

## **Investec Bank Plc (Irish Branch)**

### **EMIR Transaction Reporting Terms**

**THIS AGREEMENT**, effective from the Effective Date, is

**BETWEEN**

- (1) **INVESTEC BANK PLC**, a company incorporated under the laws of England and Wales under registration number 489604 and having its registered office at 2 Gresham Street, London EC2V 7QP, England which is acting through its Irish Branch, **INVESTEC BANK PLC (IRISH BRANCH)** which is registered with the Irish Companies Registration Office under number 904428 as an external company and has a registered branch office at The Harcourt Building, Harcourt Street, Dublin 2 ("**Investec**", "**we**" or "**us**"); and
- (2) **THE CLIENT** ("**the Client**" or "**you**").

**INTRODUCTION**

- (A) EMIR is an EU regulation which imposes a number of regulatory obligations on counterparties to derivative contracts. The obligations will apply to us and to you, in particular if you are established in the EU.
- (B) In order to help you comply with certain EMIR Reporting Obligations applicable to counterparties to a Relevant Transaction and confirm the agreement between you and us of certain other EMIR obligations, we have produced this agreement. This agreement is a binding legal agreement between us whereby we agree to assist you in fulfilling the Reporting Obligation and you agree to take all necessary actions and provide all necessary cooperation in order that we may do so and will apply to all Relevant Transactions entered into by you with Investec as principal.
- (C) Definitions and interpretation for the purpose of this agreement are set out at Annex I.

**1. Reporting Roles**

**1.1** In respect of each Relevant Transaction,

- (a) Investec and the Client agree that Investec shall report:
  - (i) the Counterparty Data in relation to Investec and Client; and
  - (ii) the Common Data; and
  - (iii) if and when required, the Exposures Data.
- (b) Investec shall report Relevant Transactions, which include transactions entered into before the Reporting Start Date and which remain outstanding as at the Reporting Start Date.
- (c) Each party shall be responsible for their own record keeping obligations under Article 9(2) EMIR.

**1.2** Any information provided to a Trade Repository for the purposes of complying with the Reporting Obligation is provided without prejudice to any present or future dispute between the parties in relation to the information provided. Any failure or delay in exercising any right, power or privilege in respect of this agreement will not be presumed to operate as a waiver in respect of any dispute between the parties 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 in respect of any dispute between the parties.

- 1.3 We will supply the Unique Trade ID required to be included in the Common Data. In the event you supply a Unique Trade ID, we will use our own unless we both agree otherwise.

## **2. Authorisation of Investec**

- 2.1 You authorise Investec, either itself or through a Reporting Delegate, to report:

- (a) the Counterparty Data in relation to you;
- (b) the Common Data; and
- (c) where applicable, the Exposures Data to the Relevant Trade Repository on your behalf.

## **3. Notifications and Providing Information**

- 3.1 Investec will notify you of each Relevant Trade Repository which we or our Reporting Delegate selects. Such notification shall be effective on receipt.

## **4. Obligations of Both Parties**

- 4.1 Investec and the Client agree that they will use reasonable efforts to agree the Common Data before it is reported to the Relevant Trade Repository in the event there is sufficient time available under the Reporting Deadline.

- 4.2 If either Investec or Client identifies an error in any information previously provided to the other party which is material to the Reporting Obligation, such party will notify such other party as soon as reasonably practicable and both parties will use all reasonable efforts in good faith and a commercially reasonable manner to resolve such error.

## **5. Obligations of Investec**

- 5.1 Investec shall with reasonable care and skill make the reports described in section 1, by the Reporting Deadline and to the Relevant Trade Repository.

- 5.2 In complying with its obligation in clause 5.1, Investec may, in its sole discretion, use the services of a Reporting Delegate.

- 5.3 Investec will not be liable for any acts or omissions of any Reporting Delegate it appoints or of the Relevant Trade Repository.

- 5.4 If, for whatever reason, we are unable to effect a report, we will inform you of that fact as soon as we are able.

## **6. Representations and Warranties**

- 6.1 Each party represents to the other party in respect of this agreement that all representations made by it pursuant to the agreement are true and accurate as of the date of this agreement.

- 6.2 Each party represents and warrants to the other party that:

- (a) it has full power to enter into, and to exercise its rights and perform its obligations under this agreement; and

- (b) all acts, conditions, authorisations, consents, approvals and other things required in order:
  - (i) to enable it lawfully to enter into and exercise its rights and perform its obligations under this agreement;
  - (ii) to authorise the execution, delivery and performance of this agreement; and
  - (iii) to ensure that the obligations expressed to be assumed by it in this agreement are lawful, valid and binding,

have been duly done, fulfilled, obtained and performed and are in full force and effect.

## **7. Obligations, representations and acknowledgements of the Client**

**7.1** You acknowledge that pursuant to the Reporting Obligation, regulators require the reporting to a Trade Repository of details of any derivative contract concluded, modified or terminated and that you and we are obliged under EMIR to carry out this reporting in respect of derivative contracts entered into between us.

**7.2** You acknowledge that the Reporting Obligation will include the disclosure of trade information to a Trade Repository as well as to any relevant regulators (including, without limitation, ESMA) and such disclosure could result in certain anonymised and aggregated transaction-related data becoming publicly available.

**7.3** You acknowledge that we may use a Reporting Delegate to transfer trade or counterpart information to a Trade Repository and that a Trade Repository may engage the services of a global trade repository regulated by one or more regulators.

**7.4** You acknowledge that in order for you to comply with EMIR and the Reporting Obligation, you will require an LEI. If you are a Below Threshold Non-Financial Counterparty which does not have an LEI as at the date of this agreement, please notify us immediately. You acknowledge that our obligations to you under this agreement are contingent on your providing us with an LEI. Should you fail to provide us with an LEI, whether or not we discharge your Reporting Obligation is a decision subject to our sole discretion. In respect of each Relevant Transaction, you:

- (a) shall provide all necessary co-operation in relation to this agreement;
- (b) shall comply with all applicable laws and regulations with respect to your activities under this agreement;
- (c) shall deliver to Investec the information needed by Investec in time for Investec to comply with its obligation under clause 5.1; and
- (d) represent to Investec that the Client Data is, at the time of delivery, true, accurate and complete in every material respect.

**7.5** You represent and warrant to Investec that either:

- (a) you own all rights, title and interest in and to all Client Data; or
- (b) you have the right to use all Client Data,

and, in either case, all Client Data has been and will be legally acquired.

- 7.6 You represent and warrant to Investec that in using the Client Data for the purposes of this agreement and under EMIR, Investec and any Reporting Delegate and Trade Repository will not infringe any third person's rights.
- 7.7 You shall use reasonable endeavours to ensure that in providing the Client Data you do not distribute or transmit any material that may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices; or is otherwise unlawful.
- 7.8 You acknowledge and confirm that this agreement shall not alter or purport to transfer your responsibility for complying with your obligations under EMIR.

## 8. Confidentiality Waiver and Data Security

- 8.1 Notwithstanding anything to the contrary in this agreement or in any non-disclosure, confidentiality or other agreement between the parties, each party hereby consents to the disclosure of information:
- (a) to the extent required or permitted under, or made in accordance with, the provisions of EMIR and any applicable supporting law, rule or regulation ("**EMIR and Supporting 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) EMIR and Supporting Regulation regarding reporting and/or retention of transaction and similar information issued by any authority or body or agency in accordance with which the other party is required or accustomed to act ("**Reporting Requirements**"); or
  - (b) to and between the other party'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 the Reporting Requirements.
- 8.2 Each party 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 personal data as the counterparty's home jurisdiction. For the avoidance of doubt:
- (a) 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 a party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by each party for purposes of such law;
  - (b) 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
  - (c) nothing herein is intended to limit the scope of any other consent to disclosure separately given by each party to the other party.

- 8.3** Each party 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.
- 8.4** Each party shall take all necessary steps to ensure that any disclosures made hereto including Client Data which comes into its possession or control is protected in accordance with appropriate technical and organisation security measures against unauthorised or unlawful processing, loss, damage or disclosure.
- 8.5** To the extent that either party acts as a data controller, in respect of any Personal Data, processed by that party pursuant to this agreement, such party warrants to the other that it complies and will continue to comply with its obligations under the Data Protection Act 1988 and Data Protection (Amendment) Act 2003 (as amended and updated from time to time, "the **Acts**") in relation to the Acts and the Privacy and Electronic Communications (EC Directive) Regulations 2003.
- 8.6** Investec acknowledges that if it processes Personal Data on the Client's behalf when performing its obligations under this Agreement, that it will act as a data processor in respect of that Personal Data. In processing such Personal Data Investec shall, and shall take steps to ensure that its subcontractors (if any) shall:
- (a) take all appropriate technical and organisational measures to prevent unauthorised or unlawful access to, interception and/or processing of the Personal Data and to prevent accidental or unlawful loss or destruction of, or damage to the Personal Data;
  - (b) process the Personal Data only in accordance with the lawful instructions of the Client reasonably given in writing from time to time;
  - (c) take reasonable steps to ensure the reliability of its employees, agents and subcontractors (if any) engaged in the performance of this agreement; and
  - (d) not transfer or store the Personal Data outside the EEA unless the transfer or storage is covered by a lawful mechanism providing an adequate level of protection for the rights and freedoms of data subjects in relation to the processing of personal data in accordance with the requirements of the relevant section of the Acts.
- 8.7** The Client warrants that all Personal Data provided to Investec by or on behalf of the Client will have been collected fairly and lawfully so as to enable the processing of Personal Data by Investec in compliance with all applicable laws and Reporting Requirements.

## **9. Timely Confirmations**

- 9.1** You agree that the terms of any confirmation sent by us to you in respect of a Transaction shall be deemed correct, agreed and confirmed, absent manifest error, unless you inform us to the contrary within the Regulatory Time Period (such confirmation to take effect on the expiry date of the Regulatory Time Period).
- 9.2** For these purposes, "Regulatory Time Period" means no more than the maximum time period for the timely confirmation of a Transaction as provided for by EMIR and any applicable supporting law, rule or regulation.

**10. 15 September 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure terms (the “Additional Terms”)**

- 10.1** The parties agree that the terms of the Additional Terms shall apply as if the parties had adhered to the Additional Terms without amendment.
- 10.2** Investec is a Portfolio Data Sending Entity and the Client is a Portfolio Data Receiving Entity.
- 10.3** Investec and the Client may use a Third Party Service Provider, and the other party (in each case) consents to such use including the communication of the relevant data in relation to that other party to such Third Party Service Provider of the purposes of the reconciliation service provided by such entity.
- 10.4** The Local Business Days for such purposes in relation to Investec are London and Dublin, and in relation to the Client are the places in which the Client has its registered address and any office through which it enters into a Relevant Transaction with Investec.
- 10.5** The following are the applicable email addresses:

Portfolio Data:

Investec: [Collateral.Management@investec.ie](mailto:Collateral.Management@investec.ie)

Client: The email address you have provided to us, or as you may otherwise advise from time-to-time

Notice of discrepancy:

Investec: [Collateral.Management@investec.ie](mailto:Collateral.Management@investec.ie)

Client: The email address you have provided to us, or as you may otherwise advise from time-to-time

Dispute Notice:

Investec: [Collateral.Management@investec.ie](mailto:Collateral.Management@investec.ie)

The Client: The email address you have provided to us, or as you may otherwise advise from time-to-time

- 10.6** In the event of any inconsistency between the terms of this agreement and the terms of the Additional Terms, this agreement will prevail for the purpose of complying with the Reporting Obligation.
- 10.7** Defined terms used in this clause 10 and not defined in this agreement shall have the meaning ascribed in the Additional Terms.

**11. Liability of Investec**

- 11.1** Investec shall only be liable to the Client for losses directly incurred by the Client to the extent they have arisen from Investec's gross negligence, fraud or wilful default.
- 11.2** Investec shall not be liable for any loss suffered by the Client falling within clause 11.1 if the loss is related to the Client's failure to comply with its obligations under this agreement.
- 11.3** Investec shall have no responsibility or liability for the completeness or accuracy of any data it receives from or on behalf of the Client in connection with this agreement.
- 11.4** Subject to clause 11.1, Investec shall not have any liability to the Client (including any liability in tort) under or in connection with this agreement for any:

- (i) loss of profits;
- (ii) loss of revenue;
- (iii) loss of or damage to reputation or goodwill;
- (iv) loss of opportunity;
- (v) wasted management or other staff time;
- (vi) losses or liabilities under or in relation to any other contract; or
- (vii) any indirect or special loss or damage.

**11.5** Notwithstanding any other provision of this agreement, Investec's liability under or in connection with this agreement shall not be excluded or reduced to the extent that it arises in respect of the following matters:

- (a) for death or personal injury;
- (b) for fraud or fraudulent misrepresentation; or

## **12. Indemnification of Investec**

**12.1** The Client indemnifies Investec on demand against any loss suffered or incurred by it arising out of or in connection with any breach of this agreement by the Client or any negligence of the Client.

## **13. Termination**

**13.1** This agreement will commence on the date it is made and will continue indefinitely until terminated in accordance with clause 13.2.

**13.2** Either party may by written notice to the other terminate this agreement by not giving less than 30 days' notice unless otherwise agreed in writing between the parties.

## **14. Force Majeure**

**14.1** Neither party will be liable to the other under this agreement if its prevented from or delayed in performing its obligation or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes, failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, acts of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of equipment, plant or machinery, viruses, fire, flood, storm or default of suppliers or sub-contractors.

## **15. General**

**15.1** A person who is not a party has no right to enforce any term of this agreement.

**15.2** This agreement may be executed in any number of counterparts, each of which, when executed and delivered, is an original, but all the counterparts taken together shall constitute one document. This agreement shall not take effect until it has been executed by all the parties.

**16. Governing law and jurisdiction**

**16.1** This agreement (and any dispute or claim relating to it or its subject matter, its enforceability or its termination (including non-contractual claims)) is to be governed by and construed in accordance with Irish law.

**16.2** The courts of Ireland shall have jurisdiction to settle any claim, dispute or issue between the parties whether arising out of or in connection with this agreement or otherwise (including non-contractual claims). Such jurisdiction shall be exclusive and each party agrees that it will not institute proceedings (except as permitted by clause 16.3) in the courts of any country other than Ireland. The parties to this agreement irrevocably submit to such jurisdiction and waive any objection to it, on the ground of inconvenient forum or otherwise. No party shall oppose the recognition or enforcement of a judgment, order or decision of those courts in respect of any such claim or dispute by the courts of any state which, under the laws and rules applicable in that state, are competent or able to grant such recognition or enforcement.

**16.3** A party may bring proceedings in the courts of any state other than Ireland for the purpose of seeking:

- (a) an injunction, order or other non-monetary relief (or its equivalent in such other state); and/or
- (b) any relief or remedy which, if it (or its equivalent) were granted by the courts of Ireland, would not be enforceable in such other state.

## ANNEX I

### 1. Interpretation

In this agreement:

- (a) *reference to:*
  - (i) any legislation, regulation, statute or statutory provision includes a reference:
    - (A) to that legislation, regulation, statute or statutory provision as from time to time consolidated, modified, re-enacted (with or without modification) or replaced by any legislation, regulation, statute or statutory provision; and
    - (B) any subordinate legislation made under the relevant legislation, regulation, statute or statutory provision;
  - (ii) the "**introduction**" or to a "**clause**" or "**schedule**" is a reference to the Introduction or the relevant clause or schedule of or to this agreement;
  - (iii) a person includes all forms of legal entity including an individual, company, body corporate (wherever incorporated or carrying on business), unincorporated association, governmental entity and a partnership and, in relation to a party who is an individual, his legal personal representative(s);
  - (iv) a party or the parties means a party or the parties to this agreement; and
  - (v) "**this agreement**" includes this agreement as amended or supplemented from time to time;
- (b) the words "**include**", "**including**" and "**in particular**" are to be construed as being by way of illustration or emphasis only and are not to be construed so as to limit the generality of any words preceding them;
- (c) the table of contents and the headings to clauses and schedules are to be ignored in construing this agreement;
- (d) if a party must do something on a given day, they must do it by 5:30 p.m. on that day (unless this agreement expressly states otherwise). If they do the thing after 5:30 p.m. on a day, they are treated as not having done it until the next working day;

- 1.2 The schedules form part of this agreement as if set out in full in this agreement and a reference to "**this agreement**" includes a reference to the schedules.

### 2. Definitions

In this agreement, including the introduction:

"**Affiliates**" means in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control"

of any entity or person means ownership of a majority of the voting power of the entity or person.

**"Below Threshold Non-Financial Counterparty"** means a non-financial counterparty (as defined in EMIR) which does not exceed the clearing threshold set out in Article 10(3) of EMIR.

**"Client"** means Investec's counterparty to these terms.

**"Client Data"** means all information provided to Investec under clause 7.4.

**"Common Data"** means, with respect to a Relevant Transaction, the information listed in Table 2 (Common Data) of the Reporting Annex.

**"Counterparty Data"** means, with respect to a Relevant Transaction and a party, the information listed in Table 1 (Counterparty Data) of the Reporting Annex.

**"Effective Date"** means the date on which your written confirmation that you wish to enter into this agreement is received by Investec.

**"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.

**"Exposures Data"** means, with respect to a Relevant Transaction to which Article 11(2) of Regulation (EU) 648/2012 applies, information forming the Counterparty Data Submission relating to mark to market or mark to model valuation and collateralisation.

**"LEI"** means Legal Entity Identifier, being a unique identifier code for a legal structure that is used to identify parties to a financial transaction for the purpose of compliance with the Reporting Obligation.

**"Personal Data"** means personal data as defined by the Data Protection Act 1998 as amended from time to time and any legislation or other regulations made thereunder.

**"Relevant Trade Repository"** means in respect of a Relevant Transaction the Trade Repository selected by Investec or Investec's Reporting Delegate from time to time for such type or class of Relevant Transaction or, where no Trade Repository is available to record the details of such Relevant Transaction, ESMA.

**"Relevant Transaction"** means any Transaction that is subject to the Reporting Obligation.

**"Reporting Annex"** means 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.

**"Reporting Deadline"** means the reporting of the Relevant Transaction as specified in Article 9 of EMIR.

**"Reporting Delegate"** means a third party, appointed by Investec to report the Counterparty Data in relation to one or both parties and/or the Common Data by the Reporting Deadline to the Relevant Trade Repository.

**"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 Start Date"** means, with respect to a Transaction, the first date on which details of such Transaction must be reported in accordance with Article 5 of Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 and published 21 December 2012 in the Official Journal of the European Union.

**"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.

**"Transaction"** means a derivative transaction entered into between Investec and the Client.