

## HSBC EMIR Delegated Reporting Agreement

This Agreement (as defined below) is dated as of the Commencement Date and is made between:

(A) HSBC Bank plc (the "**Reporting Delegate**"); and

(B) ..... [insert full legal name] [(the "**Client**").] / [(the "**Agent**").] acting for and on behalf of the principal(s) (each, a "**Client**") listed in the Delegated Reporting Service Form.]

This Agreement will not form a contract between the parties until the Reporting Delegate signs and returns this signature page to indicate that it is willing to, and has been provided with all of the information it considers reasonably necessary to enable it to, provide the Reporting Service.

This Agreement has been executed by the parties on the respective dates specified below with effect from: ..... (the "**Commencement Date**"). [To be completed by the Reporting Delegate.]

### SIGNATORIES

**HSBC Bank plc**

.....

(Full legal name of [Client] / [Agent])

.....

.....

((Pre-)LEI number)

((Pre-)LEI number, if available)

By: .....

By: .....

Name:

Name:

Title:

Title:

Date:

Date:

Address for returning this letter and the associated form: [emir.client.support@hsbc.com](mailto:emir.client.support@hsbc.com)

## WHEREAS

- (1) Pursuant to Article 9 of the European Market Infrastructure Regulation, certain parties who enter into, modify or terminate certain derivatives transactions are required to report specified data to a trade repository.
- (2) The Client has requested that the Reporting Delegate helps the Client meet its reporting obligations by reporting, on the Client's behalf, relevant data to a trade repository or, if no trade repository is available, to the European Securities and Markets Authority. The Client and the Reporting Delegate have entered into this delegated reporting agreement (the "*Agreement*") to formalise the terms under which such reporting is to be performed.

IT IS AGREED as follows:

### 1. Interpretation

- (a) **Definitions.** The terms defined in Section 18 (*Definitions and Construction*) and elsewhere in this Agreement will have the meanings therein specified for the purpose of this Agreement.
- (b) **Delegated Reporting Service Form.** The Delegated Reporting Service Form, the Procedures Manual and each other Schedule, if any, supplement and form part of this Agreement.
- (c) **Inconsistency.** In the event of any inconsistency between the provisions of the Procedures Manual and the rest of this Agreement, the provisions of the rest of this Agreement will prevail over the provisions of the Procedures Manual.
- (d) **Terms of Business.** This Agreement is supplemental to the applicable letter, terms of business or agreement between the Client and the Reporting Delegate (and/or a Reporting Delegate Affiliate, as applicable), as specified by the Reporting Delegate (and/or a Reporting Delegate Affiliate, as applicable), (the "*Terms of Business*"), as amended from time to time, which set out the basis on which the Reporting Delegate (and/or a Reporting Delegate Affiliate, as applicable) is willing to provide Derivatives services to the Client under such Terms of Business. If there is any conflict or ambiguity between the provisions of this Agreement and the Terms of Business in relation to the Reporting Services, then the provisions of this Agreement shall prevail.

### 2. Delegation of Reporting

- (a) In respect of each Relevant Transaction:
  - (i) the Client requests, appoints and authorises that the Reporting Delegate submit; and
  - (ii) subject to the other provisions of this Agreement, the Reporting Delegate agrees to submit, the Relevant Data to a Relevant Trade Repository by the Reporting Deadline.
- (b) In respect of each Relevant Transaction where the Relevant Data is to include (or is solely) Counterparty Data, the Client:
  - (i) agrees it will deliver to the Reporting Delegate its Counterparty Data (which may include Static Data) in time for the Reporting Delegate to comply with its obligation under Section 2(a);

- (ii) agrees and acknowledges that if it fails to comply with Section 2(b)(i), the Reporting Delegate will be under no obligation to (but may) submit the Relevant Data to a Relevant Trade Repository by the Reporting Deadline;
  - (iii) represents to the Reporting Delegate that the information it delivers under Section 2(b)(i) is, at the time of delivery, true, accurate and complete in every material respect; and
  - (iv) acknowledges that the Reporting Delegate may rely on the Counterparty Data without investigation.
- (c) Without prejudice to Section 7(a), in respect of each Relevant Transaction, the Reporting Delegate will determine in its sole and absolute discretion whether the Reporting Obligation has arisen, the characterisation of the Relevant Transaction and, where the Relevant Data is to include Common Data, the Common Data (which may be by reference to trade information provided by a Reporting Delegate Affiliate where such affiliate is the Client's counterparty to such Relevant Transaction). If unique reference(s) need to be generated for inclusion in the Relevant Data, the Client agrees that the Reporting Delegate will generate such unique reference(s).
- (d) If the Reporting Delegate does not or will not report the Relevant Data by the Reporting Deadline in accordance with Section 2(a), the Reporting Delegate will notify the Client as soon as reasonably practicable and the Client will be entitled to report such Relevant Data to a Trade Repository or to appoint a third party to make such report on such Client's behalf. Other than in this instance or as otherwise agreed between the parties in writing, the Client will not report or arrange the reporting of the Relevant Data to a Trade Repository and will notify the Reporting Delegate immediately if it has reported or arranged the reporting of the Relevant Data to a Trade Repository other than in accordance with this provision.
- (e) If the Client provides Counterparty Data in the form of Static Data pursuant to Section 2(b)(i), the Client agrees and acknowledges that:
- (i) the provision of such Static Data, unless otherwise agreed between the parties in writing, is subject to the restrictions on effectiveness set out in the Procedures Manual; and
  - (ii) the Reporting Delegate is entitled to rely on that information as true, accurate, complete, not misleading and compliant with any requirements under EMIR in relation to that information, and is authorised to include that Static Data in any Report or any report required to be made by the Reporting Delegate unless the Client notifies the Reporting Delegate otherwise in accordance with the Procedures Manual.

### **3. Correction of Errors**

- (a) Notwithstanding Section 3(b) immediately below, the Client acknowledges and agrees that the Reporting Delegate is not obliged to discover errors in or check the accuracy, authenticity or completeness, of any Relevant Data, whether that information derives from the Client or any other person (including without limitation any trading venue, central counterparty or similar financial market infrastructure but excluding the Reporting Delegate and each Reporting Delegate Affiliate).
- (b) Subject to Section 3(a) immediately above, if the Reporting Delegate becomes aware of a material error in any Relevant Data reported to a Trade Repository in accordance with this Agreement, it will notify the other party if required by and otherwise in accordance with the Procedures Manual and both parties will use reasonable efforts, acting in good faith and a commercially reasonable manner, to resolve such error.
- (c) The Client will notify the Reporting Delegate immediately upon becoming aware that any information which the Client has provided to the Reporting Delegate (including any Relevant Data which the Reporting Delegate has reported to a Relevant Trade Repository) was or has become incomplete, inaccurate,

misleading or not compliant with any requirements under EMIR and both parties will use reasonable efforts, acting in good faith and a commercially reasonable manner, to resolve such issue.

#### **4. Relevant Trade Repository**

(a) The "**Relevant Trade Repository**" is, in respect of a Relevant Transaction and unless otherwise agreed between the parties in writing, the Trade Repository selected by the Reporting Delegate in the Reporting Delegate's sole and absolute discretion.

(b) The Reporting Delegate will notify the Client of each Relevant Trade Repository determined under Section 4(a) to which it submits Relevant Data within 5 business days after such determination.

(c) If no Trade Repository is available to record the Relevant Data such that the Relevant Data should be reported to ESMA in accordance with Article 9(3) of EMIR, as determined by the Reporting Delegate in its sole and absolute discretion, the Reporting Delegate (i) will not be obliged to report such Relevant Data to ESMA; and (ii) will notify the Client of such determination within 5 business days after such determination.

#### **5. Use of Third Parties**

(a) The parties agree that the Reporting Delegate may utilise the services of a Third Party Service Provider to facilitate the submission of Relevant Data or other performance by the Reporting Delegate of its obligations under this Agreement (including but not limited to any platform, system, interface or other technology developed by any such Third Party Service Provider for such purpose). If the Reporting Delegate appoints a Third Party Service Provider, it will notify the Client of such appointment as soon as reasonably practicable. Where the Reporting Delegate has discretion in selecting a Third Party Service Provider, it will use reasonable care in the selection of the Third Party Service Provider.

(b) Where the Third Party Service Provider is an HSBC Affiliate, the provisions of Section 11 (*Confidentiality Waiver*) apply in respect of such Third Party Service Provider as if such Third Party Service Provider was the Reporting Delegate.

(c) Where both the Client and the Reporting Delegate (and/or a Reporting Delegate Affiliate, as applicable) use the same Platform and where the operator of that Platform provides a service under which it will report on behalf of the Client and the Reporting Delegate (and/or a Reporting Delegate Affiliate, as applicable) any of the Required Details to a Relevant Trade Repository, the Reporting Delegate may require the Client, and the Client agrees, to use that service to report those details, and to sign all such documents and do all such other acts and things as the Platform or the Reporting Delegate may require in order for the Client to use that service. All the Required Details that a Platform undertakes to report to a Relevant Trade Repository on behalf of the Client and the Reporting Delegate (and/or a Reporting Delegate Affiliate, as applicable) do not form part of the Relevant Data.

(d) In accordance with the Procedures Manual, the Reporting Delegate may require the Client to use certain Reporting Systems.

#### **6. Costs and Expenses**

The Client will reimburse the Reporting Delegate on demand for any costs or expenses (inclusive of any applicable tax) the Reporting Delegate may incur where it is required to supplement, update or amend any Report as a result of a failure by the Client to provide any of the Counterparty Data by the time specified in the Procedures Manual (or otherwise by the Reporting Delegate) or as a result of the Client's failure to comply with this Agreement.

#### **7. Client Acknowledgment**

The Client acknowledges and agrees that:

- (a) the Client remains solely responsible and liable for (i) submission of all data subject to the Reporting Obligation which is not included in the Relevant Data; and (ii) compliance with the Client's Reporting Obligation generally;
- (b) any submission by the Reporting Delegate of Relevant Data under this Agreement is made with a view to facilitating the Client's reporting of data pursuant to the Reporting Obligation and is independent of any Reporting Obligation that the Reporting Delegate or any Reporting Delegate Affiliate may or may not be subject to;
- (c) where the Reporting Delegate is not itself subject to the Reporting Obligation, any submission by the Reporting Delegate of Relevant Data is solely for the purpose of fulfilling the Reporting Delegate's obligations under this Agreement;
- (d) the Reporting Delegate and each other HSBC Affiliate will not be required to provide any services or otherwise perform under this Agreement to the extent any failure by it to provide services or otherwise perform is due to a breach of this Agreement by, or other act or omission of, the Client, any Relevant Trade Repository or any Third Party Service Provider;
- (e) without prejudice to any other agreement the Client may have with any Relevant Trade Repository or any Third Party Service Provider, the Client will not have recourse under or in relation to this Agreement against any Relevant Trade Repository or any Third Party Service Provider in respect of any Relevant Data submitted under this Agreement or any other activities contemplated by this Agreement; and
- (f) the Reporting Obligation and, accordingly, the service the Reporting Delegate provides under this Agreement, remain at all times subject to change as a result of further regulatory developments and guidance.

## **8. Liability**

- (a) The Reporting Delegate shall, at all times, perform its obligations and exercise discretion under this Agreement with reasonable care, provided that the Reporting Delegate shall not be required to do or cause to be done anything which (i) is not permitted or is otherwise contrary to or inconsistent with the operating procedures of any Third Party Service Provider or any Relevant Trade Repository (including any decision by a Third Party Service Provider or any Relevant Trade Repository not to permit the Reporting Delegate to submit Relevant Data in accordance with the terms of this Agreement); or (ii) is contrary to any law, rule or regulation or the Reporting Delegate is otherwise prevented from doing by any law, rule or regulation.
- (b) Notwithstanding any other provision of this Agreement but subject to the remaining provisions of this Section 8 (*Liability*), the Reporting Delegate, each other HSBC Affiliate and the directors, officers, employees, contractors and agents of the Reporting Delegate and each other HSBC Affiliate shall not have any liability to the Client (or any person claiming under or through it) whether in contract, tort (including negligence), breach of statutory or regulatory duty or otherwise, for:
  - (i) any Losses arising directly from, or in connection with:
    - (1) the Reporting Delegate's provision of, or the Client's use of, the services agreed to be provided by the Reporting Delegate under this Agreement;
    - (2) any acts, omissions or failures of any third party, including but not limited to any Third Party Service Provider or a Relevant Trade Repository (including any decision by a Third Party Service Provider or a Relevant Trade Repository not to permit the Reporting

Delegate to submit Relevant Data via the Third Party Service Provider or to a Relevant Trade Repository on behalf of the Client);

(3) the Reporting Delegate's performance of its obligations or exercise of its rights under this Agreement (including, without limitation, the rights of the Reporting Delegate under Section 2(c) and/or the use by the Reporting Delegate of a platform, system, interface or other technology provided by any Third Party Service Provider);

(4) the failure of any platform, system, interface or other technology, including any internal platform, system, interface or other technology, which the Reporting Delegate uses or intends to use in the performance of its obligations or exercise of its rights under this Agreement; or

(5) a third party accessing or intercepting any information or data of the Client,

except to the extent that such Losses are due to the gross negligence, wilful default or fraud of the Reporting Delegate, any other HSBC Affiliate or the directors, officers, employees, contractors or agents of the Reporting Delegate or each other HSBC Affiliate; or

(ii) any indirect or consequential loss or damage or for any direct or indirect loss of business, profits, anticipated savings or goodwill.

(c) The parties agree that this Section 8 (*Liability*) represents a fair and equitable position. Nothing in this Agreement will exclude or limit any duty or liability which may not be excluded or limited under applicable law or regulation.

(d) The Client agrees it will not and will ensure that none of its affiliates brings any claim against the Reporting Delegate, any other HSBC Affiliate or the directors, officers, employees, contractors or agents of the Reporting Delegate or each other HSBC Affiliate alleging or claiming any liability disclaimed in this Section 8 (*Liability*).

(e) Subject to Section 8(c), the entire liability to the Client of the Reporting Delegate, each other HSBC Affiliate and the directors, officers, employees, contractors or agents of the Reporting Delegate and each other HSBC Affiliate on an aggregated basis under or in connection with this Agreement is, in relation to events occurring during any calendar year, at all times limited to GBP 10,000.00 (ten thousand pounds sterling).

(f) Nothing in this Agreement shall restrict or limit the Client's general obligation at law to mitigate a loss the Client may suffer or incur as a result of an event that may give rise to a claim under this Section 8 (*Liability*).

(g) Save to the extent required by applicable rules and legislation, including in so far as applicable the rules of the UK Regulators, neither the Reporting Delegate nor any other HSBC Affiliate owes any duty to disclose to the Client, or to use for the Client's benefit, any fact, matter, information or thing which comes to its notice, or the notice of the Reporting Delegate and/or any other HSBC Affiliate in the course of rendering similar services to others or otherwise.

## **9. Force Majeure**

If the Reporting Delegate is prevented, hindered or delayed from or in performing any of its obligations under this Agreement as a result of a Force Majeure Event, such obligation(s) shall be suspended for so long as that Force Majeure Event continues. Trades not reported during such a suspension will be reported as soon as practicable following resumption of the Reporting Services.

## 10. Indemnity

The Client agrees to indemnify and hold harmless each of the Reporting Delegate, each other HSBC Affiliate and the directors, officers, employees, contractors and agents of the Reporting Delegate and each other HSBC Affiliate from and against any and all Losses incurred by or awarded against them arising from or in connection with:

- (a) any claim or action brought by any third party to the extent that such claim or action arises out of or in connection with or is caused, directly or indirectly, by the activities of the parties contemplated by this Agreement;
- (b) any information provided to the Reporting Delegate and/or each other HSBC Affiliate by the Client, including but not limited to all information included in any Relevant Data made known to the Reporting Delegate and/or each other HSBC Affiliate by the Client; or
- (c) any regulatory or investigative inquiries or information subpoenas which arise out of or in connection with the activities of the parties contemplated by this Agreement,

except to the extent that such Losses are the direct result of:

- (i) the gross negligence, wilful default or fraud of the Reporting Delegate or its directors, officers, employees, contractors or agents; or
- (ii) the gross negligence, wilful default or fraud of any other HSBC Affiliate or its directors, officers, employees, contractors or agents.

## 11. Confidentiality Waiver

(a) Notwithstanding anything to the contrary in this Agreement or in any non-disclosure, confidentiality or other agreement between the parties, the Client hereby consents to the disclosure of information:

- (i) to the extent required or permitted under, or made in accordance with any applicable law, rule or regulation ("**Relevant Regulation**") which mandate reporting and/or retention of transaction and similar information or to the extent required or permitted under, or made in accordance with, any order or directive in relation to (and including) any Relevant Regulation regarding reporting and/or retention of transaction and similar information issued by any authority or body or agency in accordance with which the Reporting Delegate is required or accustomed to act and also to the extent required in accordance with the terms of this Agreement as determined by the Reporting Delegate in its sole and absolute discretion ("**Reporting Requirements**"); or
- (ii) to and between the Reporting Delegate's head office, branches or affiliates, or any persons or entities who provide services to such other party or its head office, branches or affiliates, in each case, in connection with such Reporting Requirements.

The Client acknowledges that pursuant to global regulatory reform initiatives, regulators require reporting of trade data to increase market transparency and enable regulators to monitor systemic risk to ensure safeguards are implemented globally.

The Client further acknowledges that disclosures made pursuant hereto may include, without limitation, the disclosure of trade information including the Client's identity (by name, address, corporate affiliation, identifier or otherwise) to any swap or trade data repository or one or more systems or services operated by any trade repository ("**TR**") and any relevant regulators (including without limitation, ESMA and national regulators in the European Union) and that such disclosures could result in certain anonymous transaction and pricing data becoming available to the public. The Client further acknowledges that, for purposes of

complying with regulatory reporting obligations, the Reporting Delegate may use a third party service provider to transfer trade information into a TR and that a TR may engage the services of a global trade repository regulated by one or more governmental regulators. The Client also acknowledges that disclosures made pursuant hereto may be made to recipients in a jurisdiction other than that of the disclosing party or a jurisdiction that may not necessarily provide an equivalent or adequate level of protection for data as the Client's home jurisdiction. For the avoidance of doubt, (1) to the extent that applicable non-disclosure, confidentiality, bank secrecy, data privacy or other law imposes non-disclosure requirements on transaction and similar information required or permitted to be disclosed as contemplated herein but permits the Client to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by the Client for purposes of such law; (2) any agreement between the parties to maintain confidentiality of information contained in this Agreement or in any non-disclosure, confidentiality or other agreement shall continue to apply to the extent that such agreement is not inconsistent with the disclosure of information in connection with the Reporting Requirements as set out herein; and (3) nothing herein is intended to limit the scope of any other consent to disclosure separately given by the Client to the Reporting Delegate.

The Client represents and warrants that any third party to whom it owes a duty of confidence in respect of the information disclosed has consented to the disclosure of that information.

## **12. Amendment and Termination**

(a)

(i) Subject to Section 12(a)(vi) immediately below, the Reporting Delegate may, by written notice to the Client, amend (in whole or part) this Agreement and any operational and procedural documents or processes in respect of reporting delegated under this Agreement to accommodate any change in law, rule, regulation or operational requirement.

(ii) Such amendments to this Agreement will be effective on the date specified in the relevant notice.

(iii) The Reporting Delegate shall endeavour to give at least 60 calendar days prior notice to the Client of any such amendments. Notwithstanding the previous sentence, the Reporting Delegate reserves the right to make any such amendments without giving at least 60 calendar days prior notice to the Client if the Reporting Delegate considers that the proposed amendment is required or necessary so as to comply with any change in law, rule or regulation and the circumstances are such that there is insufficient time to give at least 60 calendar days prior notice of the proposed amendment to the Client.

(iv) If the Client does not agree with the proposed amendment, the Client can reject or object to the same by providing, before the amendment takes effect, a written notice to the Reporting Delegate. If the Client serves such a written notice of rejection or objection on the Reporting Delegate, this Agreement shall terminate on the later of (a) 7 calendar days following the date on which the written notice rejecting or objecting to the proposed amendment is deemed effective and (b) the date on which the proposed amendment would otherwise have taken effect. This is in addition to the Client's right of termination under Section 12(b).

(v) If the Client does not reject or object to an amendment by written notice in advance of the date on which the notice takes effect, the Client will be deemed to have agreed to such amendment to this Agreement.

(vi) The Reporting Delegate may amend the Procedures Manual in accordance with the provisions of the Procedures Manual.



(b) Either party may terminate this Agreement by giving written notice to the other party. Such termination will be effective at the expiry of the following notice periods:

- (i) prior to 8 February 2014, 14 calendar days; and
- (ii) from and including 8 February 2014, 90 calendar days,

following the date on which such termination notice is deemed to be effective.

(c) On termination of this Agreement:

(i) the Client will immediately cease to use any Reporting System and cease to access any Reporting System in respect of the Client's dealings with the Reporting Delegate or Reporting Delegate Affiliate and will (as the Reporting Delegate may require) either return to the Reporting Delegate, or destroy and provide such proof of destruction as the Reporting Delegate may reasonably require, any Access Codes in the Client's possession; and

(ii) the Reporting Delegate will immediately cease to provide the Reporting Services in relation to any terminated, outstanding or future derivative contract (unless agreed otherwise between the parties).

(d) The provisions of Sections 8 (*Liability*), 10 (*Indemnity*), 11 (*Confidentiality Waiver*), 14 (*Miscellaneous*), 17 (*Governing Law and Jurisdiction*), as well as this Section 12 (*Amendment and Termination*) shall survive the expiration or termination of this Agreement.

(e) Notices delivered in respect of this Section 12 (*Amendment and Termination*) are subject to Section 15 (*Notices*).

### 13. Representations

Each party makes the following representations to the other party on the date this Agreement is entered into and, in the case of the representations in Sections 13(a)(iii), (d) and (e), at all times until the termination of this Agreement:

#### (a) *Basic Representations*

(i) **Status.** It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing.

(ii) **Powers.** It has the power to execute this Agreement, to deliver this Agreement and to perform its obligations under this Agreement and has taken all necessary action to authorise such execution, delivery and performance.

(iii) **No Violation or Conflict.** Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.

(iv) **Consents.** All governmental and other consents that are required to have been obtained by it with respect to this Agreement have been obtained and are in full force and effect and all conditions of any such consents have been complied with.

(v) **Obligations Binding.** Its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable

bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

- (b) **Absence of Litigation.** There is not pending or, to its knowledge, threatened against it any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or its ability to perform its obligations under this Agreement.
- (c) **No Agency.** It is entering into this Agreement as principal and not as agent of any person or entity.
- (d) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into this Agreement, it being understood that information and explanations related to the terms and conditions of this Agreement will not be considered investment advice or a recommendation to enter into this Agreement. No communication (written or oral) received from the other party will be deemed to be an assurance or guarantee as to the expected results of this Agreement.
- (e) **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of this Agreement.

#### 14. Miscellaneous

- (a) **Consideration.** Each party hereby agrees and acknowledges that it is entering into this Agreement in consideration of (i) the mutual representations, warranties and covenants contained in this Agreement; (ii) maintaining a trading relationship with a counterparty with which it can enter into further Relevant Transactions; and (iii) other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the parties).
- (b) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto. Each of the parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a party for fraud.
- (c) **Amendments.** Unless otherwise expressly permitted by another provision of this Agreement, an amendment, modification or waiver in respect of this Agreement will only be effective if in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of e-mails or by an exchange of electronic messages on an electronic messaging system.
- (d) **Partial Invalidity.** If, at any time, any term of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, this will not affect:
  - (i) the legality, validity or enforceability in that jurisdiction of any other term of this Agreement; or
  - (ii) the legality, validity or enforceability in other jurisdictions of that or any other term of this Agreement.

(e) **Remedies Cumulative.** Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(f) **Counterparts.** This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission and by electronic messaging system), each of which will be deemed an original.

(g) **No Waiver of Rights.** A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege, whether in respect of a dispute between the parties or otherwise. Relevant Data reported to a Trade Repository in accordance with this Agreement is provided without prejudice to any present or future dispute between the parties in relation to such Relevant Data.

(h) **Third Party Rights.** Other than in respect of each Reporting Delegate Affiliate and each other HSBC Affiliate and the directors, officers, employees, contractors and agents of the Reporting Delegate, each Reporting Delegate Affiliate and each other HSBC Affiliate and the rights that such entities or people are granted under this Agreement, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement. Notwithstanding any term of this Agreement, the consent of any person who is not a party to this Agreement is not required to rescind or vary this Agreement at any time. For the avoidance of doubt, where an Agent is validly acting on behalf of one or more Clients, such action is considered to be the action of each relevant Client so is not barred by the exclusion of third party rights in this provision.

(i) **Transfer.** The Client may not transfer or assign any interest or obligation in respect of this Agreement without the prior written consent of the Reporting Delegate. Any purported transfer that is not in compliance with this Section 14(i) will be void. The Client hereby gives its consent to the Reporting Delegate causing, at any time, all or any part of the Reporting Delegate's rights and/or obligations under this Agreement to be transferred to any other HSBC Affiliate (each a "**Transferee**") by delivering to the Client a substitution notice. Such transfer is without prejudice to the outstanding rights between the Client and the Reporting Delegate. Upon delivery of a substitution notice to the Client:

(i) the Client's rights and obligations under this Agreement will remain the same but the Client will be bound to the Transferee in place of the Reporting Delegate;

(ii) the Transferee will acquire the Reporting Delegate's rights and obligations in so far as these are transferred; and

(iii) the Reporting Delegate will be released automatically from the Reporting Delegate's obligations to the Client in so far as these are assumed by the Transferee under this Section 14(i).

To the extent required by or consequential to any such transfer, the Client agrees to enter into further documentation and/or terms as the Reporting Delegate or any Transferee may reasonably require solely in order to make or facilitate the action envisaged in this Section 14(i).

(j) **No Fiduciary Duties or Rights.** Neither the relationship between the Reporting Delegate and the Client, nor the Reporting Services to be provided by the Reporting Delegate to the Client, nor any other matter shall give rise to any fiduciary or equitable duties on the Reporting Delegate's part which would oblige the Reporting Delegate (or any other HSBC Affiliate) to accept responsibilities more extensive than those expressly set out in this Agreement.

## 15. Notices

(a) **Effectiveness.** Any notice or other communication in respect of this Agreement must be in English (unless otherwise agreed by the parties) and must be in the format and to the contact address stated in this Agreement (including the Procedures Manual), as may be amended from time to time in accordance with this Agreement. The Client confirms that it has regular access to the internet and it consents to the Reporting Delegate providing the Client with information by posting such information on the Reporting Delegate's website.

All written notices made by the Client to the Reporting Delegate will be effective on actual receipt by the Reporting Delegate at the relevant contact address. All notices made by the Reporting Delegate will be deemed to have been delivered on the date given in the notice. In proving service or delivery of a relevant communication, it shall be sufficient for the Reporting Delegate to prove that it was correctly addressed and was delivered or transmitted to the correct address as last notified to the Reporting Delegate or otherwise transmitted or delivered in accordance with the Procedures Manual.

Other than where the Procedures Manual permits delivery of information by the posting of such information on the Reporting Delegate's website, the contact details for all communications in connection with this Agreement, including the Procedures Manual, are:

- (i) with respect to the Reporting Delegate, for all communications in connection with this Agreement, [emir.client.support@hsbc.com](mailto:emir.client.support@hsbc.com);
- (ii) with respect to the Reporting Delegate, for all communications in connection with the Procedures Manual, as set out in the Procedures Manual; and
- (iii) with respect to the Client, the contact details set out in the Delegated Reporting Service Form,

in each case, as may be amended in accordance with this Agreement.

(b) **Change of Details.** Either party may by written notice (in accordance with the Procedures Manual) to the other change the contact address at which notices or other communications are to be given to it.

## 16. Execution as Agent

If this Agreement is executed by an Agent acting for and on behalf of one or more Clients:

- (a) each Client will be bound as principal to this Agreement and references herein to a "party" or "parties" will be to the Client and the Reporting Delegate, as appropriate, and not to the Agent unless expressly stated to the contrary;
- (b) if there is more than one Client:
  - (i) this document evidences a separate Agreement between the Reporting Delegate and each Client as though a separate Agreement had been documented and executed between the Reporting Delegate and each Client. The obligations of each Client under this Agreement shall be several but not joint in respect of the obligations of any other Client and no Client shall, as a result of this Section 16 (*Execution as Agent*), be liable to the Reporting Delegate for the actions of any other Client; and
  - (ii) to the extent the elections in the Delegated Reporting Service Form (or other relevant elections) vary between Clients, the Agent will ensure the variation of elections is communicated to the Reporting Delegate in form and substance satisfactory to the Reporting Delegate; and

(c) the Agent represents to the Reporting Delegate that the Agent has the power and authority to execute and deliver this Agreement and to perform its obligations thereto on behalf of its Client(s), the Agent has taken all necessary action to authorise such execution, delivery and performance and the Agent has in its files a written agreement or power of attorney authorising it to act on the Client's behalf in respect thereof.

## 17. Governing Law and Jurisdiction

(a) **Governing Law.** This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

(b) **Jurisdiction.**

With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Agreement ("**Proceedings**"), each party irrevocably:

(i) submits to (A) the non-exclusive jurisdiction of the English courts if the Proceedings do not involve a Convention Court; and (B) the exclusive jurisdiction of the English courts if the Proceedings do involve a Convention Court;

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party; and

(iii) agrees, to the extent permitted by applicable law, that the bringing of Proceedings in any one or more jurisdictions will not preclude the bringing of Proceedings in any other jurisdiction.

(c) **Waiver of Immunities.** Each party irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

## 18. Definitions and Construction

(a) **Definitions**

For the purposes of this Agreement:

**"Access Code"** means an electronic identification to be used by each Authorised User to access the Reporting System (whether as password, digital certificate, access code, token and/or other identification or security device) as advised to the Client by the Reporting Delegate in accordance with the Procedures Manual or otherwise from time to time.

**"Authorised User"** means those of the Client's employees and/or agents and/or representatives whom the Client have authorised to contact the Reporting Delegate to correct or update any information relating to or required under this Agreement (or any person notified to the Reporting Delegate by the Client in writing from time to time in accordance with this Agreement).

**"CCP"** means any central counterparty authorised under Article 14 of EMIR or recognised under Article 25 of EMIR.

**"CCP Service"** means in respect of a CCP, an over-the-counter derivative clearing service offered by such CCP.

**"Cleared"** means, in respect of a Relevant Transaction, that such Relevant Transaction has been or will be submitted (including where details of such Relevant Transaction are submitted) to a CCP for clearing in a relevant CCP Service and that such CCP has or is to become a party to a resulting or corresponding transaction, as applicable, pursuant to such CCP's Rule Set.

**"Commencement Date"** has the meaning given to it on the first page of this Agreement.

**"Common Data"** means, with respect to a Relevant Transaction, the information corresponding to the fields listed in Table 2 (*Common Data*) of the Reporting Annexes, as determined by the Reporting Delegate in its sole and absolute discretion.

**"Convention Court"** means any court which is bound to apply to the Proceedings either Article 17 of the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters or Article 17 of the 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

**"Counterparty Data"** means, with respect to a Relevant Transaction and a party, the information required to complete the fields set out in Table 1 (*Counterparty Data*) of the Reporting Annexes.

**"Delegated Reporting Service Form"** means the form with that title set out in Appendix 1 (*Delegated Reporting Service Form*) to the Procedures Manual or as otherwise delivered to the Client by the Reporting Delegate, as completed by the Client to the satisfaction of the Reporting Delegate.

**"Derivative"** has the meaning given to it in Article 2(5) of EMIR.

**"EMIR"** means Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories dated 4 July 2012.

**"ESMA"** means the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council.

**"European Union"** means the economic and political union established in 1993 by the Maastricht Treaty, with the aim of achieving closer economic and political union between member states that are primarily located in Europe.

**"Exchange-Traded Derivative"** means a Derivative the execution of which takes place on a regulated market within the meaning of Article 4(1)(14) of Directive 2004/39/EC or on a third-country market considered equivalent to a regulated market in accordance with Article 19(6) of Directive 2004/39/EC.

**"Force Majeure Event"** means any event which occurs due to reasons outside of the Reporting Delegate's control (including, but not limited to, any natural, systems, facilities, technological, political or other cause and whether in respect of a Relevant Trade Repository, Third Party Service Provider, Reporting Delegate Affiliate, Reporting Delegate, third party or otherwise) and which cannot be overcome by reasonable diligence and/or without unreasonable expense solely by the Reporting Delegate.

**"FS Handbook"** means the rules, regulations, procedures and guidance of the UK Regulators in force from time to time.

**"HSBC Affiliate"** means HSBC Holdings plc and, from time to time, any subsidiary thereof (as defined in Section 1159 of the Companies Act 2006) or affiliated company thereof (as defined in the FS Handbook) and

includes the Reporting Delegate and each Reporting Delegate Affiliate and the agents of any such person or entity.

**"Losses"** means all losses, damages, fines, penalties, costs, expenses or other liabilities (including legal and other professional fees).

**"OTC Derivative"** means a Derivative that is not an Exchange-Traded Derivative.

**"Platform"** means any platform which the Reporting Delegate and the Client may use from time to time for the purposes of receiving post-trade services such as trade matching or portfolio reconciliation in relation to Relevant Transactions.

**"Proceedings"** has the meaning given to it in Section 17 (*Governing Law and Jurisdiction*).

**"Procedures Manual"** means the procedures manual attached in Schedule 1 (*Procedures Manual*) or as otherwise delivered to the Client by the Reporting Delegate, as amended from time to time.

**"Relevant Data"** means, in respect of each Relevant Transaction and unless otherwise agreed between the parties in writing, the Counterparty Data and the Common Data but, in accordance with Section 5(c), excludes the Required Details to be reported by a Platform.

**"Relevant Regulation"** has the meaning given to it in Section 11 (*Confidentiality Waiver*).

**"Relevant Trade Repository"** has the meaning given to it in Section 4 (*Relevant Trade Repository*).

**"Relevant Transaction"** means, unless otherwise agreed between the parties in writing, each transaction (a) to which the Client is party; (b) that is subject to the Reporting Obligation as determined by the Reporting Delegate in its sole and absolute discretion; (c) that is entered into between the Client, as principal, and the Reporting Delegate or a Reporting Delegate Affiliate, as applicable, as principal including where acting as the Client's executing or clearing broker; and (d) that is subject to the Reporting Services in accordance with this Agreement (including the Procedures Manual) and the Client's elections in its Delegated Reporting Service Form.

If the Reporting Delegate or a Reporting Delegate Affiliate is acting as the executing broker in respect of a transaction, such transaction will cease to be a Relevant Transaction if and at the point in time when neither the Reporting Delegate nor any Reporting Delegate Affiliate is a party to the transaction with the Client.

Where this Agreement has been executed by an Agent for and on behalf of one or more Clients, Relevant Transactions will only include transactions executed by the Agent for and on behalf of such Clients.

**"Report"** means a report made or proposed to be made by the Reporting Delegate to a Relevant Trade Repository under this Agreement.

**"Reporting Annexes"** means (i) the Annex to the Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 and published 23 February 2013 in the Official Journal of the European Union; and (ii) the Annex to the Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 and published 21 December 2012 in the Official Journal of the European Union.

**"Reporting Deadline"** means the deadline for reporting the Relevant Transaction as specified in Article 9 of EMIR and as determined by the Reporting Delegate in its sole and absolute discretion.

**"Reporting Delegate Affiliate"** means each entity as may be agreed between the parties in writing from time to time.

**"Reporting Obligation"** means the obligation to report details of derivative contracts that are concluded, modified or terminated to a trade repository or ESMA in accordance with Article 9 of EMIR.

**"Reporting Requirements"** has the meaning given to it in Section 11 (*Confidentiality Waiver*).

**"Reporting Services"** means the service provided by the Reporting Delegate to the Client under and in accordance with this Agreement whereby the Reporting Delegate submits the Relevant Data to a Relevant Trade Repository.

**"Reporting System"** means any system specified by the Reporting Delegate from time to time provided or operated by the Reporting Delegate or by a Third Party Service Provider which is used to support the provision of Reporting Services.

**"Required Details"** means the details of any Relevant Transaction which are required to be reported by the Client to a Trade Repository in accordance with EMIR.

**"Rule Set"** means, with respect to a CCP, the relevant rules, conditions, procedures, regulations, standard terms, membership agreements, collateral addenda, notices, guidance, policies or other such documents promulgated by the relevant CCP and amended and supplemented from time to time.

**"Static Data"** means information constituting Counterparty Data provided by the Client to the Reporting Delegate which is specified as such in the Procedures Manual, as may be amended by the parties from time to time in accordance with this Agreement.

**"Terms of Business"** has the meaning given to it in Section 1(d).

**"Third Party Service Provider"** means a third party including, without limitation, a CCP, appointed by the Reporting Delegate to submit Relevant Data by the Reporting Deadline to a Relevant Trade Repository.

**"TR"** has the meaning given to it in Section 11 (*Confidentiality Waiver*).

**"Trade Repository"** means any entity registered as a trade repository in accordance with Article 55 of EMIR or recognised as a trade repository in accordance with Article 77 of EMIR.

**"Transferee"** has the meaning given in Section 14(i).

**"UK Regulators"** means the Financial Conduct Authority and the Prudential Regulation Authority, or any successor regulator which may regulate the provision of the Reporting Delegate's services under the Terms of Business.

**(b) Construction**

(i) Unless this Agreement expressly provides to the contrary, any reference in this Agreement to:

(1) a party or any other person includes its successors in title, permitted assigns and permitted transferees;

(2) an amendment includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous) and amended will be construed accordingly;

(3) a person includes any individual, firm, company, corporation, government, state or agency of a state or any association or body (including a partnership, trust, fund, joint venture or consortium), or other entity (whether or not having separate legal personality);



- (4) a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which persons to which it applies are generally accustomed to comply) of any governmental, inter-governmental or supranational body, agency or department, or of any regulatory, self-regulatory or other authority or organisation; and
- (5) a provision of law is a reference to that provision as amended and includes any subordinate legislation.
- (ii) A reference to a "Section" is a reference to a section of this Agreement; a reference to a "Schedule" is a reference to a schedule to this Agreement; a reference to "Paragraph" is a reference to paragraph of the Procedures Manual; and a reference to "Appendix" is a reference to an appendix to the Procedures Manual.
- (iii) The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.
- (iv) For the avoidance of doubt, the meanings of the terms "contractor" and "agent" as used in Sections 8 (*Liability*) and 10 (*Indemnity*) do not include any Third Party Service Provider.

HSBC Bank plc. Registered in England number 14259. Registered office: 8 Canada Square, London, E14 5HQ. Authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority.

**Schedule 1**

**Procedures Manual**

*[To be attached here or otherwise delivered to the Client.]*