the short, medium and long-term alternate without it being possible to determine the duration of those cycles. General market risk must be distinguished from the specific risk attached to the company itself. Both risks, jointly or in aggregate, influence share prices.
- (c) Dividend risk: the dividend per share mainly depends on the issuing company's earnings and on its dividend policy. In case of low profits or losses, dividend payments may be reduced or not made at all.

#### 2 Bonds

A bond is a negotiable debt instrument issued in bearer or registered form by a company or a government body to creditors and whose par value at issuance represents a fraction of the total amount of the debt. The duration of the debt as well as the terms and conditions of repayment are determined in advance. Unless stipulated otherwise, a bond is repaid either at the maturity date, or by means of annual payments, or at different rates determined by drawing lots. The interest payments on bonds may be either: (i) fixed for the entire duration or (ii) variable and often linked to reference rates, e.g. Euro Interbank Offered Rate (EURIBOR) or Sterling Overnight Interbank Average Rate (SONIA), amongst others. The purchaser of a bond (the creditor) has a claim against the issuer (the debtor).

Dealing in bonds may involve risks including but not limited to the following:

- (a) Insolvency risk: the issuer may become temporarily or permanently insolvent, resulting in its incapacity to repay the interest or redeem the bond. The solvency of an issuer may change due to one or more of a range of factors depending on the issuing company, the issuer's economic sector and/or the political and economic status of the countries concerned. The deterioration of the issuer's solvency will influence the price of the securities that it issues.
- (b) Interest rate risk: uncertainty concerning interest rate movements means that purchasers of fixed-rate securities carry the risk of a fall in the prices of the securities if interest rates rise. The longer the duration of the loan and the lower the interest rate, the higher a bond's sensitivity to a rise in the market rates.
- (c) Credit risk: the value of a bond will fall in the event of a default or reduced credit rating of the issuer. Generally, the higher the relative rate of interest (that is, relative to the interest rate on a risk-free security of similar maturity and interest rate structure), the higher the perceived credit risk of the issuer.
- (d) Early redemption risk: the issuer of a bond may include a provision allowing early redemption of the bond if market interest rates fall. Such early redemption may result in a change to the expected yield.

- (e) Risks specific to bonds redeemable by drawing: bonds redeemable by drawing have a maturity that is difficult to determine, so unexpected changes in the yield on these bonds may occur.
- (f) Risks specific to certain types of bond: additional risks may be associated with certain types of bond, for example floating rate notes, reverse floating rate notes, zero coupon bonds, foreign currency bonds, convertible bonds, reverse convertible notes, indexed bonds and subordinated bonds. For such bonds, you are advised to make enquiries about the risks referred to in the issuance prospectus and not to purchase such securities before being certain that all risks are fully understood. In the case of subordinated bonds, you are advised to enquire about the ranking of the debenture compared with the issuer's other debentures. Indeed, if the issuer becomes bankrupt, those bonds will only be redeemed after repayment of all higher ranked creditors and as such there is a risk that you will not be reimbursed. In the case of reverse convertible notes, there is a risk that you will not be entirely reimbursed, but will receive only an amount equivalent to the underlying securities at maturity.

### 3 Derivatives

A derivative is a type of financial instrument whose value is based upon the value of an underlying asset, index, rate or reference point. Derivatives involve the transfer of risk from one party to another. They can be used to limit a party's exposure to a variable or allow a party to gain exposure to that variable.

- (a) Understanding the risk of derivative products: you should not deal in derivative products unless you understand the nature of the contract you are entering into and the extent of your exposure to risk. You should also be satisfied that the contract is suitable for you in light of your circumstances and financial position. Although derivatives can be utilised for the management of investment and liability risk, some of these products are unsuitable for many investors. Derivative products will not always act in the same way. Relationships with us may differ depending on the product and nature of the transaction, and clearing houses may not always owe you a direct commitment. Different products involve different levels of exposure to risk and in deciding whether to trade in such products you should be aware of the following points.
- (b) Off-exchange transactions: when trading financial derivative products with us, you will be entering into off exchange derivative transactions. All positions entered into with us must be executed with us and cannot be executed with any other entity. Transactions in off-exchange derivatives may involve greater risk than investing in on exchange derivatives because there is no exchange market on which to close an open position. It may be impossible to liquidate an existing position, to assess the value of the position arising from an off-exchange transaction or to assess the exposure to risk. Bid prices and offer prices need not be quoted by us, and, even where they are, we may find it difficult to establish a fair price, particularly when the relevant exchange or market for the underlying is closed or suspended.

### 4 Foreign markets

Foreign markets will involve different risks from the UK markets. In some cases the risks will be greater. The potential for profit or loss from transactions on foreign markets or in foreign denominated contracts will be affected by fluctuations in foreign exchange rates.

### 5 Collateral

The way in which collateral will be treated will vary according to the type of transaction and where such collateral is traded. There could be significant differences in the treatment of your collateral, depending on whether you are trading on a recognised or designated investment exchange, with the rules of that exchange (and the associated clearing house) applying, or trading off-exchange. We reserve the right to implement a higher margining requirement than the exchange. Deposited collateral may lose its identity as your property once dealings on your behalf are undertaken. Even if your dealings should ultimately prove profitable, you may not get back the same assets which you deposited, and may have to accept payment in cash.

If we hold any cash on your behalf at any time, we will do so as banker and not as trustee under the FCA rules on Client Money.

### 6 Commissions

Before you begin to trade, you should obtain details of all commissions and other charges for which you will be liable. If any charges are not expressed in money terms (but, for example, as a percentage of contract value), you should obtain a clear and written explanation, including appropriate examples, to establish what such charges are likely to mean in specific money terms.

**7 Suspensions of trading**

Under certain trading conditions it may be difficult or impossible to liquidate a position. This may occur, for example, at times of rapid price movement if the price rises or falls in one trading session to such an extent that under the rules of the relevant exchange trading is suspended or restricted. Placing a stop-loss order will not necessarily limit your losses to the intended amounts, because market conditions may make it impossible to execute such an order at the price stipulated.

**8 Clearing house protections**

On many exchanges, the performance of a transaction is 'guaranteed' by the exchange or clearing house. However, this guarantee is unlikely in most circumstances to cover you, the client, and may not protect you if we or another party defaults on its obligations to you. Additionally, in relation to Derivatives Business, Transactions are not executed on any exchange or through any clearing house; although if required in accordance with EMIR, Transactions will be cleared through a central counterparty.

**9 Insolvency**

Our insolvency or default, or that of any other brokers involved with your transaction, may lead to positions being liquidated or closed out without your consent. In certain circumstances, you may not get back the actual assets which you lodged as collateral and you may have to accept any available payments in cash.

## Schedule 2

### Agents

This Schedule 2 applies where you are an agent acting on behalf of an underlying principal.

Where you have disclosed to us that you act as agent on behalf of a Principal and have identified that person to us to our reasonable satisfaction, we may agree to treat the Principal as our client for the purposes of Applicable Regulations subject to the Principal entering into these Terms and any other agreements we may require. You hereby provide your agreement, in accordance with FCA rules, to us treating the Principal as our client in such cases.

You agree, warrant and represent as at the date of each Transaction which you enter into on behalf of the Principal that:

- 1 For UK regulatory purposes, you are our sole customer or client (as both terms are defined in the FCA rules) to the exclusion of your underlying Principal.
- 2 You are fully authorized to act on behalf of the Principal pursuant to these Terms and to use the resources of the Principal to meet any of its obligations under these Terms and any Transactions. You have not acted, and will not act, in breach of your authority.
- 3 In entering into any Transaction on behalf of the Principal, you have no reason to believe that the Principal would not be able to enter into such Transaction or perform its obligations thereunder or that your Principal would (or would cause you to) not comply with these Terms and any Applicable Regulations.
- 4 You undertake that you will procure that your Principal will not create or have outstanding any security interest whatsoever on or over any of the Securities.
- 5 You are subject to, and are fully in compliance with Applicable Regulations covering matters including, but not limited to, client identification and categorisation, the detection and prevention of money laundering, anti-corruption and bribery, the prevention of terrorism, and sanctions as amended from time to time and you have obtained evidence of and recorded the identity of your Principal in accordance with such regulations and/or requirements.
- 6 All Securities delivered by you pursuant to a Transaction will be beneficially owned by your Principal free from all liens, charges and encumbrances other than those which may arise in our favour.
- 7 In relation to Securities, money or other property which belongs beneficially to your Principal, references in any documentation relating to a Transaction to you shall be construed as references to your Principal.
- 8 You will be, and you will procure that your Principal will be, jointly and severally liable, each as if a Principal, to us in respect of all obligations and liabilities to be performed by you pursuant to and in respect of any Transaction(s) entered into as part of the Services provided to you pursuant to these Terms.
- 9 You have, and you will procure that your Principal has, obtained all consents, licences and authorisations to enable you and your Principal to enter into, perform and comply with your and your Principal's obligations under any Transaction and you will, and will procure that your Principal will maintain in full force and effect all such consents, licences, and authorisations and you will or procure that your Principal will provide us with copies or other evidence of such consents or approvals as we may reasonably require.
- 10 You undertake, at our request, to supply us with such financial or other information about your Principal as we may reasonably require.
- 11 You will notify us promptly in writing if there is any material deterioration in the financial condition of your Principal or if you cease to act for any Principal.
- 12 You will notify us prior to or promptly after you provide us with an Instruction on behalf of any Principal that you are acting as agent for that the Principal and inform us of the identity, address and any other details which we may require to provide our services under these Terms to the Principal. Without limitation to the foregoing, where you have entered



into a Transaction on behalf of a Principal, you will provide us with all the information required by us for the settlement of such Transaction no later than 24 hours prior to the due date for settlement of that Transaction.

- 13 Our liability shall also be limited in respect of your Principal as it is limited in respect of you pursuant to Clause 24.
- 14 You will be jointly and severally liable for the performance by the Principal of its obligations under a transaction.
- 15 You shall only submit an Instruction or enter into a Transaction contemplated or executed by or between us and you pursuant to these Terms on behalf of a Principal when you have, under your management, assets of such Principal which are sufficient, at the time such Transaction is entered into, to satisfy that Principal's obligations under the Transaction by the applicable settlement date of such Transaction and you have the full authority of that Principal to use such assets to meet such obligations.
- 16 Notwithstanding the foregoing, or any provision of these Terms to the contrary, you agree that, for settlement purposes only, we may settle directly with the Principal and will be entitled to take any action to effect such settlement.
- 17 Upon the occurrence of an Event of Default by any of your Principals, or the failure of any of your Principals to meet any of their material obligations hereunder, you will provide us with the full name, registered office (as well as, if the Principal's registered office address is not in the UK, the address of a process agent that the Principal has agreed to maintain for the duration of the receipt of services under this agreement) and contact details of the relevant Principal and take all other steps as we may reasonably (acting in good faith) require in order that we might take such steps as are necessary, including but not limited to instituting legal proceedings against your Principal, to minimise our exposure and/or redress any loss or damage we may have suffered.



## Schedule 3

### Abu Dhabi Global Markets

#### Amendments to Standard Terms of Business for equities and fixed income securities and customised over the counter derivatives in compliance with the laws and regulations of the Abu Dhabi Global Markets

This Schedule 3 applies in relation to any services received from the ADGM and the provisions hereunder shall form part of these Terms.

1. Any reference to "FCA" is deleted and replaced with "FSRA".
2. Except for in the definitions of "Non-Complex Financial Instrument" and "Systematic Internaliser" in Clause 34 (Interpretation), any reference to "CSDR", "FCA rules", "rules of the FCA Handbook", "UK MiFIR", "UK MiFID2 RTS 22", or "EMIR" and to any articles or clauses of such regulations or rules is deleted and replaced with "FSRA Rules".
3. Any reference to the "UK Bribery Act 2010" is deleted and replaced with "AML Guidance".
4. Clause 7 (Use of Brokers, Introductory, Arranging and Order Routing Services), Clause 11 (Direct Electronic Access), Clause 18 (Short Selling), Clause 19.1 (Late settlement and Settlement Fails) are not applicable where we provide our services to you from our ADGM Branch.
5. In **Clause 1 (General Information)**, the following new sub-clauses 1.7 and 1.8 are inserted:
 

"1.7. Where we provide the client with a service, we will treat the client as a "Professional Client" or as a "Market Counterparty" as defined under the FSRA Rules.

1.8. Capitalised terms that are used in this Schedule 3 and these Terms, but which are not defined, have the meaning given to them under the FSRA Rules."
6. In **Clause 5.1 (Services)**, "the United Kingdom" is included in between the references to "Europe" and "the United States of America" in the last sentence.
7. In **Clause 31.5(g) (Confidentiality and Privacy)**, is amended as follows: the reference to "the United Kingdom and EEA" is replaced with "ADGM or the United Arab Emirates", the reference to "Article 49 EU GDPR or Article 49 UK GDPR" is replaced with "section 44 of the ADGM Data Protection Regulations 2021", the reference to "Article 46 EU GDPR or Article 46 UK GDPR" is replaced with "section 42 of the ADGM Data Protection Regulations 2021" and the reference to "the UK Information Commissioner's Office or European Commission" is replaced with "ADGM Office of Data Protection".
8. In **Clause 31 (Confidentiality and Privacy)**, the following new sub-clause 31.7 is inserted:
 

"We provide our clients with financial services from time to time. As part of our relationship with the client, we collect information about individuals connected to the Client ("**Personal Data**"). Such individuals may include employees, directors, beneficial owners or agents ("**Data Subjects**").

#### (a) Processing information we hold

By agreeing to these Terms, you give us positive consent to collect, use, transfer, store, disclose to third parties or otherwise process Personal Data, including Sensitive Personal Data within the meaning given to the term in the ADGM Data Protection Regulations 2021. We may hold Personal Data at our Affiliates at a location outside of the ADGM.

#### (b) The purpose of processing information

We may process Personal Data for the purposes of our relationship with you, any outsourcing agreement, adherence to both our internal policy and external legal and regulatory obligations, compliance with our anti money laundering requirements, compliance with applicable legal or regulatory requirements including with present or future contractual or other commitments with local or foreign regulatory or law enforcement authorities, whether that information concerns the client and relevant Data Subjects collectively, and whether obtained from you or from third parties, including credit reference and fraud prevention agencies.

We may also wish to use the Personal Data for our legitimate marketing purposes, and you consent to our disclosing the Personal Data for these purposes and to us using the Personal Data to contact the relevant Data Subjects about our products and services.

Your Personal Data will not be retained for any longer than is necessary for the purposes for which it is processed, except as specified in the applicable law.

Where appropriate, your Personal Data will be anonymised so that you are not personally identifiable.

### (c) Transfer of information to third parties

We may transfer Personal Data to third parties located outside ADGM, for example and without limitation, for outsourcing purposes, to facilitate the execution of your requests, to provide services to you, to manage your relationship with us or otherwise for the reasons, and in accordance with the privacy procedures set out on our website.

This is provided that we are satisfied that: (a) an adequate level of protection for your Personal Data is ensured by laws and regulations in the recipient jurisdiction; or (b) adequate safeguards have been put in place by us to ensure the security of the Personal Data.

We will transmit Personal Data as described in this notice by means of mail, facsimile, phone, electronic means or otherwise. Electronic means includes email and the use of our own and third-party networks.

We will ensure that your Personal Data is processed in a lawful, fair, and transparent manner only for the purposes for which it was collected. You may, on written request, gain access to your personal data that we hold, and correct any information that may be inaccurate or incomplete.

We will endeavour to minimise the proliferation of your personal data and implement technical and organisational measures in order to reduce the risk of a potential data breach."

9. In **Clause 31.5 (Confidentiality and Privacy)**, the following new sub-clause 31.5(h) is inserted:

"To the extent necessary to protect business secrets or other confidential information, including Personal Data, we may redact part of the text of the communications involving personal data prior to sharing a copy."

10. In **Clause 33.10 (General)**, references to the "United Kingdom" have been deleted and replaced with "ADGM or the UAE".

11. In **Clause 34 (Interpretation)**, the following defined terms are deleted:

"Adequacy Decision"; "Applicable Regulator"; "Applicable Regulations"; "Client Money"; "CASS"; "CSDR"; "Data Protection Law"; "EEA"; "EMIR"; "EU GDPR"; "Exchange"; "Execution Venue"; "FCA Handbook"; "Introduced Broker"; "Introduced/Routing Broker Terms"; "Routing Broker"; "UK GDPR"; "UK MiFID2 RTS 22"; and "UK MiFIR".

12. In **Clause 34 (Interpretation)**, the following defined terms are inserted in alphabetical order:

**Adequacy Decision** means, in respect of a third country, a territory, or one or more specified sectors within that third country, a finding of adequacy pursuant to section 41 of the ADGM Data Protection Regulations 2021.

**ADGM** means the Abu Dhabi Global Market.

**AML Guidance** means the Anti-Money Laundering and Sanctions Rules and Guidance published by the FSRA.

**Applicable Regulations** includes the FSRA Rules or the rules of any successor to the FSRA, or any other relevant regulatory authority, any Infrastructure rules, any bilateral or tripartite agreement between us and any Infrastructure, and all other applicable laws, rules and regulations as are in force from time to time as they relate to us and/or you.

**Applicable Regulator** means the FSRA or any other relevant regulatory authority regulating us and/or you in any jurisdiction.

**Client Money** has the meaning given to it in the Glossary of the FSRA Rulebooks.

**Data Protection Law** means the ADGM Data Protection Regulations 2021.

**Exchange** means any market (including a regulated market, multilateral trading facility or organised trading facility (as such terms are defined in the FSRA Rules) or alternative trading system) on which we agree to provide dealing services to you under these Terms.

**Execution Venue** means a trading venue (or its operator), a Systematic Internaliser or a market maker or liquidity provider (each within the meaning contemplated under the FSRA Rules).

**FSRA** mean the ADGM Financial Services Regulatory Authority.

**FSRA Rules** means the handbook of rules and guidance issued by the FSRA from time to time.

**Regulated Activity** means the activities that are defined in section 19 of the ADGM Financial Services and Markets Regulations 2015.

13. In **Schedule 1 (Risk Factors and Warnings), Clause 8 (Clearing house protections)** is deleted and replaced with the following:

“8. Clearing house protections

On many exchanges, the performance of a transaction is ‘guaranteed’ by the exchange or clearing house. However, this guarantee is unlikely in most circumstances to cover you, the client, and may not protect you if we or another party defaults on its obligations to you. Additionally, in relation to Derivatives Business, Transactions are not executed on any exchange or through any clearing house; although if required by the FSRA, Transactions may be cleared through a central counterparty.”

## Form of one way letter for attention of Dealers/Brokers/Investors of SMBC only

We, SMBC UK are writing to confirm our arrangements for the investment business we carry out with you when we issue certificated of deposit and/or commercial paper.

Solely for the purposes of our product approval process in respect of any [certificates of deposit] [or] [commercial paper] (the "**Instruments**") which are issued by us, the target market assessment in respect of such Instruments has led us to the conclusion that: (i) the target market for such Instruments is eligible counterparties and professional clients only, each as defined in the Glossary to the FCA Handbook;<sup>1</sup> and (ii) all channels for distribution of such instruments to eligible counterparties and professional clients are appropriate.

Any person subsequently offering, selling or recommending such instruments (a "**distributor**") should take into consideration our target market assessment; however, a distributor subject to Chapter 3 of the Product Intervention and Product Governance Sourcebook (**PROD**) of the FCA Handbook<sup>2</sup> (or equivalent regulatory requirements, such as those existing under the EU's MiFID II<sup>3</sup>) is responsible for undertaking its own target market assessment in respect of the Instruments (by either adopting or refining our target market assessment) and determining appropriate distribution channels.

Please note that any Instruments will be issued by us on the above basis.

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<sup>1</sup> The FCA Handbook is available at: <https://www.handbook.fca.org.uk/handbook>.

<sup>2</sup> Relevant types of distributors are described in PROD 1.3.1R.

<sup>3</sup> Directive 2014/64/EU.

# Cash Management Services Agreement

This Agreement is entered into between SMBC BI and the company ("Customer") whose details are set out on the Execution page at the end of this Agreement. It takes effect from the last date of signature set out on the Execution page. As used in this Agreement, the terms "we", "us", "our", and "Bank" refer to SMBC BI. The terms "you" and "your" refer to the Customer.

Defined expressions used in the Agreement shall be interpreted in accordance with Annex 1 of the General Terms of Use Schedule.

## 1 Scope of this Agreement

1.1 This Agreement governs the corporate "Cash Management Services" (the "Services") that we provide to you, including:

- (a) Strong Customer Authentication
- (b) E-Moneyger®
- (c) Host-to-Host

## 2 Additional terms in Schedules to this Agreement

2.1 The terms and conditions set out in the following schedules ("Schedules") are incorporated by reference in this Agreement:

- (a) General Terms of Use Schedule

This sets out terms and conditions that apply generally to your use of the Service.

- (b) Legal and Regulatory Provisions Schedule

This sets out additional terms and conditions that apply as a result of providing the Services to you from our office in the UK.

- (c) Strong Customer Authentication Schedule

This sets out additional terms and conditions that apply where you use specific Cash Management Services where SCA must be applied.

- (d) E-Moneyger® Schedule

This sets out additional terms and conditions that apply when you use our "E-Moneyger®" Service.

- (e) Host-to-Host Schedule

This sets out additional terms and conditions that apply when you use our "Host-to-Host" Service.

2.2 Any inconsistency between this Agreement and the Schedules, or among the Schedules, will be resolved in accordance with the following priorities:

- (a) Each Schedule has priority over the terms set out in this Agreement.
- (b) The Legal and Regulatory Provisions Schedule has priority over the other Schedules.
- (c) The Strong Customer Authentication Schedule has priority over the E-Moneyger® Schedule, and both have priority over the General Terms of Use Schedule.

## 3 Fees

The Customer shall pay fees to the Bank for the provision of Cash Management Services in accordance with the terms defined in this Agreement and the associated Schedules. The Bank may debit the account specified in the Service Schedule or, if no such account is specified, any account of the Customer with such fees when they are due. This Agreement does not affect any rights or obligations of any party arising under any other Agreements in relation to the payment of interest, fees, costs, expenses or other amounts.

## 4 Dispute Resolution

4.1 Mediation. Should any dispute arise between you and us relating to this Agreement and if, following the good faith negotiation of the dispute, it cannot be resolved, the parties will consider using mediation to settle such dispute in

accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR.

- 4.2 Court proceedings. Should we be unable to resolve the dispute following mediation, or if we do not wish to use, or continue to use, mediation to resolve a dispute, either you or we may bring suit with respect thereto in the Courts of England. You agree that such courts have exclusive jurisdiction to hear the dispute, and agree not to file any motion or pleading seeking to dismiss the suit on the grounds that such courts do not provide an appropriate or convenient forum for hearing the dispute. This Clause is for our benefit only. To the extent allowed by law, we may take proceedings in any other court and concurrent proceedings in any number of jurisdictions.
- 4.3 Agent for Service. If you do not have a registered office in England and Wales, you hereby irrevocably appoint the person named as Process Agent on the Execution page below as your agent to receive and acknowledge service on your behalf of any claim form, application notice, order, judgment or other notice of legal process in England. If for any reason that agent (or its successor) no longer serves as your agent for this purpose, you shall promptly appoint a successor agent and notify us thereof. Until we receive such notification we shall be entitled to treat the agent named below (or its said successor) as your agent for the purposes of this Clause 4. You agree that any such legal process shall be sufficiently served on you if delivered to your agent at its address for the time being in England whether or not such agent gives notice thereof to you.

## 5 **Governing Law**

This Agreement (including any non-contractual disputes and claims that arise out of or in connection with this Agreement) shall be governed by, and construed in accordance with, the laws of England.



# Cash Management Services Agreement

## General Terms of Use Schedule

This Schedule is supplemental to the Cash Management Services Agreement (the "Agreement") between the Bank and the Customer. Expressions defined in the Agreement have the same meanings in this Schedule.

### 1 Use of Services

- 1.1 You access and use our various Cash Management Services ("Services") through a number of gateways including our corporate Internet site, [www.smbcgroup.com](http://www.smbcgroup.com). When you begin to use a particular Service, you also agree to be legally bound by all of the terms and conditions stated in the Agreement applicable to that Service. You may select additional Services or delete existing Services in the future by informing us in writing. You shall use the Services solely to carry on your lawful business, and you shall not use any of the Services to process or facilitate "Instructions" for or on behalf of any Third Party without obtaining our prior written consent.
- 1.2 By using our Cash Management Services, you agree to the terms and conditions set forth in the Agreement. You understand and acknowledge that the Services are accessed through the use of various Identifying Information, Authentication Passcodes, Digital Tokens or other Security Devices and that we are entitled to rely upon any "Instructions" provided or initiated by anyone using these Identifying Information, Authentication Passcodes, Digital Tokens or other Security Devices and treat such "Instructions" as having been authorised and approved by you.

### 2 Utilisation of TPPs

- 2.1 Where you have provided us with Authorised Consent, Cash Management Services may be executed by you through a regulated and approved Account Information Service Provider ("AISP") or Payment Initiation Service Provider ("PISP") via our "TPP Interface".
- 2.2 Your utilisation of any AISP or PISP (as those service providers are defined in relevant legislation) to access or use any of our Services will be subject to your consent to the engagement of such a service provider and by which you will agree that we may transmit data about you, your accounts with us and any previous or intended payment transaction to that service provider that is necessary in order to undertake their services for you and to effect the services we provide under the Agreement. We shall be entitled to rely upon a notification of your consent for up to 90 days at which point it may be refreshed, or until the Agreement is terminated or until such time as we receive notice from you that your consent has been withdrawn, or from the regulator that the AISP or PISP is no longer approved. You agree that you cannot withdraw your consent whilst a payment is being processed.
- 2.3 When we transmit and receive data about you or your accounts or process any payment transaction to or through any such provider we shall treat any request or order transmitted to us by that provider as if it had been made by you directly. In such circumstances references to "you" and any obligation imposed on you under the Agreement shall apply to the extent necessary to ensure that the requested payment or service is carried out in accordance with the Agreement. For the avoidance of doubt, we shall not enter into any contractual relationship with any such service provider you engage and any such service provider shall not be our agent or sub-contractor. We do not accept any liability for any loss or damage caused to you, howsoever arising, in relation to any action, omission or breach of legal or regulatory obligation caused or attributable to in whole or part by any such service provider; the foregoing does not affect our obligations to you where an executed payment transaction was initiated through a payment initiation services provider and was not authorised by you and you have notified us of the error within the time limit specified in the Agreement.
- 2.4 The obligations in the Agreement imposed on you are not waived or modified by us if you engage any AISP or PISP. Full details on the Terms and Conditions which we impose on a "TPP" and their access to our "TPP Interface" can be found here: <https://developer.smbcdigital.com>
- 2.5 You agree that we may provide AISPs with access to information from your accounts held by us, for purposes of the performance of account information services, as frequently as we consider appropriate.

### 3 Instructions

- 3.1 Reliance. We will rely on the information and "Instructions" you transmit to us (collectively, "Instructions") provided in connection with your use and access of the Services. In connection therewith we will assume that any "Authorised Representative" or otherwise using these Identifying Information, Authentication Passcodes, Digital Tokens or other Security Devices has been authorized to provide "Instructions" to us.

- 3.2 Use of Account or Other Identifying Number. You understand that we routinely rely on account numbers or other identifying numbers in executing payment orders. If you issue "Instructions" containing an identifying or bank account number of the beneficiary, we and all intermediary and beneficiary banks may rely on such number without inquiry of you or other verification, even if such "Instructions" contain a name or other information that may be inconsistent with such number. You will be obligated to pay the amount specified in such Instruction if it is a payment or transfer order. Similarly, we may rely on the identifying or account number as the correct identification of the beneficiary when we receive incoming payment orders. You agree to compensate us for any loss and expense incurred by us as a result of such reliance on such number in executing or attempting to execute your Instruction.
- 3.3 Cancellation or Amendment. If you ask us to amend or cancel any "Instruction" and your request complies with our internal procedures as in effect from time to time, we will use reasonable efforts to comply with your request prior to executing your Instruction. We will not be liable to you, however, if we fail for any reason to amend or cancel your Instruction.
- 3.4 No Action on Instruction. We shall not be obligated to act upon any "Instruction":
- (a) which is not in accordance with our internal procedures (or those of any Related Bank, defined below), as in effect from time to time;
  - (b) for which we are not able to obtain any necessary authentication;
  - (c) which would result in a debit to any of your accounts with us or any Related Bank, defined below, exceeding the available funds in such account and any pre-established credit limit;
  - (d) which would exceed any credit or other limit established for you by us from time to time;
  - (e) which is incomplete or ambiguous;
  - (f) which, in our sole judgment, we are or may be unable to act on because of legal process, applicable law or regulation, or other government guidelines; or
  - (g) if, in our sole judgment, your financial condition is impaired or we suspect fraud or an unlawful activity may occur in connection with any Service.
- 3.5 Notice. If we reject or do not act upon your Instruction, we shall notify you within a reasonable time by telephone, facsimile, electronic transmission or overnight mail, but we shall have no liability to you (whether for interest or otherwise) or any other person by reason of any delay in providing, or any failure to provide, such notice or the requested transaction.
- 3.6 Verification. You are responsible for verifying that we have received your Instruction. We will have no liability to you in connection with an Instruction you attempt to issue to us which is not received by us.
- 3.7 Instructions Received After Cut-Off Time. If your Instruction is received by us after the cut-off time specified for the applicable Service or on a day that is not a Business Day, then the Instruction shall be deemed to have been received on the next Business Day.
- 3.8 Unauthorised Transactions and Breaches of Security Procedures. If at any time, you become aware of any unauthorized transactions being made and/or any breach of any security procedures, you must notify us immediately and without undue delay and in any event no later than thirteen (13) months after the transaction date.
- 3.9 Changes. From time to time, you may change information you have provided to us in connection with the Services. We may rely on the information previously supplied by you until we receive written notice of any change on forms prescribed by us, signed by your authorized representative and have had a reasonable opportunity to act on such notice(s).
- 4 Statements, Notices, Confirmations**
- 4.1 Statements. We shall provide you with periodic statements and notices and, as applicable, transaction confirmations for the Services you use. You will be deemed to have received information made electronically available on the date the information is available for access by you.
- 4.2 Your Obligation. You agree to examine promptly all statements, transaction confirmations and other notices, which we or other banks send or make available to you. If there is a discrepancy or error ("Error") reflected in any statement, notice or transaction confirmation produced by us and you fail to notify us of the Error, (i) in the case of any statement or notice, within sixty (60) calendar days of your receipt of such statement or notice or, (ii) in the case of a transaction confirmation, by the next Business Day after receipt of such transaction confirmation, we shall have no liability to you

for any additional loss including, without limitation, any loss of interest, resulting from your failure timely to report such Error. If you notify us orally, you shall promptly confirm the notification in writing.

- 4.3 Limitation of Liability. You shall be entirely precluded from asserting any Error against us, and we shall have no liability to you of any kind for any Error, if you fail to notify us of such Error within sixty (60) calendar days after you receive the statement, notice, or transaction confirmation produced by us reflecting such Error.

- 4.4 Multi-Bank Statement Services. Periodically other third party banks or financial institutions may provide balance and statement reports to you and we may arrange for these reports to be made available to you through our Cash Management Services. By signing the Agreement, you agree that the Bank and its affiliates shall not be liable or responsible for, and makes no representation as to the accuracy, reliability or completeness of, any information contained in any such multi-bank statement reports provided by a third party bank or financial institution. The terms and conditions of the Agreement apply without limitation to the provision of such multi-bank statement services, including (for the avoidance of doubt) the right of the Bank to terminate such service at any time at its discretion as contemplated by paragraph 10.2 of Clause 10.

## **5 Our Retention of Records**

We may, but are not required by the Agreement to, maintain records, including computer files and other electronic records, of any transactions, Instructions, communications or other acts or omissions relating to the Services provided to you and may retain such records for so long as we deem appropriate. Any such records retained by us may be made available to you, at our discretion, subject to payment by you of any costs and expenses reasonably incurred by us in doing so.

## **6 No Extension of Credit; Fund Transfer; Set-off**

- 6.1 Your Obligation. If a Service involves a debit to any of your accounts with us (a "Fund Transfer"), you shall have in your deposit account the required amount of available funds to enable us to make the debit. Nothing in the Agreement shall constitute, or shall be deemed to constitute, a commitment by us to extend credit or grant overdraft privileges to you or any other person, nor shall any course of dealing between you and us constitute, or be deemed to constitute, any such commitment or grant. We shall have no obligation to make any funds available to effect any payment being made by or to you in utilizing any of the Services. At no time shall we be required to overdraw your account, even if we have allowed you to do so on one or more prior occasions.

- 6.2 All Items Subject to Final Payment. All non-cash deposits are posted to your account subject to our receipt of "final payment" from the bank or other person on which the item is drawn. If we receive notice that an item is being returned to us unpaid, or if we do not receive final payment on a deposited item, because, for example, the drawer has placed a stop payment or the item is returned "insufficient funds" or "account closed"; or if an item is returned after final payment, we will charge your account for the amount of the item, for any interest earned on the item and for our applicable charges, even if the amount of the item has already been made available to you and even if we do not actually receive the returned item. If the chargeback of a returned item or a bank charge creates an overdraft, you agree to pay us the amount of the overdraft immediately, and we may charge your account a service charge for the overdraft. We receive final payment for deposited items at different times depending on the location of the banks or other parties who will pay the items. In addition, our receipt of final payment may be delayed further due to circumstances beyond our reasonable control. If we must pay any fees to collect an item you have deposited, we will charge the fees to your account and we may impose a service charge for the collection. We may immediately, but shall not be obligated to, charge-back to any of your accounts the amount of any returned item or debit or credit entry, and you shall be liable to us for such amount until paid to us. If we credit your account for any Fund Transfer, the credit we give you is provisional until we receive final credit for the Fund Transfer through our Correspondent Bank or other applicable payment system. If we do not receive final settlement or payment, you agree that you must refund to us the amount we credited to you for the Fund Transfer, and we may charge any account you have with us for such amount. In such case, the person making the payment to you will be considered not to have paid you the amount of the Fund Transfer.

- 6.3 Set-off. We shall have a contractual right of set-off against your deposits and other property, now or in the future in our possession, for your obligations to us under the Agreement. We may exercise our right of set-off without demand upon or notice to you and it shall be deemed to have been exercised immediately upon any default by you without any action by us, although we may enter the set-off on our books and records at a later time. Any exercise by us of our rights under this Clause shall be without prejudice to any other rights or remedies available to us under the Agreement or otherwise.

## 7 Accounts

In performance of the Services it may be necessary for us to establish accounts on your behalf at other banking institutions with whom we have established a contractual relationship. Unless otherwise indicated in the Agreement, any reference to an "Account" in the Agreement shall refer to any of your accounts at the "Bank" or any accounts we have established at any other banking institution (each a "Related Party") for the purpose of providing the services.

## 8 Confidentiality

8.1 Your Confidentiality Obligations. All computer programs, data bases, equipment, trade secrets, processes, proprietary data, documentation, user manuals and related materials or information provided by us to you in connection with the Agreement are confidential and are owned exclusively by us or by the third parties from whom we have secured the right to use such items (collectively, "Confidential Information"). You shall treat the Confidential Information as confidential and not copy (except for back-up purposes), disclose or otherwise make the Confidential Information available in any form to any person or entity except to your employees on a need-to-know basis. Upon termination of the Agreement, you shall return all Confidential Information to us.

8.2 Breach. Any breach or threatened breach of this Clause will cause immediate irreparable injury to us and you agree that injunctive relief, including preliminary injunctive relief and specific performance should be awarded as appropriate to remedy such breach without limiting our right to other remedies available in the case of such a breach. We may apply to a court for preliminary injunctive relief, permanent injunctive relief and/or specific performance but such application shall not abrogate our right to proceed with an action in a court of competent jurisdiction in order to resolve the underlying dispute.

8.3 Our Confidentiality Obligations.

(a) We will treat personal and business information which you provide to us, and information concerning the accounts held with us, in the course of the Services as private and confidential. We may share this information with our affiliated companies. We may share necessary information with our service providers in order to carry out transactions initiated by you. We will restrict their use of such information for any purpose other than carrying out these transactions and providing the services requested by us. We may share this information when we are legally required to do so, such as with law enforcement authorities, or as directed by court order. We may also share this information to prevent fraud, with our accountants and lawyers as required for them to carry out their responsibilities to us, with our regulators as requested by them and for other similar purposes. We will not sell or transmit this information to third parties to allow them to solicit you or provide the information to them for their own independent use. We may, however, share selected information with our business partners in order to deliver products and services you have requested and in order to communicate with you about us, our products and services.

(b) Where you have given notice to us of your consent to use one or more payment initiation service provider or account information service provider to use any of our services you agree that we may transmit such information about you, your accounts that you hold with us and any completed or prospective transactions as is requested by any such provider or which we deem necessary to transmit to any such provider for the purpose of that provider undertaking the relevant payment initiation service or account information service. Such information will be communicated by us to the relevant provider in accordance with any applicable regulatory technical standards, but we shall not be liable for the subsequent retention, use or loss of any such information by any third party provider or by any of their agents once transmitted by us in accordance with the consent you provided to us.

## 9 Taxes

You are responsible for paying all taxes, however designated, levied or based upon the Services, but excluding taxes based upon our net income or assets.

## 10 Termination

10.1 Your Right to Terminate. You may terminate the Agreement at any time by providing notice to us specifying an effective date and time of termination (which must be not less than 30 days after the date of the notice). You will be obligated for all fees and charges associated with your use of the Services up to and including the effective date and time of termination. You may not use the Services after the effective date and time of termination.

10.2 Our Right to Terminate. We may terminate the Agreement, or any specific Service provided by us hereunder, at any time by providing notice to you specifying an effective date and time of termination (which must be not less than 30 days after the date of the notice). We may also terminate the Agreement, or any Service provided by us hereunder,

immediately in the event you fail to fulfil any covenant or obligation required of you hereunder or under any other agreement you have with us or with any of our affiliated companies or if we determine that your financial condition has deteriorated or if required by law, or when your company is or becomes insolvent, commences negotiations with any of its creditors as a result of any financial difficulties, is unable to pay its debts as they fall due, presents or has presented against it in any court or before any relevant authority any petition, application or order for receivership, liquidation, administration or any similar procedure in any jurisdiction outside of England or an insolvency official (public or private) is appointed or becomes responsible for managing the affairs of your company. We may terminate the Agreement when all the accounts you have with us which use the Services have been closed. You will be obligated for all fees and charges associated with your use of the Services up to and including the effective date and time of termination. You may not use the Services after the effective date and time of termination.

- 10.3 Certain Continuing Obligations. Notwithstanding any such termination, the Agreement shall continue in full force and effect as to all transactions for which processing has been commenced by us and all rights and liabilities arising prior to such termination. This Clause and Clauses 4.3, 5, 6, 8.1, 12, 13, 15, 16, 17 of this Schedule, and Clauses 4 and 5 of the Agreement, shall survive termination. Save as otherwise provided by this Clause, all rights and obligations of the parties shall cease to have effect immediately upon termination of the Agreement.

## **11 Amendment**

- 11.1 From time to time we may change the Services that we make available to you under the Agreement, including adding new or withdrawing any existing Services. We will provide you with written notice of any such changes to the available Services. Any withdrawal of a Service which we are already providing to you shall be governed by Clause 10 (*Termination*) of this Schedule.
- 11.2 You agree that we may modify the terms and conditions set out in the Agreement, including in any addenda, documentation and specifications relating to any specific Service, from time to time at our discretion. We will provide you with notice of any such modifications and a date (which will be a date not earlier than thirty days from the date of the notice we provide) when they will become effective (the "Effective Date"). You may elect not to accept the modifications, and in such event (unless we agree otherwise), you must terminate the Agreement or, in the case of any amendments to any applicable addenda, documentation and/or specifications, your use of the specific Service to which the modifications relate, and notify us accordingly. Your continued use of any Service we provide to you after the Effective Date will constitute your consent and agreement to the relevant modifications.

## **12 Limitation of Liability**

- 12.1 Unauthorized Transactions. We shall have no liability to you for any unauthorized transfer made using the SCA and/or security procedures that occurs before you have notified us of possible unauthorized use. You may be responsible for losses resulting from any unauthorized use of the Services if you have acted fraudulently, failed to notify us of any suspected breach or if you act without reasonable care (which may apply if you do not comply with your obligations under Clause 3 (*Instructions*)).
- 12.2 Altered Transactions. We shall incur no liability for acting upon and carrying out the Funds Transfer Instructions we receive, even if the information we receive has been altered during transmission, regardless of the events or circumstances leading to the alteration, including without limitation, your failure (1) to access our online corporate banking Services using a personal computer on which virus protection software has been installed, (2) to update virus signature files promptly when updates become available from the manufacturer of the virus protection software, and (3) to immediately install updates to browser software as such updates become available from the manufacturer.
- 12.3 General Limitations on our Liability. You agree that the Bank, any of its parents, subsidiaries or affiliates, and any third party providers engaged by the Bank to perform any of the Services connected with the Agreement shall have no liability to you under or in connection with the Agreement, or any collateral agreement, whether arising in or caused by a breach of contract, tort (including negligence), breach of statutory duty or otherwise, save as expressly provided or contemplated in paragraph 12.4 of this Clause.
- 12.4 Indirect and consequential losses. In no event shall we (or any other party with whom we may be claimed to be jointly liable) be liable for any indirect, consequential, incidental, punitive, exemplary or special losses or damages, or expenses (including, without limitation attorneys' fees), which you may incur or suffer including, without limitation, any loss, damage or expense from subsequent dishonour or rejection of any transaction (including, without limitation, dishonour of checks or other items), whether or not the possibility or likelihood of such damage was known or contemplated by us.
- 12.5 No representations. We make no representations or warranties of any kind, express or implied, in connection with any of the Services or any software or equipment we may supply to you; any condition, warranty, representation or other



term which might otherwise be implied into or incorporated in the Agreement or any collateral contract, whether by statute, common law or otherwise, is hereby expressly excluded.

12.6 Third Party Rights. No Third Party shall have any rights or claims against us under the Agreement.

### 13 Indemnification

13.1 Indemnity. You agree to indemnify us and each of our respective shareholders, directors, officers, and employees, and the shareholders, directors, officers and employees of our affiliated companies (the "Indemnified Parties") and to hold each Indemnified Party harmless from and against any and all claims, damages, losses, liabilities and expenses (including all legal fees) which any Indemnified Party may incur or which may be asserted against any Indemnified Party in connection with or arising out of the matters referred to in the Agreement (including, but not limited to, our taking actions, carrying out transactions or relying upon information initiated or provided by you) by any person, entity or governmental authority (including any person or entity claiming derivatively on your behalf ).

13.2 Exception. You shall have no obligation or liability under this Clause 13 for any loss of profit or consequential loss or damage of any kind suffered by an Indemnified Party, or to the extent that any losses, damages, liabilities, costs or expenses suffered or incurred by an Indemnified Party arise out of or result from any gross negligent, fraudulent or wilful act or omission of or by the Indemnified Party or its employees.

### 14 Force Majeure

We shall have no responsibility and shall incur no liability for any failure to carry out, or any delay in carrying out, any of our obligations under the Agreement resulting from acts, omissions, or inaccuracies of third parties not under our reasonable control, acts of God (including, but not limited to, fire, floods, or adverse weather conditions), labour disputes, legal constraint, war, terrorism, the unavailability or interruption of transmission or communication facilities or utilities, equipment or other technological failure, emergency conditions, or any other cause beyond our reasonable control.

### 15 Notices

Unless otherwise stated in the Agreement, all notices required by the Agreement or by law to be given by you or us shall be sent by first class mail, overnight courier service, hand delivery, fax, electronically, or other agreed-on means, and will be effective upon delivery. All such notices shall be delivered to the address shown at the end of the Agreement. We may provide notice electronically to you by fax or secure email to your "Authorised Representative". Either you or we may change addresses by written notice to the other. Any notice provided as set forth above shall be conclusively presumed to have been received by the party to which it is sent: on the next following Business Day, if sent by overnight courier; on the fourth Business Day after the day sent by mail; when received in legible form, if sent by fax; or, on the Business Day of delivery, if sent by hand delivery or electronic transmission.

### 16 Assignment; Successors

Neither party may assign any of its rights or delegate any of its obligations hereunder without prior written consent of the other party, except we may assign the Agreement or any part of it to any of our affiliates upon written notice to you, and we may contract with others to provide all or any part of the Services. The Agreement shall be binding upon, and inure to the benefit of, you and us and your and our respective permitted successors and assigns.

### 17 Miscellaneous Provisions

17.1 Entire Agreement. The Agreement (together with the Notice to Customers and the various addenda and schedules referred to herein) constitutes your and our entire agreement with respect to the subject matter hereof and supersedes any previous or contemporaneous proposals, representations, warranties, understandings and agreements, either oral or in writing. Your account and other services you obtain from us will be subject to the account agreement and the other agreements relating thereto.

17.2 Writing. The Agreement, together with the various addenda, schedules or notices provided hereunder may be provided to you entirely or in part in paper form (including facsimile transmission) or electronically.

17.3 Defined Terms and Interpretation. Terms defined in the Agreement shall, unless otherwise defined therein, have the same meaning in any addenda, documentation or specifications. Any reference to the Agreement includes the relevant addenda, documentation and/or specifications provided by us in connection with the Agreement. "Business Day" for the purposes of the Agreement includes any day (other than a Saturday or Sunday) when we are open for general business in London. Any reference to a "party" is to a party to the Agreement and also includes a reference to that party's successors and permitted assigns. A "person" includes a natural person, corporate or unincorporated body



(whether or not having separate legal personality). A reference to any party shall include that party's successors or permitted assigns. A provision of law is a reference to that provision as amended or re-enacted.

- 17.4 Headings. The headings in the Agreement are for convenience only and shall not be used for construction or interpretation of any provisions hereof.
- 17.5 Severability. In the event that any one or more of the provisions of the Agreement shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the remaining provisions of the Agreement shall not be affected or impaired thereby.
- 17.6 No Waiver. Except for changes made in accordance with the Agreement, no deviation, whether intentional or unintentional, shall constitute an amendment of the Agreement, and no such deviation shall constitute a waiver of any of either our or your rights or obligations. Any waiver by either you or us of any provision of the Agreement shall be in writing and shall not constitute a waiver of your or our rights under that provision in the future or of any other rights.
- 17.7 Counterparts. The Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts and each such counterpart shall constitute an original of the Agreement but all of which together constitute one and the same instrument. The Agreement shall not be effective until each party has executed at least one counterpart.

## Annex 1 – DEFINITIONS AND INTERPRETATION

Term	Description
Agreement	The “Agreement” or “Cash Management Services Agreement” governs the use of the Corporate Cash Management Services provided by “The Bank” to its Corporate Customers
AISP	“AISP” or “Account Information Service Provider” is a form of “TPP” who can provide account information services such as Account Balances and Statements
Authentication Passcode	“Authentication Passcode” means the unique password, PIN or other identifier which helps to confirm the identity of the Customers “Authorised Representative” to the “Service”
Authorised Representative	“Authorised Representative” refers to the corporate customer employee who has been delegated authority to use the “Service”
Bank	“Bank” or “The Bank” refers to the SMBC Group Branch, Subsidiary or affiliate, namely SMBC BI where the Customer’s Accounts are held in the UK
BCSA	“BCSA” or “Bank Created System Administrator” is a role delegated by the “Customer” to one or more of their “Authorised Representatives” who accepts receipt of the security devices and Authentication Passcodes from the Bank, and is responsible for performing the initial and on-going user access management to the Service by its Company’s Authorised Representatives
Confidentiality Information	“Confidentiality Information” includes all computer programs, databases, Digital Tokens, equipment, trade secrets, processes, proprietary data, documentation, user guides, user manuals and related materials and information provided by the “Bank” to the “Customer” in connection with the “Agreement”
Consent	“Consent” refers to the authority given from one party to another. This is typically referred to in the “Agreement” as Consent being provided by the “Customer” to the “Bank” to access their accounts using a specific “Cash Management Service” (including via a TPP) or is implied when the “Customer” delegates authority to an “Authorised Representative” who will actually use the “Service” This does not cover the agreement between the “Customer” and any “TPP”
CSA	“CSA” or “Company System Administrator” is a role delegated by the “Customer” to one or more of their “Authorised Representatives” who is responsible for performing the initial and on-going user access management to the Service by its Company’s Authorised Representatives
Customer	The Corporate Customer who holds at least one Deposit Account with “The Bank” and who wishes to access that account using one or more Cash Management Services
Digital Tokens	“Digital Tokens” refer to the Mobile Authenticator App or the Hardware Token supported by the “Bank” which the “Customer” must use as part of the “SCA” “Service” when accessing or using specific “Cash Management Services”
Ebics	“Ebics” is the Cash Management Service which can interface into “The Bank” for its Customers to access their accounts with “The Bank”
Effective Date	“Effective Date” is the date when an “instruction” alteration, modification or cancellation will apply
E-Moneyger®	“E-Moneyger®” is the Cash Management Service provided by “The Bank” to its Customers to access their accounts with “The Bank”
Error	“Error” means any discrepancy, inaccuracy or activity which is believed to be incorrect on the customer account as represented on any statement, transaction confirmation, or report via the “Service”
Fund Transfer	“Fund Transfer” refers to any payment initiated from your account held with the “Bank”
Hardware Token	“Hardware Token” is the physical version of the “Digital Token” which is used to perform “SCA”
H2H / Host to Host	“H2H” or “Host to Host” is the Cash Management Service provided by “The Bank” for its Customers to access their accounts with “The Bank”

Identifying Information	"Identifying Information" are the credentials, user ID, or user name which helps to confirm the identity of the Customers "Authorised Representative" to the "Service"
Indemnified Parties	"Indemnified Parties" are the shareholders, directors, officers and employees of the "Bank" and the shareholders, directors, officers and employees of our affiliated companies
Instructions	"Instructions" refer to any form of information or request submitted by the "Customer" electronically via a Cash Management Service. This can include Login, Consent, Approvals, information requests and payment submissions and approvals
Isabel	"Isabel" is the Cash Management Service which can interface into "The Bank" for its Customers to access their accounts with "The Bank"
Mobile Authenticator App	"Mobile Authenticator App" is the mobile phone application version of the "Digital Token" which is used to perform "SCA"
Multicash	"Multicash" and "Multicash On" (formerly known as "Multicash@Sign") are the Cash Management and remote approval Services supported by "The Bank" for its Customers to access their accounts with "The Bank"
PISP	"PISP" or "Payment Initiation Service Provider" is a form of "TPP" who can facilitate payment initiation services including the submission and approval of payments.
Primary Contact	"Primary Contact" means the person at the Customer side who is primarily responsible for receiving service related notifications from the Bank and communicating such changes to its "Authorised Representatives"
Related Bank	"Related Bank" applies when the "Customer" has provided the "Bank" with authority to create accounts in their name with other Financial Institutions in order to support a specific Cash Management product
SCA	"SCA" or "Strong Customer Authentication" refers to the Service provided by the Bank for Customers to correctly identify themselves and their "Authorised Representative" when accessing or using particular Cash Management Services
Schedule	The "Schedule" is supplementary to The "Agreement" and governs the use of a specific "Service" or defines specific terms or legal context as part of the "Agreement"
Services	"Services" or "Cash Management Services" refers to the electronic means by which an account can be accessed by the "Customer" which is supported by "The Bank"
TPP	"TPP" or "TPP Interface" is the electronic means by which a regulated and approved Third Party Provider can access Customer's Accounts in order to provide AISP and/or PISP services

# Cash Management Services Agreement

## UK Legal and Regulatory Provisions Schedule

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This Schedule is supplemental to the Cash Management Services Agreement (the "Agreement") between the Bank and the Customer. It sets out additional terms and conditions that we need to include in order to comply with legal and regulatory provisions that apply in the UK. Expressions defined in the Agreement have the same meanings in this Schedule.

### 1 **Payment Services Regulations**

The Payment Services Regulations 2017 (SI 2017/752) will apply to the Agreement, except for the following provisions which shall not apply to the Agreement: (i) all the provisions of Part 6; and (ii) the following provisions of Part 7: regulations 66(1), 67(3) and (4), 75, 79, 80, 83, 91, 92 and 94. Regulations 86 to 88 do not apply to the Agreement, except to transactions (a) executed wholly within the United Kingdom and the EEA States (the **Qualifying Area**) in euro under a payment scheme which operates across the Qualifying Area, (b) when executed wholly within the UK in sterling, or (c) executed wholly under a payment scheme which operates across the Qualifying Area involving one currency conversion between euro and sterling, provided that the currency conversion is carried out in the UK, and in the case of cross-border payment transactions, the cross-border transfer takes place in euro (as set out in Regulation 85(1)(c)), and except for other transactions that are executed wholly within the UK in which case the provisions of Regulation 86(3) will apply.

### 2 **Exceptions to Limitation of Liability**

Nothing in Clause 12 of the General Terms of Use Schedule or otherwise in the Agreement shall exclude or in any way limit any person's liability to you for (i) fraud, (ii) death or personal injury caused by its negligence (including negligence as defined in s. 1 Unfair Contract Terms Act 1977), (iii) breach of terms regarding title implied by s. 12 Sale of Goods Act 1979 and/or s. 2 Supply of Goods and Services Act 1982, (iv) gross negligence or (v) any liability to the extent the same may not be excluded or limited as a matter of law or regulation, including, but not limited to, certain provisions of the Payment Services Regulations 2017 that are not expressly disapplied by the Agreement.

### 3 **Third Party Rights**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement and no person who is not a party to the Agreement may enforce any provision of it.

# Cash Management Service Agreement

## E-Moneyger® Schedule

This schedule is supplemental to the Cash Management Services Agreement (the "Agreement") between the Bank and the Customer. Expressions defined in the Agreement have the same meanings in this schedule.

### 1 General Provisions Applicable to E-Moneyger® Services

- 1.1 Use of E-Moneyger® Services. All of the Services may be accessed through our E-Moneyger® service available through our web site, <https://www.smbcdigital.com>. By using these E-Moneyger® Services, you agree to the terms and conditions set forth in this Schedule and the other documents and agreements referred to herein. You understand and acknowledge that the E-Moneyger® Services may be accessed through the use of signatures, identification codes, authentication passcodes, passwords and Digital Token codes and that we are entitled to rely upon any instructions, information or transactions provided by anyone using these signatures, identification codes, authentication passcodes, passwords and Digital Token codes and treat such instructions, information or transactions as having been authorised and approved by you.
- 1.2 Internet Access and Use. Please be advised that if you elect to use our E-Moneyger® Services through <https://www.smbcdigital.com> you will use point and click procedures that indicate your instructions to us or your acceptance or agreement to specific terms or provisions. These procedures constitute "electronic signatures" that are binding on you. We will from time to time provide information electronically to you that constitutes "electronic records" under applicable law.
- 1.3 System and Security Requirements Associated with Internet Use. If you elect to use these services through <https://www.smbcdigital.com> you agree to follow all security measures and advices provided by SMBC through <https://www.smbcgroup.com/security/index.html/> and the security procedures and recommendations described below.
- 1.4 As the Bank continues to enhance the security controls we deploy for our Cash Management Services to protect you and the Bank, from time to time it may be necessary for us to change our systems, Digital Tokens or security procedures. It may also be necessary for you to need to update your systems or security procedures. You agree to comply with these changes in order to continue accessing E-Moneyger® Services.
- 1.5 Fees. Our Fees for E-Moneyger® Services will be as set forth in and payable in accordance with Annex 2 ("Fee Addendum") to this Schedule (together, the "Fees"), or as otherwise agreed in writing between us from time to time. We will provide you with a copy of our most recent Fee Addendum upon request. We will provide you with written notice of any changes to the Fees, which will become effective on and as of the date specified in such notice, and which shall in any case be no earlier than sixty (60) calendar days following the date of such notice.

### 2 E-Moneyger® Service Summary and Sign-Up

#### 2.1 E-Moneyger® Services.

E-Moneyger® provides a range of Cash Management Services including Fund Transfers, Balance and Statement Reporting and Foreign Exchange & Money Market Confirmations through <https://www.smbcdigital.com>. Full details of all services available can be found through the Bank's web page <https://www.smbcgroup.com/emea/products-services/cash-management/>

#### 2.2 E-Moneyger® Sign-up Procedures.

Please review, sign and return to us the "Company Sign-up Form" that will be sent to you by the Bank.

The "Company Sign-up Form" requires you to:

- (a) select all the Services you wish to subscribe to through the E-Moneyger® on-line banking facility; and
- (b) designate a Primary Contact Person as well as a Bank Created System Administrator ("BCSA"), and provide his or her e-mail address, phone number, and a security device delivery address should a Hardware Digital Token device be required. Upon completion of the signing of the necessary Agreement(s) and "Company Sign-up Form", the Bank's Information Security personnel will contact your BCSA to deliver the confidential Authentication Code.

The Primary Contact person may or may not be the same as the BCSA. The Primary Contact person is to be the main contact person for general communication with the Bank. Announcements and changes with regard to Cash

Management Services will be notified to the Primary Contact person by the Bank. The Primary Contact person will be responsible for liaising with the Bank and communicating such notifications to its Company's internal users.

The BCSA will be the individual security contact who accepts receipt of the IDs, security device Activation Codes, Digital Tokens or any other security device required for initial login pursuant to the Company Sign-up Form. You will notify the Bank promptly when any changes to the Primary Contact person and/or the BCSA occur – such changes include the name(s), email address(es) and phone number(s).

### 2.3 E-Moneyger® Service Setup Procedures.

Full details of the procedures associated with the initial log-In and creation of additional User IDs for your Authorised Representatives can be found in the “E-Moneyger® System Administrator User Guide” and/or other instructions that will be provided to you by the Bank.

## 3 **E-Moneyger® Security**

### 3.1 Protecting your Account. It is your obligation to establish and implement policies, procedures and a system of controls over the use of E-Moneyger®, and to perform such internal and external audits as you believe appropriate to assure that the services are only used in an appropriate and proper fashion. In that regard, we strongly recommend that:

- (a) Identifying Information, Authentication Passcodes, and Digital Tokens are specific to each Authorised Representative and should never be shared.
- (b) Identifying Information, Authentication Passcodes, Digital Tokens or any other security devices should never be displayed in an area accessible by others.
- (c) Digital Tokens including on mobile devices should never be left unlocked and unattended.
- (d) PCs or other devices used to access E-Moneyger® should never be left unattended whilst a session is active.
- (e) E-Moneyger® Services should only be accessed from a non-public (personal or corporate owned) PC or device on which virus protection software and the latest Operating System, Browser and Security updates have been installed and continue to be promptly maintained when they become available from the manufacturer.
- (f) PCs or other devices used to access E-Moneyger® should be routinely scanned using your virus protection software to detect and remove any viruses found. Undetected or unrepaired, a virus may corrupt and destroy programs, files and even hardware. You agree that the Bank is not responsible for and shall have no liability for any virus that you may encounter using E-Moneyger® Services.
- (g) Users should always exit the system by clicking the Logout button from the menu after using E- Moneyger®.
- (h) If your BCSA and/or Security Contacts and/or CSAs have access to the E-Moneyger® Services purely for administrative purposes, do not give them the authority to use the system to transfer funds or execute other transactions.
- (i) You should notify the Bank immediately if you suspect that Identifying Information, Authentication Passcodes or Digital Tokens may have been compromised and become known to any unauthorised individual. Such Identifying information, Authentication Passcodes or Digital Tokens should be terminated immediately by the BCSA or CSAs.

### 3.2 Monitoring of Authorised User Security Compliance. The BCSA and CSAs are responsible for instructing all Authorised Representatives as to each of the procedures for maintaining security of Identifying Information, Authentication Passcodes, Digital Tokens or any other security devices set forth in Clause 3.1 above. The BCSA and CSAs are also responsible for ensuring all Authorised Representatives continue to maintain adherence to these security procedures.

### 3.3 Your Obligation to Examine Records and Report Discrepancies.

- (a) We provide various confirmations and statements of your activities. It is your obligation to examine those statements and report any discrepancies. For certain services (Balance and Statement Reporting, Funds Transfer Services, and Foreign Exchange & Money Market Confirmation Delivery Services), we will send an e-mail confirmation to your Primary Contact person of each user's session activity after that user has logged out of our cash management services. If a session includes funds transfers or foreign exchange & money market confirmations, confirmation of the funds transfers or foreign exchange & money market confirmations transacted during that session will be included in the Primary Contact person's e-mail confirmation. You agree that your Primary Contact person, as your representative, shall review all e-mail confirmations and



shall notify us immediately if there are any discrepancies in any e-mail confirmation of a funds transfer or foreign exchange & money market confirmations (other than one relating to an employee's access level, which should be promptly reported to your Primary Contact person). The Bank provides no separate written confirmation of individual funds transfers or foreign exchange & money market confirmations conducted through our online banking services other than the session activity e-mail confirmations sent to your Primary Contact person's e-mail address.

- (b) The date and amount of transfers made through our online banking services will also be shown online under the Wire Transfer Status Reports menu, and will also be shown on your printed statements for the accounts from which the transfer is made. Additional confirmation is provided through online information available from us in electronic form as part of our online banking services and through your periodic mailed account statements. You agree to examine your statement promptly and to notify us immediately of any discrepancy between the statement and your other account records (other than one relating to an employee's access level, which should be promptly reported to your Primary Contact person). You also agree to notify us immediately of any discrepancy you may find in reviewing online information (other than one relating to an employee's access level, which should be promptly reported to your Primary Contact person).

#### 3.4 E-Moneyger® and adherence to Strong Customer Authentication (SCA)

In order to access E-Moneyger® Services you must adhere to our procedures for Secure Customer Authentication (SCA) as defined in the "Strong Customer Authentication Schedule".

#### **4 Your Authorised Representatives**

You agree that each of the Authorised Representatives (the individuals) you designate to access and use our E-Moneyger® Services are acting with your full authority in their use of these Services and in their creation and/or assignment of identifying information including Security Device Activation Codes and Digital Tokens. You further agree that all Authorised Representatives who have been provided access to the Services through the use of identifying information, Authentication Passcodes, and Digital Tokens (or by any other means whether through the Customer's negligence or not) will be considered acting with your full authority in their use of E-Moneyger®. We are authorised and empowered to rely and act upon instructions received providing your identifying information and Authentication Passcodes as part of an online session.

## Annex 2 – FEE ADDENDUM

This Addendum sets out our fees for providing you with our E-Moneyger® services through our corporate website, <https://www.e-moneyger.com> and/or <https://www.smbcdigital.com>. Capitalized terms used in this Addendum shall have the meaning set forth in the Cash Management Services Agreement (the "Agreement") to which you are a party.

The Fees applicable to the provision of the E-Moneyger® services to be provided by us in connection with the Agreement are as follows:

Company Name:			
Debit Account:			
Type of Fee		Currency	Amount
Initial Setup Fee			
Monthly Fees	Bank Report Service		
	Fund Transfer Service		
Monthly Fee TOTAL			

Unless we otherwise agree in accordance with Clause 3 (*Fees*) of the Agreement, the Fees referred to above shall be payable as follows:

- 1 The Initial Setup Fee and the first Monthly Fees shall each be payable in arrear on the 20<sup>th</sup> day of the first calendar month falling immediately after the calendar month in which the Agreement is signed.
- 2 Thereafter, the Monthly Fees shall be payable in arrear on the 20<sup>th</sup> day of each calendar month during the term of the Agreement.
- 3 If on the date for the payment of any Fee such day is not a Business Day, then payment of the relevant Fees shall be made on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).
- 4 All Fees shall be automatically debited from the account that you hold with us and which you agree to designate for this purpose.
- 5 Fees may apply for the use of "Digital Tokens" under certain circumstances.

# Cash Management Services Agreement

## Strong Customer Authentication Schedule

This Schedule is supplemental to the Cash Management Service Agreement (the "Agreement") between the Bank and the Customer. It defines the specific Terms and Conditions associated with the Strong Customer Authentication solutions provided by the Bank and your obligations for adherence for those Cash Management Services defined below. Expressions defined in the Agreement have the same meanings in this schedule.

### 1 Strong Customer Authentication Summary

Authentication is a procedure which allows the Bank to verify the identity of your Authorised Representative and confirm the validity of their intended use of a particular Cash Management Service.

Strong Customer Authentication (SCA) applies a higher form of authentication otherwise known as "Two- Factor Authentication" which requires the Authorised Representative to provide authentication composed of two or more independent elements from the following categories: knowledge – something only you know, Possession – something you have, and Inherence – something you are.

Under certain circumstances, an even higher form of SCA will be applied referred to as "Dynamic Linking" or "Transaction Signing". In these cases the Authorised Representative will also be asked to re-confirm details of a request submitted to ensure that this matches the details of what was received by the Bank.

The Bank continues to review and upgrade its SCA solutions inclusive of identity, session and transaction monitoring to protect you and the Bank, and to align with regulatory expectations.

The Bank will rely on such SCA as the Customer's authority to provide access to approved 3<sup>rd</sup> Parties, allow access to account information, authorise payments from the account, or other services made available to you by the Bank now or in the future.

### 2 Scope of this Schedule

2.1 Service Scope. This schedule governs your obligations for SCA when using the following Cash Management Services:

- (a) E-Moneyger®
- (b) TPP Interface (PISP or AISP)
- (c) Any other service the Bank may make available to you that will rely on such authentication and authorization.

2.2 Service Action. SCA can be applied by the Bank at any time and for a range of different actions but will consistently be applied when the following actions are performed:

- (a) Consent
- (b) Logon
- (c) Payment Approval
- (d) Other approval as agreed.

### 3 Strong Customer Authentication Procedures

3.1 Establishment of SCA Procedures. If required for a service, at our request you will establish appropriate SCA procedures, including the designation of Authorised Representatives to access and use the services and their use of Identifying Information, Authentication Passcodes and Digital Tokens, which they must safeguard. Using these SCA procedures you will transmit information and instructions (collectively, "Instructions") to us. We are entitled to accept and act on Instructions if they have been authenticated by the relevant SCA procedures.

3.2 Purpose of SCA Procedures. SCA procedures are intended to confirm the authenticity of the Instructions you provide to us. We assume no responsibility to discover or audit any unauthorized disclosure or use of the SCA procedures or other breach of security by you, your Authorised Representatives, or any third party.

3.3 Use of SCA Procedures. You acknowledge that you have been advised of the various SCA procedures employed by the Bank, that you understand them, and that the Instructions you will issue to us under the "Agreement" will employ the SCA procedure suitable to your circumstances and the Cash Management Services being accessed or used.

- 3.4 Confidentiality of SCA Procedures. You must preserve the confidentiality of the SCA procedures that you, your Authorised Representatives and the Bank use in connection with these services. You should disclose the SCA procedures only to those Authorised Representatives who are required to know them. You must preserve the confidentiality and security of any Identifying Information, Authentication Passcodes, Digital Tokens or other any other security devices and make them available only to the authorised individuals designated by you to use the Services.

#### **4 Digital Tokens**

- 4.1 To facilitate your interaction with SCA, the Bank will provide a Digital Token for each Authorised Representative which allows them to:
- (a) Activate the token by receiving activation information from the Bank and setting up Identifying Information and Authentication Passcodes on the device.
  - (b) Authenticate into the online cash management services provided by the Bank to you (as defined in section 2a).
  - (c) Provide consent to the Bank for access by a third party service provider (TPP) to your accounts held with the Bank.
  - (d) Sign payment transactions you have initiated from your accounts held with the Bank using these Cash Management Services (as defined in section 2a).
- 4.2 The Digital Token is purely for user authentication and transaction signing. It does not offer other banking services such as account reporting or payment initiation.
- 4.3 The Digital Token is provided as part of our service to you and is solely for the use of your Authorised Representatives. The Digital Token is not designed or intended for, and should not be downloaded or used by, individuals or consumers acting in their own capacity.
- 4.4 We will protect the communication sessions between you and us as part of the SCA Service using the Digital Token against the capture of authentication data transmitted during the authentication, and against manipulation by unauthorised parties.
- 4.5 You will notify the Bank immediately if you have received information on a Digital Token that is not meant for you.
- 4.6 You will notify the Bank immediately if you know or believe any of your Identifying Information, Authentication Passcodes or Digital Tokens have been compromised in some way.
- 4.7 You will follow all security measures and advices provided by the Bank.
- 4.8 We do not guarantee that the Digital Token will always be available and functional. If you are unable to use the Digital Token and therefore cannot access the Bank's Cash Management Services because the Digital Token or associated services provided are unavailable or interrupted we shall have no liability to you.
- 4.9 You understand and acknowledge that where you to utilise a TPP, it is possible that such providers will issue their own credentials (to be used by you in those providers' own platforms). These are separate from the SCA Service and Digital Tokens described in this Schedule.
- 4.10 By entering the Agreement, you agree to the licence and liability terms, as listed in Annex 1 to this Schedule, relating to the Mobile Authenticator App.

#### **5 The right to suspend SCA Services**

- 5.1 We may suspend or withdraw or restrict at any time the availability of all or any part of the SCA Service and the Digital Token for security, operational, legal or business reasons. We will try to give you reasonable notice of any suspension.
- 5.2 Access to the Digital Token will be suspended if your Authorised Representative enters incorrect authentication details repeatedly.

#### **6 The right to terminate SCA Services**

- 6.1 We can terminate this Schedule or stop providing the SCA Service through the Digital Token at any time and for any reason. We may also change, suspend, terminate or discontinue any aspect of the SCA Service including availability of certain features at any time and for any reason. Where possible we will endeavour to give you notice before doing so.

- 6.2 You can terminate this Schedule insofar as it is applicable to you for any reason by giving us immediate notice. In addition, either party may terminate this Schedule immediately if the other is breaching any of its responsibilities under this Schedule.
- 6.3 On any termination of this Schedule, your right and those of your Authorised Representatives to access the SCA Service through the Digital Token will cease and we may terminate your access to the SCA Service through the Digital Token and invalidate all or any relevant access details to the Digital Token.
- 6.4 Termination for whatever reason of this Schedule will not affect (a) any rights, liabilities or obligations which accrued before such termination; or (b) any of this Schedule that is intended to continue to have effect after such termination.

## **7 Personal Information**

The personal information your Authorised Representative submits to the Bank and that the Bank collects in connection with their use of the Digital Token and/or SCA Service is governed by our Website Terms of Use and Privacy Notice. To the extent there is an inconsistency relating to personal information between these Terms and the Website Terms of Use and Privacy Policy, the terms of the Website Terms of Use and Privacy Policy shall prevail.

<https://www.smbcgroup.com/emea/notices-reporting/customer-information-notices>

## **8 Responsibilities**

- 8.1 Nothing in these Terms excludes our liability for death or personal injury arising from our negligence, or our fraud or fraudulent misrepresentation, or any other liability that cannot be excluded or limited by English or other applicable law.
- 8.2 To the maximum extent permitted by applicable law, we exclude all conditions, warranties, representation or other terms which may apply to the Digital Token, whether express or implied. The Digital Token is provided "as is" with no representation, guarantee or agreement of any kind as to its functionality.
- 8.3 To the maximum extent permitted by applicable law, the Bank shall not be liable to you for any loss or damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, even if foreseeable, arising under or in connection with the use of, or inability to use, the Digital Token.
- 8.4 Without prejudice to the Banking Terms, the Bank shall not be liable for any loss of profit, loss of sales, transactions or business, loss of agreements or contracts, loss of use or corruption of software, data or information, any indirect, consequential, incidental, punitive, exemplary or special losses or damages, or expenses (including without limitation attorneys' fees), which you may incur or suffer including, without limitation, any loss, damage or expense from subsequent dishonour or rejection of any transaction, whether or not the possibility or likelihood of such damage was known or contemplated by us.

### Annex 3 – Mobile Authenticator App Licence and Liability Terms

#### 1 LICENCE TERMS

- 1.1 The Bank grants to you a limited, non-exclusive, revocable, non-transferable (except as otherwise permitted in this Clause 1) licence to install and use the Mobile Authenticator App on Android or iOS phones controlled by you (the **"Licensed Equipment"**), subject to the terms of the Agreement. This Licence shall be terminated on the expiry or termination of the Agreement or Strong Customer Authentication Schedule.
- 1.2 You shall not, nor permit others to:
  - (a) use or copy the Mobile Authenticator App except as expressly permitted in the Agreement or applicable law;
  - (b) translate, reverse engineer, decompile, disassemble or attempt to derive the source code or object code of the Mobile Authenticator App, except to the extent expressly permitted by applicable mandatory law;
  - (c) rent, lease, assign or otherwise transfer the Mobile Authenticator App and/or activation codes except as expressly agreed in writing;
  - (d) modify the Mobile Authenticator App or merge all or any part of the Mobile Authenticator App with any unauthorised program, unless such use is approved by the Bank in writing;
  - (e) modify or delete any copyright, trademark, other proprietary rights notice on the Mobile Authenticator App or other documentation related to the Mobile Authenticator App;
  - (f) copy, except to the extent permitted in the Agreement or applicable law, any documentation related to the Mobile Authenticator App without reproducing applicable copyright, trademark or proprietary rights notices on each copy;
  - (g) impair in any way the Bank or the Bank's licensor's copyright, trademark or other proprietary rights;
  - (h) use, copy, modify or create new activation codes unless expressly permitted in the Agreement;
  - (i) use or allow the use of the Mobile Authenticator App in violation of U.S., European or other applicable export regulations, or for any other unlawful activity or in any unauthorised manner;
  - (j) download or install the Mobile Authenticator App onto a jail-broken or rooted mobile device;
  - (k) tamper with the Mobile Authenticator App or otherwise use the Mobile Authenticator App in a way that could damage it or stop it from working or affect the systems, such as hacking into or inserting malicious codes into the Mobile Authenticator App or mobile operating systems;
  - (l) use the Mobile Authenticator App in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users of the Mobile Authenticator App; or
  - (m) collect or harvest any information from the Mobile Authenticator App or our systems or attempt to decipher any transmissions to or from the servers running the Mobile Authenticator App or our systems.
- 1.3 You must:
  - (a) only use the Mobile Authenticator App, and procure that the use by any Authorised Representatives shall be, in accordance with the terms of the Agreement, and the end user licence agreement, as annexed to this Schedule, and as may be amended or presented to Authorised Representatives from time to time (the **"Mobile Authenticator App Terms"**);
  - (b) only allow your Authorised Representatives to use the Mobile Authenticator App, and procure that they do so solely in connection with the administration of the Services for your business purposes;
  - (c) have provided the Bank with accurate, current and complete details of Authorised Representatives as that are necessary for the Bank to provide the Mobile Authenticator App, and you shall keep such information accurate, current and complete;
  - (d) comply with, and procure that the Authorised Representatives comply with, the terms of the Agreement and the Mobile Authenticator App Terms;
  - (e) implement and maintain procedures to ensure that you are able to monitor compliance with the terms of the Agreement and the Mobile Authenticator App Terms;



- (f) only use the Mobile Authenticator App, and procure that use by any Authorised Representatives shall be, in compliance with all applicable laws, including any consumer, data protection, data privacy and export control laws; and
  - (g) update or procure the update of the operating systems of Licensed Equipment if advised by the Bank that this is necessary for security reasons.
- 1.4 The Bank can terminate or stop providing, suspend, withdraw, or restrict the Mobile Authenticator App or your licence to install and use it at any time and for any reason. The Bank may also change, suspend, terminate or discontinue any aspect of the Mobile Authenticator App including availability of certain features at any time and for any reason. Where possible the Bank will endeavour to give you notice before doing so.
  - 1.5 If Authorised Representatives enter incorrect authentication details repeatedly, access to the Mobile Authenticator App will be suspended. You must contact your system administrator or the Bank's help desk for further support.
  - 1.6 The Mobile Authenticator App has not been developed to meet your individual requirements. You are responsible for ensuring that the facilities and functions of the Mobile Authenticator App meet your requirements.
  - 1.7 All intellectual property rights in the Mobile Authenticator App throughout the world belong to the Bank (or its licensors) and the rights in the Mobile Authenticator App are licensed (not sold) to you. You have no intellectual property rights in, or to the Mobile Authenticator App other than the right to use them in accordance with the terms of the Agreement.
  - 1.8 As set out in Clause 1.2, you must not infringe the Bank's intellectual property rights or those of any third party (including the Bank's licensors) in relation to your use of the Mobile Authenticator App.

## **2 LICENCE LIABILITY**

- 2.1 Nothing in this Clause 2 excludes the Bank's liability for death or personal injury arising from our negligence, or the Bank's fraud or fraudulent misrepresentation, or any other liability that cannot be excluded or limited by English or other applicable law.
- 2.2 To the maximum extent permitted by applicable law, the Bank excludes all conditions, warranties, representations or other terms which may apply to the Mobile Authenticator App, whether express or implied. The Mobile Authenticator App is provided "as is" with no representation, guarantee or agreement of any kind as to its functionality or availability.
- 2.3 The Bank does not guarantee that the Mobile Authenticator App will always be available or be uninterrupted.
- 2.4 The Bank shall not be liable to you for any loss or damage, whether in contract, tort (including negligence), breach of statutory duty or otherwise, even if foreseeable, arising under or in connection with the use of, or inability to use, the Mobile Authenticator App.
- 2.5 In relation to the use of, or inability to use, the Mobile Authenticator App, the Bank shall not be liable for any loss of profit, loss of sales, transactions or business, loss of agreements or contracts, loss of use or corruption of software, data or information, any indirect, consequential, incidental, punitive, exemplary or special losses or damages or expenses (including without limitation attorneys' fees), which you may incur or suffer including, without limitation, any loss, damage or expense from subsequent dishonour or rejection of any transaction, whether or not the possibility or likelihood of such damage was known or contemplated by us.
- 2.6 You agree to defend, indemnify and hold the Bank free and harmless from any claim and against any loss or damage which the Bank may suffer or incur as a result of your (and your Authorised Representatives) use of the Mobile Authenticator App or any breach of your obligations set out in Clause 1 (*Licence Terms*).

## Annex 4 – Mobile Authenticator App Terms

Please read these terms and conditions carefully, in particular section 7 (Responsibilities) which sets out our responsibilities and liabilities relating to this App.

**In the event the App is unavailable please contact the Cash Management Helpdesk: Phone +44 (0)207 786 1874 or Email [emoneygerhelpdesk@gb.smbcgroup.com](mailto:emoneygerhelpdesk@gb.smbcgroup.com).**

BY CLICKING ON THE ACCEPT BUTTON BELOW YOU AGREE TO THESE TERMS WHICH WILL BIND YOU. IF YOU DO NOT AGREE TO THESE TERMS, CLICK ON THE "DECLINE" BUTTON BELOW.

### 1 SMBC Digital Mobile Authenticator App

- 1.1 The SMBC Digital Mobile Authenticator App (the **App**) is operated and provided by the Bank in accordance with these terms and conditions (the **App Terms**). As used in this Agreement, the terms "we", "us", "our", and "Bank" refer to SMBC BI.
- 1.2 The App is introduced to strengthen the security and authentication for our business customers (the **Business Customer**) when utilising our cash management services (the **Services**) where strong customer authentication is required. The App is only to be used by individuals who have been authorised by a Business Customer (the **Customer's Authorised Representative**), pursuant to the cash management agreement in place with our Business Customer (the **Agreement**). The Customer's Authorised Representative can use the App in connection with the use of the cash management services that we provide to Business Customers, as they are authorised and directed by Business Customers.
- 1.3 The App Terms and our Website Terms of Use and Privacy Policy (collectively, the **Applicable Terms**) set out the legal terms and conditions on which we provide the App. By downloading or using the App you acknowledge and agree that you are authorised and instructed by a Business Customer to use this App for the purposes of accessing the Service.
- 1.4 Full details of the Applicable Terms can be found here: <https://www.smbcgroup.com/emea/about-us/customer-information-and-notices/#notice>

### 2 The App:

- 2.1 The App allows you to:
  - (a) activate the App by receiving activation information from SMBC and setting up authentication codes on the mobile device;
  - (b) authenticate into the online cash management services provided by SMBC to Business Customers;
  - (c) provide consent to SMBC for access by a third-party service provider to the Business Customer's SMBC account(s) that you are authorised to manage; and
  - (d) sign payment transactions you have initiated, from the Business Customer's SMBC account(s) that you are authorised to manage, using the SMBC online banking application or via a third-party service provider.
- 2.2 The App is purely for user authentication and payment signing. It does not offer other banking services such as account reporting or payment initiation.
- 2.3 The App is provided as part of our service to our Business Customers and is solely for the use of our Business Customers, through the Customer's Authorised Representative. This App is not designed or intended for and should not be downloaded or used by, individuals or consumers acting in their own capacity.
- 2.4 There are no SMBC service fees in using the App. Your mobile network operator may charge you for accessing data to use the App.
- 2.5 While you comply with these App Terms, we grant you a non-exclusive, non-transferable, personal, revocable limited licence to access and/or use the App (but not any related source code) for the purposes of using the Service, subject to the terms of the Applicable Terms and the authorisations and instructions you have received as the Customer's Authorised Representative. You agree not to use the App for anything else.

### 3 Conditions to use the App:

- 3.1 To use the App, you must:
  - (a) only use this App as authorised and directed by the Business Customer;

- (b) notify SMBC immediately if you believe you have received a message to the App that is not meant for you;
  - (c) change your Passcode immediately using the "Settings" menu in the App and notify SMBC if you know or suspect someone else knows the code; and
  - (d) follow all security measures and advice provided by SMBC and by the manufacturer of your mobile device <https://www.smbcgroup.com/security/index.html/>
- 3.2 The App works on Android and iPhone mobile devices and can be downloaded as directed by the Business Customer.
- 3.3 You must not:
- (a) disclose your Passcode to anyone, including SMBC;
  - (b) use the App for any purpose or in any manner not expressly permitted by the Applicable Terms, and as authorised and directed by the Business Customer;
  - (c) download or install the App onto a jail-broken or rooted mobile device;
  - (d) infringe our intellectual property rights or those of any third party in relation to your use of the App or Service;
  - (e) use the App in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these App Terms;
  - (f) tamper with the App or otherwise use the App in a way that could damage it or stop it from working or affect the systems, such as hacking into or inserting malicious codes into the App or mobile operating systems;
  - (g) use the App in a way that could damage, disable, overburden, impair or compromise our systems or security or interfere with other users of the App;
  - (h) collect or harvest any information from the App or our systems or attempt to decipher any transmissions to or from the servers running the App or our systems;
  - (i) rent, lease, assign or otherwise transfer the App or the Service in any form in whole or in part to any person without prior written consent from us;
  - (j) copy the App, except as part of the normal use of the App or where it is necessary for the purpose of back-up or operational security;
  - (k) copy, except to the extent permitted by the Applicable Terms or applicable law, any documentation related to the App without reproducing applicable copyright, trademark or proprietary rights notices on each copy;
  - (l) translate, reverse engineer, decompile, disassemble or attempt to derive the source code or object code of the App, except to the extent expressly permitted by applicable mandatory law;
  - (m) modify the App or merge all or any part of the App;
  - (n) impair in any way SMBC or SMBC's licensor's copyright, trademark or other proprietary rights;
  - (o) use, copy, modify or create new activation codes unless expressly permitted by the Applicable Terms;
  - (p) use or allow the use of the App in violation of U.S., European or other applicable export regulations, or for any other unlawful activity in any unauthorised manner; or
  - (q) modify or delete any copyright, trademark, other proprietary rights notice on the App or other documentation related to the App.
- 4 Suspension or termination of the App:**
- 4.1 Your access to the App will be suspended if you enter incorrect authentication details repeatedly. You must contact the Business Customer's system administrator or SMBC Help Desk on +44-(0)20- 7786-1874 for further support.
- 4.2 We can terminate these App Terms or stop providing, suspend, withdraw or restrict the Service delivered through the App at any time and for any reason. We may also change, suspend, terminate or discontinue any aspect of the App including availability of certain features at any time and for any reason. Where possible we will endeavour to give you notice before doing so.
- 4.3 You can terminate these App Terms insofar as they are applicable to you for any reason by giving us immediate notice. In addition, either party may terminate these App Terms immediately if the other is breaching any of its responsibilities under these App Terms (including those set out in section 3 (Conditions to use the App)).

4.4 On any termination of these App Terms, your right to access the Service through the App will cease and we may terminate your access to the Service through the App and invalidate all or any relevant access details to the App.

4.5 Termination for whatever reason of these App Terms will not affect: (a) any rights, liabilities or obligations which accrued before such termination; or (b) any of these App Terms that are intended to continue to have effect after such termination.

## **5 Personal Information:**

5.1 The personal information you submit to SMBC and that SMBC collects in connection with your use of the App and/or Service is governed by our Website Terms of Use and Privacy Policy. To the extent there is an inconsistency relating to personal information between these App Terms and the Website Terms of Use and Privacy Policy, the terms of the Website Terms of Use and Privacy Policy shall prevail.

5.2 Full details of the Website Terms of Use and Privacy Policy can be found here: <https://www.smbcgroup.com/emea/notices-reporting/customer-information-notices>.

## **6 Updates:**

6.1 From time to time, SMBC may automatically update the App to improve performance, enhance functionality, reflect changes to the operating system or address security issues. Alternatively we may ask you to update the App for these reasons.

6.2 If you choose not to install such updates or if you opt out of automatic updates you may not be able to continue to use the App.

## **7 Responsibilities:**

7.1 Nothing in these App Terms excludes our liability for death or personal injury arising from our negligence, or our fraud or fraudulent misrepresentation, or any other liability that cannot be excluded or limited by English or other applicable law.

7.2 To the maximum extent permitted by applicable law, we exclude all conditions, warranties, representation or other terms which may apply to this App, whether express or implied. The App is provided "as is" with no representation, guarantee or agreement of any kind as to its functionality. We do not guarantee that our App or the Service will always be available or be uninterrupted.

7.3 To the maximum extent permitted by applicable law, SMBC shall not be liable to any user for any loss or damage, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, even if foreseeable, arising under or in connection with the use of, or inability to use, the App.

7.4 Without prejudice to the Agreement, SMBC shall not be liable for any loss of profit, loss of sales, transactions or business, loss of agreements or contracts, loss of use or corruption of software, data or information, any indirect, consequential, incidental, punitive, exemplary or special losses or damages, or expenses (including without limitation attorneys' fees), which you may incur or suffer including, without limitation, any loss, damage or expense from subsequent dishonour or rejection of any transaction, whether or not the possibility or likelihood of such damage was known or contemplated by us.

## **8 Intellectual property rights:**

8.1 All intellectual property rights in the App and the Service throughout the world belong to us (or our licensors) and the rights in the App and the Service are licensed (not sold) to you. You have no intellectual property rights in, or to, the App or the Service other than the right to use them in accordance with these App Terms.

8.2 As set out in section 3 (Conditions to use the App) above, you must not infringe our intellectual property rights or those of any third party in relation to your use of the App or Service.

## **9 Governing law and jurisdictions:**

9.1 These App Terms, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the governing law of the Agreement.

9.2 We and you irrevocably agree that any dispute or claim arising out of or in connection with these App Terms or its subject matter or formation shall be governed by and subject to the provisions of the Agreement in relation to jurisdiction.

**10 Severability:**

- 10.1 Each of the paragraphs of these App Terms operates separately. If any court or relevant authority decides that any of them are unlawful, the remaining paragraphs will remain in full force and effect.

**11 No waiver:**

- 11.1 Even if we delay in enforcing this contract, we can still enforce it later. If we do not insist immediately that you do anything you are required to do under these App Terms, or if we delay in taking steps against you in respect of your breaking this contract, that will not mean that you do not have to do those things and it will not prevent us from taking steps against you at a later date.

**12 Third party rights:**

- 12.1 These App Terms do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce its terms.
- 12.2 We may at any time transfer or deal in any other manner with all or any of our rights or obligations under these App Terms but you may not do so without our prior written consent.

**13 Entire Agreement:**

- 13.1 Except as expressly provided, the Applicable Terms and the Notice to Customers constitute the entire agreement between you and us and supersede and extinguish all previous agreements, promises, assurances, warranties, representations and understandings between us whether written or oral, relating to the App or delivery of the Service through an app.
- 13.2 You acknowledge that in entering into these App Terms, you do not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the App Terms.

# Cash Management Service Agreement

## Host-to-Host Service Schedule

This Schedule governs the terms and conditions associated with the Host to Host Service (as defined below). This Schedule is referred to as "H2H" or "Host to Host" in the cash management services agreement entered between you and us on [●] ("Cash Management Services Agreement"), which this Schedule supplements and which incorporates the terms of this Schedule by reference. As used in this Schedule, the terms "we", "us", "our", and "Bank" refer to the Bank as defined in the Cash Management Services Agreement. The terms "you" and "your" (occasionally referred to as "Customer") refer to the Customer as defined in the Cash Management Services Agreement.

### 1 The Host to Host Service

- 1.1 The Host to Host Service. We shall provide to you, subject to the terms of this Schedule and any relevant Documentation and Specifications (both as defined below), a data transmission service (the "Host to Host Service"). You acknowledge that the Host to Host Service is simply a means to transfer data from you to us and us to you and is not, in and of itself, an extension of credit or banking facilities or the provision of an account of any sort. The other agreements (including the Cash Management Services Agreement), schedules, documentation, terms and conditions which govern any such credit or facilities and the management of any such accounts including, without limitation, the crediting and debiting of such accounts and the instructions we may accept in relation thereto, shall continue to have effect and will not be affected by this Schedule save where necessary to give effect to its terms. We shall inform you of any discontinuation of the Host to Host Service with prior reasonable notice. In case of discontinuation you shall have the right to terminate this Schedule with immediate effect and without any compensation being due from us to you or from you to us. [For the avoidance of doubt, you will be obligated for all fees and charges associated with your use of the Host to Host Service up to and including the effective date and time of termination.]
- 1.2 Addenda Applicable to Host to Host Service. You agree, in addition to the terms of this Schedule, to be bound by the specific terms and conditions set out in the various addenda attached to and made a part of this Schedule. You acknowledge and agree that we may modify these terms and conditions from time to time in our discretion. We will provide you notice of any modification of the terms and conditions and a date (which will be a date not earlier than thirty days from the date of the notice we provide) when such modifications will become effective. You may elect not to accept the modifications, and in such event, you must terminate your use of the Host to Host Service and so notify us. Your continued use of the Host to Host Service after the effective date will constitute your consent and agreement to the modifications. If there is an inconsistency between this Schedule and any of the addenda for the Host to Host Service the relevant addendum will govern.
- 1.3 Documentation and Specifications. Detailed procedures for the use of the Host to Host Service are contained in implementation documents ("Documentation") we will supply to you before you begin to use the Host to Host Service. We may also provide you with specifications ("Specifications"). You may be required to complete and provide information to us in connection with the Documentation and Specifications. When you begin to use the Host to Host Service, you also agree to be legally bound by all of the terms stated in the Documentation and Specifications. The Documentation and Specifications are an integral part of this Schedule and are incorporated into it by reference. This Schedule, the addenda, the Documentation and Specifications are intended to be read together. However, if there is any inconsistency between them, the terms of the Documentation and Specifications will control.
- 1.4 Writing. This Schedule, together with the various addenda, schedules or notices provided hereunder may be provided to you entirely or in part in paper form or electronically. Any part of this Schedule sent electronically shall be considered to be a "writing" or "in writing" and shall constitute an "original" when printed from electronic files or records established or maintained in the normal course of business.
- 1.5 Defined Terms. Any terms defined herein shall also be defined terms in any addenda, Documentation or Specifications attached hereto and incorporated by reference.

### 2 Fees

Our charges and fees for our cash management Host to Host Service are negotiated on a case by case basis. These fees and charges may change. We will provide you notice of such changes, which will become effective on and as of the date of publication.



### 3 Security Procedures

- 3.1 Establishment of Security Procedures. You will establish appropriate security procedures, including the designation of individuals authorized to access and use the Host to Host Service, as provided in this Clause and more generally in the Cash Management Services Agreement, including in the General Terms of Use Schedule. These security procedures may include the use of SSH keys, PGP keys, digital certificates, signatures, identification numbers and passwords, which you must safeguard. Using these security procedures you will transmit information and instructions (collectively, "Instructions") to us. Any Instructions you provide in which the respective security procedures are used (whether or not the individual using the procedures or the particular transaction has been authorized by you) will be considered genuine and authentic by us, and we shall be entitled to rely on the Instructions without further investigation whatsoever.
- 3.2 Purpose of Security Procedures. Security procedures are intended to confirm the authenticity of the Instructions you provide to us, and not to detect errors in the content or transmission of such Instructions, and we assume no responsibility for doing so. We also assume no responsibility to discover, audit, or report to you any unauthorized disclosure or use of the security procedure or other breach of security by you, your agents or representatives, or any third party, and all losses resulting therefrom shall be solely your responsibility. You shall promptly notify us of any suspected breach of security (whether or not involving your employees).
- 3.3 Use of Security Procedures. You acknowledge that you have been advised of the various security procedures employed by us, that you understand them, and that the Instructions you will issue to us under this Schedule will employ the security procedure suitable to your particular circumstances.
- 3.4 Confidentiality of Security Procedures. The parties hereto must preserve the confidentiality of the security procedures they use in connection with the Host to Host Service. You should disclose the security procedures only to those employees who are required to know them. You must preserve the confidentiality and security of any security codes or devices and make them available only to the authorized individuals designated by you to use the Host to Host Service.
- 3.5 Change of Security Procedures. We reserve the right to change the security procedures upon notice to you.
- 3.6 System and Security Requirements Associated with Internet Use. You agree to follow all security measures and advice provided by the Bank through <https://www.smbcgroup.com/emea/notices-reporting/customer-information-notices> where relevant to the Host to Host Service.

### 4 Confidentiality

You must comply with the confidentiality requirements provided at Clause 8 of the General Terms of Use Schedule of the Cash Management Services Agreement.

### 5 Instructions

You must comply with the requirements provided at Clause 3 of the General Terms of Use Schedule of the Cash Management Services Agreement as relate to your instructions in connection with your use of the Host to Host Service.

### 6 Limitation of Liability

- 6.1 Our Obligation. Our liability to you shall be limited to our exercise of ordinary care in performing that part of the Host to Host Service which is within our control. You acknowledge that (i) a third party is responsible for managing the technology which underlies the Host to Host Service, and (ii) that use of the Host to Host Service is dependent, in part, on your own software. Substantial compliance by us with our standard procedures for providing a Host to Host Service shall be deemed to constitute the exercise of ordinary care.
- 6.2 Other Limitations of Liability. You acknowledge that our liability to you under this Schedule shall be further limited as provided in Clause 12 of the General Terms of Use Schedule of the Cash Management Services Agreement, as otherwise modified by that agreement.

### 7 Termination

- 7.1 Your Right to Terminate. You may terminate this Schedule at any time by providing notice to us specifying an effective date and time of termination (which must be not less than 45 days after the date of the notice). You may also terminate this Schedule immediately in the event we fail to fulfil any material covenant or obligation required of us hereunder. You will be obligated for all fees and charges associated with your use of the Host to Host Service up to and including the effective date and time of termination. You may not use the Host to Host Service after the effective date and time of termination.

- 7.2 Our Right to Terminate. We may terminate this Schedule at any time by providing notice to you specifying an effective date and time of termination (which must be not less than 45 days after the date of the notice). We may also terminate this Schedule immediately in the event you fail to fulfil any material covenant or obligation required of you hereunder or under any other agreement you have with us or with any of our affiliated companies or if we determine that your financial condition has deteriorated or if required by law. You will be obligated for all fees and charges associated with your use of the Host to Host Service up to and including the effective date and time of termination. You may not use the Host to Host Service after the effective date and time of termination.
- 7.3 Certain Continuing Obligations. Notwithstanding any such termination, this Schedule shall continue in full force and effect as to all transactions for which processing has been commenced by us and all rights and liabilities arising prior to such termination. This Section and Section 6 of this Schedule shall survive termination.
- 7.4 Duration. This Schedule shall be deemed to be effective from the date of signature of the last signatory until terminated in accordance with the provisions of this Section.

## Green Deposit Terms and Conditions

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Available upon request

# SMBC UK

## Current Account and Payment Services Agreement

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### Agreement between:

SMBC UK

and

You the customer

You the Customer hereby agree to the following terms and conditions ("Conditions") in holding or conducting current account and payment transactions with SMBC UK ("the Bank"). The signatories below bind all authorised users of the Account and their signatures constitute Your acceptance of these Conditions.

Certain types of Account have additional conditions ("Special Conditions"). If a Special Condition conflicts with a Condition, then the Special Condition takes priority except to the extent that the Special Conditions conflict with our obligations to You under the Payment Services Regulations 2017 or any requirement imposed on Us by the Financial Conduct Authority ("FCA"), in which case these Conditions and/or those obligations or requirements shall take priority over the Special Conditions.

### REPRESENTATION AND APPLICATION OF THE PSRS TO THIS AGREEMENT

The PSRs apply to and regulate the provision of payment services in the United Kingdom. In accordance with Part 6 of the PSRs, You hereby represent and warrant that You are not a consumer, a Micro-Enterprise or a charity. You are deemed to repeat this representation for as long as You have an Account opened with us. If You believe that You have or will become a Micro-Enterprise then You must notify Us immediately.

In accordance with that representation, You agree that all of the provisions of Part 6 of the PSRs shall not apply to any part of this agreement or any payment service provided under it, as permitted by Regulation 40 (7) and You also agree that certain regulations in Part 7 of the PSRs, shall not apply to any part of this agreement or any payment service provided under it, as permitted by Regulation 63(5), namely Regulations 66(1), 67(3) and (4), 75, 77, 79, 80, 83, 91, 92 and 94.

Regulations 86 to 88 do not apply to this agreement, except to transactions (a) executed wholly within the Qualifying Area in euro under a payment scheme which operates across the Qualifying Area, (b) in sterling when executed wholly within the UK, or (c) executed wholly under a payment scheme which operates across the Qualifying Area involving one currency conversion between euro and sterling, provided that the currency conversion is carried out in the UK, and in the case the case of cross-border payment transactions, the cross-border transfer takes place in euro (as set out in Regulation 85(1)(c)), and except for other transactions that are executed wholly within the UK in which case the provisions of Regulation 86(3) will apply.

### Definitions

In these Conditions the following words and phrases have the meanings set out below:

**"Account"** means the current account opened by You with Us in the currency denomination specified and shall include any other current account in the same or any different currency denomination opened at the same time or subsequently by the same Customer with Us; each account being subject separately to these same terms and conditions as set out in this Agreement. The closure of one Account shall not affect the continued application of this Agreement to any other Account that remains open with Us.

**"Affiliate"** means, in relation to any person, a Subsidiary of that person, or a holding company of that person or any other Subsidiary of that holding company. **"Bank", "Us" or "We"** means SMBC UK.

**"Business Day"** means a day (other than a Saturday or Sunday) when the banks are open for general business in London.

**"Cut-off time"** means the latest time of day in the United Kingdom established by Us for the receipt of Payment Orders for meeting the earliest possible value date.

**"Customer"** means the business that is party to these terms and in which name the account is held. Any reference to a party to this Agreement and also includes a reference to that party's successors and permitted assigns.

**"Device"** means any device issued by Us through which the Account can be accessed including without limitation an Account number.

**"Direct Debit"** means a payment service for debiting the payer's Payment Account where a Payment Transaction is initiated by the Payee on the basis of consent given by the payer to the Payee, to the Payee's payment service provider or to the payer's own payment service provider.

**"Fees"** means any of the fees separately notified to You and as amended from time to time. **"Information"** by a token or Device supplied to You by Us in connection with the Account.

**"Micro-Enterprise"** means an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet does not exceed €2 million as defined in more detail by Commission Recommendation of 6 May 2003 (2003/361/EC).

**"Payee"** means the person who is the intended recipient of the funds which have been the subject of a Payment Transaction.

**"Payer"** means: (a) a person who holds a Payment Account and initiates, or consent to the initiation of, a Payment Order from that Payment Account; or (b) where there is no Payment Account, a person who gives a Payment Order.

**"Payment Account"** means an Account held in the name of one or more payment service users (as defined in the Payment Services Regulations 2017) which is used for the execution of Payment Transactions.

**"Payment Instrument"** means any printed or handwritten form, token, card, Device or instruction (whether in paper form, sent electronically or given orally) the purpose of which is to initiate a Payment Order.

**"Payment Order"** means any instruction from You to Us requesting the execution of a Payment Transaction.

**"Payment Transaction"** means a credit transfer, Direct Debit, a cheque transaction or any other transaction entailing the debiting of any funds and facilitated by the use of an Account.

**"Personalised Security"** means the password issued by Us to You or generated.

**"PSRs"** means the Payment Services Regulations 2017.

**"Qualifying Area"** means the area of the UK and the EEA states.

**"Sanctions"** means laws, regulations and/or executive orders which establish trade embargoes, and/or impose economic or financial sanctions or other restrictive measures, and which are enacted, administered, implemented and/or enforced from time to time by any of the following (and including through any relevant Sanctions Authority):

- (a) the Security Council of the United Nations;
- (b) Japan;
- (c) the United Kingdom of Great Britain and Northern Ireland;
- (d) the European Union (and each of its Member States);
- (e) Switzerland; and
- (f) the United States of America.

**"Sanctions Authority"** means any agency or person which is duly appointed, empowered or authorised to enact, administer, implement and/or enforce Sanctions, including:

- (a) the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC);
- (b) the United States Department of State or the United States Department of Commerce;
- (c) HM Treasury of the United Kingdom and its Office of Financial Sanctions Implementation (OFSI); and
- (d) The UK Department for International Trade and its Export Control Joint Unit.

**"Sanctioned Territory"** means a country, region or territory that is the subject of country-wide, region-wide or territory-wide Sanctions.

**"Sanctions List"** means any of the lists of designated sanctions targets maintained by a Sanctions Authority from time to time.

**"Sanctions Restricted Person"** means a person that is:

- (a) listed on a Sanctions List, or directly or indirectly owned, or otherwise controlled within the meaning and scope of the relevant Sanctions, by any one or more persons listed on a Sanctions List (to the extent that, under the relevant Sanctions, the restrictions apply also to those who are owned or controlled by a person listed on a Sanctions List);
- (b) located or resident in, or incorporated or organised under the laws of, a Sanctioned Territory; or

otherwise a subject of Sanctions.

**"Standard Tariffs"** means the document detailing the Bank's standard tariffs and conditions provided to the Customer, as updated, amended or replaced from time to time, provided that any such change is notified to the Customer in accordance with Clause 16 (*Deduction of Fees and Charges*).

**"Subsidiary"** means a subsidiary within the meaning of section 1159 of the Companies Act 2006.

**"Unique Identifier"** means a combination of letters, numbers or symbols that identifies the Payee or the Payee's account.

**"You", "Your" or "Account Holder"** means the Customer holding the Account(s) with us, and each authorised signatory or user of those accounts that may from time-to-time be notified by You to Us separately.

Unless a contrary indication appears, any reference in this Agreement to:

the words **include(s)** and **including** shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words;

the words **other** and **otherwise** shall not be construed *ejusdem generis* with any preceding words where a wider construction is possible; and

a time of a day is a reference to London time.

## **1. Permitted Deposits to Account**

- 1.1 The proceeds of Payment Instruments may be deposited to the Account. The Customer shall complete the necessary procedures for collection of Payment Instruments, such as endorsement, etc.
- 1.2 The Customer shall make necessary entries in all blanks in bills, notes and cheques. The Bank shall not be responsible for making such entries.
- 1.3 In the event that expenses are incurred by the Bank in the collection of a Payment Instrument, the Customer shall be required to pay a service charge in an amount determined by the Bank.

## **2. Deposit of Instruments**

- 2.1 When a Payment Instrument is deposited to the Account, the amount thereof shall not be drawn against until the procedures for collection thereof have been completed by the Bank and settlement thereof has been verified by the Bank after the due date for return of any dishonoured item.
- 2.2 With respect to Payment Instruments deposited to the Account which designate the Bank as the place of payment, the amount thereof shall not be drawn against until settlement has been verified by the Bank.
- 2.3 The Bank shall not be responsible for any loss or damages resulting from the loss, destruction or damage of a Payment Instrument deposited to the Account due to disturbances, calamities, and accidents during transit or any other unavoidable causes.

## **3. Deposits by Customer**

If deposits are made to the Account through other banking institutions, such deposits shall not be drawn against until recorded in the Bank's current accounts ledger. With respect to Payment Instruments which are deposited to the Account in this manner, the amount thereof shall not be drawn against until the settlement thereof has been verified by the Bank.

## **4. Deposits by Third Parties**

- 4.1 If Payment Instruments are deposited to the Account at this office of the Bank by a third party, such Payment Instruments shall be handled in the manner described in Clause 2 hereof.
- 4.2 If deposits are made to the Account by a third party through other banking institutions, such deposits shall be handled in the manner described in Clause 3 hereof.

## **5. Rejected or dishonoured Deposited Instruments**

- 5.1 In the event that deposits or transfers for credit have been made under Payment Instruments that are rejected or dishonoured, the Customer shall promptly be notified to that effect and the Bank shall cancel the credit entries in the Bank's current accounts ledger and return such Payment Instruments to the Customer at the office where the deposit was made; provided, however, that if deposits of Payment Instruments are made as described in Clause 4 hereof are dishonoured, such dishonoured Instruments shall be returned to the party who deposited the same, except that if

Instruments described in Paragraph 4.1 of Clause 4 hereof are dishonoured, such dishonoured Payment Instruments may also be returned through the Customer.

- 5.2 The Bank shall not be required to take any procedures necessary to protect the Customer's rights in the dishonoured Payment Instruments described in the preceding paragraph unless specifically so requested in writing in advance.

#### **6. Handling of Bills, Notes and Cheques**

Bills, notes and cheques shall be credited to or drawn against the Account in the amount indicated in the specified space for the amount of payment, irrespective of amounts indicated elsewhere in the Payment Instrument.

#### **7. Payment of Bills, Notes and Cheques**

- 7.1 When a cheque is presented to the Bank for payment or a bill or note is presented to the Bank for payment within its period for presentation, the same shall be paid by the Bank out of the Account.
- 7.2 Withdrawals from the Account may be made by cheque or by any other method referred to in the account opening mandate, any e-Moneyger agreement, or any other method satisfactory to the Bank. The maximum time for the withdrawal to be executed shall be notified to You in the account opening mandate or e-Moneyger agreement.

#### **8. Forms for Bills, Notes and Cheques**

- 8.1 In drawing cheques, which designate the Bank as the payor, or promissory notes, which designate the Bank as the place of payment, only the forms designated by the Bank or forms in compliance with Pay.UK standards shall be used. Further information about Pay.UK cheque and credit standards may be found here: <https://www.wearepay.uk/what-we-do/third-party-assurance/cheque-printer-accreditation-scheme/cheque-and-credit-standards/>
- 8.2 Acceptance of bills of exchange which designate the Bank as the place of payment shall be restricted to bills of exchange drawn on forms supplied by banking institutions which accept deposits.
- 8.3 The Bank shall not pay bills, notes and cheques other than those described in the preceding two paragraphs.
- 8.4 Forms for bills, notes and cheques shall be provided at cost to the Customer upon request and in the quantities deemed necessary.

#### **9. Limitation on Payment**

- 9.1 If the amount of a bill, note or cheque which is presented to the Bank for payment exceeds the balance then in the Account, the Bank shall be under no obligation to make payment.
- 9.2 No partial payment of a bill, note or cheque shall be made by the Bank.

#### **10. Option Concerning Payment**

If several bills, notes, cheques, etc. are presented for payment on the same day and the aggregate amount thereof exceeds the balance then in the Account, the decision as to which of such items shall be paid shall be left to the discretion of the Bank.

#### **11. Authorisation of Payment Transactions**

- 11.1 You agree that any use of a Payment Instrument, Personalised Security Information, Unique Identifier constitutes your consent to a Payment Transaction.
- 11.2 We have the right to stop, suspend or restrict a Payment Instrument on reasonable grounds relating to:
- (a) security of a Payment Instrument;
  - (b) the suspected unauthorised, fraudulent or otherwise unlawful use of a Payment Instrument; or
  - (c) a significantly increased risk that You will be unable to fulfil Your payment obligations where the Payment Instrument is used to advance credit to you.
- 11.3 Before We stop, suspend or restrict a Payment Instrument We will inform You that We intend to stop, restrict or suspend the Payment Instrument and give our reasons for doing so. If We are unable to do so then We will inform You immediately afterwards. However, We do not have to inform You where it would compromise our reasonable security measures or is otherwise unlawful.
- 11.4 As soon as the reasons for suspending, restricting or stopping the Payment Instrument cease to exist We will re-activate or replace the Payment instrument.



- 11.5 You will use the Payment Instrument in accordance with the terms and conditions governing its issue and use. When You receive a Payment Instrument You will ensure that You take all reasonable steps to keep Personalised Security Information safe.
- 11.6 If a Payment Instrument is lost or stolen or is the subject of unauthorised use You shall notify Us immediately using any of the methods of communication agreed between us.
- 11.7 We will:
- (a) ensure that the Personalised Security Information of the Payment Instrument are not accessible to persons other than the person to whom the Payment Instrument has been issued;
  - (b) not send You any unsolicited Payment Instruments unless they are replacements;
  - (c) ensure that You are able to:
    - (i) notify Us at all times of a Payment Instrument that is lost or stolen or is the subject of unauthorised use; and
    - (ii) request the use of a Payment Instrument that has been stopped,
  - (d) confirm in writing receipt of any notice from You under (c)(i) if requested by You at any time up to a period of 18 months after the alleged date of notification; and
  - (e) prevent any use of a Payment Instrument once We have been notified that it is lost or stolen or the subject of unauthorised use.
- 11.8 We bear the risk of sending a Payment Instrument or any of its Personalised Security Information to you.
- 11.9 You must notify Us of any unauthorised payments or withdrawals or incorrectly executed Payment Transactions as soon as possible on becoming aware of such unauthorised payment or withdrawal, and in any case no later than 13 months after the debit date. If You do not do this, We may not be liable for an unauthorised or incorrectly executed Payment Transaction.
- 11.10 If We are responsible for a Payment Transaction being debited to Your Account which You did not authorise or which is incorrectly executed We will refund the amount of the Payment Transaction to Your Account and treat the Payment Transaction as if it had never occurred; this will include a refund of any fees, charges or interest applied to Your Account as a result of the unauthorised or incorrectly executed Payment Transaction.

## **12. Execution of Payment Transactions**

- 12.1 When You give Us a Payment Order for immediate execution, the money will normally be taken from Your Account on the same Business Day We receive Your Payment Order provided We have received Your instruction by Cut-off time on that Business Day. If We have not received Your Payment Order by then it shall be deemed to have been received on the next Business Day. We have previously provided You with our Cut-off times. Any changes to our Cut-off times will be notified to You at least one month in advance of the change taking effect.
- 12.2 When You give Us a Payment Order and agree with Us that the Payment should be executed at some future specific date, the money will normally be taken from Your Account on the day agreed for execution of the Payment Order. If the day agreed is not a Business Day, the Payment Order shall be executed on the next Business Day.
- 12.3 If We refuse to allow any withdrawal, or make any payment, from Your Account, We will take all reasonable steps to inform You of our reasons for doing so and the procedure for rectifying any factual errors that led to our refusal. Fees may be payable for contacting You with this information. However, We will be under no obligation to contact You where this would compromise our security measures or is otherwise unlawful.
- 12.4 You can instruct Us to stop a payment from Your Account by contacting Us using any of the methods of communication agreed between us. If You are stopping a direct debit You must also tell the person to whom the direct debit is payable. Fees may be payable for requesting Us to stop payments from Your Account. After We receive Your instruction, We will stop the payment, provided that:
- (a) the payment has not already been made;
  - (b) You give Us sufficient details and time to process Your request;
  - (c) it is not a cash payment, counter cheque or banker's draft; or

- (d) if it is an advance Payment Transaction (such as a direct debit or standing order) You instruct Us to cancel the payment no later than the day before the payment is due.

### **13. Execution time for Payment Transactions**

We will ensure that a Payment Transaction is credited to the Payee's account by:

- (a) the end of the fourth Business Day following the time of receipt of the Payment Order, where a transaction is by way of paper Payment Order or where a transaction is executed wholly within the UK and is carried out in a currency other than an EU/EEA currency, or involves more than one currency conversion; and
- (b) in any other case the end of the second Business Day following the time of receipt of the Payment Order.

### **14. Liability for failed or defective or failed Payment Transactions**

- 14.1 Where We execute a Payment Order in accordance with an incorrect Unique Identifier We will not be liable for non-execution or defective execution. In such a case We will make reasonable efforts to recover the funds involved in the transaction.
- 14.2 If We are unable to provide services generally or any particular services to You because of any abnormal or unforeseen circumstances outside our reasonable control (for example a failure of computer systems which happens for reasons outside our reasonable control, a strike or industrial action) or because to supply those services would cause Us to contravene any applicable law or regulation, We will not be liable to You for any loss which You may suffer.

### **15. Overdrafts**

- 15.1 In the event that notwithstanding the provisions of Clause 9 hereof the Bank, in its discretion, shall pay bills, notes, cheques, etc. in excess of the balance then in the Account, the Customer shall repay such excess to the Bank promptly upon demand.
- 15.2 The Customer shall reimburse the Bank, at such times, at such rates and by such methods of computation and payment as shall be determined by the Bank, for any damages resulting under the preceding paragraph due to a shortage of funds in the Account.
- 15.3 Any funds deposited or transferred to the Account subsequent to payment by the Bank under Paragraph 15.1 of this Clause shall be applied to the repayment referred to in the same provision.
- 15.4 In the event that the repayment or reimbursement for damages described in Paragraphs 15.1 and 15.2 of this Clause is not made by the Customer, the Bank may, at any time, set off any other deposits or claims of the Customer against the amount thereof, irrespective of whether or not such deposits or claims are due and payable.
- 15.5 In the event of a payment by the Bank as described in Paragraph 15.1 of this Clause, all Instruments accepted for deposit or transferred to the Current Account prior to the payment date shall be deemed to constitute security assigned to the Bank with respect to the repayment of such excess amount.

### **16. Deduction of Fees and Charges**

- 16.1 Fees are payable for certain types of withdrawal or Payment Transactions You may request Us to make. Our Fees are notified to You separately in writing and detailed in our Standard Tariffs. Changes to any of our Fees will be notified to You in writing at least one month before the change takes effect.
- 16.2 When the Bank is entitled to receive interest on loans, discount charges, service charges, guarantee fees, advances or any other similar amounts from the Customer it may deduct same from the Account rather than obtaining payment by cheque.

### **17. Substitution for Certification of Cheque**

The Bank shall not be required to certify cheques; provided, however, that upon the Customer's request, the Bank shall issue its own cheque and deduct the amount of said cheque from the Account.

### **18. Submission of Seal Impressions, Etc.**

- 18.1 The authorised signatures to be used in Account transactions shall be submitted to this office of the Bank in advance and the form supplied by the Bank shall be used for this purpose.
- 18.2 If the Customer conducts transactions through an attorney, the Customer shall submit the name and signature of such attorney to the Bank in the manner described in the preceding paragraph.

**19. Change of Reported Matters**

- 19.1 Immediate written notice shall be given to this office of the Bank in the event that bills, notes, cheques, forms for promissory notes or cheques are lost or in the event that a name, trade name, representative, attorney, address or any other matter previously reported to the Bank is changed.
- 19.2 The Bank shall not be responsible for any damages incurred prior to its receipt of the notice described in the preceding paragraph.

**20. Liability for irregularities**

- 20.1 The Bank shall not be responsible for any damages resulting from forgery, counterfeiting or other irregularities in situations where it has examined a signature appearing on bills, notes, cheques or other documents submitted to it with reasonable care and found the same to be identical to the specimen signature previously filed with it.
- 20.2 The provisions of the preceding paragraph shall apply to damages resulting from forgery or counterfeiting of forms for bills, notes or cheques in situations where the Bank has examined such forms with reasonable care.
- 20.3 The designated forms for bills, notes and cheques provided by the Bank shall not be assigned, lent or otherwise transferred to any third party. In the event that a bill, note or cheque is drawn by a third party on forms so transferred, the Bank may deduct the payment thereof from the Account of the Customer, and the provisions of Paragraph 20.1 of this Clause shall apply to the damages resulting therefrom.
- 20.4 The provisions of Paragraph 20.1 of this Clause shall also apply to damages resulting from a breach by the Customer or its attorney of this agreement or any regulations with respect to the use of bills, notes and cheques determined separately.
- 20.5 The Bank shall not have any obligation to examine the format or printing or security features of cheques that are produced by customers themselves, or be responsible for any irregularities of cheques relating to any of the foregoing that are not produced by the Bank.

**21. Bills, Notes and Cheques which Omit Date or Payee**

- 21.1 In drawing bills, notes and cheques or in accepting bills of exchange, the Customer shall enter therein as many of the requisite items as possible. If cheques or bills or notes having a fixed date for payment which omit the date of drawing, or if bills or notes which omit the Payee, are presented for payment, the Bank may make payment without notice to the Customer in each instance.
- 21.2 The Bank shall not be responsible for any damages resulting from the acts described in the preceding paragraph.

**22. Bills or Notes Drawn by a Director for His Own Transactions, Etc. with the Customer.**

- 22.1 In case where the board of director's approval, consent of a general meeting of members or other similar procedures are required in connection with transactions relating to bills or notes, the Bank may make payment without investigation as to whether such approvals or consent have been obtained or such similar procedures have been completed.
- 22.2 The Bank shall not be responsible for any damages resulting from the acts described in the preceding paragraph.

**23. Interest**

No Interest shall accrue on an Account unless We have notified You in writing to the contrary when an Account is opened or on a subsequent occasion. Interest on overdrawn balances will be charged at the applicable overdraft rates.

**24. Report of Balance**

Upon the request of the Customer, the Bank shall report entries to the Account or the balance therein in the manner determined by the Bank.

**25. Termination**

- 25.1 This agreement may be terminated at any time by either party hereto; provided, however, that a written notice of termination shall be given to the Bank if the Customer desires to terminate.
- 25.2 If the Bank sends a notice of termination to the Customer at its address previously reported to the Bank and the notice is delayed or does not reach the Customer, such notice shall be regarded as having been given at the time it would normally reach the Customer.

- 25.3 If the Bank terminates this agreement because of the occurrence of an Event of Default listed in Article 5 of the Agreement on Bank Transactions, this agreement shall be deemed terminated at the time of dispatch of the notice of termination to the customer, irrespective of the arrival thereof.

## **26. Disposition after Termination**

If transactions on the Account are terminated, the Bank shall not be liable for payment of promissory notes or cheques which were drawn, or bills of exchange which were accepted prior to termination.

In the situation described in the preceding paragraph, the Customer shall immediately return unused forms for bills, notes and cheques to the Bank and shall take all steps to settle the Account.

## **27. Prevention and Detection of Financial Crime**

- 27.1 The Bank is committed to the highest ethical standards in terms of Anti-Money Laundering, Counter Terrorism Financing, Sanctions, Tax Evasion, Fraud, Anti-Bribery and Corruption and Financial Crime in general. The Customer commits to take all necessary measures to comply at all times with all laws and regulations applicable in the United Kingdom with regards to these matters. The Customer commits not to associate the Bank with any business related to:

- (a) countries to which the Financial Action Task Force (FATF) calls for countermeasures;
- (b) any Sanctioned Territory; or
- (c) any Sanctions Restricted Person, provided that this paragraph (c). shall not apply to the extent it would cause the Customer or the Bank to breach: (A) European Union Regulation 2271/96/EC (as amended), including as in effect in the United Kingdom as retained EU law within the meaning of the European Union (Withdrawal) Act 2018; (B) *Aussenwirtschaftsverordnung* (the German Foreign Trade and Payments Act); or (C) any applicable similar blocking or anti-boycott law; or
- (d) any activity or conduct which would violate any applicable anti-bribery, anti-corruption or anti- money laundering laws or regulations in any applicable jurisdiction.

- 27.2 The Customer shall provide the Bank with any information the Bank may request for the Bank (together with any entity of the SMBC Group) to comply with any laws and regulations relating to the prevention or detection of financial crime (including but not limited to fraud, money laundering, Sanctions and tax evasion).

- 27.3 The Customer shall notify the Bank of any failure to comply with any applicable laws and regulations related to financial crime and of any conviction or charge relating to financial crime committed or alleged to have been committed by the Customer, any of its Subsidiaries, any person who directly or indirectly owns or controls the Customer, any director of the Customer, any authorised signatory of the Customer or (to the Customer's knowledge) any of the Customer's other Affiliates, its agents or its employees.

- 27.4 Notwithstanding any other provision of this Agreement, the Bank may carry out checks or actions to stop or reduce the risk of an Account being used for the purposes of a Financial Crime in accordance with our legal and regulatory obligations. This may result in us delaying or refusing either to process a payment or your instructions, or to provide all or part of any services to you. The Bank shall not be responsible for any damages resulting from carrying out these checks.

- 27.5 "**Financial Crime**" means actual or suspected money laundering, terrorist financing, corruption, tax evasion, fraud, breach of applicable Sanctions, and/or any attempts to circumvent or beach any laws relating to these matters and in any jurisdiction relevant to the provision of any of our services to you.

## **28. Continuity of Provisions**

The execution of this Agreement shall be deemed as Your consent to the amendment of the provisions of the Agreement previously executed with the Bank, and You hereby agree to the application by the Bank of the terms and conditions of this Agreement to any promissory notes or cheques drawn or bills of exchange accepted by the Bank prior to the date hereof. The Guarantor also consents to the said amendment and agrees to be jointly and severally liable with the Principal for the performance of all obligations covered hereby.

## **29. Amendments**

You agree that we may make amendments to this Agreement from time to time, by providing You with notice [(in writing or by email)] which states when the proposed Amendments will come into force. You agree that that You will be deemed to have accepted the amendments if you (a) continue to use your Account, or (b) do not notify Us that you object to such amendments before the proposed date of entry into force.

**30. Governing law**

This Agreement (including any non-contractual disputes and claims that arise out of or in connection with this Agreement) shall be governed by, and construed in accordance with, the laws of England.

**31. Financial Services Compensation Scheme**

The United Kingdom's Financial Services Compensation Scheme ("FSCS") is a statutory deposit guarantee scheme that protects certain deposits ("eligible deposits") up to a specified monetary limit in the event of our insolvency. Information about how the FSCS operates can be found at: <http://www.fscs.org.uk> Further details about the FSCS deposit guarantee scheme are contained in a separate information sheet provided to You prior to opening the first Account subject to this Agreement; by signing below You the Customer acknowledge receipt of this information sheet.