

# EMIR Reporting Service

Special Terms and Conditions



**Bank of  
Ireland**

# Part 1: Applicability

## 1.1 Purpose

The following special terms and conditions, together with any annexes (the **Special Terms and Conditions**), appended to the Bank's Terms and Conditions and/or Terms of Business and the terms of your most recent Account Mandate which Bank of Ireland ("the Bank") has agreed with you in writing (the **Account Mandate**), are the basis on which the Bank will provide the EMIR reporting service described in the Delegated Reporting Service Provisions or the Mandatory Reporting Service Provisions, as applicable.

## 1.2 Interpretation

In the event of, and to the extent of, any conflict between these Special Terms and Conditions and the Terms and Conditions of the Bank, these Special Terms and Conditions shall prevail. In the event of, and to the extent of, any conflict between these Special Terms and Conditions and the Account Mandate, the Special Terms and Conditions shall prevail.

## 1.3 Existing Agreements

The Special Terms and Conditions shall be deemed to supersede any other agreement that has been previously executed by the Bank and the Customer with respect to EMIR reporting services.

## 1.4 Definitions

In these Special Terms and Conditions, the following terms shall have the meaning set out in clause 9 of the General Provisions below and capitalised terms not defined herein shall have the meaning set out in the Terms and Conditions or Terms of Business.

# Part 2: Delegated Reporting Service Provisions

## Purpose

The Customer has requested that the Bank facilitate the Customer in meeting some or all of its reporting obligations by reporting, on the Customer's behalf, relevant data to a Trade Repository.

## 1 Delegated Reporting Services to be provided

1.1 On or after the Reporting Start Date subject to timely receipt from the Customer of all necessary information, the Bank will report the following information relating to all Transactions entered into on or after the Effective Date, to a Trade Repository:

- (a) Common Data on behalf of the Bank and the Customer; and
- (b) Counterparty Data on behalf of the Customer.

1.2 The Bank offers the Delegated Reporting Service in good faith.

However, the Bank's reporting obligation is qualified by and shall not extend to, the limitations set out in Annex 2, as may be amended from time to time.

1.3 Subject to clause 1.4, the Bank will submit a Report in respect of any Historical Live Transactions and any Historical Expired Transactions, in accordance with the timeframes required by EMIR.

1.4 Subject to express written agreement of the Bank (in addition to these Special Terms and Conditions), the Bank will not report Historical Expired Trades of the Customer.

1.5 Subject to clause 7, it will be at the Bank's sole discretion to elect the Trade Repository to which it will report a Transaction. Upon request from the Customer, the Bank will provide details of Trade Repositories which it may use in providing the Delegated Reporting Service and will confirm which Trade Repository(s) it uses in respect of the Customer.

1.6 Despite the delegation of the reporting obligation, the Customer will remain legally responsible for (i) compliance with all of its obligations under EMIR, in particular the reporting obligation pursuant to Article 9 of EMIR and (ii) the content of each report made by the Bank pursuant to these Special Terms and Conditions.

1.7 If a Transaction is not entered into on a trading platform, the Bank will generate and provide the Unique Trade Identifier for the Transaction. If a Transaction is entered into on a trading platform, the trading platform will generate the Unique Trade Identifier.

## 2 Common Data

2.1 The Bank will report the Common Data relating to each Transaction based on the information available to it following the conclusion, modification or termination of each relevant Transaction.

## 3 Counterparty Data

3.1 The Bank will use the information provided by the Customer in Annex 1 to these Special Terms and Conditions for the purposes of reporting the Counterparty Data.

3.2 For the purposes of reporting the Valuation Fields, the Bank shall, subject to clause 3.3, provide the Mid-Market Value of a Transaction, which it shall calculate and include together with the relevant details in the Report made on behalf of the Customer.

3.3 If the Bank reasonably believes that the market conditions specified in EMIR that prevent providing a market value and/ or Marking-to-Market exist in respect of a Transaction in respect of the Valuation Fields, it shall calculate the value of such Transaction using proprietary Mark-to-Model method which it reasonably believes to meet the requirements for such methods set out in EMIR.

3.4 The collateralisation or valuation reported as part of the Common Data or Counterparty Data under the Delegated Reporting Service is solely for the purpose of reporting to a Trade Repository under the Special Terms and Conditions and shall not affect the collateral value calculated in relation to a Transaction. For the avoidance of doubt, the Customer should not rely on this valuation for his own financial account.

- 3.5 It is the responsibility of the Customer to promptly notify the Bank if any of the information provided by the Customer in Annex 1 is incorrect or no longer accurate and to provide the Bank with the correct information.
- 3.6 Notwithstanding clause 4 of the General Provision, the Customer may, at any time, notify the Bank of any changes to or inaccuracies in the information in Annex 1 by way of written notice to address stated in clause 4 of the General Provision.

The Bank will use reasonable endeavours to incorporate any changes notified to it in accordance with this clause 3.6 in all Reports made 48 (forty-eight) hours after receipt of the notice. Where required, the Bank will submit modification reports containing the updated information notified to it in accordance with this clause 3.6 in respect of Transactions for which it has already submitted a Report to a Trade Repository. The Bank will use reasonable endeavours to submit any such modifications to the relevant Trade Repository within the timeframe set out in EMIR.

- 3.7 The Bank has no obligation to, and will not, verify that any of the information provided by the Customer in Annex 1 is accurate or up to date. The Bank will have no liability whatsoever for any Losses resulting from the inaccuracy of any information provided by the Customer in Annex 1.
- 3.8 The Bank shall not be required to use the information it receives for any purpose other than the provision of the Delegated reporting Service in accordance with these Special Terms and Conditions.
- 3.9 The Bank will not reconcile any Reports made on behalf of the Customer.

#### **4 Errors**

- 4.1 It is the responsibility of the Customer to verify that all Reports for all Transactions have been made to a Trade Repository as required by EMIR. If the Customer becomes aware that a Report in respect of any Transaction has not been made it must notify the Bank immediately.
- 4.2 If the Customer becomes aware of an error in any Report made by the Bank on its behalf it shall notify the Bank as soon as reasonably practicable. Upon such notification, the Customer and the Bank shall use reasonable endeavours and acting in a commercially reasonable manner, to attempt to resolve the error. The Bank shall, where required and subject to the Bank agreeing to report in each case, submit a modification Report to the relevant Trade Repository.
- 4.3 If the Bank becomes aware of an error in any Report made by the Bank on the Customer's behalf, it shall, use reasonable endeavours to correct such error where possible. If the Bank is unable to correct the error unilaterally, it shall notify the Customer. For the avoidance of doubt, the Bank is not obliged to verify the accuracy of any Reports it submits as part of the Delegated Reporting Service or that any Reports have been received by a Trade Repository or that any of the Reports meet the Reporting Requirements in respect of such Reports.

- 4.4 The Customer acknowledges that any error in a Report or any action taken by the Bank to correct any error in a Report will not amend, modify, affect or change the status of the Transaction with the Bank.
- 4.5 The Customer shall execute any and all required agreements with a Trade Repository for the purposes of allowing it to view the Reports made on its behalf by the Bank.

#### **5 Delegation**

- 5.1 The Bank shall be permitted to delegate its performance of some or all of the Delegated Reporting Service under these Special Terms and Conditions to any person that the Bank reasonably believes to be able to provide the Delegated Reporting Service, or part of it, in accordance with these Special Terms and Conditions.
- 5.2 If the Bank were to delegate some or all of the Delegated Reporting Service, the Bank may amend the Special Terms and Conditions in accordance with clause 5 of the General Provisions to reflect the terms on which the delegate has agreed to submit the Counterparty Data and the Common Data. Unless otherwise stated, the Bank's liability for the Delegated Reporting Service as set out in clause 7 of the would not be affected by its delegation of the performance of the Delegated Reporting Service in accordance with this clause 5.1.

#### **6 Regulatory queries in respect of the Service**

- 6.1 If the Customer receives any communication from any regulatory authority in respect of the Service or the Customer's reporting obligation in relation to a specific Transaction, it shall, unless prevented by any Applicable Law, immediately notify the Bank and provide the Bank with a copy of any communication received. The Bank will not assist the Customer in responding to queries between any regulatory authority and the Customer.
- 6.2 The Bank interprets trade reporting requirements under EMIR in accordance with the rules, regulations, statements and practices of the national competent authority of Ireland, and will carry out its obligations under these Special Terms and Conditions in accordance with such interpretation.

#### **7 UK EMIR**

A Customer established in the UK is subject to the UK EMIR reporting regime. The Bank will facilitate the Customer in meeting some or all of its reporting obligations pursuant to UK EMIR by reporting, on the Customer's behalf, relevant data to a Trade Repository in the UK.

In respect of a Customer's UK EMIR reporting obligation, any reference to "EMIR" in Part 1, 2 and 4 of these Special Terms and Conditions shall be deemed to be references to "UK EMIR".

#### **8 Liability and indemnity**

- 8.1 Exclusion of liability
- 8.2 The obligations of the Bank in respect of the Delegated

Reporting Service shall only be those specifically set out in these Special Terms and Conditions and shall be subject to the limitations of liability contained herein.

- 8.3 It is the Customer's responsibility to comply with its obligations to report all Transactions to a Trade Repository in accordance with the Reporting Requirements and nothing in these Special Terms and Conditions shall alter this.
- 8.4 The Bank does not make any warranties or representations or give any undertakings to the Customer regarding compliance of the Delegated Reporting Service with the Reporting Requirements, any other requirements or of any other applicable law, nor in respect of any systems used or provided by the Bank, including as to fitness for purpose or for a particular use.
- 8.5 The Bank excludes and limits all liability arising in connection with the provision of the Delegated Reporting Service to the fullest extent permitted by law. In particular, the Bank shall not be liable for any Losses incurred by the Customer, except those arising out of the Bank's fraud, negligence or willful misconduct.
- 8.6 For the avoidance of doubt, the Bank shall not in any circumstances be liable to the Customer or any other person for:
- (a) loss of or anticipated loss of profit, loss of or anticipated loss of revenue, loss of use, business interruption, loss of use of any equipment, loss or any contract or other business opportunity or goodwill or punitive loss; or
  - (b) indirect loss or consequential loss, regardless of whether the Bank has been advised of the possibility of such Loss or whether such Loss otherwise could have been foreseen.
- 8.7 The Customer accepts that the Bank will provide the Delegated Reporting Service and report the Common Data and Counterparty Data in accordance with its reasonable interpretation of the Reporting Requirements. The Bank shall not be liable for any Losses resulting from the fact that such interpretation is incorrect.
- 8.8 The Bank will have no liability whatsoever for any Losses resulting from the inaccuracy of any information provided or generated by any other entity including, but not limited to, any Trade Repository.
- 8.9 Nothing in these Special Terms and Conditions shall exclude or limit the Bank's liability (i) in respect of personal injury or death resulting from the Bank's negligence, recklessness or intentional act or omission or (ii) otherwise to the extent that it cannot be excluded or restricted in accordance with applicable law.
- 8.10 The Bank shall not be liable to any person who is not a Customer.
- 8.11 The Customer shall notify the Bank as soon as possible of any pending action, claim or proceeding against the Bank arising out the Delegated Reporting Service or

these Special Terms and Conditions and the details of such action, claim or proceeding.

## **Customer indemnity**

- 8.12 The Customer shall indemnify and hold harmless the Bank against any and all Losses suffered or incurred by the Bank arising out of or in connection with the provision by the Bank of the Service described in clause 2, save to the extent that the Losses arise as a result of the fraud, willful default or gross negligence of the Bank.

## **Force majeure**

- 8.13 The Bank shall be released from its obligations under these Special Terms and Conditions and shall not be liable for any Losses, liabilities, damages, claims, costs or expenses to the extent that performance of such obligations is delayed, hindered or prevented by force majeure (as defined below).
- 8.14 Force majeure means any circumstances beyond the Bank's reasonable control.
- 8.15 Without prejudice to the generality of clause 7.14 and without being limited by it, "force majeure" includes any one or more of the following:
- (a) any suspension, closure, act or omission of a Trade Repository; and
  - (b) any failure or malfunction or defect or delay or interruption in, or inability to use, any systems or communications necessary for compiling and/or reporting the Common Data and/or the Counterparty Data.

## **9 Termination**

- 9.1 Either party may, at any time, terminate the provision of the Delegated Reporting Service on 15 Business Days written notice to the other party.
- 9.2 In the event of the termination of the agreement between the Bank and the Customer pursuant to which the Transactions are created (the Master Agreement), the Bank's obligation to provide the Delegated Reporting Service will automatically terminate on the date at which the Bank's obligations under the Master Agreement terminate.
- 9.3 On termination of the Service in accordance with either clause 8.1 or 8.2, the Bank shall have no obligation to submit any Counterparty Data or Common Data in respect of any conclusion, modification or termination of any Transaction on behalf of the Customer. For the avoidance of doubt this includes modifications in respect of Transactions that have already been reported to a Trade Repository.

## **10 Fees**

- 10.1 While the Bank reserves the right to charge a fee for the Delegated Reporting Service in the future, and to change any such fee it may charge in the future, the Delegated Reporting Service is at present provided on a complimentary basis in consideration of the obligations which the Customer undertakes pursuant to these Special Terms and Conditions.

# Part 3: Mandatory Reporting Service Provisions

## 1 Purpose

Pursuant to the regulatory obligations of the Bank under EMIR, the Bank will report data on behalf of the Customer as its counterparty, where such counterparty meets certain conditions. In order to submit such reports to a Trade Repository, the Bank requires certain data from the Customer.

However, the Bank won't be providing the Mandatory Reporting Service to any Customer established in the UK.

## 2 Mandatory Reporting Services to be provided

2.1 On or after the Mandatory Reporting Start Date subject to receipt from the Customer of all necessary information described in clause 4.1, the Bank will report the following information relating to all Transactions entered into on or after the Effective Date, to a Trade Repository:

- (a) Common Data; and
- (b) Counterparty Data.

2.2 In respect of each Transaction, the Bank will determine in its sole and absolute discretion whether its reporting obligation under EMIR has arisen and the characterisation of the relevant Transaction.

2.3 It will be at the Bank's sole discretion to elect the Trade Repository to which it will report a Transaction.

2.4 If a Transaction is not entered into on a trading platform, the Bank will generate and provide the Unique Trade Identifier for the Transaction. If a Transaction is entered into on a trading platform, the trading platform will generate the Unique Trade Identifier.

## 3 Common Data

The Bank will report the Common Data relating to each Transaction based on the information available to it following the conclusion, modification or termination of each relevant Transaction.

## 4 Counterparty Data

4.1 The Bank will use the information provided by the Customer in Annex 1 to these Special Terms and Conditions for the purposes of reporting the Counterparty Data and the Customer agrees it will deliver to the Bank any additional Counterparty Data, as the Bank may request from the Customer from time to time, in time for the Bank to comply with its reporting obligations under EMIR and that the Bank may rely on the Counterparty Data without any further investigation.

4.2 The Customer represents to the Bank that the information it delivers under clause 4.1 of these Mandatory Reporting Service Provisions is, at the time of delivery and on an ongoing basis true, accurate and complete in every material respect.

4.3 The Customer acknowledges that the Bank may, if the Customer fails to provide Counterparty Data in accordance with clause 4.1 of these Mandatory

Reporting Service Provisions, determine the values submitted to the Trade Repository in its sole discretion (which may comprise default values) in order to comply with its reporting obligation under EMIR and the Bank shall not incur any liability to the Customer with respect to the accuracy or completeness of any values and shall be under no obligation to client to subsequently correct any such data submitted to the Trade Repository.

4.4 For the purposes of reporting the Valuation Fields, the Bank shall, subject to clause 4.5, provide the Mid-Market Value of a Transaction, which it shall calculate and include together with the relevant details in the Report made on behalf of the Customer.

4.5 If the Bank reasonably believes that the market conditions specified in EMIR that prevent providing a market value and/ or Marking-to-Market exist in respect of a Transaction in respect of the Valuation Fields, it shall calculate the value of such Transaction using proprietary Mark-to-Model method which it reasonably believes to meet the requirements for such methods set out in EMIR.

4.6 The collateralisation or valuation reported as part of the Common Data or Counterparty Data under the Service is solely for the purpose of reporting to a Trade Repository under the Special Terms and Conditions and shall not affect the collateral value calculated in relation to a Transaction. For the avoidance of doubt, the Customer should not rely on this valuation for his own financial account.

4.7 Notwithstanding clause 4.1 of the General Provisions, the Customer may, at any time, notify the Bank of any changes to or inaccuracies in the information in Annex 1 by way of written notice to address stated in clause 4.1 of the General Provisions.

The Bank will use reasonable endeavours to incorporate any changes notified to it in accordance with this clause 4.7 in all Reports made 48 (forty-eight) hours after receipt of the notice. Where required, and subject to the limitations set out in clause 5.2, the Bank will submit modification reports containing the updated information notified to it in accordance with this clause 4.7 in respect of Transactions for which it has already submitted a Report to a Trade Repository. The Bank will use reasonable endeavours to submit any such modifications to the relevant Trade Repository within the timeframe set out in EMIR.

4.8 The Bank has no obligation to, and will not, verify that any of the information provided by the Customer in Annex 1 is accurate or up to date. The Bank will have no liability whatsoever for any Losses resulting from the inaccuracy of any information provided by the Customer in Annex 1.

4.9 It is the responsibility of the Customer to promptly notify the Bank if any of the information provided by the Customer in Annex 1 is incorrect or no longer accurate and to provide that Bank with the correct information.

## 5 Non-Financial Counterparties

5.1 Unless notified by the Customer in accordance with clause 5.2, for Customers who are Non-Financial Counterparties the Bank shall report, in relation to each Transaction:

- (a) the Transaction is objectively measurable as directly linked to the Customer's commercial or treasury financing activity, as referred to in Article 10(3) of EMIR; and
- (b) [the Customer is below the clearing threshold as referred to in Article 10(2) of EMIR; and]
- (c) the Customer is acting as principal to the Transaction.

5.2 If the statement made in either clause 5.1(a), clause 5.1(b) and/or clause 5.1(c) is incorrect, and/or in the case of clause 5.1(b) the statement is now correct and the corresponding four month clearing obligation has expired, the Customer must notify the Bank by way of email to the following email address:

*emirclassification@boigm.com*

Notifications in relation to clause 5.1 must be provided to the Bank prior to the execution of the relevant Transaction, where possible. Following receipt of such notification, the Bank will:

- (a) For notifications in relation to clause 5.1(a) or 5.1(c) if it has not submitted a Report in respect of that Transaction, use the information provided by the Customer in the notification when reporting the Counterparty Data for that Transaction or, if it has submitted a Report in respect of that Transaction, submit a modification to update the Counterparty Data recorded in respect of that Transaction so that it reflects the information provided in the notification; and
- (b) For notifications in relation to clause 5.1(b), use the information contained in the notification for all Reports subsequently made for the Customer and submit a modification Report in respect of all Transactions for which it has already submitted a Report and which are still outstanding stating that the Customer has exceeded the clearing threshold.

## 6 Liability

To the extent permitted by applicable law, the Customer agrees that the Bank shall have no liability to the Customer for any losses arising directly from, or in connection with the Customer's performance, or failure to perform, its obligations under applicable law or regulation.

## 7 Indemnity

7.1 To the extent permitted by applicable law, the Customer agrees to indemnify and hold harmless the Bank from and against all Losses in relation to the Mandatory Reporting Service incurred by or awarded against them arising from or in connection with:

- (a) any information provided to the Bank by the Customer including, but not limited to, all information in the Counterparty Data made known to the Bank by the Customer or the failure by the customer to provide, on a timely basis or at all, information reasonably required by the Bank to fulfil its EMIR reporting obligations; and

- (b) any corrections required to be made by the Bank to Counterparty Data previously submitted to the Trade Repository in consequence of the Customer providing inaccurate information or failing to provide information, except to the extent that such Losses are the result of the gross negligence, wilful default or fraud of the Bank.

## Part 4: General provisions

### 1 Automatic transition between reporting models

1.1 If the Customer has notified the Bank on accordance with clause 4 of the General Provisions, or the Bank becomes otherwise aware that the Customer's regulatory status in Annex 1 has changed such that the Bank is required by EMIR to report transactions on behalf of the Customer (Automatic Mandatory Transition Date), then (1) the Mandatory Reporting Service of Part 3 of these Special Terms and Conditions shall be deemed to be applicable; and (2) the Delegated Reporting Services of Part 2 shall be deemed not to be applicable in each case in respect of Transactions concluded on or after the Automatic Mandatory Transition Date.

1.1 If the Customer has notified the Bank on accordance with clause 4, or the Bank becomes otherwise aware that the Customer's regulatory status in Annex 1 has changed such that the Bank ceases to be required by EMIR to report transactions on behalf of the Customer (Automatic Delegated Transition Date), then (1) the Delegated Reporting Service of Part 2 of these Special Terms and Conditions shall be deemed to be applicable; and (2) the Mandatory Reporting Services of Part 3 shall be deemed not to be applicable in each case in respect of Transactions concluded on or after the Automatic Delegated Transition Date.

### 2 Representations

- 2.1 The Customer represents and warrants to the Bank:
- (a) it is duly incorporated in an EU or EEA jurisdiction, and is validly existing in its jurisdiction of establishment;
  - (b) it has taken all necessary corporate action to authorise it to enter into these Special Terms and Conditions and to perform the obligations it is expressed to assume under them;
  - (c) any and all information provided to the Bank is accurate.

2.2 Each of the representations and warranties made by the Customer in this clause 2.1 shall be deemed to be repeated by the Customer (i) as of the date the Customer first uses the Service and (ii) upon entering into each Transaction.

### 3 Confidentiality

3.1 Notwithstanding anything to the contrary in these Special Terms and Conditions or in any non-disclosure, confidentiality or other agreement between the parties, the Customer hereby consents to the disclosure of information:

- (a) to the extent required or permitted under, or made in accordance with, the Reporting Requirements; or
- (b) to and between the Bank's head office, branches or affiliates, or any persons or entities who provide services to the Bank or its head office, branches or affiliate, in each case, in connection with the Reporting Requirements.

3.2 The Customer further acknowledges that disclosures made pursuant to the service as described in the Delegated Reporting Service Provisions and the Mandatory Reporting Service Provisions will include, without limitation, the disclosure of trade information including a party's identity (by name, address, corporate affiliation, identifier or otherwise) to any Trade Repository or one or more systems or services operated by any Trade Repository and any relevant regulators (including ESMA, national regulators in the EU under EMIR in the case of trade reporting under applicable EMIR or the FCA) and that such disclosures could result in certain transaction and pricing data becoming available to the public.

3.3 The Customer further acknowledges that, for purposes of complying with the Reporting Requirements, the Bank may, delegate to a third party the transfer of trade information into a Trade Repository and that a Trade Repository may engage the services of a global trade repository regulated by one or more governmental regulators.

3.4 The Customer also acknowledges that disclosures made pursuant to the Service may be made to recipients in a jurisdiction other than that of the Customer or a jurisdiction that may not necessarily provide an equivalent or adequate level of protection for personal data in comparison to the Customer's home jurisdiction.

3.5 For the avoidance of doubt, to the extent that applicable non-disclosure, confidentiality, bank secrecy, data privacy or other laws impose non-disclosure requirements on Transactions but where it permits a party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent for the purposes of such law. Again, to the extent that applicable non-disclosure, confidentiality, bank secrecy, data privacy or other laws impose non-disclosure requirements on these Special Terms & Conditions but allows a party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent for the purposes of such law.

3.6 The Customer represents and warrants that any third party to whom it owes a duty of confidentiality in respect of the information disclosed has consented to the disclosure of that information

#### 4 Notices

4.1 Subject to clauses 3.6 of the Delegated Reporting Service Provisions and clause 4.7 of the Mandatory Reporting Service Provisions, a notice or other communication given under or in connection with these Special Terms and Conditions (a Notice) must, unless otherwise specified, be in writing, in English, and sent to the relevant address specified below by any means of communication indicated by the Bank.

Notices to the Bank to be sent to:

GM Documentation  
Bank of Ireland  
3rd Floor,  
Baggot Plaza,  
Baggot Street,  
Dublin 4,  
Ireland

Notices to the Customer will be sent to the details provided in the Account Mandate.

#### 5 Amendment of the Special Terms and Conditions

The Bank shall be entitled to amend these Special Terms and Conditions by publishing the amended Special Terms and Conditions on its website or notifying the Customer in accordance with this clause 6. The Customer agrees that, by continuing to enter into, modify or terminate Transactions from the date on which the amended Special Terms and Conditions take effect it will be considered to communicate its agreement to and be bound by the amended Special Terms and Conditions.

#### 6 Severability

For the avoidance of doubt, each and each part of each clause shall be construed separately, applying and surviving if for any reason one or more than one of the of the other clauses or any part thereof is held in any jurisdiction to be invalid, illegal or unenforceable.

#### 7 Governing Law

7.1 These Special Terms and Conditions shall be governed by the same law as the Terms and Conditions and/or Terms of Business which govern the relationship between the Customer and the Bank.

7.2 With respect to any suit, action or proceedings relating to any dispute arising out of or in relation to these Special Terms and Conditions ("**Proceedings**"), each party irrevocably

- (a) submits to (A) the non-exclusive jurisdiction of the Irish courts if the Proceedings do not involve a Convention Court and (B) the exclusive jurisdiction of the Irish courts if the Proceedings do involve a Convention Court", and for this purpose,

**"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 Judgements in Civil and Commercial Matters or Article 17 of the 1988 Lugano Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters."

- (b) 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 any 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 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.

## 8 Counterparts

Annex 1 to these Special Terms and Conditions may be executed in any number of counterparts. Each counterpart, when duly delivered to the Bank, is an original but the counterparts together are one and the same agreement.

## 9 Definitions

9.1 In these Special Terms and Conditions, the following terms shall have the meaning set out below and capitalised terms not defined herein shall have the meaning set out in the Terms and Conditions or Terms of Business:

**CCP** has the meaning given in EMIR;

**Common Data** means the data required to complete Table 2 of the Annex to Commission Delegated Regulation (EU) No 148/2013 supplementing EMIR with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories dated 19 December 2012;

**Customer** means a counterparty who enters into an OTC Derivative as principal with the Bank, whether directly [or acting through an agent];

**Counterparty Data** means the data required to complete Table 1 of the Annex to Commission Delegated Regulation (EU) No 148/2013 in respect of the Customer;

**Delegated Reporting Service** means the service provided by the Bank to the Customer pursuant to the Delegated Reporting Service Provisions.

**Effective Date** means the earlier of ten (10) Business Days after receipt by the Bank of the fully completed 0 (including a valid, up-to-date Legal Entity Identifier) and when the Bank advises the Customer that the EMIR Reporting Service on behalf of the Customer is operational;

**EMIR** means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories as amended from time to time, including, without limitation, by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019;

**UK EMIR** means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories as amended from time to time, including, without limitation, by Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019, as it applies in the UK from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11 pm on 31 December 2020;

**ESMA** means the European Securities and Markets Authority;

**FCA** means the Financial Conduct Authority and any successor regulatory body;

**Historical Expired Transaction** means

- (i) a Transaction entered into before 16th August 2012 which was outstanding at the 16th August 2012 and which expired before the Reporting Start Date and
- (ii) a Transaction entered into from and including the 16 August 2012 and which expired before the Reporting Start Date;

**Historical Live Transaction** means

- (i) a Transaction entered into before the 16 August 2012 and which is still outstanding on the Reporting Start Date and
- (ii) a Transaction entered into from and including the 16 August 2012 and which is still outstanding on the Reporting Start Date;

**Losses** means losses, costs, expenses, damages, liabilities, claims, actions, proceedings, fines and judgments (including, without limitation, professional advisors and legal costs and disbursements);

**Mandatory Reporting Start Date** means the 18 June 2020;

**Mandatory Reporting Service** means the service provided by the Bank to the Customer pursuant to the Mandatory Reporting Service Provisions.

**Mid-Market Value** means the value obtained by taking the reference price point, mid way between the market bid and offer, at a point in time for the referenced underlying security of the derivative being valued. This is known as marking to market ("**Mark to Market**"). The obtained value is unadjusted for prevailing credit spreads, market liquidity, position size, transactions and financing costs, hedging costs and risks and use of capital and profit. Where a mid-market value cannot be determined in the market for the derivative, such as with complex financial instruments, then the mid-market valuation is determined by financial models, known as Mark to Model ("**Mark to Model**");

**OTC Derivative** shall have the meaning given by Article 2 of EMIR;

**Report** means a report consisting of Common Data and Counterparty Data relating to a Transaction to be sent to the trade repository on behalf of the Customer;

**Reporting Start Date** means 12 February 2014, or such other date as directed by ESMA, for trade reporting under EMIR;

**Reporting Requirements** means the provisions of EMIR 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) EMIR regarding reporting and/or retention of transaction and/or of similar information issued by any authority or body or agency in accordance with which the Bank or the Customer is required to act;

**Service** means the services set out in Clause 1 of the Delegated Reporting Service Provisions and Clause 2 of the Mandatory Reporting Service Provision, as applicable in each case;

**Trade Repository** means any entity recognised or authorised as a trade repository pursuant to Article 55 or Article 77 EMIR;

**Transaction** for the purposes of the Delegated Reporting Service Provisions and the Mandatory Reporting Service Provisions, as applicable means each OTC Derivative entered into between the Bank and the Customer which is required to be reported to a Trade Repository pursuant to EMIR in accordance with such interpretation in Ireland;

**Unique Trade Identifier** means a unique trade identifier meeting the requirements for such identifiers under EMIR; and

**Valuation Fields** means the Counterparty Data fields relating to the Mark-to-Market value of a Transaction, currency of the Mark-to-Market value of a Transaction, valuation date, valuation time and valuation type.

9.2 The headings in these Terms and Conditions are for convenience only and do not affect the meaning. The Annexes are part of these Terms and Conditions. Any reference to any provision of statute, enactment, order, regulation or other legislation refers to the provision as it is amended or re-enacted from time to time.

## ANNEX 1 CUSTOMER DATA

Business Name:	
Registered Office of Customer:	
Reporting Counterparty ID:	
Corporate sector:	
Nature of the counterparty:	
Beneficiary ID:	
Trading Capacity:	
Directly linked to commercial activity or treasury financing:	
Clearing member ID:	
Legal Entity Identifier*:	<input type="checkbox"/>
E-mail address**:	
Regulatory regime:	<input type="checkbox"/> EU - EMIR Reporting regime <input type="checkbox"/> UK - EMIR Reporting regime

Counterparty Classification:	
<input type="checkbox"/>	Financial Counterparty ("FC")
<input type="checkbox"/>	C = Credit Institution authorised in accordance with Directive 2013/36/EU; F = Investment Firm authorised in accordance with Directive 2014/65/EU;
<input type="checkbox"/>	I = Insurance Undertaking authorised in accordance with Directive 2009/138/EC;
<input type="checkbox"/>	L = Alternative Investment Fund (AIF), as defined in Directive 2011/61/EU, which is either established in the European Union or managed by an alternative investment fund manager (AIFM) authorised or registered in accordance with Directive 2011/61/EU, unless that AIF is set up exclusively for the purpose of serving one or more employee share purchase plans, or unless that AIF is a securitisation special purpose entity as referred to in Directive 2011/61/EU, and, where relevant, its AIFM established in the European Union;
<input type="checkbox"/>	O = Institution for occupational retirement provision within the meaning of Article 6 of Directive (EU) 2016/234;
<input type="checkbox"/>	R = Reinsurance undertaking authorised in accordance with Directive 2005/68/EC;
<input type="checkbox"/>	U = UCITS and, where relevant, its management company, authorised in accordance with Directive 2009/65/EC (unless that UCITS is set up exclusively for the purposes of serving one or more employee share purchase plans); or
<input type="checkbox"/>	Central Securities Deposit authorised in accordance with Regulation (EU) 909/2014
If you have indicated above that you are a Financial Counterparty "FC" please also indicate if you are a:	
<input type="checkbox"/>	- Financial Counterparty that is subject to the clearing obligation under EMIR
<input type="checkbox"/>	- Financial Counterparty that is not subject to the clearing obligation under EMIR ["Small Financial Counterparty"]
<input type="checkbox"/>	Non-Financial Counterparty ("NFC") that is not subject to the clearing obligation under EMIR ["NFC-"] OR
<input type="checkbox"/>	Non-Financial Counterparty ("NFC+") that is subject to the clearing obligation under Article 4 of EMIR. Please tick which asset classes you exceed the clearing threshold
<input type="checkbox"/>	- OTC credit derivative contracts;
<input type="checkbox"/>	- OTC equity derivative contracts;
<input type="checkbox"/>	- OTC interest rate derivative contracts;
<input type="checkbox"/>	- OTC foreign exchange derivative contracts;
<input type="checkbox"/>	- OTC commodity derivative contracts and other OTC derivative contracts not provided for above

<input type="checkbox"/>	Non-EEA entity
Do you wish the Bank to report your trade information to a trade repository in order to comply with your requirements under EMIR?	
Yes <input type="checkbox"/> No <input type="checkbox"/>	

By signing below, you agree that you have fully read, understood and are bound by the EMIR Reporting Service Special Terms and Conditions.

Authorised Signatory***	
Name:	
Date:	

Authorised Signatory***	
Name:	
Date:	

\* LEI codes are issued by appointed Local Operating Units such as the Irish Stock Exchange and the London Stock Exchange. In order to obtain a LEI simply contact your preferred business partner from a list of LEI issuing organizations (<https://www.gleif.org/en/about-lei/get-an-lei-find-lei-issuing-organizations>). You will be required to provide certain information, which may include, legal name, address, country of incorporation, company registration number, VAT number and also, to pay a small fee.

\*\* Email address should be a company email address for communications relating to EMIR which is checked regularly by company personnel.

\*\*\* Authorised signature(s) should be in accordance with the mandate instructions.

# Delegated Reporting Services Provisions – Annex 2

## Schedule of Excluded Information

### Issues affecting the market as a whole

Uncertainty exists about how market participants should implement certain aspects of EMIR, including but not limited to:

- (i) the interpretation of rules set out in the implementing legislation of EMIR
- (ii) market standards that are yet to be agreed

The Bank is using reasonable efforts to adopt approaches to these issues which adhere to industry best practice.

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**Information Classification: Public (Green)**