



# General Business Terms

Banking Circle S.A.

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## 1. INTRODUCTION AND SCOPE OF APPLICATION

- 1.1. These general business terms (the “**General Business Terms**”) set out the terms and conditions applicable to your business relationship with Banking Circle (as defined in Clause 2.1). The General Business Terms shall apply to products and services provided to you by Banking Circle pursuant to any agreement entered into between you and Banking Circle, including any Pricing Agreement or otherwise, together with the Code of Conduct and the Personal Data Protection Addendum (any terms so applicable to the business relationship between you and Banking Circle together the “**Agreement**”). Any term agreed individually between you and Banking Circle shall prevail over the General Business Terms, the Code of Conduct and the Personal Data Protection Addendum, unless expressly stated otherwise or contrary to any duty under Applicable Law.
- 1.2. In these General Business Terms, references to “**you**”, “**your**” or “**Client**” means the client having entered into any agreement governed by these General Business Terms. Any references to “**we**”, “**us**” or “**our**” means Banking Circle.
- 1.3. The headings in these General Business Terms are for reference only and do not limit the scope of each Clause. Capitalised terms have specific definitions, and are provided in Clause 39 (*Definitions and Interpretations*) or otherwise in the text of these General Business Terms.
- 1.4. If you have concluded a client agreement with Banking Circle prior to the entry into force of these General Business Terms, these General Business Terms shall apply in conjunction with the terms in such agreement and, in case of discrepancy, the terms and conditions in the relevant agreement shall prevail.

## 2. WHO ARE WE?

- 2.1. We are Banking Circle S.A. (“**Banking Circle**”), a credit institution authorised under Luxembourg law. We are regulated by the Commission du Secteur Financier (“CSSF”) in addition to financial supervisory Authorities in the jurisdiction where we have branch establishment.
- 2.2. Our Luxembourg head office’s authorisation number LUB00000408.
- 2.3. Our head office’s principal business address and company registration number are:
- 2 boulevard de la Foire  
L- 1528 Luxembourg  
Luxembourg  
Company reg. no.: B222.310
- 2.4. Banking Circle may provide certain services under the Agreement through its other branches. Unless otherwise agreed, the General Business Terms shall also apply to such services, including any Account opened by you or on your behalf with any of our branches. The address, authorisation number and contact details of each of our branches can be found at our website:

[bankingcircle.com](http://bankingcircle.com).

## 3. ABOUT OUR SERVICES

- 3.1. At our discretion, Banking Circle may provide you with one or more of the following services (the “**Services**”):
- Providing you with deposit accounts, including payment accounts;
  - Online banking services;
  - Execution of a payment transactions (with and without a credit line);
  - Money remittance services;
  - FX Spot trading; and
  - Credit facilities.
- 3.2. We do not provide any investment, or investment advisory, services and will not, nor be under any duty to, undertake any ongoing



monitoring of your financial circumstances as a whole or any part. We shall not be obliged to provide any of the Services governed by these Business Terms.

3.3. We may also make other services available to you. Where appropriate, these will be provided on separate terms and conditions or via a supplementary agreement or document.

3.4. We may, in our reasonable discretion, withdraw or suspend the provision of any of the Services to you, for example where we consider that it would otherwise breach any Applicable Law or Compliance Obligations. Banking Circle will not be liable for any Loss that you may incur from us suspending the Services, other than if we acted fraudulently, negligently or recklessly in suspending the Service, in which case our liability to you will be as set out in Clause 28 (*Your Liability*).

#### 4. AUTHORISED USERS

4.1. You may designate one or more of your Directors, officers or employees as your authorised representatives (an "Authorised User") to give Instructions, access and operate the Transactions Platforms or otherwise act on your behalf as specified by you. Authorised Users may designate new Authorised Users.

4.2. Only Authorised Users may access and use the Transaction Platforms. You may designate Authorised Users in writing in the form of the User Registration Form or in a manner as otherwise approved by us in our discretion. A person shall only become an Authorised Users upon our approval. Our approval of an Authorised User may be subject to you providing us with evidence of his or her identity or other documentation. We reserve the right to decline at our discretion any request for designation of any new Authorised User, and may without notice disable Authorised Users' access to the Transaction Platforms, in whole or in part.

4.3. It is your responsibility to notify us without undue delay if the information provided to us in any User Registration Form is no longer up to date. If you wish to remove or add any Authorised User or make any other

amendments to roles and privileges assigned to any existing Authorised User, you must inform us by giving written notice to your relationship manager with Banking Circle by sending a new User Registration Form.

4.4. Subject to any limitations clearly and specifically set out in the applicable User Registration Form, we shall be entitled to rely on and act in accordance with, and you shall be bound by, the Instructions of any person designated by you or on your behalf as an Authorised User in a User Registration Form insofar as such Instruction appears on the face of it to have been made an Authorised User on your behalf.

#### 5. CODE OF CONDUCT

5.1. Banking Circle's Code of Conduct applies to the use of our Services and the Transaction Platforms. We shall provide you with the Code of Conduct when entering the business relationship with you or when amended from time to time.

5.2. You agree to comply with, and to ensure that all of your Authorised Users comply with, the Code of Conduct at all times.

#### 6. KYC REQUIREMENTS

6.1. We are required by law to conduct ongoing monitoring of all of our clients, and transactions carried out for or with our clients, including you (and your employees), in order to comply with our Know Your Client (KYC) obligations. This includes monitoring Instructions and Transactions for the prevention and detection of financial crime.

6.2. You will provide us with all information (e.g. as we consider necessary for opening an Account and conducting the business relationship prescribed by any Applicable Law) and will execute all documents we reasonably request from you from time to time, including any relevant document in order to confirm the tax residence you have declared to us.

6.3. You will provide us with correct, accurate and truthful information.

6.4. You must notify us immediately in writing of any changes in circumstances which might cause the information provided to us to become incomplete or inaccurate. Changes in circumstances can be but are not limited to changes to: type of business, type of products or services, any dissolution, liquidation, or Insolvency Event, payment flow, licensing, geographic location, company name(s), residence address/registered office, company registration number, address(es) of residence for tax purposes, tax identification number (TIN), Value Added Tax ("VAT") registration number, nationality/nationalities, Legal Entity Identifier (LEI), legal entity type and any contact details, such as telephone or fax number(s) and e-mail address(es) and/or in respect of any other person(s) involved in the business relationship, such as the beneficial owner(s), any controlling person(s), authorised signatory(ies) and/or person(s) holding a power of attorney.

## 7. YOUR DUTY TO COOPERATE

7.1. You hereby declare that the assets deposited now and in the future in any Account are not of criminal origin, nor are they in any way likely to be used in the financing of terrorism or violation of sanctions laws and other Applicable Law.

7.2. You agree to cooperate with Banking Circle on all compliance and operations related matters and to comply with anti-money laundering, counter terrorist financing, and similar legal and regulatory obligations applicable to Banking Circle.

7.3. You agree to respond to Banking Circle' urgent (as defined by Banking Circle) requests for:

- i. information e.g. on specific Transactions and beneficiaries, payers or payees and provide all relevant KYC or Know your Client's Client (KYCC) documentation; and
- ii. any action that you are required to take in order to comply with payment system rules,

as soon as possible and no later than four (4) Business Days from the receipt of the request from Banking Circle.

7.4. For less urgent enquiries for information e.g. prior to ordinary annual compliance review, you agree to respond as soon as possible and no later than ten (10) Business Days from the receipt of the request from Banking Circle.

## 8. VAT AND TAX MATTERS

8.1. When rendering cross-border services to you and provided you are registered for VAT purposes, VAT may be payable in the country where you are situated instead of in the country where the service is provided. Following Applicable Law, we are in that case required to comply with certain reporting obligations in respect of VAT in order to ensure the correct application of VAT. We must inform the Luxembourg Authorities responsible for VAT of certain information, including your country code and VAT registration number, and of the total value of the supplied services. This information will ultimately be submitted to the Authorities responsible for VAT in the country where you are registered for VAT purposes.

8.2. You, having provided a VAT registration number, hereby expressly confirm being aware of our reporting obligations, and authorise and instruct us to forward the information, which we are obligated to provide, to the Authorities responsible for VAT matters as foreseen under Applicable Law.

8.3. You shall be solely responsible for all taxes and payments related to the operations carried out on the Transaction Platforms and for any fees, charges and taxes related to obtaining and maintaining any required permission and license.

## 9. SECURITY OF THE ACCOUNTS AND OF THE TRANSACTION PLATFORMS

9.1. You shall take all measures necessary to protect the personalised security features of the Accounts and only use our services and any Accounts in accordance with the Agreement.



You may not (and may not attempt to) tamper, hack, modify or otherwise corrupt the security or functionality of any Transaction Platforms.

- 9.2. Authorised Users shall be provided with personalised security credentials to access the Transaction Platforms and, to the extent applicable, one-time passwords for strong customer authentication through an authentication device or authentication software to authorise transactions through the Transaction Platforms. Such personalised security credentials and one-time passwords must be kept safe by individual Authorised Users and must not be shared with or used by any other person.
- 9.3. Authorised Users are obliged to notify Banking Circle without undue delay if you have become aware of irregularities, hacking, misuse or unauthorised use of the Transaction Platforms, any authentication device or software or any of our services, including your Accounts. In such event Banking Circle will block any such systems and Accounts. For more information, please consult our website [www.bankingcircle.com](http://www.bankingcircle.com).
- 9.4. Authorised Users are required to take all necessary measures to ensure that the technical characteristics of any device used to access the Transaction Platforms, any authentication device or software, Internet access and telecommunications means are up to date for obtaining information and for access to the transactions and services offered by the Transaction Platforms. Authorised Users are responsible for keeping such devices and/or software up to date and installing all manufacturer provided updates and security fixes when available. You are furthermore required to manage properly the security of such devices through installing and updating security components (antivirus, firewalls, security patches).
- 9.5. Banking Circle may offer training and make material available to you. Such training and material is provided "as is" and all use thereof is at your risk. Banking Circle does not provide any warranty of such training and

material whatsoever, whether express, implied, or statutory, including, but not limited to, any warranty of merchantability or fitness for a particular purpose or any warranty that the contents of the training or the material will be error-free.

- 9.6. It is your responsibility to train Authorised Users appointed so that they take all measures necessary to protect the personalised security features of the Accounts and only use our services and any Accounts in accordance with the Agreement.

## 10. COMMUNICATION

- 10.1. Banking Circle shall conclude agreements and communicate in English unless otherwise agreed between you and us (including any correspondence in respect of claims or complaints).
- 10.2. Subject to mandatory Applicable Law, any communication with you may be made by electronic mail or other electronic means and any requirement for communication to be 'written/in writing' made by 'letter', or through 'account statement printout', etc., shall include communication and documentation provided by electronic means.
- 10.3. We will contact you via the Transaction Platforms, using the email address associated with your Accounts or the contact details you provided to us, in any particular way that may be required by Applicable Law or by any other means as may be agreed between us.
- 10.4. We will assume the conformity with authentic originals of all documents submitted to us as copies (including electronic copies).
- 10.5. Any notice or communication that is provided to you by email shall be deemed to have been received at the time of sending, as long as this is within Business Hours, otherwise, the relevant notice or communication shall be deemed to have been received when Business Hours resume the following Business Day.
- 10.6. If you wish to contact us, please send communication and notices to Banking Circle via the



Transaction Platforms or by other electronic means agreed between you and us.

10.7. Banking Circle reserves the right to record telephone conversations in order to be able to establish the content of the conversation.

10.8. You acknowledge and accept that we may validly provide certain information, such as information on our bank, information pertaining to the safeguarding of clients' funds, information on costs and associated charges, as well as relevant changes, exclusively via our website. You will be notified electronically of the website address and of the place on such website where you can access this information. You undertake to consult our website regularly.

10.9. You confirm that you accept the risks, duly authorise the use of electronic communications and agree to use available, appropriate means of detecting the most widely known viruses prior to sending information by electronic means.

10.10. You are responsible for having in place and maintaining adequate security measures to ensure the protection of IT systems you use or rely on, and we shall not be liable for any Loss or damage in connection with electronic communications.

## 11. TRANSACTIONS/INSTRUCTIONS

11.1. Instructions shall be sent to Banking Circle via the Transaction Platforms or by other electronic means agreed between you and us from time to time or accepted by Banking Circle in its discretion.

11.2. Instructions are effective when we receive them. We will not generally acknowledge receipt of Instructions other than by acting on them.

11.3. If you instruct Banking Circle to make a payment, or more than one payment, on a future date, we will not begin processing the payment(s) until the future date, and the

Instructions will be effective on the relevant future date.

11.4. Banking Circle will only carry out Transactions to or on your behalf upon the receipt of an Instruction signed or accepted by an Authorised User, or if Banking Circle otherwise has been authorised to do so by you.

11.5. Banking Circle will ensure that Instructions are executed as soon as reasonably possible, but in no particular order. If the Instruction is received after the applicable cut-off times available on [www.bankingcircle.com/currencies-and-cut-off-times](http://www.bankingcircle.com/currencies-and-cut-off-times) or notified you in any other way by Banking Circle, such Instruction shall be deemed received on the following Business Day.

11.6. We will treat an Instruction as genuine if we believe in good faith that the Instruction is from any Authorised User (for example, because it appears on the face of it to have been given by an Authorised User) and there are no circumstances that we are or should reasonably be aware of that cause us to suspect the authenticity of the Instruction. We may assume, except in case of manifest error, that the information you give us in connection with a Transaction, including any account number quoted in an Instruction, is correct. Whenever we receive Instructions on which the name does not match the account number indicated thereon, we may rely conclusively on the account number.

11.7. If we are unable to contact you or another Authorised User to verify an Instruction, where we consider that to be necessary, or if following our request you or another Authorised User do not provide appropriate Instructions, your Transaction may be delayed or may not be executed.

11.8. We may contact you on any matter relating to your Instructions and Transactions, subject to any restriction which you may impose on us.

11.9. A Transaction is deemed concluded when you place an Instruction through the Transaction Platforms and Banking Circle executes such Instruction.



- 11.10. You are obliged to ensure that all Instructions are complete and accurate. In case you request to cancel or modify an Instruction, Banking Circle is required to use reasonable efforts to comply with such request. Banking Circle will not be liable for any failure to cancel or modify such an Instruction.
- 11.11. Banking Circle may reject or delay in its discretion and without liability any Instruction from you if:
- i. the Instruction is inaccurate, incomplete or unclear;
  - ii. the Instruction has not been properly authorised by you or that any other breach of security has occurred in relation to your use of our services;
  - iii. the Instruction would result in a negative balance on any of your Accounts and/or cause any limit imposed by Banking Circle in relation to your Accounts to be exceeded;
  - iv. it is an Instruction that, in the opinion of Banking Circle, implies a risk of participating in a scheme that potentially could be money laundering, terrorist financing or other criminal activities, including tax fraud;
  - v. legal or regulatory requirements prevent us from executing the Instruction or mean that we need to carry out further checks;
  - vi. the Transaction seems unusual in light of the ways you ordinarily use your Account(s);
  - vii. the Instruction involves a Transaction that is not within the internal acceptable risk scope of Banking Circle or Banking Circle's correspondent institutions including but not limited to the Code of Conduct;
  - viii. an injunction or order from any competent Authority or court to freeze funds or any other specific measure associated with preventing or investigating crime has been imposed;
- ix. any third-party claims exist on the funds held with us and upon extra-judicial opposition notified to us by third parties regarding your assets; or
- x. you are in breach of your obligations under the Agreement or any other fact or matter persists as a result of which we are entitled to terminate the business relationship with you or block access to your Accounts.
- 11.12. Unless regulatory requirements prevent us from doing so, we will inform you as soon as reasonably practicable:
- i. if we reject or suspend the execution of an Instruction;
  - ii. of the reasons for such rejection or suspension; and
  - iii. what you can do to correct any errors in the instruction, if applicable.
- 11.13. Banking Circle will not be liable for any Losses you suffer as a result of a rejection or suspension of the execution of an Instruction.
- 11.14. Banking Circle makes data from SWIFT BIC directory (SWIFTRef files) available to its clients through a lookup tool in connection with ordering of payments. You use the data at your own risk and Banking Circle is not liable for any use of the lookup tool and the data which are provided "as is". Banking Circle does not represent the functionality or suitability of the lookup tool and the data for you, or that it will be uninterrupted or error free. You acknowledge and accept that any data in the lookup tool may be inaccurate, incomplete, and/or not up to date. Except as specifically mentioned in the Agreement, any other use of the lookup tool and data is strictly prohibited. The proprietary rights in the data belongs to S.W.I.F.T. SCRL. or its suppliers.
- 11.15. Banking Circle's payment API offers an automated channel for communication between



your business systems and Banking Circle. The API has the purpose of offering STP (Straight Through processing) capabilities by offering a secure channel for transfer of financial information between you and Banking Circle.

- 11.16. Due to Banking Circle's security policy, you can submit requests during a limited time. If the number of requests exceeds the time limit, your request will be timed out for a limited period. Information on request and time limits will be provided to you separately.
- 11.17. End-of-day (EOD) report and/or intra-day reports can be subscribed for, such as reconciliation reports, rejection reports and account balance reports. These reports are generated only during Business Days. By default, you will be set up for EOD reconciliation report and EOD rejection report.
- 11.18. The SWIFT Gateway is available for clients being registered members of the Society for Worldwide Interbank Financial Telecommunication network ("SWIFT") or Clients who are relying on another SWIFT member ("Authorised Member").
- 11.19. In case the client is relying on an Authorised Member the client must authorise that Authorised Member to send Instruction from the Client's Banking Circle accounts on the Client's behalf in the form as required by Banking Circle. Banking Circle is entitled to request additional information to identify such Authorised Member for the purpose of regulatory compliance.
- 11.20. Access to / use of the SWIFT Gateway is subject to prior exchange of SWIFT relationship management authorisation ("RMA") between the Parties.
- 11.21. The exchange is limited to the message types MT101 and MT103 (together referred to as "SWIFT messages").
- 11.22. SWIFT messages sent to Banking Circle must be compliant with the format requirements as indicated in Banking Circle SWIFT Payment Gateway instruction.
- 11.23. The MT101 can be used to initiate (i) Euro payments, payments in Euro within the E.E.A. and (ii) foreign payments, payments in a foreign currency and/or outside the E.E.A. A MT101 can contain one or more payment transactions with a maximum of 60 transactions per MT101 file. Banking Circle accepts both single and multiple MT101-messages, as long as only one debit account is present in sequence A of the MT101. The MT103 can be used for (i) Euro payments, payments in Euro within the E.E.A. and (ii)/ foreign payments, payments in a foreign currency and/or outside the E.E.A. A MT103 can contain one or more payment transactions with a maximum of one (1) transactions per MT103 file.
- 11.24. Banking Circle accepts orders through the SWIFT Gateway as maintained by SWIFT, according to the rules of the actual SWIFT standard release, and reserves the right to reject orders which arrive in another form than agreed to, or which contravene Applicable Law. In all disputes arising from the interpretation of any expression in connection with services provided by SWIFT, the definitions and understanding generally used by SWIFT shall apply.
- 11.25. Payment orders that cannot be linked to the client will be rejected and funds will be returned to the sending institution, and return fee will be deducted, irrespective of the charging option of the original payment order, unless otherwise agreed.
- 11.26. Validation check of payment orders happens before fund movement. In case Banking Circle receives a payment order, which fails validation, the payment order will be rejected. The reject code will be sent to the Client as MT199.
- 11.27. As a general rule, a payment order may be cancelled or amended only until it has been settled or communicated to a third party. Any cancellation or amendment request received thereafter will be handled on a best effort basis only, depending on the co-operation and approval of the beneficiary, even if the request for cancellation is received prior to the value date. Banking Circle reserves the right to charge the client a cancellation fee.

- 11.28. Our obligation to perform an Instruction is subject to compliance by the relevant Authorised User with our procedures for customer authentication applicable at any time, including any requirement of two-factor authentication. Such authentication may require the use of an application, protocol or individualised security credentials made available to your Authorised Users individually. You shall take all reasonable steps to ensure that any such applications, protocols or security credentials are kept safe and are used only by Authorised Users to whom they have been configured or designated.
- 11.29. Banking Circle is not liable for delays, errors misinterpretations, etc. that may arise from incomplete or unclear instructions.
- 11.30. Banking Circle reserves the right to reject any order due to compliance reasons / not in accordance with Applicable Law.

## 12. OPERATION OF PAYMENT ACCOUNTS

- 12.1. You hereby authorise Banking Circle to act in accordance with any Instructions on your behalf and credit and debit your Payment Account(s) accordingly.
- 12.2. Only sums credited to your Payment Accounts shall be treated as available for payments initiated by you and Banking Circle will not act on an Instruction from you if there are not sufficient funds on the relevant Payment Account to carry out the requested Transactions. Any incoming payment shall be credited to your relevant Payment Account(s):
- i. on the same Business Day provided that the payment is received by Banking Circle before the applicable cut-off time; or
  - ii. on the following Business Day if the payment is received after the applicable cut-off time.
- 12.3. Banking Circle shall be entitled to delay crediting your Payment Accounts (for such period

as Banking Circle in its reasonable discretion considers appropriate) any sum that would otherwise be due in order to protect its position with respect to any liability owed by you to Banking Circle, whether actual or anticipated.

- 12.4. Subject to Applicable Law and in providing the Services, Banking Circle shall at any time and in accordance with our policies be entitled to transfer balances on your Accounts with our branches to your Accounts with our head office in Luxembourg (or other branches).
- 12.5. Banking Circle may reverse amounts transferred into your Payment Accounts by obvious mistake on the part of Banking Circle, for example if the same amount is transferred twice – in accordance with the principle of recovery of undue payments. The same applies where Banking Circle – according to agreements with its correspondent institutions – is under the obligation to reverse amounts. If Banking Circle reverses an amount, you will be notified hereof.
- 12.6. If a reversal of entries results in a negative balance on the relevant Payment Account, overdraft interest may be automatically charged same date without notice. This provision may not be interpreted as authorising you to have any debit balances on your Payment Accounts. Interest charged on the negative balances is capitalised monthly.
- 12.7. Banking Circle will process and be responsible for processing payments out of your Payment Accounts solely on the basis of the BIC, sort code or national bank code of the recipient's bank, and the recipient's bank account number (or IBAN), which we shall receive from you as part of your Instructions. Additional information may be requested in accordance with Applicable Law, including the WTR.
- 12.8. If incorrect payment details have been provided, the payment may be delayed or credited to a wrong account and Banking Circle will not be liable for any Loss incurred by you, the payer or the payee and/or for any delay to the payment being made.



12.9. Any cross-border payment may be returned if the foreign bank(s) involved has been unable to process the payment on the basis of the information provided or if you have cancelled the payment. Banking Circle will process a returned payment as a cross-border payment and charge fees accordingly.

12.10. When transferring funds to other countries Banking Circle's correspondent institutions in the receiving country may not be the same as your bank. In certain circumstances Banking Circle may use selected correspondent institutions and international clearing systems to facilitate the transfer.

### 13. FIXED TERMS DEPOSITS

13.1. At your request, we can also provide interest-bearing, fixed-term deposits in a number of currencies. Instructions received by us concerning renewals of fixed-term deposits will be carried out by us at the prevailing interest rate for the relevant type of deposit at the time of renewal.

13.2. Information about what interest payments you could be eligible for, when and how they will be paid, are subject to separate agreement.

13.3. We may change our interest or exchange rates immediately, and without notice, based on reference interest or exchange rate information provided to us. If we make any such changes, we will inform you as soon as reasonably possible.

13.4. Instructions concerning renewal or termination of fixed-term deposits must be received by us at least two (2) Business Days prior to the maturity date of such deposits. In the absence of instructions, we may, at our discretion, decide to keep the deposit in the same currency as before, or convert it to whatever currency we may find more appropriate. We can automatically renew deposits for a term of the same duration on the conditions prevailing at the time of renewal, or transfer them to another of your Accounts. We are entitled to refuse the premature termination of a time deposit, or,

if we accept such termination, to charge its refinancing cost, if any, and a penalty to you.

13.5. Any deposit monies we hold for you shall be held by us as banker. If we fail, even though the FCA Client Money Distribution Rules, the FCA Client Money Distribution Rules will not apply to your deposit and so you will not be entitled to share in any distribution under the FCA Client Money Distribution Rules.

### 14. SPECIFIC PROVISIONS RELATING TO THE USE OF VIRTUAL IBANS

14.1. The Virtual IBAN is a product enabling your reconciliation of incoming and outgoing payments on your Payment Accounts.

14.2. All inbound payments are credited to and all outbound payments are debited from your Payment Accounts showing the Virtual IBANs for reconciliation purpose.

14.3. Payments can be received via the Virtual IBANs in your name on your Current Account or, quoting your payment service user's name as beneficiary, on your Settlement Account or Nostro/Vostro Account.

14.4. Outbound payments can be made via the Virtual IBAN in your name from your Current Account or, in the name of your payment service user, from your Settlement Account or Nostro/Vostro Accounts.

14.5. When using Virtual IBAN to make and receive payments on behalf of your payment service users, you acknowledge and confirm that you are acting as payment service provider of either the payer or the payee and we confirm that we are acting as intermediary provider within the meaning of the WTR.

14.6. None of your payment service users will be able to make Instruction on your Settlement Account or Nostro/Vostro Accounts associated with the Virtual IBANs despite the fact that the Virtual IBAN may be quoted with their name in the payment message.

14.7. The use of the Virtual IBANs with a Settlement Account or a Nostro/Vostro Account, is subject to the following conditions:

- i. a Virtual IBAN must be associated at all times to a single payment account held by you in the name of one of your payment service users so that the Virtual IBAN can permit any payment to be traced back to your payment service users acting as payer or payee.
  - ii. You must provide sufficient information to your payment service users in your terms and conditions in respect of the use of the Virtual IBANs so as to ensure that your payment service users are not led to believe that Virtual IBANs are actually accounts opened in their name.
  - iii. When sending a payment using the Virtual IBAN, you must provide all the information necessary for Banking Circle to comply with its obligations under the WTR.
  - iv. You must notify Banking Circle immediately in case of closing of a payment account held in the name of your payment service user by you and associated to a Virtual IBAN and ensure that that Virtual IBAN is cancelled.
- i. Banking Circle may offer real-time tradable prices to you. Due to delayed transmission between you and Banking Circle the price offered by Banking Circle may have changed before an order from you is received by Banking Circle. If automatic order execution is offered to you, Banking Circle shall be entitled to change the price on which your order is executed to the market value at the time at which your order was received;
  - ii. You shall be responsible for all orders, and for the accuracy of all information, sent via the internet using your name, password or any other personal identification means implemented to identify you;
  - iii. You shall bear all currency exchange risks in respect of any Transaction;
  - iv. Although the Transaction Platforms might confirm that a Spot Contract is executed immediately when you transmit Instructions via the Transaction Platforms, it is the Settlement/Trade Confirmation forwarded by Banking Circle or made available to you on the Transaction Platforms that solely constitutes Banking Circle's confirmation of execution.

#### 15. SPECIFIC PROVISIONS RELATING TO FX TRADING

- 15.1. The Transaction Platforms give you access to commercial currency hedging via online trading in currency Spot Contracts.
- 15.2. Orders may be placed as market orders to buy or to sell as soon as possible at the price obtainable in the market, or as limit and stop orders to trade when the price reaches a pre-defined level. Limit orders to buy and stop orders to sell must be placed below the current market price, and limit orders to sell and stop orders to buy must be placed above the current market price. If the bid price for sell orders or ask price for buy orders is reached, the order will be filed as soon as possible at the price obtainable in the market.
- 15.3. The following terms shall apply to Spot Contracts:
  - 15.4. Any Instruction sent via a Transaction Platform or by email by you shall only be deemed to have been received and shall only then constitute a valid Instruction and/or binding Spot Contract between Banking Circle and you when such Instruction has been recorded as executed by Banking Circle and confirmed by Banking Circle to you through the Settlement/Trade Confirmation and/or Account Statement. The mere transmission of an Instruction by you shall not constitute a binding Spot Contract between Banking Circle and you.
  - 15.5. It is possible that errors may occur in the prices of transactions quoted by Banking Circle. In such circumstances, without prejudice to any other right it may have under Luxembourg law, Banking Circle shall not be bound by any Spot Contract which purports to have

been made (whether or not confirmed by Banking Circle) at a price which:

- i. Banking Circle can substantiate to you it was manifestly incorrect at the time of the transaction, or
- ii. Was or ought to reasonably have been known by you to be incorrect at the time of the transaction

in which case Banking Circle reserves the right to either i) cancel the trade all together or ii) correct the erroneous price at which the trade was done to either the price at which Banking Circle hedged the trade or alternatively to the correct market price at the time of the trade.

15.6. Strategies aimed at exploiting errors in prices and/or concluding trades at off-market prices (commonly known as "sniping") are not accepted by Banking Circle. Provided that Banking Circle can document that there on the time of the conclusion of the trade were errors in prices or in the Transaction Platforms, and provided Banking Circle can render probable that you, based on strategy or other provable behaviour, deliberate and/or systematically have exploited or attempted to exploit such an error, Banking Circle is entitled to take one or more of the following countermeasures:

- i. Adjust the price spreads available to you;
- ii. Restrict your access to streaming, instantly tradable quotes, including providing manual quotation only;
- iii. Retrieve from your Account any legacy trading profits that Banking Circle can document have been gained through such abuse of liquidity at any time during the business relationship; and/or
- iv. Terminate the business relationship immediately by giving written notice.

15.7. By accepting the Agreement you hereby authorise Banking Circle to register and keep register of the IP-addresses from which you log into the Transaction Platforms in order to prevent sniping.

15.8. You acknowledge that Banking Circle has the right, but not the obligation, to close directly opposite positions. This applies not only when the positions are held on the same account, but also when they are held on separate accounts.

15.9. You shall on demand pay to Banking Circle:

- i. such sums of money as initial or variation margin as Banking Circle may require;
- ii. such sums of money as may from time to time be due to Banking Circle under a Spot Contract and such sums as may be required in or towards clearance of any debit balance on any Collateral Account; and
- iii. such sums of money as Banking Circle may from time to time require as security for your obligations to Banking Circle.

15.10. You shall be obliged to promptly deliver any money or property deliverable under a Spot Contract in accordance with the terms of that Spot Contract and with any Instructions given by Banking Circle for the purpose of enabling Banking Circle to perform its obligations under any corresponding contract entered into between Banking Circle and a third party.

15.11. If you fail to provide any margin or other sum due under the Agreement in respect of any Transaction, Banking Circle may close any open position without prior notice to you and apply any proceeds thereof to the payment of any amounts due to Banking Circle.

15.12. You hereby pledge in favour of Banking Circle as security for all payment obligations towards us (whether in principal, interest, fees or costs resulting from amongst others any

Transactions), all amounts that you may have now or in the future in whatever currency in the Collateral Account.

15.13. You are advised that Banking Circle shall have the right, in addition to any other rights it may have under the Agreement, or under Luxembourg law in general, to limit the size of your open positions (net or gross) and to refuse orders to enter into new Spot Contracts. Banking Circle will notify you as soon as possible regarding such refused orders and the reason for the refusals. Situations where Banking Circle may exercise such right include where:

- i. Banking Circle considers that there is abnormal activity; or
- ii. You have a negative cash-balance on any Collateral Account.

15.14. In certain cases, it will not be possible for Banking Circle to apply the agreed charges, fees, margins and FX bid offer spreads stated in the Pricing Agreement or to execute any Transaction at all as requested by you. This can be for the following non-exhaustive reasons:

- i. Market factors including the time of day the Instruction is given, the market size of the Instruction being outside the range of pricing for the particular currency pair, lack of liquidity in the currency pair, counterparty risk, funding costs, liquidity, transaction costs, operational costs or other factors;
- ii. Requirements of Applicable Law, market conditions or law or regulations applicable to the FX market; and / or
- iii. Credit policies applicable to Banking Circle.

Where one or more of the factors above are relevant, the Transactions may be executed and pricing provided on the basis of Banking Circle's standard pricing for the same currency pair and size of trade.

15.15. Furthermore, Banking Circle is entitled in its reasonable opinion to determine that an emergency or an exceptional market condition has occurred. Such conditions shall include, but are not limited to, the suspension or closure of any market or the abandonment or failure of any event to which Banking Circle relates its quote or the occurrence of an excessive movement in the level of any Margin Trade and/or underlying market or Banking Circle reasonable anticipation of the occurrence of such a movement. In such cases Banking Circle may increase its margin requirements, reduce your exposure, close any or all your open Margin Trades and/or suspend trading.

15.16. On the date of the opening of a Margin Trade between Banking Circle and you, Banking Circle may require you to have margin on the Collateral Account at least equivalent to Banking Circle's initial margin requirement.

15.17. Banking Circle's margin requirement shall apply throughout the term of the Margin Trade. It is your responsibility continuously to ensure that sufficient margin is available on your Collateral Account at any time. If practically possible, Banking Circle shall notify you if the margin requirements are not met. If, at any time during the term of a Margin Trade, the margin available on the Collateral Account is not sufficient to cover Banking Circle's margin requirement, you are obliged to reduce the amount of open Margin Trades or transfer adequate funds to Banking Circle. Even if you take steps to reduce the size of the open Margin Trades or to transfer sufficient funds to Banking Circle, Banking Circle may close one, several or all of your Margin Trades or part of a Margin Trade without assuming any responsibility towards you for such action.

15.18. Banking Circle's general margin requirements for different types of Margin Trades are displayed on the Transaction Platforms. However, Banking Circle reserves the right to determine specific margin requirements for individual Margin Trades.

15.19. You are specifically made aware that the margin requirements are subject to change without notice. When a Margin Trade has been opened, Banking Circle is only allowed to close



- the Margin Trade according to Banking Circle's rights under the Agreement or at your Instruction. However, Banking Circle will increase the margin requirements if Banking Circle considers that its risk on a Margin Trade has increased compared to the risk on the date of the opening.
- 15.20. Without prejudice to any of Banking Circle's other rights under the Agreement, in case of a dispute or complaint between you and Banking Circle over a Margin Trade or alleged Margin Trade or any Instruction relating to a Margin Trade, Banking Circle is entitled at its reasonable discretion and without notice to close any such Margin Trade or alleged Margin Trade, if Banking Circle reasonably believes such action to be desirable for the purpose of limiting the maximum amount involved in the dispute. Banking Circle shall not be responsible to you in connection with any subsequent fluctuations of the level of the relevant Margin Trade. If Banking Circle closes a Margin Trade under this Clause such action shall be without prejudice to Banking Circle's right to contend that such Margin Trade had already been closed by Banking Circle or was never opened by you. Banking Circle shall take reasonable steps to inform you that Banking Circle has taken such action as soon as practicable possible after doing so. Where Banking Circle closes a Margin Trade or alleged Margin Trade in accordance with this Clause, the closing shall be without prejudice to your rights to open a new Margin Trade, provided that such Margin Trade is opened in accordance with the Agreement. When calculating the margin or other funds required for such Margin Trade, Banking Circle is entitled to do so on the basis that Banking Circle view of the disputed events or Instructions is correct.
- 15.21. If your combined exposure in one or more margin trades reaches a level which - in case of an adverse market development - may lead to a significant deficit not covered by your deposits and/or margin with Banking Circle, Banking Circle may in its reasonable discretion reduce your exposure by closing one or more or all your open positions.
- 15.22. If the aggregate amount payable by one party exceeds the aggregate amount payable by the other party, the party by whom the larger aggregate amount is payable to shall pay the excess to the other party and the obligations to make payment of each party will be satisfied and discharged (netting).
- 15.23. If you, at any time during the business relationship, have a negative cash balance in any Collateral Account, Banking Circle is entitled, but not obligated to net between your Collateral Accounts. You shall bear all the charges and any other costs associated with such netting in accordance with your Pricing Agreement.
- 15.24. If the business relationship is terminated, the claims that the parties have against each other shall be finally discharged by means of netting (closed). The value of open Spot Contracts shall be determined according to the principles set forth below and the final amount to be paid by one of the parties shall be the difference between the payment obligations of the parties.
- i. Spot Contracts shall be closed based on market rates applicable on the day on which Banking Circle decides to close the Spot Contracts.
  - ii. Banking Circle may at its reasonable discretion determine the rates by obtaining an offer from a market maker regarding the asset in question or by applying rates from electronic financial information systems.
  - iii. When determining the value of the Spot Contracts to be netted, Banking Circle shall apply its usual spreads and include all costs and other charges.
  - iv. This netting agreement shall be binding towards the estate and creditors of the parties to the business relationship.

16. SPECIFIC PROVISIONS RELATED TO MONEY  
REMITTANCE

- 16.1. When providing remittance services, Banking Circle shall collect funds on your behalf from a payer and transfer the corresponding amount to you without opening a Payment Account in your name.
- 16.2. Virtual IBANs may be provided to you as part of the money remittance service that you can use for the purpose of reconciling incoming and outgoing payments but, for the avoidance of doubt, those Virtual IBANs will be held by Banking Circle. The specific provisions on Virtual IBANs (Clause 14) shall however still apply as if the Virtual IBANs were linked to a Payment Account in your name.

17. ACCOUNT STATEMENTS, TRANSACTION HISTORY  
AND OTHER INFORMATION

- 17.1. Any Authorised User can view your online Transaction history when logging on to the Transaction Platforms using his or her USERID and password.
- 17.2. You should regularly and carefully review the transaction history and other information and check whether there have been any incorrect information, errors or unauthorised transactions in the Accounts.
- 17.3. You will advise us immediately of errors, discrepancies and irregularities that appear in any documents, transaction history, confirmations, account or statements or other communication addressed to you (hereinafter referred to as the "Communications"). If we receive no written objection within thirty (30) days of the dispatch of the Communications, all Transactions mentioned therein are considered as having been approved and ratified by you. All Transactions and figures given in the above-mentioned Communications will be considered to be final and accurate. You will have no direct or indirect right of objection against such transactions. This rule applies to all Transactions executed by us. You may request copies of any Communications at any time during the period in which we are legally required to keep records of the relevant

Transaction, against a fee as set out in our summary for operational fees you can consult on [www.bankingcircle.com/summary-operational-fees](http://www.bankingcircle.com/summary-operational-fees). For the avoidance of doubt, this Clause 17.3 applies to any request for rectification of unauthorised or incorrectly executed payment transactions, cf. article 71 of PSD2, of which you must notify us promptly on becoming aware of any such transaction giving rise to a claim, and in no event later than thirty (30) days after the debit date.

18. SERVICE REVIEW AND UPDATE

- 18.1. Banking Circle will undertake periodic service review to ensure a consistent level of quality service is provided.
- 18.2. Banking Circle is continually looking to improve and expand its services. As a result, it may be necessary or desirable from time to time to enhance or amend existing service levels, or introduce additional services in support of new or developing businesses. These changes may also be required to align operational standards with market practice or industry standards. Any such changes may be implemented by Banking Circle by amending the Agreement in accordance with Clause 23 (*Amendments*).

19. CHARGES, FEES AND MARGINS

- 19.1. Banking Circle shall be entitled to charge for any services rendered and the use of the Transaction Platforms, e.g. payment transfers and currency conversion, withdrawal or amendments of payments orders performing special tasks on your behalf and sending reminders.
- 19.2. You agree to pay the charges, fees, margins and FX bid offer spreads stated in the Pricing Agreement or in the Transaction Platforms or as notified to you from time to time.
- 19.3. Any charges, fees, margins and FX bid offer spreads mentioned in the Pricing Agreement become due and payable at the end of each month (the "Invoicing Period").





- 19.4. We will notify you of any due and payable amount in the first week of the month following the end of the Invoicing Period .
- 19.5. Unless expressly stated otherwise, our charges and costs are exclusive of VAT and other taxes, which will also be payable by you.
- 19.6. Any amount owed to us shall be payable when due without set-off or counterclaim.
- 19.7. If you do not perform, or delay performing, your obligations under this Agreement and we incur additional costs or expenses as a result, we reserve the right to notify you and invoice you for our reasonable additional costs incurred. We will provide you with information to substantiate those reasonable additional costs).
- 19.8. Charges, fees, expenses, margins and FX bid offer spreads will be deducted from your Fee Account in our discretion.
- 19.9. You must ensure that your Fee Account holds sufficient funds at all time to cover for all charges, fees, expenses, margins and FX bid offer spreads and in any case an amount equivalent to the monthly minimum fee as agreed in the Pricing Agreement. If there are insufficient funds in your Fee Account to enable us to deduct any charges, fees, expenses, margins and FX bid offer spreads that are due and payable, we will notify you as soon as possible.
- 19.10. Charges for payments are usually distributed to the effect that you pay Banking Circle's charges and the beneficiary pays the receiving bank's charges (SHARE). Additional fees may be charged if the payment is to be handled by several banks in the payment chain. Payments in EEA currencies to countries in the EEA are subject to the Luxembourg law of 10 November 2009 on payment services as amended from time to time. You may in certain situations also choose to pay the beneficiary's charges (OUR) as agreed and when permissible under the Luxembourg law. The fees relating to OUR payments are stated in the Pricing Agreement.
- 19.11. Cross-border payments are for your account and risk, including foreign charges, delays as well as errors and omissions made by the beneficiary's bank or any intermediary bank.
- 19.12. Banking Circle may at any time introduce new charges, fees, margins and FX bid offer spreads for services for which Banking Circle has not previously charged subject to one (1) months' notice given to you.
- 19.13. Where the provision of any of its services requires Banking Circle to make a conversion from one currency to another, this shall be done at Banking Circle's Reference Exchange Rate plus the charges, fees, margins and any FX bid offers spreads stated in the Pricing Agreement.
- 19.14. Banking Circle reserves the right to charge interest as follows:
- i. on any overdrawn balance on your Account including where, in our discretion, we advance funds to enable a Transaction to be completed; and
  - ii. on any overdue amount if you default in paying any sum when it is due to us under or in connection with this Agreement.
- Where we charge interest it will be payable at a rate determined by us, subject to Applicable Law. Interest will be calculated on a 360 day year.
- 19.15. Any interest on an outstanding amount shall accrue and become payable until the outstanding payment is made to Banking Circle in its entirety including interest.
- 19.16. You may also need to pay other additional costs, fees and expenses, including any additional fees on termination and any taxes, transfer fees, registration fees and other liabilities, costs and expenses payable in respect of each Transaction that arise in the context of us or another provider under this Agreement, but which are not imposed by us. We will provide you with information about costs as required by Applicable Law.

## 20. AMENDMENTS TO CHARGES, FEES AND MARGINS

20.1. Banking Circle may amend charges, fees, margins, interest and FX bid offer spreads set out in the Pricing Agreement subject to one (1) months' notice where such amendments are not in your favour and without notice where the amendments are in your favour. Banking Circle may also without notice introduce and increase fees for one-off services.

20.2. Further, Banking Circle may vary such charges, fees, margins and FX bid offer spreads without notice when the grounds for the change is due to external circumstances beyond Banking Circle control including but not limited to:

- i. changes in the relationship with Banking Circle's counterparties which affect Banking Circle's cost structure;
- ii. changes in commission and charges from clearing houses, information providers or third-party providers that are passed on to you by Banking Circle; and/or
- iii. changes required by an Authority or Applicable Law.

20.3. The amended charges, fees, margins and FX bid offer spreads will appear from the online Transaction history. Further, you will receive an amended Pricing Agreement if the changes affect your individual fee terms.

## 21. UNAUTHORISED TRANSACTIONS/BLOCKING OF ACCOUNT

21.1. Banking Circle reserves the right to cut off access to and prohibit the use of the Transaction Platforms if the charges and fees cannot be covered in accordance with Clause 19 or if you are otherwise in material breach of your obligations under the Agreement.

21.2. Banking Circle is required, and may take any action we consider appropriate, to meet Compliance Obligations relating to or in connection with the detection, investigation and prevention of money laundering, fraud, breach of

sanctions and other financial crime ("Financial Crime Risk Management Activity"). Such action may include, but is not limited to:

- i. screening, intercepting and investigating any Instruction, communication, drawdown request, application for our Services, or any payment sent to or by you, or on your behalf;
- ii. investigating the source, or intended recipient, of funds; and/or

making further enquiries as to the status of a person or entity, whether they are subject to a sanctions regime, or confirming your identity and status.

21.3. We reserve the right to block your access to the Transaction Platforms and/or specific Accounts if we become aware of or reasonably suspect Financial Crime Risk Management Activity, unauthorised or fraudulent use of such systems or for reasons relating to the security of such systems.

21.4. Exceptionally, our Financial Crime Risk Management Activity may lead to us delaying, blocking or refusing the making or clearing of any payment, the processing of your Instructions or application for our Services or the provision of all or any part of our Services.

21.5. As part of Financial Crime Risk Management Activity, we may need to speak with you to re-confirm some payments or we may need to ask you for additional security information. We will tell you when this is the case. If we need to speak with you but cannot do so for any reason, we will only make the payment if we believe it is genuine. Our Financial Crime Risk Management Activity may lead to the payment being delayed. This will not prevent you from later disputing you authorised the Transaction.

21.6. You authorise us to block your Account(s) or to take such other measures as we may deem fit upon extra-judicial opposition notified to us by third parties regarding your assets, or if we are informed of any actual or alleged unlawful operations by you or by the beneficial owner of the Account, or if any third-party claims exists on the assets held by you with us.



21.7. If you or we become subject to an Insolvency Event, then we may refuse to act on any Instructions from you or anyone else unless you have obtained a validation order from the court. Once we receive evidence that a liquidator or administrator has been appointed, we will act on their Instructions. We may also set up a separate account in your name to which any of your future receipts can be sent. You shall inform us if you know or suspect that you will become subject to an Insolvency Event.

21.8. Unless regulatory requirements prevent us from doing so, we will inform you as soon as reasonably practicable upon the blocking of your Account(s). We may be required under applicable law to notify Authorities that systems or Accounts have been blocked for reasons of unauthorised use or suspicion thereof.

## 22. CONFLICTS OF INTEREST

22.1. You acknowledge and accept that we and any agents or providers may have interests which conflict with your interests and may owe duties to other clients which would otherwise conflict with the duties owed by us to you.

22.2. Banking Circle has a policy for identifying and managing conflicts of interest that could arise in the course of providing our Services to you. The policy is revised from time to time.

22.3. Where you have been introduced to us by a third party, we may pay an introduction fee on a one-off or continuing basis. In addition, where we pass your Transactions or introduce you to a third party, we may receive a fee from the third party on a one-off or continuing basis. The circumstances in which we and other providers receive and make or provide any such payments or other benefits are controlled by Applicable Law, including, to the extent applicable, the FCA and PRA rules.

## 23. AMENDMENTS

23.1. Banking Circle may amend the terms of this Agreement at any time. This might be to make changes, for example:

- i. required by Applicable Law;
- ii. reflect a change in Services; or
- iii. correct any errors.

23.2. Unless otherwise agreed, Banking Circle may amend these General Business Terms or any other part of the Agreement subject to one (1) months' notice where such amendments are not in your favour and otherwise without notice.

23.3. Subject to Applicable Law, amendments to our Agreement may be communicated to you either in writing or through e-mail or similar electronic communication through the Transaction Platforms with terms incorporating the relevant amendments being available through a link to our website or by electronic or physical copy of relevant documentation.

23.4. If you do not provide us with notice of rejection of any amendment of which we have notified you within the period stipulated in Clause 23.1 (or such other notice period in respect of amendments which may apply under the Agreement), we will deem the Agreement to have been amended as per the expiry of the notice period. If you do provide us with notice of rejection of any amendment of which we have notified you, we shall have the right to terminate the business relationship with you with effect as from the date on which the relevant amendment was to apply.

## 24. BANKING CIRCLE'S RIGHT TO REFUNDS AND SET-OFF

24.1. Banking Circle shall be entitled to obtain a refund of (i) any amounts paid by Banking Circle on your behalf and (ii) any expenses incurred by Banking Circle, if you fail to perform your contractual obligations. Such expenses may include payments of insurance premiums relating to legal fees, legal assistance, etc.

24.2. We shall be entitled to, immediately and without prior notice, offset any amount due and payable from and / or block funds on any of your other Account to satisfy any amount



owed by you to us that remain unpaid for more than 30 days after you have been notified that such amount has become due and payable.

- 24.3. For offsetting purposes, we are entitled to terminate a term deposit before its maturity, if required.

## 25. TERM AND TERMINATION

- 25.1. The General Business Terms shall apply from the Effective Date and continue until terminated in accordance with this Clause 25 (*Term and Termination*).

- 25.2. Either Party is entitled to terminate our business relationship for convenience at any time with three (3) months' written notice.

- 25.3. Banking Circle is entitled to terminate the business relationship with you immediately by giving you written notice if:

- i. you are in material breach of your obligations under the Agreement;
- ii. changes to previous information or circumstances you have provided to us mean that you are no longer an acceptable client to us;
- iii. there has been or we reasonably suspect there has been fraud or suspicious activity involving any of your Accounts with us or any Transactions on any of your Accounts;
- iv. you are subject to an Insolvency Event;
- v. we have reasonable grounds for believing you have committed or are about to commit a crime in connection with any of your Accounts;
- vi. we reasonably consider that by continuing the Agreement (a) we may break any Applicable Law or other duty or (b) we may be exposed to action or censure from any Authority.

Without prejudice to any other obligations a breach of which could be deemed material under this Clause 25 (*Term and Termination*), breach of your obligations in Clauses 5 (KYC Requirements), 7 (Your duty to cooperate) or 15.6 ('sniping') and of the General

Business Terms or the Code of Conduct which will always be considered material.

- 25.4. Banking Circle may at its discretion grant you up to a thirty (30) day period to remedy a material breach. Banking Circle may also decide to block your accounts until the breach is sufficiently remedied.

- 25.5. Termination of the business relationship shall be without prejudice to any rights which accrued before termination.

- 25.6. A termination of the business relationship shall not affect:

- i. outstanding Transactions being settled and any costs, charges or any other expenses or amounts whatsoever accruing to us (including any additional expenses in connection with such termination being paid); and
- ii. any rights, obligations, liability claims, etc between you and Banking Circle, and any warranties or indemnities given by you under this Agreement, which shall survive, which by their nature are deemed to survive the termination.

- 25.7. At any time after the termination of this Agreement, or after we have reasonably determined that you have not performed any of your obligations to us, we may, upon three (3) Business Days' notice (oral or written) to you of our intention to do so close out, replace or reverse any such Transaction or take, or refrain from taking, such other action at such times and in such manner as we consider necessary or appropriate to avoid, cover, reduce or eliminate any Loss or liability under or in respect of any contracts, positions or commitments.

- 25.8. Upon termination of this Agreement, all amounts payable by you to us (where only one or more Services is terminated, but not the Agreement as a whole, to the extent they relate to the relevant Service or Services) will become immediately due and payable including (but without limitation):

- i. all outstanding charges, costs, interest and fees;
- ii. any costs expenses incurred by terminating this Agreement; and
- iii. any losses and expenses realised in closing out any Transactions or settling or concluding outstanding obligations incurred by us on your behalf.

25.9. Following termination of this Agreement, you agree that we will be entitled to retain access to your Fee Account or access your term deposit before its maturity, if required until all your outstanding payments have been settled. You permit us to deduct from your Fee Account or term deposit, as applicable, any amounts needed to settle any such payments. We will return to you any remaining funds held in your Fee Account after all amounts owed have been settled. Your Fee Account or term deposit, as applicable, shall then be closed.

25.10. We will not be liable to you for any Loss that you incur as a result of us acting on Instructions that you authorised prior to termination of any Service.

25.11. On termination, you will co-operate with us in arranging the transfer of your money/funds to another financial services provider. If you fail to co-operate with us by providing instructions within a reasonable period of time from our request for you to do so we will have the right to close your Account(s). Pending the transfer of your money/funds to another provider (where applicable), we shall continue to hold the relevant money/funds in accordance with the other provisions of this Agreement, and subject to your paying all applicable charges and costs. However, we shall not have any other responsibility in respect of the relevant money/funds and the only permitted Transactions on your Account will be the transfer out of your money/funds.

## 26. OTHER CLIENT OBLIGATIONS

26.1. You shall ensure at all times that:

- i. the execution, delivery and performance of your obligations under the Agreement and any deviations thereof

agreed between you and Banking Circle, the Transactions and the use of the services contemplated hereunder do not contravene or conflict with (i) any Applicable Law or any order of any Authority, body or agency or any judgment, order or decree of any court having jurisdiction over you, or (ii) the provisions of your constitutional documents;

- ii. you are responsible for conducting KYC, anti-money laundering, sanctions and other financial crime and due diligence checks required by Applicable Law on your customers that will use or benefit from the Services. You will provide us with details, as reasonable, of the processes and procedures that you follow to carry out such checks together with any updates or amendments to those checks which you make while this Agreement is in place between you and Banking Circle;

- iii. you have and will maintain for the term of the business relationship all consents, authority, licenses, recognitions, registrations, permissions, authorisations, exemptions and memberships, including in particular under PSD2 if applicable, necessary for the conduct of your business (and that it is properly empowered and has obtained necessary corporate or other Authority pursuant to its constitutional and organisational documents);

- iv. all Transactions and other activities relating to our services and Banking Circle are concluded in connection with your commercial activities;

- v. you are in compliance with all Applicable Laws to which you are subject, including, without limitation, all consumer regulation, personal data protection regulation, tax law and regulation and registration requirements;

- vi. you have not suspended the payment of your financial obligations as they fall due, entered into arrangement with your creditors generally or certain credit groups, become subject to liquidation, bankruptcy, restructuring or other

bankruptcy proceedings, been party to any enforcement proceedings levied against your assets, nor have you been threatened with any insolvency or enforcement proceedings;

vii. the information provided by you to Banking Circle is complete, accurate and not misleading in any material respect.

26.2. In addition to the above, if you hold a Settlement Account or a Nostro/Vostro Account with Banking Circle, you shall ensure at all times that all payments processed through any of your Settlement Accounts and Nostro/Vostro Accounts, and opened in your name, are made for the benefit of your payment service users and you hereby confirm that you have full power and capacity and are contractually authorised to collect funds for your payment service users with discharging effect on the payer or execute transactions in the name of and with discharging effect on your payment service users.

26.3. You shall inform us immediately if you breach any of the obligations set out in this Clause 26 (*Other Client Obligations*).

## 27. BANKING CIRCLE'S LIABILITY AND LIMITATIONS

27.1. Banking Circle represents, warrants and undertakes that throughout the term of this Agreement:

- i. it is duly constituted, organised and validly exists under the laws of the country of its incorporation;
- ii. it has the ability, capacity and any authorisation (including regulatory authorisation) required by Applicable Law to enter into and perform its obligations under this Agreement;
- iii. it has the legal right, power and authority to enter into, exercise its rights and perform its obligations under this Agreement; and
- iv. entering into this Agreement will not cause it to breach any Applicable Law,

any provision of its constitutional documents or any agreement, licence or other instrument, order, judgment or decree of any court, governmental agency, or Authority to which it is bound.

27.2. Banking Circle will provide the Services and perform its other obligations with reasonable care and skill and in accordance with its policies.

27.3. Banking Circle will not be liable in damages or responsible to you for any Loss arising in connection with this Agreement except to the extent that:

- i. the Loss was caused by our negligence, wilful default or fraud; and
- ii. the Loss was reasonably foreseeable by you and us at the time this Agreement was entered into as a consequence of the breach of duty.

27.4. However, Banking Circle shall not be liable for any fines, penalties, loss of information, profit, goodwill, business or anticipated savings, nor any indirect Losses sustained.

27.5. Banking Circle shall not be liable for Losses resulting from:

- i. breakdown/lack of access to IT systems or damage to data stored in such systems which can be attributed to the events mentioned below, regardless of whether Banking Circle or an external contractor is responsible for operating such systems;
- ii. failure in Banking Circle's power supply or telecommunications, non-availability of Banking Circle's website e.g. due to maintenance downtime, legal measures or administrative decrees, natural disasters, war, riot, civil unrest, sabotage, terrorism or vandalism (including computer virus, cyber terrorism, including but not limited to hacking and other cyber-crime);
- iii. the insolvency of a clearing system, save to the extent the Loss would not have

arisen but for our wilful default or fraud. In the event of the insolvency of any third party, we may only have an unsecured claim against that third party. There is therefore a risk that any amounts recovered from that third party are insufficient to satisfy your claim and the claims of other clients;

- iv. strike, lockout, boycott or blockade, regardless of whether the conflict is directed against or initiated by Banking Circle itself or its organisation and regardless of the reason for the conflict. This also applies if the conflict only affects some of Banking Circle's operations;
  - v. other circumstances which are beyond Banking Circle's control or due to complying with Banking Circle's other obligations under Applicable Law, including but not limited to the action of any government or government agency and/or disruption to the international banking systems to and/or through which payments are sent or any investment exchange and/or clearing house or the operator of SWIFT or any other settlement or clearing system.
- 27.6. Banking Circle's exemption from liability under this Clause 27 (*Banking Circle's Liability and Limitations*) shall not apply where Banking Circle should have foreseen the event causing the Loss at the time of the entering into the business relationship or and should reasonably have avoided or overcome the reason for the Loss.
- 27.7. Banking Circle accepts no liability for errors, delays or other inconveniences caused by any correspondent institution chosen by you. Banking Circle can also not be held responsible for the solvency of such correspondent institution.
- 27.8. Notwithstanding anything to the contrary in the General Business Terms, Banking Circle's total liability in respect of all claims arising in connection with the business relationship and any Transaction or Spot Contract processed on the Transaction Platforms shall be

limited to EUR 40,000 in any twelve-month period.

- 27.9. Banking Circle, its correspondent institutions and other banks in the payment chain check incoming and outgoing payments against relevant terrorists -and anti-money laundering watch lists, including the EU database, which may imply that a payment is stopped and frozen. In such case, Banking Circle is not liable for any subsequent Losses.
- 27.10. The use of the Transaction Platforms is at your own risk and Banking Circle is not liable for any use of the Transaction Platforms. The Transaction Platforms are provided "as is" and Banking Circle does not represent the functionality or suitability of the Transaction Platform for you, or that it will be uninterrupted or error free. All conditions, warranties, covenants, representations and undertakings which might be implied, whether statutory or otherwise, in respect of Banking Circle's obligations are excluded to the maximum extent permitted under Applicable Law. You acknowledge and accept that any information on the Transaction Platform may be inaccurate, incomplete and/or not up to date.
- 27.11. According to its reasonable assessment, Banking Circle may decide that there is an emergency or an extraordinary market situation. Such situations shall comprise, but are not limited to, (i) suspension or shutting down of any market, (ii) any ceasing of or unsuccessful execution of any event on which Banking Circle bases its price quotations, (iii) the occurrence of an unusually large fluctuation in the price or liquidity level for one or more Transactions and/or an underlying market, and/or (iv) Banking Circle's reasonably justified expectation of the occurrence of one or more of the events mentioned in (i) to (iii). In such situations, Banking Circle shall be entitled to immediately cancel one or more Transactions.
- 27.12. Notwithstanding anything to the contrary elsewhere, Banking Circle may cancel a Transaction or a Spot Contract, reject to carry out a Transaction or a Spot Contract and/or reverse amounts transferred into your Accounts without prior notice to you if Banking Circle deems, in its discretion, that the Transaction, Spot

Contract, Instruction and/or payment is a result of an abnormal behaviour or misuse of the Transaction Platforms, including but not limited to speculative activities such as high frequency trading or the use of the platforms for other activities than stated in the General Business Terms or in violation of the Code of Conduct. Such behaviour will be regarded as a material breach of your obligations and you cannot in such event put forward any claims against Banking Circle.

27.13. Banking Circle shall not be liable for any Losses resulting from unauthorised use of its services, including, but not limited to, the Accounts, the Transaction Platforms.

27.14. Nothing in this Agreement excludes or restricts any obligation we have to you under the PRA or FCA rules, the Financial Services and Markets Act 2000 or otherwise under the UK regulatory system, in each case if applicable, or requires you to waive or make good any Loss to us against any breach by us of such an obligation.

## 28. YOUR LIABILITY

28.1. You are obliged to compensate Banking Circle for all Losses, taxes, expenses, costs and liabilities whatsoever (present, future, contingent or otherwise and including reasonable legal fees) which may be suffered or incurred by Banking Circle as a result of or in connection with the breach of your obligations (including representations and warranties) pursuant to the Business.

28.2. For the avoidance of doubt, you are liable without any limit for all Losses relating to payments where you or one of your Authorised Users have acted fraudulently, negligently or failed to comply with the Agreement or Applicable Law.

28.3. You shall indemnify and keep Banking Circle indemnified against all actions, proceedings, costs, Losses or damages of any kind that Banking Circle, its parent company, subsidiaries or associated companies may suffer as a result of handling your Instructions or as a result of your failure to comply with your

obligations under the Agreement or you having acted fraudulently or negligently.

28.4. You will give Banking Circle prior notice (or, if for confidentiality reasons you are unable to give Banking Circle advance notice, as soon as possible thereafter) if you undergo a change of Control. The notification shall include details of the new Controller.

28.5. You agree to comply with, and ensure your employees comply with, Banking Circle's policies (including our security, financial crime and privacy policies) that apply to your use of the Services.

## 29. CONFIDENTIALITY, DISCLOSURE OF INFORMATION, AND OUTSOURCING

29.1. Banking Circle's privacy policy as documented into the Personal Data Protection Addendum applies to your use of our Services and the Transaction Platforms. The Personal Data Protection Addendum is available on Banking Circle's website and/or is provided to you when entering the business relationship.

29.2. We are bound by strict professional secrecy obligations, and may not disclose data or information relating to our business relationship with you to any third party, except when disclosure of the information is made in compliance with, or required under, Applicable Law, or upon your instruction or otherwise with your consent.

29.3. In order to adequately and efficiently provide you with our Services, to comply with applicable legal and regulatory requirements whether in Luxembourg or abroad, we must in certain circumstances disclose your information.

29.4. You are hereby informed, acknowledge and accept that certain of our processes and data may be transferred to and processed by third party in the context of various outsourcing arrangements. More information on the various outsourcing arrangements Banking Circle has entered into can be found in the Outsourcing Addendum.



- 29.5. We are further both entitled and required to disclose certain data, in connection with payment or other transactions that we carry out for you, to any other third parties in Luxembourg or abroad that are involved in these transactions (e.g., in their role as banks, especially correspondent institutions, operators of payment systems or brokers). The data that may need to be disclosed by us in this context may in particular include the data explicitly specified above, the account number, the International Bank Account Number (IBAN), as well as name of the beneficiary of the payment. In particular, data contained in credit transfer orders or any similar payment transactions carried out for your Account(s) and on your behalf will be processed by our subcontractors or other specialised companies, such as SWIFT. Such processing may take place in special centres or with third parties located in other countries in or outside of the EEA/EU, including in countries which may not offer a similar level of protection as applicable within the EEA/EU, in accordance with their legislation. Accordingly, you acknowledge that such third parties or Authorities in said countries may request access to data which is stored in processing centres of this sort, for the purposes of combatting terrorism or for any other legal purpose. By instructing us to carry out any transaction, you acknowledge and agree that all data required in order to execute the transaction correctly may be shared, processed and held outside of Luxembourg or may be disclosed to local Authorities or any third parties as described.
- 29.6. Please note that, when transferring funds internationally, information may be passed on to relevant US Authorities. SWIFT – who facilitates such international transfers – is required to report information about the transaction to relevant US Authorities if it suspects the transaction to be connected to financing of criminal activities or terrorism in accordance with US laws and regulations.
- 29.7. You acknowledge that we are under certain circumstances required by the Luxembourg Law of 18 December 2015 regarding the automatic exchange of information (AEI) on financial accounts in tax matters, as amended,
- 29.8. We are further both entitled and required to disclose certain data, in connection with payment or other transactions that we carry out for you, to any other third parties in Luxembourg or abroad that are involved in these transactions (e.g., in their role as banks, especially correspondent institutions, operators of payment systems or brokers). The data that may need to be disclosed by us in this context may in particular include the data explicitly specified above, the account number, the International Bank Account Number (IBAN), as well as name of the beneficiary of the payment. In particular, data contained in credit transfer orders or any similar payment transactions carried out for your Account(s) and on your behalf will be processed by our subcontractors or other specialised companies, such as SWIFT. Such processing may take place in special centres or with third parties located in other countries in or outside of the EEA/EU, including in countries which may not offer a similar level of protection as applicable within the EEA/EU, in accordance with their legislation. Accordingly, you acknowledge that such third parties or Authorities in said countries may request access to data which is stored in processing centres of this sort, for the purposes of combatting terrorism or for any other legal purpose. By instructing us to carry out any transaction, you acknowledge and agree that all data required in order to execute the transaction correctly may be shared, processed and held outside of Luxembourg or may be disclosed to local Authorities or any third parties as described.
- and the Luxembourg Law of 24 July 2015 approving the Agreement between the Grand Duchy of Luxembourg and the Government of the United States of America in view to improve international tax compliance and relating to the dispositions of the United States of America concerning the exchange of information commonly called the “Foreign Account Tax Compliance Act” (FATCA), to report certain Personal Data relating to your director(s) or ultimate beneficial owner(s), who are subject to disclosure in connection with the AEI or FATCA, to the Luxembourg Direct Tax Administration (referred to hereinafter as the “LTA”) and/or the US Internal Revenue Service (IRS) or any other competent US Authority on an annual basis, which in turn passes on such data to the competent tax Authorities in any reportable jurisdiction(s) in which the reportable person is resident for tax purposes. For the purposes of the AEI and FATCA we are a data controller within the meaning of statutory regulations on data protection and we may disclose data to service providers in order for them to effect the reporting on our behalf. The data we are required to disclose to the LTA includes the name(s), address(es), TIN(s), date(s) and place(s) of birth, account number(s), the name of the bank, account balance(s) or value(s) as of the end of the relevant calendar year or other appropriate reporting period if the account(s) was/were closed during the year, and in the case of (a) custodial account(s); the total gross amount of interest, dividends and other income generated with respect to the assets held in the account(s) and the total gross proceeds from the sale or redemption, and (b) depository account(s); the total gross amount of interest paid by or credited for you. For each information request we send to you, addressing such information request is obligatory, and failure to respond or provide the required information may trigger incorrect reporting or reporting in multiple jurisdictions for which we have identified indicia in our files. You have the right, free of charge, to access the data transferred to the LTA and may ask for a rectification thereof if such data is inaccurate or incomplete.
- 29.8. We are required under regulatory requirements to report certain transactions to a trade repository or relevant regulators. You hereby acknowledge that disclosure made pursuant

to such regulatory requirements may include your identity (by name, identifier or otherwise).

- 29.9. For the avoidance of doubt, neither Party shall copy, reproduce or disclose any information relating to the other Party's business, investments, finances or other matters of a confidential nature as may come to the Party's knowledge during the performance of said Party's obligations or in any other ways, and both Parties shall use all reasonable endeavours to prevent any such disclosure. This shall not apply, however, where the Party is obliged to disclose such information due to applicable legislation or due to a public or supervisory Authority or to another person who is entitled by law to demand such disclosure (including the tax Authorities), or in order to enable the Party to an adequate extent to fulfil its obligations in accordance with the Agreement.

### 30. AUDIT/COMPLIANCE REVIEW

- 30.1. Upon two (2) weeks written notice and upon reasonable grounds for belief of non-compliance or as part of an ordinary annual compliance review, Banking Circle or a representative acting on behalf of Banking Circle, shall have the right to conduct an on-site audit/compliance review during Business Hours. The on-site audit/compliance review shall be strictly limited to the extent reasonably necessary to validate such compliance and/or carry out other reasonable control measures in order to verify compliance with the Agreement.
- 30.2. You shall reasonably cooperate with Banking Circle by: (a) making applicable records available; (b) providing copies of the relevant records requested; and (c) directing all employees, agents and representatives to reasonably cooperate. If the audit/compliance review shows that you are not in compliance with the Agreement, you shall pay Banking Circle's reasonable expenses for conducting the audit along with any other claim for breach of the Agreement.

### 31. EVIDENCE

- 31.1. You expressly agree that, notwithstanding the provisions of Article 1341 of the Luxembourg Civil Code, we will, whenever useful or necessary, be entitled to prove our allegations by any means legally admissible in commercial matters, such as witnesses or affidavits.
- 31.2. Computerised registrations effected by us on the basis of original documents, will constitute prima facie evidence and will have the same value in evidence as an original written document. You may only disprove micrographic reproductions or electronic records or any other form of record made by us on the basis of original documents or documents having the value of an original by submitting a document of the same nature or in writing.
- 31.3. Our books and records will be regarded as probative and will conclusively prove inter alia the messages and instructions given by you and that Transactions mentioned in such documents have been carried out in accordance with your instructions.
- 31.4. Tape recording of telephone conversations may be used in court or other legal proceedings with the same value in evidence as a written document.

### 32. PROTECTION OF DEPOSITORS

- 32.1. We are a member of the Fonds de garantie des dépôts in Luxembourg (hereinafter "FGDL"), which ensures the protection of clients' deposits up to certain amounts and subject to certain conditions, in case of our default. For more information please go to [www.fgdL.lu](http://www.fgdL.lu).
- 32.2. **Please note that if you are a credit institution or other regulated financial institution, your deposits with us will not be eligible for coverage under the FGDL guarantee scheme. Further, your deposits with us may otherwise be ineligible for coverage under the FGDL guarantee scheme due to other criteria.**
- 32.3. Should your deposits with us be eligible for coverage under the FGDL guarantee scheme,



we will provide you with additional information separately. Such information will also be provided to you directly on an annual basis. If eligible, clients' cash deposits with us are guaranteed by the FGDL deposit guarantee scheme up to an amount of EUR 100,000.

### 33. TRANSFER AND ASSIGNMENT

33.1. Banking Circle may assign the business relationship to other entities belonging to the same group of companies or in connection with any corporate restructure, reorganisation or the sale of Banking Circle's business.

33.2. You may not assign or transfer any of your rights or obligations under the Agreement, without a prior written consent from Banking Circle.

### 34. LIMITATION OF CLAIMS

34.1. Legal actions initiated by you against us must be filed with the competent courts within twelve (12) months from the date of our action, or omission, giving rise to your claim. Any action brought after the expiry of such twelve (12) month period will be time barred.

### 35. MISCELLANEOUS

35.1. In some cases, Banking Circle receives a commission or another fee when Banking Circle sells a partner's products or when Banking Circle refers you to another company.

35.2. Any right, title and interest in and to Banking Circle's website and any content thereon is the exclusive property of Banking Circle. The name "Banking Circle" and our logos are trademarks belonging to Banking Circle S.A. and you are unauthorised to copy, imitate, modify, alter, amend or use the names without our prior written consent.

35.3. You may not alter, modify or change the Transaction Platforms or intellectual properties in any way, or use them in a manner that is disparaging or display them in any manner

that implies Banking Circle's sponsorship, endorsement, affiliation or otherwise.

35.4. You may not reverse engineer, decompile, or disassemble any of the software used for the Transaction Platforms or services. Also, you may not copy, modify, sell, distribute or transfer any parts of the software used for the Transaction Platforms or services.

35.5. These General Business Terms are applicable from the date hereof and shall remain effective until a new version is released. The newest and current version of the General Business Terms is always available on Banking Circle's website.

### 36. RIGHTS AND REMEDIES

36.1. For the avoidance of doubt, in the event that the UK Contracts (Rights of Third Parties) Act 1999 is found to be applicable to this Agreement, a person who is not a party to this Agreement has no right under the Act to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

36.2. Except where otherwise expressly provided, the rights and remedies contained in this Agreement are cumulative and not exclusive of rights and remedies provided by law.

36.3. No delay in exercising, or failure to exercise, any right, power or remedy in connection with this Agreement will be considered a waiver of any of these. No single or partial exercise of a right will preclude any other exercise of that right.

### 37. OUR AUTHORITY AND USE OF THIRD PARTIES

37.1. You hereby confer on us all powers, authorities and discretions on your behalf which are necessary for, incidental to, or customary in, the provision of the Services to be provided under this Agreement, including the power to appoint sub-agents, and you hereby agree to ratify and confirm everything which we shall lawfully do in the exercise of such powers, Authorities or discretions in the manner contemplated under this Agreement.

37.2. If required to do so by us, you shall execute in favour of us a power of attorney in such form and conferring such powers as we may reasonably think fit to enable us to provide our Services under this Agreement. We shall be entitled to instruct any brokers and other agents on your behalf as we may decide and confer on them all such Authorities conferred on us hereunder (including the Authority to appoint other brokers and agents likewise).

37.3. We may arrange for the provision of any or all of the Services to you under this Agreement or the carrying out of any element of those Services (including any administrative functions) from any of our offices or other business divisions. In particular, we may carry out any Transaction for you, in our discretion, with or through a broker, intermediary, or member of any exchange/clearing institution on such terms as we think fit (including entering into such contracts as a principal whilst discharging our duty to you as your agent and entering into any give-up or similar agreement on your behalf).

#### 38. QUERIES AND COMPLAINTS

38.1. If you have a query regarding a payment, the query shall be raised in the first instance to the client services team at [clientservices@bankingcircle.com](mailto:clientservices@bankingcircle.com).

38.2. Banking Circle will have no interaction with neither payers or payees of your payment service users or customers and your payment service users or customers themselves acting in any of these capacities. If any of the payers, payees or your payment service users or customers contacts Banking Circle, Banking Circle shall refer them to you and you shall resolve any issues with them directly.

38.3. If you are not satisfied with the Service you have received and wish to make a complaint or raise a dispute, you should email us at [info@bankingcircle.com](mailto:info@bankingcircle.com), setting out full details of the matter.

38.4. Any complaint will be handled in accordance with Banking Circle's complaint handling policy (available on <https://www.bankingcircle.com/complaints-policy>). The complaint handling policy is available in English only. Unless otherwise agreed, any correspondence between us in relation to a complaint shall be made by e-mail.

#### 39. ENTIRE AGREEMENT

The Agreement constitutes the entire agreement between the Parties. Any prior statement or representation by either Party, whether express or implied is hereby excluded from the Agreement insofar as is permissible under Applicable Law.

#### 40. ILLEGALITY, INVALIDITY AND UNENFORCEABILITY

40.1. If any provision or term of this Agreement or any part thereof shall become or be declared illegal, invalid or unenforceable for any reason whatsoever, such term, provision or part shall be divisible from this Agreement and shall be deemed to be deleted from this Agreement.

40.2. We are entitled to take any action, or to refuse to take any action, which we regard as necessary for us to comply with Applicable Law. You agree, when instructing us, to comply with all Applicable Law to which you are subject.

#### 41. GOVERNING LAW AND CHOICE OF JURISDICTION

41.1. The Agreement and any matter arising from or in connection with the business relationship, including the termination hereof, shall be governed by and construed in accordance with Luxembourg law, excluding private international choice of law rules, and all claims and disputes (including non-contractual claims and disputes) arising out of or in connection with this Agreement and/or its subject matter, negotiation or formation will be determined in accordance with Luxembourg law.

41.2. Each Party submits to the courts of Luxembourg in relation to all claims, disputes, differences or other matters (including non-contractual claims, disputes, differences or other

matters) arising out of or in connection with this Agreement.

#### 42. FORCE MAJEURE

- 42.1. If either Party is unable to perform its obligations under this Agreement in whole or in part because of a Force Majeure Event, then the Party affected shall immediately notify the other Party of the extent to which it will be unable to perform its obligations.
- 42.2. If Banking Circle is the Party affected, Banking Circle will implement its business continuity plan.
- 42.3. The Party affected will use reasonable efforts to minimise the effect of the Force Majeure Event.
- 42.4. If the Party affected complies with its obligations above, that Party will not be liable to the other Party for Losses the other Party suffers as a result of the Force Majeure Event.

#### 43. PSD2 AND PSRs – AGREED TERMS

- 43.1. These General Business Terms, together with any other part of the Agreement setting out the generally applicable terms of our services constitute a “Framework Contract” as defined in the PSRs.
- 43.2. You acknowledge and accept the provisions of Title III (*Transparency of conditions and information requirements for payment services*) of PSD2 shall not apply unless specifically provided in the Business Terms. Further, without limitation to any other provision hereof, you acknowledge and accept the provisions of Part 6 (*Information Requirements for Payment Services*) of the PSRs shall not apply unless specifically provided in the Business Terms.
- 43.3. You agree that the provisions of articles 72 (*evidence on authentication and execution of payment transactions*), 76 (*refunds for payment transactions initiated by or through a payee*), 80 (*irrevocability of a payment order*), 89 (*liability for non-execution, defective or late execution of payment transactions*) of

PSD2 shall not provide you with more favourable terms than set out in the Agreement, including in respect of burden of proof.

- 43.4. Without limitation to any other provision hereof, to the extent you or Services provided to you are subject to the PSRs, in accordance with regulation 63(5) of the PSRs, you agree that Banking Circle is not required to provide you with the information under, or comply with, regulations 66(1) (*Charges*), 67(3) and 67(4) (*Consent and withdrawal of consent*), 75 (*Evidence on authentication and execution of payment transactions*), 77 (*Payer or payee’s liability for unauthorised payment transactions*), 79 (*Refunds for payment transactions initiated by or through a payee*), 80 (*Requests for refunds for payment transactions initiated by or through a payee*), 91 (*Non-execution or defective or late execution of payment transactions initiated by the payer*), 92 (*Non-execution or defective or late execution of payment transactions initiated by the payee*), 93 (*Non-execution or defective or late execution of payment transactions initiated through a payment initiation service*) and 94 (*Liability of payment service provider for charges and interest*) of the PSRs.

- 43.5. To the extent permitted by regulation 85, you agree that Banking Circle is not required to provide you with the information under, or comply with, regulations 86 to 88 of the PSRs.
- 43.6. If any Loss suffered by you as a consequence of any unauthorised payment transactions result from the use of a lost, stolen, or misappropriated payment instrument as set out in article 73 (*Payment service provider’s liability for unauthorised payment transactions*) of PSD2, no limit shall apply to the amount of Loss which shall be borne by you.

#### 44. DEFINITIONS AND INTERPRETATION

- 44.1. In these General Business Terms the following terms shall, unless the context otherwise pledges, have the following meanings and may be used in singular or plural as appropriate:
- i. “Account” means any account(s) with Banking Circle opened in your name, including any

- account opened with any branch of Banking Circle;
- ii. "Account Statement" means a periodic statement of the transactions credited to or debited from an Account;
  - iii. "Agreement" has the meaning defined in Clause 1.1;
  - iv. "Applicable law" means any law, statute, regulation or legally binding requirement or order as interpreted taking appropriate account of regulatory policy, guidance or industry code, relating to either of the parties or subject matter in question, including any instructions or requirement imposed by a competent Authority, and any rules and restrictions in relation to trade embargos or other sanctions regulation imposed by the United States, the United Nations, the European Union and any of its member states or the United Kingdom or any institution or agency acting on behalf of any of them, in each case to which (i) Banking Circle and any of its branches and/or the Services and, if the context so requires, you (ii) are subject;
  - v. "Authorised User" has the meaning defined in Clause 4.1;
  - vi. "Authorities" includes any judicial, administrative, public or regulatory body, any government, any tax authority, securities or futures exchange, court, central bank or law enforcement body, or any of their agents;
  - vii. "Banking Circle web" means the payment solution provided by Banking Circle to its clients enabling the clients to hold payment accounts in their name, handle payments and currency conversions;
  - viii. "Business Day" means any day on which banks are opened for business in Luxembourg; "Business Hours" means the time between 09:00 and 17:00 (Luxembourg time);
  - ix. "Code of Conduct" means Banking Circle's Code of Conduct (or any document howsoever named replacing the Code of Conduct) of use of the Transaction Platforms as applicable from time to time;
  - x. "Collateral Account" means the Client's settlement account for the Real-Time FX Platform;
  - xi. "Compliance Obligation" means under Applicable Law and/or any other obligation of Banking Circle to comply with: (a) laws or international guidance and internal policies or procedures, (b) any demand from authorities or reporting, disclosure or other obligations under laws, and (c) laws requiring us to verify the identity of our clients.
  - xii. "Contract" means any contract, for the purchase or sale of any currency, entered into by Banking Circle with you;
  - xiii. "Control" means (i) ownership of (50) fifty per cent or more of the issued share capital, or (ii) the power to direct or cause the direction of the general management, of the relevant entity, or its parent. The terms "Controlled", "Controlling", "Controller" and "Controls" shall have the same meaning.
  - xiv. "Current Accounts" means the account(s) opened in the name of a legal entity for the purpose of receiving and sending payments in its own name from and to third parties and qualifying as payment account under PSD2;
  - xv. "Effective Date" means the date the last Party signs this Agreement;
  - xvi. "Fee Account" means a single account used for settling fees from activities on the Banking Circle web;
  - xvii. "Force Majeure Event" means any circumstances beyond the reasonable control of the affected Party, including civil unrest, war, act of terrorism, threat or perceived threat of act of terrorism, riots, disaster, earthquake, extraordinary storm, lock-out or other industrial dispute, public internet failure, or changes in Applicable Law, to the extent that such circumstances materially affect the ability of the party relying on those circumstances to perform its obligations under this Agreement;
  - xviii. "General Business Terms" has the meaning defined in Clause 1.1;
  - xix. "Insolvency Event" means that a Party:
    - (a) is unable, or admits inability, to pay its debts or suspends or threatens to suspend making a payment on any of its debts;
    - (b) has an order or petition made against it or a resolution passed for its administration, winding-up or dissolution or any other corporate step or legal proceeding is taken with a view to the same (otherwise than for the purposes of a solvent amalgamation or reconstruction);
    - (c) has an administrative receiver, receiver, manager, liquidator, administrator, trustee or similar officer appointed over all or a significant part of its assets;
    - (d) enters into or proposes any compromise arrangement with its creditors; or

- (e) suffers or carries out anything similar to the above in any applicable jurisdiction;
- xx. "Instructions" means any payment or transaction instruction, where you instruct Banking Circle to perform a Transaction or a Spot Contract;
- xxi. "Loss" includes any loss (including loss of profits), costs, damages, taxes, expenses or other liability.
- xxii. "Margin Trade" means a contract opened and maintained based on a margin deposit as opposed to a contract based on a purchase price;
- xxiii. "Nostro/Vostro Account(s)" means the account(s) opened in the name of an entity licensed as credit institution and used for the purpose of providing payment services to its payment service users;
- xxiv. "Outsourcing Addendum" means the addendum provided to you as part of the Agreement and providing information on the type of information transmitted in the context of the processes outsourced by Banking Circle, the suppliers of the services and their country of establishment.
- xxv. "Party" means each of you and Banking Circle individually, and "Parties" means you and Banking Circle collectively;
- xxvi. "Payment Accounts" means any Settlement Account, Current Account or Vostro/Nostro Account;
- xxvii. "Personal Data Protection Addendum" means the terms and conditions that govern Banking Circle treatment of personal data when clients use Banking Circle's services (including, but not limited to any information you provide in relation to the use of Banking Circle's Services) as applicable from time to time;
- xxviii. "Pricing Agreement" means the agreement executed by you and Banking Circle documenting the agreed pricing for the provision of the Services;
- xxix. "PSD2" means the directive (EU) 2015/2366 on payment services in the internal market and any enactment transposing directive (EU) 2015/2366 into national law (including with respect to Luxembourg law of 10 November 2009) and any applicable rules and regulations issued by the European Union, any member state or any of their competent Authorities pursuant thereto and having the force of law;
- xxx. "PSRs" mean the UK Payment Services Regulations 2017;
- xxxi. "Real-Time FX Platform" means the online trading platform 'Real-Time FX' made available by Banking Circle and enabling you to trade currency;
- xxxii. "Reference Exchange Rate" means the relevant Spot exchange rate prevailing on the foreign exchange market, as conclusively determined by Banking Circle.
- xxxiii. "Settlement/Trade Confirmation" means a notification from Banking Circle confirming the entry into a spot Contract;
- xxxiv. "Settlement Account" means the account opened in the name of an entity licensed as payment service provider under PSD2 or any similar regulation outside the European Union and used for the purpose of providing payment services to its payment service users and qualifying as a payment account under PSD2;
- xxxv. "Spot Contract" / "Spot" has the meaning given in Article 10 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;
- xxxvi. "SWIFT Gateway" means the messaging capacity that allows for payment messages to be initiated and distributed;
- xxxvii. "Transaction" means transfer or receipt of funds or any other action or disposal of funds carried out by Banking Circle on your behalf;
- xxxviii. "Transaction Platforms" means Banking Circle web, the Real-Time FX Platform and any other system or application programming interface(s) (API) made available by Banking Circle; and
- xxxix. "User Registration Form" means the form setting out the roles and privileges of certain individuals using of the Transaction Platforms on your behalf;
- xl. "Virtual IBAN" means the unique identifiers consisting of a combination of letters and numbers in the form of an international bank account number.
- xli. "WTR" means the regulation 2015/847 on information accompanying transfer of funds as amended from time to time.
- 44.2. References to any law, statute, regulation or enactment in these General Business Terms



shall include references to any amendment, modification or re-enactment thereof or to any regulation or order made under such law, statute or enactment.

- 44.3. Any references to the terms "include", "includes", "including", or any similar terms are not intended to limit the, or provide an exhaustive, meaning or generality of the related wording.