



# Terms and Conditions governing use of Euroclear

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The following Terms and Conditions govern your use of the Euroclear System.

## 1. Definitions

The following definitions apply when used in this document, unless the context requires otherwise:

**Account** – any account opened by us in your name as described in the Terms and Conditions, including, without limitation, Securities Clearance Accounts, Cash Accounts and Non-Deposit Accounts.

**BRRD** – Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, as may be amended from time to time, or any further directive which would repeal and/or replace Directive 2014/59/EU.

**Business Day** – a day when Euroclear Bank is open for business.

**Cash Account** – a current account (which may be divided into a number of sub-accounts, denominated in any Settlement Currency as permitted by the Operating Procedures) opened in connection with the Euroclear System by us on our books in your name.

**CSD** – or ‘central securities depository’: a legal person that operates a securities settlement system referred to in point (3) of Section A of the Annex to CSDR and provides at least one other core service listed in Section A of the Annex of CSDR.

**CSDR** – 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 may be amended from time to time, or any further regulation which would repeal and/or replace Regulation (EU) No 909/2014.

**Depository** – a financial institution at which securities are held in custody in accordance with Section 4(b)(i) or, as required, any custody agent or other service provider, including a common service provider, appointed by us to service securities.

**Euroclear Bank** – we, Euroclear Bank, a société anonyme incorporated under Belgian law.

**ESA** – Euroclear SA/NV, a société anonyme incorporated under Belgian law.

**Euroclear System** – the securities settlement system as referred to in point (3) of Section A of the Annex to CSDR operated by us in our capacity of CSD. This includes all services we offer in respect of securities held or recorded in any Account as set forth in the Terms and Conditions.

**Insolvency Event** - any of the following events:

- (i) receipt by us of information or a notification from the competent regulatory authority that Insolvency Proceedings have been opened with respect to the Participant by a decision of the competent judicial or administrative authority;
- (ii) we otherwise becoming aware or being notified that Insolvency Proceedings have been opened with respect to the Participant by a decision of the competent judicial or administrative authority; or
- (iii) we otherwise having justified reasons to believe that Insolvency Proceedings have been opened with respect to the Participant.

**Insolvency Proceedings** – as defined in the Operating Procedures

**Investor CSD** – a CSD that is either a participant in the securities settlement system operated by another CSD or that uses an intermediary that is a participant in the securities settlement system operated by another CSD.

**Issuer CSD** – a CSD which provides the notary service or the central maintenance service in the meaning of CSDR.

**New Global Note** – a security issued in the form of a global certificate which refers to our records and/or the records of Clearstream Banking S.A. (‘Clearstream’) to determine the total remaining indebtedness of the issuer as determined from time to time (the issue outstanding amount).

**New Safekeeping Structure** – a security where the relevant certificate is held in our vaults and/or the vaults of Clearstream as safekeeper and where the registered owner is our nominee company or a Clearstream nominee.

**Non-Deposit Account** – a memorandum account that we maintain in your name for the purpose of recording information and providing services in respect of entitlements that are not held in the Euroclear System and that may be registered or recorded in your, or your designee's, name or otherwise held directly by you or your designee.

**Operating Procedures** – the operating procedures established by us in accordance with Section 3 as may be amended or supplemented from time to time.

**Other CSD** – any CSD other than us established in the European Union, or any entity established outside the European Union providing similar services and qualifying as third-country CSD in the meaning of CSDR.

**Participant** – you and any other entity, which has entered into an agreement to participate in the Euroclear System as a Participant under the Terms and Conditions and which has provided other documentation in the form required by us, including those in connection with the operation of its Securities Clearance Account and Cash Account.

**Sanctions** – the sanctions laws, regulations, embargoes, restrictive measures, orders, judgements, assets freeze, blocking regulations or any other act or actions of, or by, any national, international, foreign authority, government, court, agency, including but not limited to the European Union, United Nations Security Council, the United Kingdom, the Federal Government of the United States of America (including the United States Office of Foreign Assets Control (OFAC)), the Hong Kong Monetary Authority, applicable directly or indirectly to you, to any of your underlying clients up to the ultimate legal and beneficial owner, to us, to any assets held with us, to any of our nominee companies, or to any of our Cash Correspondents, Depositories or Other CSD.

**Securities Clearance Account** – a securities account opened in connection with the Euroclear System by us, on our books, in your name.

Securities '**held in the Euroclear System**' – refers to securities credited to a Securities Clearance Account or otherwise held in the Euroclear System pursuant to Section 4(e).

**Securities Loss** – has the meaning as described in Section 17(a).

**Settlement Currency** – has the meaning as described in Section 16(d).

**Specialised Depository** – has the meaning as described in Section 4(c).

**Terms and Conditions** – these Terms and Conditions as supplemented by the Operating Procedures, as the same may be amended or supplemented pursuant to Section 19.

**Transit Account** – an account opened in connection with the Euroclear System by us on our books in your name, as further described in the Operating Procedures.

## 2. Securities Clearance Accounts and Cash Accounts

Except as otherwise agreed in writing between you and us, we will open a Securities Clearance Account and a related Cash Account for you. You may open additional Securities Clearance Accounts and related Cash Accounts with our consent.

It is our and your intention that Securities Clearance Accounts and related Cash Accounts are:

- i. at all times located and maintained for all purposes at our registered office in Belgium
- ii. governed by the Terms and Conditions
- iii. governed solely by Belgian law for all purposes including, without limitation, asset protection.

You acknowledge that we may from time to time receive operational support from one or more of our offices outside Belgium. Such support does not change in any way the location of any Securities Clearance Account and related Cash Account.

### 3. Contractual documents

The Operating Procedures have been established for the Euroclear System. The Operating Procedures, which are supplemental to and constitute an integral part of the Terms and Conditions, set forth detailed rules and procedures for the functioning of the Euroclear System.

In the event of any conflict between the Operating Procedures and these Terms and Conditions, the latter shall prevail.

### 4. Acceptance and holding of securities; terms of custody; re-use

(a) **Acceptance of securities** – Securities may be accepted in the Euroclear System either at the issuer's request or at the request of a Participant which is not the issuer of the relevant securities.

We may make the acceptance subject to any condition, which we consider appropriate, as further described in the Operating Procedures and the Euroclear Documentation (as defined in the Operating Procedures).

(b) **Belgian Law** – The following Belgian legal texts apply to the extent applicable to securities held in the Euroclear System:

- i. the coordinated Royal Decree No. 62 dated November 10, 1967 on the Deposit of Fungible Financial Instruments and the Settlement of Transactions involving such Instruments (the 'Royal Decree')
- ii. the Law dated January 2, 1991 related to the Belgian public debt
- iii. the Law dated July 22, 1991 related to commercial papers and certificates of deposit
- iv. the Companies Code
- v. other applicable Belgian legislation providing for a regime of fungibility, as the case may be and as the same may be amended, supplemented or superseded from time to time.

The Terms and Conditions have effect as supplemented by the provisions of the Royal Decree and other applicable Belgian legislation.

Each Participant acknowledges and agrees that securities of any issue held in the Euroclear System on its behalf may be treated by us as fungible with all other securities of the same issue which are on deposit with us subject to the Royal Decree and other applicable Belgian legislation.

You have no right to any specific securities certificates for securities held in the Euroclear System, but are, instead, entitled, subject to the Terms and Conditions, to transfer (by book entry), to deliver or to repossess from us an amount of securities of the issue equivalent to the amount credited to your Securities Clearance Account, without regard to the certificate numbers of the securities certificates.

Our obligation to you with respect to such securities will be limited to effecting such a transfer, delivery or repossession.

(c) **Where we hold securities** – Securities held in the Euroclear System will be held with us except that:

- i. we may hold securities with any Depository in accordance with arrangements requiring such Depository to hold such securities either:
  - (y) in its own vaults
  - (z) with any subcustodian in conformity with the practice of such Depository or, directly or indirectly through such a subcustodian, with any Other CSD (such subcustodian or Other CSD to be approved by us) and upon such terms and conditions as may be customary for such subcustodian or Other CSD (or upon such other terms and conditions as may be approved by us), it being understood that any securities so deposited or held by us are to be carried in a customers' securities account of us or of a nominee of us (i.e. a fully owned subsidiary incorporated in England and Wales and acting on our behalf under a trust agreement) with such Depository.
- ii. any Other CSD with which securities are held may, in turn, redeposit or hold securities with one or more subcustodians or Depositories used by it without the requirement of our approval

- iii. securities may from time to time be in transit in connection with the operations of the Euroclear System
- iv. we may hold Fund Shares (as defined in the Operating Procedures) on the Fund's shareholder register or records in accordance with the Operating Procedures.

(d) **Designation of Depositories** – We may, with respect to any issue of securities, designate one or more Depositories for securities of such issue held in the Euroclear System, and may terminate any such designation.

So long as a Depository is so acting with respect to any such issue of securities, it will be a 'Specialised Depository' for such issue. The designation of a Depository as a Specialised Depository will not preclude securities from being held with any subcustodian or Other CSD pursuant to Section 4(b)(i) or (ii).

We will give periodic notices to you of any Specialised Depositories for the various issues of securities.

(e) **Securities held in the Euroclear System** – Unless otherwise provided in the Operating Procedures:

- i. a security will be deemed to be held in the Euroclear System if it is either:
  - (w) credited to a Securities Clearance Account
  - (x) physically received by a Depository for credit to a Securities Clearance Account, unless it may be refused by the Depository initially receiving the security for deposit, as not being in the form, or for not satisfying any of the prescribed conditions
  - (y) tendered to us by an Other CSD for credit to a Securities Clearance Account and the prescribed conditions, with respect to the acceptance of such tender by us, have been satisfied
  - (z) debited from a Securities Clearance Account pending physical delivery unless the risk of loss with respect to such delivery has passed to the intended recipient in accordance with the Operating Procedures.
- ii. a security held in the Euroclear System will (subject to any adjustments contemplated by the Operating Procedures) be deemed to be held by the holder of the Securities Clearance Account:
  - (v) to which it is credited
  - (w) for the credit to which it was physically received by a Depository unless it may be refused
  - (x) for the credit to which it was tendered to us by an Other CSD
  - (y) from which it was debited pending physical delivery until the risk of loss with respect to such physical delivery has passed to the intended recipient in accordance with the Operating Procedures
  - (z) from which it was debited pending the tender of such security to an Other CSD.

(f) **Securities held in Non-Deposit Accounts** – We may offer services in relation to securities in respect of which information is recorded on a Non-Deposit Account as described in the Operating Procedures.

For the avoidance of doubt, securities in respect of which information is recorded on a Non-Deposit Account are not securities 'held in the Euroclear System' within the meaning of the Terms and Conditions.

You will not have any right to receive from us securities in respect of which information is recorded on a Non-Deposit Account and we will have no obligation to effect the transfer or delivery of such securities except, insofar as may be set forth in the Operating Procedures, an obligation to relay instructions with respect to such transfer or delivery, and we will have no liability with respect thereto.

(g) **Re-use of securities** – We will not use for any purpose securities that belong to you unless and to the extent we have obtained your prior express consent. If you hold securities on behalf of your clients with us, you shall obtain from your clients any necessary consent prior to authorising us to use such securities.

## 5. Payments with respect to securities

(a) All payments of principal, premium, interest or dividends we receive with respect to securities credited to any Securities Clearance Accounts will be distributed to the holders of such Securities Clearance Accounts on the basis of the amounts of such securities credited thereto, in the manner and on such dates as may be specified in the Operating Procedures.



(b) We will take the steps as described in the Operating Procedures to have notice of any due date of any payment with respect to:

- i. any security credited to any Securities Clearance Account upon such security's maturity
- ii. any coupons pertaining to any such security.

If we have such notice, we will instruct each Depository to take such steps as are required to receive such payment.

(c) We will take such steps as described in the Operating Procedures to have notice of any call for redemption in whole or in part of any issue of securities credited to any Securities Clearance Account. In such a case, we will (except as otherwise provided in the Operating Procedures):

- i. for a redemption in part, in such manner as we deem fair and appropriate, determine to which Securities Clearance Accounts, and in what amounts, such securities to be so redeemed will be allocated
- ii. notify each holder of such a Securities Clearance Account of the amount of securities standing to such Account's credit which are to be redeemed
- iii. unless contrary instructions are received from the holder of such a Securities Clearance Account in accordance with the Operating Procedures, subject to rules and practices of any Other CSD, take such steps (or instruct a Depository to take such steps) as are required to receive such payment.

(d) We will take such steps as may be specified in the Operating Procedures with respect to payments in relation to securities in respect of which information is recorded on a Non-Deposit Account.

## **6. Effecting transactions**

(a) Transactions between Participants, and transactions between Participants and non-Participants, will be effected in accordance with the Terms and Conditions, subject, in all events, to:

- i. sufficient securities standing to the credit of any Securities Clearance Account being available for any debit to be made to such Securities Clearance Account
- ii. sufficient funds or provision for such funds in any Cash Account being available for any debit to be made to such Cash Account.

(b) If the available securities standing to the credit of a Securities Clearance Account or the available funds or provision for such funds in a Cash Account to which any debits are to be made in accordance with the Terms and Conditions are sufficient to permit the carrying out of some but less than all such debits, then, except as otherwise specified in the Operating Procedures, we may determine, in our sole discretion without liability to any Participant, which debits are to be so made.

(c) Without prejudice to Sections 6(a) and 6(b) you must settle your transactions on the intended settlement date.

## **7. Limitation on effecting transactions; suspension of settlement**

(a) We are not required to effect any transaction (or take any other action) at your demand or upon your instructions pursuant to the Terms and Conditions:

- i. to the extent that the same would either:
  - (y) violate any applicable law, decree, regulation or order of any government or governmental body or international regulatory authority (including any court or tribunal)
  - (z) be contrary to any agreement made between you and us
- ii. in such other circumstances as may be specified in the Operating Procedures.

We will not have any liability for any loss or damage suffered by you as a result of the operation of the foregoing.

Upon the occurrence of an Insolvency Event affecting a Participant, we will handle the insolvent Participant's Instructions in accordance with applicable law, as provided for in the Operating Procedures.

(b) If we become aware of an undue creation or deletion of securities and we are not able to find a solution to the problem by the end of the following Business Day, we are required to suspend the concerned securities issue for settlement until the undue creation or deletion of securities has been remedied.

We will inform you without undue delay of any such suspension and of when the undue creation or deletion of securities has been remedied and the settlement resumes.

In the absence of negligence or wilful misconduct on our part, we will not have any liability for any loss or damage suffered by you as a result of the operation of the foregoing.

(c) If an Other CSD decides to suspend the settlement of any securities we hold with such Other CSD we are required to suspend the securities issue for settlement until the Other CSD resumes the settlement on such securities. The same applies if and when the Other CSD is informed by a Depository of any such suspension being decided.

We will inform you without undue delay of any such suspension and of when the settlement resumes.

In the absence of negligence or wilful misconduct on our part, we will not have any liability for any loss or damage suffered by you as a result of the operation of the foregoing.

## **8. Receipt of securities**

In the case of any receipt at a Depository of securities to be held in the Euroclear System, we will instruct any Depository to use reasonable efforts not to accept any securities which are not in the form, or which do not satisfy the conditions, prescribed by the Operating Procedures.

Subject to the foregoing, we accept no liability for losses incurred by you or any other person as a result of the receipt or acceptance of fraudulent, forged or invalid securities (or securities which are otherwise not freely transferable or deliverable without encumbrance in any relevant market) for credit to a Securities Clearance Account.

## **9. Reversal of entries**

We reserve the right to reverse any erroneous credit to, or debit from, any Account and to reverse any conditional credit or debit if the relevant conditions should not be fulfilled.

## **10. Statements to be rendered by Euroclear Bank**

We will make statements of your operations available to you, at such times and under such conditions and in such ways as may be specified in the Operating Procedures. We will make statements available to you on each Business Day specifying the individual transfers of securities recorded on, and the aggregated end-of-day balance of, the Securities Clearance Accounts in your name.

You must reconcile your records with statements of Securities Clearance Account(s) on a daily basis.

You must inform us and provide evidence of any error or omission in any statement of (or any accompanying advice with respect to) any Securities Clearance Account or Cash Account in your name made available to you pursuant to this Section 10. Failure to do so by the end of the Business Day following the day on which any such statement was made available to you shall be evidence of your approval of such statement.

## 11. Depositories; Other CSDs

(a) When we act as Issuer CSD, we may, from time to time:

- i. appoint banks or legal entities (other than Euroclear Bank) as additional depositories ('Depositories') for securities held in the Euroclear System
- ii. determine the terms and conditions upon which any Depository shall act
- iii. terminate the appointment of any Depository.

(b) When we act as Investor CSD, we may, from time to time:

- i. enter into links with an Other CSD in order to facilitate the transfer of securities between the participants of the Other CSD and the Participants of the Euroclear System. Such links may be direct links (i.e. arrangements with an Other CSD whereby we become a participant in the securities settlement system of the Other CSD) or indirect links (i.e. arrangements with a Depository that is a participant in the Other CSD and that holds the securities on our behalf with the Other CSD)
- ii. determine the terms and conditions of such arrangements in accordance with the type of links, and applicable laws and regulations
- iii. terminate any such arrangement at any time.

(c) We will have the sole right, to the exclusion of any Participant, to exercise or assert any rights or claims in respect of the actions or omissions of, or the bankruptcy or insolvency of, any Depository or any Other CSD with which we hold or deposit securities held in the Euroclear System and from whom we receive any securities held in the Euroclear System, and deposited therewith or held thereby, and any amounts received by such Depository or Other CSD in respect of such securities.

(d) We will provide you with notice of the appointment or termination of any Depository or Other CSD, and of the designation, location or change in location of any Depository or Other CSD.

## 12. Duties and liabilities of Euroclear Bank

(a) **Duties we undertake to perform** – We undertake to perform such duties and only such duties as are specifically set forth in the Terms and Conditions.

In the absence of negligence or wilful misconduct on our part, we are not liable towards you, whether for contractual liability (responsabilité contractuelle/contractuele aansprakelijkheid) or liability in tort (responsabilité extra-contractuelle/buitencontractuele aansprakelijkheid), with respect to any action taken or omitted to be taken by us when providing the services contemplated in the Terms and Conditions.

In addition, in the absence of gross negligence or wilful misconduct on our part, we are not liable towards you, whether for contractual liability (responsabilité contractuelle/contractuele aansprakelijkheid) or liability in tort (responsabilité extra-contractuelle/buitencontractuele aansprakelijkheid), for indirect losses such as, but not limited to, loss of business or loss of profit or for unforeseeable losses.

ESA may from time to time provide us with certain services in accordance with arrangements between us and ESA. We remain solely responsible towards you for the acts of ESA. You agree that ESA does not owe you any duty of care in relation to the operation of the arrangements, and, accordingly, agree that you will not take any action against ESA (or any person for whom ESA is liable) to recover damages, compensation or payment or remedy of any other nature in respect of any acts or omissions or events which occur while such arrangements are in operation. Furthermore, you agree that you have no other rights against ESA in connection with such arrangements.

We may from time to time have recourse to outsourced third party providers (as further described in the Operating Procedures). In such case, we remain solely responsible towards you for the acts of these outsourced third parties providers.

(b) **Authenticity of instructions** – We will take action, as set forth in the Operating Procedures, to verify the authenticity of any instructions given to us by you or any other person in connection with the Euroclear System. Our actions or omissions as regards any instruction, document or other instrument, the authenticity of which has been so

verified or which we believe to be genuine, are considered as duly performed by us and ratified by you. You expressly waive any claims whatsoever towards us in connection with such actions or omissions.

(c) **Reconciliation** – We maintain reconciliation policies and procedures to ensure the integrity of securities held in the Euroclear System. Where needed, our procedures involve cooperation and information exchange with third parties.

(d) **Force Majeure** – We are not liable for any action taken, or any omission to take any action required to be taken hereunder or otherwise to fulfil our obligations hereunder (including without limitation the failure to receive or deliver securities or the failure to receive or make any payment), in the event and to the extent that the taking of such action or such omission arises out of, or is caused by, war, insurrection, riot, civil commotion, act of God, accident, fire, water damage, explosion, mechanical breakdown, computer or system failure or attack or other failure of equipment, failure or malfunctioning of any communications media for whatever reason (whether or not such media are made available to you by us), interruption (whether partial or total) of power supplies or other utility or service, strike or other stoppage (whether partial or total) of labour, any law, decree, regulation or order of any government or governmental body or international regulatory authority (including any court or tribunal) or any other cause (whether similar or dissimilar to any of the foregoing) whatsoever beyond our reasonable control.

(e) **Additional limitations of liability** – Without limiting the generality of the foregoing but without prejudice to our obligations under Section 17, we are not liable for the acts or omissions of (or the bankruptcy or insolvency of) any Depository or subcustodian or any Other CSD or any carrier transporting securities (provided we selected such carrier with due care and that the appropriate insurance has been obtained in respect of securities in possession of such carrier).

If, however, as a result of any act or omission of, or the bankruptcy or insolvency of, any Depository or subcustodian or any Other CSD or any carrier transporting securities selected by us, you in the capacity as holder of a Securities Clearance Account suffer any loss or liability, we will take such steps in order to effect a recovery as we deem appropriate under all the circumstances (including without limitation the bringing and settling of legal proceedings). Unless we are liable for such loss or liability by virtue of our negligence or wilful misconduct, we will charge to you the amount of any cost or expense in effecting, or attempting to effect, such recovery.

Notwithstanding the above, we are liable towards Eurosystem member national central banks for the acts or omissions of the agents which might operate our accounts opened directly with Other CSDs, but only to the extent that such acts or omissions cause Eurosystem member national central banks to suffer any loss or liability linked to securities that they hold for purposes of monetary policy operations or intra-day credit operations.

(f) We make no investigation with respect to and are not liable for any of the following:

- i. the acts and omissions of (or the bankruptcy, insolvency, creditworthiness or status of) any issuer, any entity acting for such issuer, or any guarantor of securities made eligible for services within the Euroclear System
- ii. the validity or binding effect of any such security or any guarantee thereof or any related document
- iii. any other similar matter.

(g) We are not liable for any loss resulting from a failure by you, another Participant or any other person to comply with any procedures or requirements specified in the Terms and Conditions.

(h) Where you request physical delivery of securities credited to a Securities Clearance Account maintained for you, our responsibility in respect of the delivery of such securities is as set forth in the Operating Procedures.

(i) We are authorised to sign on your behalf any declaration, affidavit or certificate of ownership, to the extent we may legally do so, which may be required from time to time and in doing so, to rely fully upon any information regarding you or the ownership of such securities which may have been provided to us by you or on your behalf.

(j) We may be a Participant and, in that capacity, we will have the same rights, duties and liabilities as if we were not the operator of the Euroclear System.

## 13. Fees and expenses

You will be charged such fees, and for such expenses and disbursements, as shall be specified from time to time in accordance with the Operating Procedures. Such charged amounts will be debited from your Cash Account(s).

## 14. Participation in the Euroclear System

(a) We will admit you as a Participant provided that you meet the participation criteria, as further detailed in our Operating Procedures.

In accordance with BRRD, as transposed into Belgian law, we may admit you as a Participant even if you do not meet all relevant admission criteria, provided that your admission is linked to resolution proceedings affecting another Participant, and a resolution tool triggered by the relevant resolution authority.

(b) To the extent permitted by applicable law, we may at any time, in whole or in part, suspend your participation in the Euroclear System by written notification with effect from such date and time as we may specify, in the following circumstances:

- i. you no longer meet a prerequisite to admission or an admission criteria set out in the Operating Procedures and your continued participation in the Euroclear System could be prejudicial to the interests of the Euroclear System, us or other Participants generally
- ii. you are in breach of any material provisions of the Terms and Conditions or, in our reasonable opinion, any such breach is likely to occur
- iii. you are in breach of any provisions of the Terms and Conditions other than the provisions referred to in iii and you fail to remedy such breach within the time reasonably allocated to you by us for such remedy.

Our written notification informing you of our decision to suspend you will explain the reasons for such suspension.

Any suspension will continue for so long as we will determine is appropriate in view of the risks caused to the Euroclear System, us or other Participants generally and will end on such date and on such conditions as we will determine.

**The consequences of a suspension are set out in the Operating Procedures. The provisions of the Terms and Conditions, so far as relevant, shall continue to apply during any suspension.**

(c) To the extent permitted by applicable law, we may at any time, terminate your participation in the Euroclear System or your access to one or more services by giving you at least 30 calendar days notice, provided that we may effect such termination upon notice effective immediately either if:

- i. any of the following events shall occur:
  - (w) you are affected by an Insolvency Event (this does not apply if you are subject to resolution proceedings in the meaning of BRRD or CSDR)
  - (x) your application for composition with your creditors, whether in or out of court, or for deferment of your debts
  - (y) attachment or execution upon or against any of your assets or property.
- ii. you no longer meet one or more of the admission criteria set out in the Operating Procedures and your continued participation in the Euroclear System could be materially prejudicial to the interests of the Euroclear System, us or other Participants generally.
- iii. you are in breach of any material provision of the Terms and Conditions.

Our termination notice will explain the reasons for such termination.

(d) You may resign from the Euroclear System by giving us notice. Such resignation will be effective upon the date upon which all your transactions with respect to any Account have been settled, provided that from and after the time that we receive such notice we may decline to accept any instruction or give effect to any transaction which would result in any credit to any Account in your name.

(e) Upon the effectiveness of any termination or resignation, or as soon thereafter as is reasonably practicable, we will effect the return to you of the amounts you hold in your Cash Account(s) and securities credited to your Securities Clearance Account(s), provided, however, that we, without affecting any other rights we may have, have the right to:

- i. set off against or retain from such amounts to be so returned any amounts which are due to, or which may become due to, us from you
- ii. retain securities held in such Securities Clearance Account(s) to provide for the payment in full of any amounts which are due to, or which may become due to, us from you.

No such termination or resignation shall affect any right or liability arising out of events (including any Securities Loss) occurring, or securities delivered, prior to its effectiveness.

The other consequences of a termination or resignation are set out in the Operating Procedures.

(e) We are not liable to you or any other person as a result of any suspension, termination or any other action taken pursuant to this Section 14.

## 15. Certain responsibilities and liabilities of Participants

(a) You must:

- i. comply (and ensure compliance by any of your underlying clients up to the ultimate legal and beneficial owner) with any law, decree, regulation, Sanctions, or order of any government or governmental body or international regulatory authority (including any court or tribunal) applicable to you and/or your underlying clients up to the ultimate legal and beneficial owner, and/or us, or your participation in the Euroclear System as well as with any contract, agreement or other instrument binding upon you
- ii. indemnify us upon demand against any loss, claim, liability or expense, including reasonable legal and accountancy fees, asserted against or imposed upon us (other than any such loss, claim, liability or expense caused by our negligence or wilful misconduct) as a result of either:
  - (s) the use of services provided in respect of a Non-Deposit Account, and arising out of or caused by the operation of any law, decree, regulation, Sanctions, or order of any government or governmental body or international regulatory authority (including any court or tribunal)
  - (t) the violation, or breach of, or the actual or alleged non-compliance with, any law, decree, regulation, Sanctions, or order by you or any of your underlying clients up to the ultimate legal beneficial owner
  - (u) any action or omission by you or any of your underlying clients up to the ultimate legal and beneficial owner which could cause us to violate or breach any law, decree, regulation, Sanctions, or order
  - (v) the violation or breach by you of any contract, agreement or other instrument
  - (w) your failure to provide complete and accurate information as we may request under these Terms and Conditions and/or the Operating Procedures
  - (x) your negligence, wilful misconduct or fraud
  - (y) the holding by you of any securities in the Euroclear System (or the receipt of payments or the effecting of any transaction with respect thereto) and arising out of or caused by the operation of any law, decree, regulation or order of any government or governmental body or international regulatory authority (including any court or tribunal)
  - (z) any actions, proceedings, claims or demands (including any legal actions) being taken or asserted against any Depository or Other CSD as a result of us providing the services to you pursuant to the Terms and Conditions.
- iii. provide us with such information, documents and/or records (including information on your clients) as we may reasonably request from time to time in order for us to comply with our obligations under any applicable law or regulation for the purpose of providing the services contemplated under the Terms and Conditions and/or monitoring your compliance with the Terms and Conditions including with any condition which relates to your admission as a Participant or any business you undertake in connection therewith. In particular, you must:
  - (y) comply with any request for additional information about your clients (including about your clients' ultimate legal and beneficial owner) which we may reasonably make from time to time for the purpose of identifying, monitoring and managing any material risks that you or your clients may cause to the Euroclear System, to us or to other Participants generally
  - (z) inform us and provide all relevant information in case you act as an intermediary for an Other CSD that seeks to establish or maintain an indirect link with us in the meaning of article 2(1)(32) of CSDR.

(b) You are liable if any security received at any Depository or through an Other CSD for credit to any of your Securities Clearance Account(s) or Transit Account(s) is proven at any time to be forged, fraudulent or invalid (or otherwise not

freely transferable and deliverable without encumbrance in any market which we determine to be relevant under the circumstances).

We shall, upon notice to you, debit from such Securities Clearance Account or Transit Account (as applicable, if the securities have not at the time been credited to such Securities Clearance Account or Transit Account), an amount of securities of the same issue upon discovery that securities so received are forged, fraudulent or invalid (or are not freely transferable and deliverable without encumbrance in any such market).

Our records as to which Securities Clearance Account or Transit Account securities received were initially to be credited will be sufficient evidence of the matters referred to therein in the event of controversy.

(c) Debit balances or overdrafts in Securities Clearance Accounts are prohibited in the Euroclear System.

If a shortfall of securities is recorded, at any time, with respect to securities of any issue in your Securities Clearance Account you must immediately deliver for credit (or otherwise cause to be credited) a sufficient amount of securities of such issue to such Securities Clearance Account to eliminate such shortfall.

Without prejudice to our right obligation to suspend the securities issue for settlement as provided for in Section 7(b), if you do not deliver (or cause to be credited) such securities by the end of the Business Day following the shortfall, we may (but, in our discretion, need not) purchase, for your account and at your sole expense, such amount of such securities for credit to such Securities Clearance Account, such purchase to be in such markets, in such manner and for such consideration as we shall reasonably determine.

(d) You are responsible for notifying us in writing, with appropriate supporting documents, of any change in your legal capacity or in the scope or validity of the signing authorities of your representatives. We have no obligation to make any inquiry or investigation with respect to such changes.

(e) You acknowledge and agree:

- ii. that we are the beneficiary of a statutory lien pursuant to Article 31 of the Law of 2 August 2002 as further defined in Section 3.5.1 of the Operating Procedures
- iii. to grant a general pledge to our benefit in accordance with the terms of Section 3.5.2. of the Operating Procedures

(f) Part III of the Operating Procedures (Rights and Responsibilities) further describes certain other rights and liabilities which apply to you when participating in the Euroclear System.

## 16. Special rules applicable to Cash Accounts

(a) **Unity of account and right of set off** – Except as otherwise provided by law or otherwise agreed in writing between you and us with respect to any specified account, all Cash Accounts and other current accounts with us in Belgium opened in your name are part of one single and indivisible current account of which they are mere subdivisions for bookkeeping purposes.

This is the case even if:

- i. such subdivisions are maintained in different currencies, earn credit interest or are charged debit interest at different rates
- ii. the transactions therein are reported in different statements of account.

Consequently, we have the option, among others, of transferring the balance of any subdivision of your current account that is in credit to any subdivision that is in debit or vice versa, at any time and without prior notice.

Transfers under this Section 16(a) between subdivisions of your current account denominated in different currencies will, unless provided otherwise in the Operating Procedures, be effected on the basis of either:

- i. the rate of exchange of the relevant currencies in relation to the Euro established at the daily fixing by the European Central Bank on the last Business Day prior to the transfer
- ii. if the rate of exchange of a currency in relation to the Euro is not fixed by the European Central Bank as aforesaid, on the basis of a quote obtained from a source we consider reliable.

(b) Except as otherwise provided by law or otherwise agreed between you and us in writing with respect to any specified account, the overall credit balance of your single and indivisible current account may be set off by us at any time and without prior notice against your debts to us that have not been paid when due.

(c) We will carry out instructions to make payments for your account in accordance with the Operating Procedures.

(d) **Holding of different Settlement Currencies** – We may, following customary practice, hold any currency in which any subdivision of your current account is denominated, on deposit in and effect transactions relating thereto through an account with one of our offices or another bank in the country where such currency is the lawful currency or in other countries where such currency may be lawfully held on deposit ('Settlement Currency').

If the applicability of any law or regulation, now or in the future in effect, or the occurrence of any event, including but not limited to (i) capital control measures, or (ii) freeze orders would affect the transferability, convertibility, or availability of all or any portion of a Settlement Currency in the countries where such accounts are maintained, we are not liable for any loss or damage arising therefrom.

In no event are we obliged to substitute another currency for a Settlement Currency whose transferability, convertibility or availability has been affected by such law, regulation or event.

To the extent that any such law, regulation or event imposes a cost or charge upon us in relation to the transferability, convertibility or availability of any such Settlement Currency, such cost or charge will be for your account.

(e) Transactions in a Settlement Currency shall be subject to the regulations laid down by the relevant exchange control authorities.

(f) If all or any portion of a particular Settlement Currency held in deposit in the Euroclear System becomes unavailable due to the applicability of any law, regulation, or from the occurrence of any event as per Section 16(d) (such unavailability being referred to as a 'Settlement Currency Unavailability'), then, the reduction in the available amount of such Settlement Currency held in the Euroclear System arising therefrom will be shared by those holding such Settlement Currency in the Euroclear System at the opening of the Business Day on which we will make a determination that such Settlement Currency Unavailability has occurred (or if such day is not a Business Day, at the opening of business on the immediately preceding Business Day). If we can attribute the Settlement Currency Unavailability to one Participant, there will be no sharing among other Participants holding that same Settlement Currency.

Such sharing is to be in proportion with the amount of such Settlement Currency so held at the time of such determination and will be effected by blocking the appropriate amount of such Settlement Currency in the relevant subdivision of your account. Such amount will remain blocked until the law or regulation or the event causing the Settlement Currency Unavailability has been revoked or has ended.

(g) **Interest rates** – We determine the terms and rates of interest applicable to credit balances in the various subdivisions of your current account and the terms and rates of interest to be charged on debit balances in the various subdivisions of your current account, and shall have the right to modify such terms and rates at any time.

Unless otherwise agreed, debit balances in any subdivision of your current account and interest thereon will be required to be offset forthwith by a corresponding credit to such subdivision of such current account by you.

(h) **Delay in the processing of payment instructions** – Except in the case of negligence or wilful misconduct, we are not liable for delays in carrying out your payment instructions. Without limiting the generality of the foregoing, in the event that we use the services of another bank or Other CSD (whether or not selected by us) for carrying out payment instructions we receive from you, we are not liable to you if such payment instructions, although transmitted correctly to that other bank or Other CSD, are not carried out or are carried out incorrectly by the latter.

In the event that a delay in the carrying out of a payment instruction is caused by our negligence, our liability will not exceed an interest equivalent, determined in accordance with the Operating Procedures, for the period from the day when the payment should have been carried out, but for our negligence, until the day when it is actually carried out (excluding any portion of such period during which we cannot carry out such instructions as a result of any event referred to in Section 12(c) and (d)). This is provided, however, that if you fail to report the delay to us within 10 calendar days from the date when the payment should, but for our negligence, have been made, the relevant period shall not exceed 10 calendar days.



In exceptional circumstances, we may execute your money transfer instruction for its equivalent value in Euro or USD, in accordance with applicable rules and regulations. This is applicable when the following conditions are met:

- i. we are in a stress situation as defined below, and
- ii. your instruction concerns a Settlement Currency deemed non-relevant by the competent authorities.

We will bear the costs related to the above exceptional procedure.

The list of relevant and non-relevant currencies will be available on our website and will be updated on a monthly basis.

For this purpose will be defined as:

**Stress situation:** a situation where we are not in a position to execute your money transfer instruction in the currency instructed by you, as a result of:

- i. a massive decrease of cash deposits in the Euroclear System,
- ii. a sudden loss of funding facilities,
- iii. the default of one or more Participants, service providers or cash correspondents.

(i) **Unforeseen liquidity shortfall** – In the unforeseen event of a Stress situation (as defined in subsection 16 (h)) having as a result that our available liquidity resources are exceeded and we are therefore not in a position to execute instruction(s) for the transfer of cash out of the Euroclear System in one or more Settlement Currenc(y)(ies) instructed by one or more Participant(s) (an '**Unforeseen Liquidity Shortfall**'), each Participant holding such Settlement Currenc(y)(ies) in its Cash Account(s) unconditionally and irrevocably agrees to contribute to the funding of this temporary Unforeseen Liquidity Shortfall in such Settlement Currenc(y)(ies) in the proportion and according to the terms set out in the Operating Procedures. The foregoing is without prejudice to any payment instruction(s) (i) for the transfer of cash between Cash Accounts or (ii) reducing the Unexpected Liquidity Shortfall in any way, including, without limitation through the purchase of securities owned or issued by us.

## 17. Securities losses

(a) **Loss sharing** – The following is without prejudice to our duty to suspend the securities issue for settlement as provided for in Section 7(b) and (c), and to our obligation to take action under Section 17(c) or 17(e) or to any liability that we may have to compensate you for negligence or wilful misconduct on our part.

If all or any portion of the securities of a particular issue held in the Euroclear System is lost or otherwise becomes unavailable for delivery (such loss or unavailability being referred to as a 'Securities Loss'), then, subject to the last sentence of this Section 17(a), the reduction in the amount of securities of such issue held in the Euroclear System arising therefrom will be shared by those holding such issue in the Euroclear System at the opening of the Business Day on which we will make a determination that such Securities Loss has occurred (or if such day is not a Business Day, at the opening of business on the immediately preceding Business Day).

Such sharing is to be in proportion with the amount of securities of such issue so held at the time of such determination and will be effected by means of debits from Securities Clearance Accounts to which securities of such issue are credited at such time. This is subject to appropriate adjustment in the event that any portion of the securities of such issue held in the Euroclear System is for any reason not then credited to Securities Clearance Accounts.

Notwithstanding the foregoing, any reduction in the amount of securities available for delivery arising solely from any Securities Loss with respect to securities held with any Depository or Other CSD shall be shared at the time as of which such reduction is attributed to us.

For the purpose of this subsection:

- i. securities of a particular issue called for redemption in part and allocated to Securities Clearance Accounts under Section 5(c)(i) shall be considered to be a separate issue
- ii. we may deem a security of a particular issue to be lost or unavailable for delivery either:
  - (v) if such security is mutilated, lost, stolen or destroyed (or if for any other reason cannot be delivered or is unavailable for delivery)
  - (w) if such security proves to be forged, fraudulent or invalid (in whole or in part)

- (x) if such security is nationalised, expropriated or seized
- (y) if for any reason such security is not freely transferable or deliverable without encumbrance in any market which we determine to be relevant under the circumstances
- (z) to the extent of any shortfall which has not been resolved under Section 15(c).

(b) **Claims reflected in a Non-Deposit Account** – Simultaneously with any debit from your Securities Clearance Account under Section 17(a), we will establish a Non-Deposit Account in your favour to reflect any claims, contingent or otherwise, which you may have against us as a result of either:

- i. any possible recovery of securities or cash which we may effect under Section 17(c) or 17(e)
- ii. any other liability arising from the Securities Loss that we may have to you under the Terms and Conditions, it being understood that the establishment of any such Non-Deposit Account will not increase our liabilities under the Terms and Conditions.

We will from time to time report the status of such Non-Deposit Account to you together with a general description of any action that we have taken or propose to take, under Section 17(c) or 17(e). We will not be required to take instructions from you or any other entity to effect any transaction with respect to such Non-Deposit Account.

(c) **Recovery of securities** – In the case of any Securities Loss with respect to any issue of securities which arises under circumstances in which any Depository, any Participant, any Other CSD, any subcustodian, or any other person is or may be legally liable (or if any other remedy may be available for making good the Securities Loss), we will take such steps to recover the securities which are the subject of such Securities Loss or damages (or to obtain the benefits of any such other remedy) as we reasonably deem appropriate under all the circumstances (including without limitation the bringing and settling of legal proceedings).

Unless we are liable for such Securities Loss due to our negligence or wilful misconduct, we will charge those sharing the reduction in securities arising out of such Securities Loss (proportionately in accordance with the amount of such sharing) the amount of any cost or expense incurred in connection with any action taken under Section 17(c). This Section 17(c) is not intended to limit the generality of the last paragraph of Section 12(e).

(d) Any cash amounts or securities which we recover in respect of a Securities Loss relating to a particular issue of securities or for which we are liable in connection with a Securities Loss will be credited to the appropriate Cash Accounts or Securities Clearance Accounts of those sharing the reduction in the amount of securities of such issue arising from such Securities Loss under Section 17(a).

(e) **Securities loss due to mutilation, loss, theft or destruction** – If a Securities Loss arises due to the mutilation, loss, theft or destruction of securities and it is necessary in order to obtain the reissuance of such securities that we obtain and deliver a security, indemnity or other like instrument, then:

- i. we will obtain and deliver such security, indemnity or other like instrument and, unless we are liable for such Securities Loss by virtue of our negligence or wilful misconduct, we may charge any related cost or expense to Participants affected by such Securities Loss, proportionately in accordance with the amount of securities subject to such Securities Loss
- ii. if we do not elect to proceed under clause (i), we will:
  - (y) notify each Participant affected by such Securities Loss
  - (z) to the extent practicable and if so instructed by any such Participant, obtain and deliver on behalf of and, unless we are liable for such Securities Loss by virtue of our negligence or wilful misconduct, at the cost and expense of those giving such instructions (proportionately in accordance with the amounts of such securities), such security, indemnity or other instrument, but, unless we are liable as aforesaid, only upon receiving satisfactory security, indemnity or other like instrument with respect to the cost and our expenses arising therefrom.

Nothing in this Section 17(e) requires us to issue any security, indemnity or other like instrument.

(f) **Our management of a Securities Loss** – If as a result of the operation of Section 17(a) or 17(d) there stands to the credit of one or more Securities Clearance Accounts a fraction of the smallest deliverable definitive certificate of an issue, we are authorised, in order to avoid any fractional security being credited, to sell and debit from (or to purchase and credit to) such Securities Clearance Accounts securities of such issue in an amount sufficient to eliminate such fractions. Any such sale or purchase will be for the accounts of the holders of such Securities Clearance Accounts,

proportionately with respective amounts of such debits or credits, and may be made in the markets, manner and for such consideration as we reasonably determine.

(g) If a Securities Loss results from a failure to properly maintain the Issuer Memorandum Account (as defined in the Operating Procedures) in accordance with Section 12(a) for securities eligible as collateral in the Eurosystem and issued in New Global Note form or held in the New Safekeeping Structure:

- i. each Eurosystem member national central bank is excluded from any sharing of the reduction in the amount of such securities under Section 17(a), but only to the extent that such a national central bank held such securities for purposes of monetary policy operations or intra-day credit operations
- ii. any sharing of the reduction in the amount of such securities under Section 17(a) will be proportionate to the amount of such securities held by those sharing such reduction after application of Section 17 (g)(i).

## **18. Entire agreement; benefit of Terms and Conditions**

Except as may be otherwise provided in any separate written agreement with you, the Terms and Conditions set forth the entire agreement with you for the subject matter hereof.

No customer or other entity or individual for which you may be acting will, in that capacity, have or be entitled to assert any rights, claims or remedies against us.

## **19. Modifications; waivers**

The Terms and Conditions including the Operating Procedures may be amended or supplemented at any time upon notice to you. You will, without prejudice to your rights under Section 14(b), be deemed to have accepted any such amendment and supplement either:

- i. effective immediately, in the case of any amendment or supplement not adversely affecting you
- ii. effective immediately, in the case of any change in local market rules or applicable law which is applied with immediate effect
- iii. effective ten Business Days after you are notified, in the case of any other amendment or supplement.

No failure to exercise a right or power conferred by the Terms and Conditions shall constitute a waiver thereof.

## **20. Notices**

All notices, requests, demands or other communications from us are deemed to have been received as specified in the Operating Procedures and sent to the address most recently specified by you as your address for such purpose. All notices, requests, demands or communications to us are deemed to have been duly given and made when received at the address, and through the means, set forth in the Operating Procedures.

## **21. Maintenance of records; limitation on actions**

(a) We accept no responsibility to maintain records with respect to instructions received or transactions carried out ten years from the time such instructions are received or transactions are carried out.

(b) Any action, claim or counterclaim by a holder of an Account based upon any instruction received by us or transaction carried out by us is barred five years after the time such instruction is received or such transaction is carried out. The running of such period is not to be interrupted or suspended for any reason.

## **22. Governing law; dispute; jurisdiction; evidence**

(a) The Terms and Conditions, any non-contractual obligations arising out of or in connection with the Terms and Conditions and all disputes arising thereunder or in connection therewith are governed by and construed in accordance with the laws of Belgium.

For the purposes of the law of 28 April 1999 implementing Directive 98/26/EC on settlement finality in payment and securities settlement systems and the Royal Decree, the Euroclear System itself, the holding of securities in the Euroclear System and the transfer of securities and related cash transfers within the Euroclear System are governed solely by the laws of Belgium.

(b) You may lodge a complaint related to any service we provide to you in accordance with the rules and procedures for such complaint available on our website ([www.euroclear.com](http://www.euroclear.com)).

(c) You submit to the nonexclusive jurisdiction of the competent courts of Brussels for the purposes of any dispute arising under the Terms and Conditions.

To the extent that you are prohibited by law or regulation to submit to the jurisdiction of a foreign court, a dispute arising out of or in connection with the Terms and Conditions may be finally settled under the Rules of Arbitration of the International Chamber of Commerce by an arbitral tribunal consisting of three arbitrators appointed in accordance with such Rules.

The place of any such arbitration shall be Brussels, Belgium and the arbitral proceedings shall be in the English language.

The award of the arbitrators shall be final and enforceable. You waive to the fullest extent permitted under the applicable law all immunity, whether on the basis of sovereignty or otherwise, in any proceeding hereunder and in any proceeding to recognise or enforce any judgement or award made by any foreign court or foreign arbitral tribunal in such a proceeding.

(d) Our own books and records (regardless of the media in, or upon, such books and records are maintained) are deemed to constitute sufficient evidence of any of your obligations to us and of any facts and events relied upon by us.



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