

**convera**

# Standard Terms and Conditions

Convera Europe S.A., Austria Branch

Convera Europe Financial S.A., Austria Branch

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Words commencing with a capital letter in these Standard Terms and Conditions are defined in clause 1 below.

Services will be provided by Convera Europe S.A., Austria Branch and/or Convera Europe Financial S.A., Austria Branch.

In these Standard Terms and Conditions:

- (a) Section A sets out the provisions applicable to the Services provided by each of Convera Europe S.A., Austria Branch and Convera Europe Financial S.A., Austria Branch;
- (b) Section B sets out the terms applicable to the Payment Services that are provided by Convera Europe S.A., Austria Branch; and
- (c) Section C sets out the terms applicable to the Derivative Services that are provided by Convera Europe Financial S.A., Austria Branch.

These Standard Terms and Conditions govern, as set out hereinafter, Your relations with Us in relation to transfers of money and/or foreign exchange transactions that You request Us to execute. Convera Europe S.A., Austria Branch will provide the Payment Services and Convera Europe Financial S.A., Austria Branch shall provide the Derivative Services.

You hereby represent, warrant and confirm that You are not a Consumer. You must immediately inform Us if at any time You become a Consumer.

To the fullest extent permitted by law, by the fact that You enter into these Standard Terms and Conditions, You hereby expressly agree that the following shall as from its date of signature by Your relevant legal representative or duly authorised representative be binding to You under these Standard Terms and Conditions.

To the fullest extent permitted by law, You hereby agree, as corporate client, that the provisions contained in §§ 32 to 54 of the Austrian Payment Services Act 2018 (*Zahlungsdienstegesetz 2018 – ZaDiG 2018*) regarding transparency of conditions and information requirements for payment services shall not apply in relation to the Services rendered under these Standard Terms and Conditions. Furthermore, You agree that §§ 56(1), 58(3) as well as §§ 66, 68, 70, 71, 74 and 80 of the Austrian Payment Services Act 2018 contained in the fourth main chapter (*Hauptstück*) (*Rights and Obligations in relation to the Provision and Use of Payment Services*) of the Austrian Payment Services Act 2018, shall not apply in relation to the Services.

The contract entered into between You and Us will be governed by these Standard Terms and Conditions (or by these Standard Terms and Conditions as modified by Us and accepted by You in accordance with the provisions of clause 21.3 below) and the Services that We perform will be performed on the basis of the details of the instructions given in the Confirmation that We have sent You. These Standard Terms and Conditions, the Confirmation, the Request and the Subscription to the Services will together constitute the whole of the agreement between You and Us, subject to specific agreement(s) between You and Us that may be entered into in accordance with the provisions of these Standard Terms and Conditions.

You acknowledge and agree that, for purposes of applicable payment services law, Your Request to perform a transaction shall constitute Your consent to Us executing the transaction as it is reflected in the Confirmation. You may withdraw Your consent only as permitted under the Cancellation provisions in Section 7 contained herein, subject to any restrictions or limitations set forth therein.

**1 Definitions**

**“Addendum”** means an additional agreement which may contain additional terms and conditions, as provided to You by Us from time to time, including without limitation, any pricing schedules, service-specific addendums, and credit letters;

**“Advance Payment”** means a deposit You have made in connection with a Derivative Contract or a PPE Forward Contract; such payment shall be cash collateral (*Barsicherheit*) within the meaning of § 3(1)(4) of the Austrian Financial Collateral Act (*Finanzsicherheiten-Gesetz - FinSG*);

**“Agreed Process”** means any process agreed between You and Us in respect of a Dispute other than the procedure set out at clause 27.3 below;

**“Applicable Law”** means any national, federal, state, provincial, local, foreign or supranational law, statute, regulation, ordinance, rule, order or decree by any governmental entity, quasi-governmental entity, court, tribunal, judicial or arbitral body, commission, board, bureau, agency or instrumentality or any regulatory, administrative or other department, agency or any political or other subdivision, department or branch of any of the foregoing to which We or You (as applicable) is subject;

**“Assistant Security Administrator”** means the person appointed by You to ensure the confidentiality of the Security Administrator’s Online System Access Methods;

**“Banking Act 1993”** means the Luxembourg act of 5 April 1993 on the financial sector, as amended;

**“Beneficiary”** means any third party to which You instruct Us to deliver a payment;

**“Business Day”** means Monday to Friday, excluding public and bank holidays in Austria and any reference to a time of day shall be to Austria time;

**“Buyer”** means the party specified as such in the related Option Confirmation;

**“Call Currency”** means the currency specified as such in the related Option Confirmation or, if such currency is not specified, the currency that is to be purchased by the Buyer;

**“Call Currency Amount”** means the amount of the Call Currency to be purchased on exercise of the Option as specified in the related Option Confirmation;

**“Call Option”** means a transaction which gives the Buyer the right but not the obligation to buy from the Seller, at the Expiration Time, the Call Currency Amount at the Strike Price;

**“Cash Settlement Amount”** means the amount payable by either You or Us on the Value Date, as determined by Us;

**“CET”** means Central European Time;

**“Change of Control”** means any change of control over You following your acceptance of these Standard Terms and Conditions where "control" means the power to, directly or indirectly, (including the direct or indirect control by persons acting in concert as defined in § 244(2) of the Austrian Enterprise Code (*Unternehmensgesetzbuch - UGB*) direct Your management and policies or to control the composition of Your corporate bodies, whether through the ownership of voting capital, by contract or otherwise;

**“Collateral”** means any Advance Payment and/or Margin Deposit;

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

**“Confirmation”** means a document containing our acceptance of Your instructions, which We will send to You every time that You send us a Request;

**“Confirmation Delivery Deadline”** means the end of the Business Day following the Trade Date;

**“Consumer”** means a natural person who is acting for purposes other than his or her trade, business or profession (§ 4(20) of the Austrian Payment Services Act 2018) including a person within the meaning § 1(1)(2) and (3) of the Austrian Consumer Protection Act (*Konsumsentschutzgesetz – KSchG*);

**“Contract Date”** means the date on which You instruct Us to enter into a Future Payment transaction;

**“Contract Funds”** means the amount and type of currency You agree to purchase from or sell to Us;

**“Contract Rate”** means the agreed exchange rate which will be used to calculate the Cash Settlement Amount;

**“Convera Affiliate”** means any person controlled by Us, any person controlling Us and/or any person controlled by same person as Us, and notified to You by Us from time to time;

**“Convera Europe”** means the branch in Austria of Convera Europe S.A., a public limited company (Company number B262832) with its registered office at OBH Building, sis 6B rue du Fort Niedergrunewald L-2226 Luxembourg;

**“Convera Europe Financial”** means the branch in Austria of Convera Europe Financial S.A., a public limited company (Company number B264303), with its registered office at OBH Building, sis 6B rue du Fort Niedergrunewald L-2226 Luxembourg;

**“Convera International”** means Custom House Financial (UK) Limited, a Convera Affiliate incorporated in England and Wales, (Company Number 04380026), with its registered office at Alphabeta Building, 14-18 Finsbury Square, London, EC2A 1AH, United Kingdom;

**“Convera Lithuania”** means Convera Lithuania UAB, a Convera Affiliate being a private limited liability company organized and existing under the laws of the Republic of Lithuania, legal entity code 305910417, with its registered address at Juozo Balčikonio g. 9, Vilnius, The Republic of Lithuania;

**“Counterparty Data”** means, with respect to a Relevant Transaction and You, the information with respect to You required to complete the fields set out in Table 1 (*Counterparty Data*) of the Reporting Annexes;

**“CSSF”** means the *Commission de surveillance du secteur financier*, the Luxembourg regulator of the financial sector, having its address at 283, route d’Arlon, L-1150 Luxembourg, Grand Duchy of Luxembourg;

**“CSSF Outsourcing Guidelines”** means Circular CSSF 22/806 on outsourcing arrangements.

**“Customer Profile Document”** means a form prepared by Us, filled in, executed and submitted by the You containing information about and serving for the purpose of assessment of, amongst other things, Your 5categorization under MiFID 2 rules, Your knowledge and experience in relation to foreign exchange derivative contracts, Your business needs and objectives, Your risk appetite and Your risk and loss bearing capacity based on Your financial situation;

**“Data Delivery Date”** means one Business Day prior to the relevant PR Due Date;

**“Data Reconciliation”** means a comparison of the Portfolio Data provided by Us against Your own books and records of all outstanding Derivative Contracts in order to identify promptly any misunderstandings of Key Terms;

**“Delivery Window”** means the period of time prior to the Maturity Date during which You may Draw Down on a Forward Contract or a PPE Forward Contract, if so agreed between You and Us;

**“Derivative Contract”** means a Forward Contract, NDF or an Option Contract between You and Us entered into pursuant to these Standard Terms and Conditions and shall not include a PPE Forward Contract;

**“Derivative Services”** means the conclusion of Derivative Contracts and the provision of Investment Advice and the provision of Standing Orders relating to Derivative Contracts.

**“Dispute”** means any dispute between You and Us relating to the recognition of a Derivative Contract or the valuation of a Derivative Contract or Collateral in respect of which a Dispute Notice has been effectively delivered;

**“Dispute Date”** means with respect to a Dispute, the date on which a Dispute Notice is effectively delivered by one party to the other party save that if, with respect to a Dispute, both parties deliver a Dispute Notice, the date on which the first in time of such Dispute Notices is effectively delivered will be the Dispute Date. Each Dispute Notice will be effectively delivered if delivered by facsimile, letter or e-mail to the address or facsimile number most recently provided by You or Us, as the case may be, to the other party;

**“Dispute Notice”** means a notice in Writing which states that it is a dispute notice for the purposes of clause 27.3 of these Standard Terms and Conditions and which sets out in reasonable detail the issue in dispute (including, without limitation, the Derivative Contract(s) to which the issue relates);

**“Draw Down”** means the partial delivery and/or partial or full settlement of a Forward Contract or PPE Forward Contract;

**“EBA Guidelines”** means EBA/GL/2019/02, “Guidelines on outsourcing”, published by the European Banking Authority on 25 February 2019, or any successor or update thereto;

**“EEA”** means the European Economic Area;

**“EMIR”** means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (as amended by Regulation (EU) No 2019/834 of the European Parliament and of the Council of 20 May 2019);

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

**“European Option”** means an Option Contract that can only be exercised at the Expiration Time;

**“Exercise Date”** means the date on which the Seller accepts a Notice of Exercise;

**“Expiration Date”** means the last date on which the Option can be exercised;

**“Expiration Time”** means the latest time at which We will accept a Notice of Exercise, which shall be 3:00 p.m. (CET) on the Exercise Date, unless otherwise stated in the applicable Option Confirmation;

**“FATCA”** means the Foreign Account Tax Compliance Act enacted by the United States of America (U.S.), which affects foreign financial institutions globally, including Us, and in general is relevant for Your transactions with Us of U.S. sourced income that is being transferred to non-U.S. persons;

**“Financial Collateral”** means financial collateral within the meaning of § 3(1)(1) of the Austrian Financial Collateral Act, provided by You to Us as the Advance Payment and the Margin Deposit(s) by way of full title transfer (*Vollrechtsübertragung*) within the meaning of § 3(1)(2) of the Austrian Financial Collateral Act with respect to such funds, in order to secure Our receivables in connection with the Forward Contract(s), PPE Forward Contracts, NDFs or Option Contracts;

**“Financial Services Guide”** means a document named as such prepared by Us and delivered to You along with these setting out, amongst other things, detailed description of issues related to handling by Us any potential conflict of interest issues, filing complaints, our contact details, manner and language that we can be contacted in, categorization of Our clients for the purposes of MiFID 2, best execution policy, structure of Our remuneration in relation to Services, applicable investor protection scheme and competent financial supervisory authorities;

**“Fixing Date”** means the date the Fixing Rate is determined and the Cash Settlement Amount is calculated;

**“Fixing Rate”**: means the rate displayed on an independent market rate source at the agreed time on the Fixing Date. The Fixing Rate is used to calculate the Cash Settlement Amount;

**“Force Majeure”** means any circumstance which is not within Our reasonable control, cannot be reasonably prevented and which impacts Our ability to perform any of Our obligations under these Standard Terms and Conditions including, without limitation, acts of god, flood, drought, fire, explosion, earthquake or other natural disaster, epidemic or pandemic, terrorist attack, war, nuclear, chemical or biological contamination or sonic boom or any law or any action taken by a government or public authority;

**“Forward Contract”** means an agreement entered into between You and Us in which You agree to purchase from (or sell to) Us a specific amount of funds in one currency and to settle, on an agreed future date, in a corresponding amount of funds in another currency;

**“Future Payments”** means an agreement entered into between You and Us in which: (i) You agree to purchase a specific amount of funds in one currency and to settle on an agreed future date in a specific amount of funds in another currency at an agreed fixed exchange rate; and (ii) We agree to transfer the purchased funds to a designated Beneficiary or Yourself for an agreed service fee if applicable;

**“Group”** where You are concerned, this term has the meaning corresponding to the definition of group of companies (*Konzern*) deriving from § 15 of the Austrian Stock Corporation Act (*Aktiengesetz - AktG*);

**“Holding Balances”** means funds held temporarily by Convera Europe for Your benefit and on Your behalf and for Your convenience pending receipt from You or a Beneficiary of a Request including delivery instructions;

**“Incoming Payment”** has the meaning given to it in clause 20.3 below;

**“In the Money”** in respect of an Option Contract(s), means an Option Contract(s) which if exercised would produce a gain (excluding consideration of the Premium);

**“Investment Advice”** means recommendations made by Us to You in respect of the purchase, sale, exercise of or refraining from purchase, sale or exercise of Derivative Contract(s) which are available from Us and tailored hedging strategies covering combinations of the aforementioned recommendations, in all cases prepared taking into account Your individual needs, experience and financial situation;

**“Investor Protection Scheme”** has the meaning given to it in clause 26.6 below;

**“Key Terms”** means with respect to a Derivative Contract and Us, the valuation of such Derivative Contract and any other relevant details to enable such Derivative Contract to be identified, which may include: the transaction date and time, the settlement date, the Derivative Contract amounts and currencies, the exchange rate, the position of the counterparties, Beneficiary’s Account (in case of Future Payments) and/or any other relevant details of the Derivative Contract;

**“LEI (Legal Entity Identifier)”** means a global legal entity identifier code identifying an entity for the purpose of, amongst other things, reporting obligations under EMIR, issued by an accredited LEI issuer (Local Operating Unit);

**“Losses”** means all losses, debt, damages, fines, penalties, costs, expenses or other liabilities (including legal and other professional fees);

**“Luxembourg”** means the Grand Duchy of Luxembourg;

**“Margin Deposit”** means a security deposit additional to the Advance Payment that We may require You to make to Us in connection with: (i) a Derivative Contract in circumstances described in clause 9.3.3 below; or (ii) a PPE Forward Contract in circumstances described in clause 24.8 below; such payment shall be cash collateral (*Barsicherheit*) within the meaning of § 3(1)(4) of the Austrian Financial Collateral Act;

**“Maturity Date”** means the date on which the Forward Contract or PPE Forward Contract becomes due for delivery and settlement. The Maturity Date must be a Business Day in all jurisdictions involved in the relevant Forward Contract or PPE Forward Contract, including both countries of the currencies involved. The Maturity Date shall always be the last day of the Delivery Window, if any;

**“MiFID 2”** means the Market in Financial Instruments Directive 2014/65/EU, Regulation (EU) No 600/2014 on markets in financial instruments, any technical standards or other delegated legislation issued thereunder and any national laws and regulations implementing the same in Luxembourg and Austria;

**“NDF”** means a non-deliverable forward, being a cash-settled foreign exchange product between You and Us in which You agree to purchase from (or sell to) Us a specific amount of funds in one currency and to pay (or receive), on an agreed future date, a cash amount representing that amount of funds at an agreed fixed exchange rate;

**“ND Facility”** (No Deposit Facility) means a limit (or a combination of several different limits applicable to different durations of a Derivative Contract or PPE Forward Contract) expressed in notional amount which We may, in Our sole discretion, extend to You in Writing from time to time and which will allow you to agree Derivative Contracts or PPE Forward Contracts within that limit without having to make an Advance Payment;

**“Not Confirmed Notice”** means with respect to a Confirmation provided by Us in respect of a Derivative Contract, a notice from You to Us (which may be made in Writing or orally by telephone) stating that the terms of such Confirmation do not accurately reflect the terms of the relevant Request, which terms are inaccurate and what such terms should be, in Your opinion. If a Not Confirmed Notice is made by telephone such oral notice has to be confirmed in Writing on the same day otherwise such oral Not Confirmed Notice is deemed not to be delivered to Us by the Timely Confirmation Deadline;

**“Notice of Exercise”** means the notice given by the Buyer to the Seller of its intention to exercise the Option Contract;

**“Online System”** means the proprietary online system(s) developed and the components thereof, owned and maintained by Us that enables You to send and receive global business payments, including any replacement thereof and any related software, websites, URLs, software programs and deliverable ancillary to the Online System such as reports, compilations or databases;

**“Online System Access Methods”** means the unique password(s) and user identification(s) required to access the Online System;

**“Option Confirmation”** means a document sent by Us to You and which confirms the details of the Option Contract entered into between You and Us;

**“Option Contract”** means a Call Option or a Put Option;

**“Option Value”** means the current market value of an Option Contract as calculated by Us;

**“Options Settlement Amount”** means the total amount, including the cost of currency acquisition as well as any fees and charges You owe Us pursuant to an Option Contract;

**“Other Currency”** means any currency that is not Euro, Polish zloty, Czech koruna, United States dollars or British pounds sterling;

**“OTM Facility”** means any Out of the Money exposure limit which We may, in Our sole discretion, extend to You in Writing from time to time and which will allow you to agree Derivative Contracts or PPE Forward Contracts within that limit without having to make an Advance Payment and/or a Margin Deposit;

**“Out of the Money”** means in respect of: (i) a Forward Contract or a PPE Forward Contract, the negative difference in value of a Forward Contract or PPE Forward Contract between the original purchased foreign exchange rate and the current market rate; and (ii) in respect of a NDF, the negative difference in value of a NDF between the Contract Rate and the current market rate; and (iii) in respect of Option Contract an Option Contract which if exercised would produce a loss (excluding consideration of the Premium);

**“Parties”** means Us and You and **“Party”** means You, Convera Europe or Convera Europe Financial;

**“Payment Services”** means the making of payments in foreign currencies by bank transfer or by cheque in a foreign currency, the provision of Standing Orders, the conclusion of PPE Forward Contracts and the provision of Holding Balances;

**“PSA 2009”** means the Luxembourg act of 10 November 2009 on payment services, as amended;

**“Personal Data”** means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the individual’s physical, physiological, genetic, mental, economic, cultural or social identity.

**“Portfolio Data”** means in relation to a Data Delivery Date, the Key Terms in relation to all Derivative Contracts outstanding on the Data Delivery Date, in a form and standard that is capable of being reconciled, with a scope and level of detail that would be reasonable to Us if We were performing the Data Reconciliation;

**“PPE Forward Contract”** means an agreement entered into by You for a purpose relating to the facilitation of the agreement by You for a good or service and Us in which You agree to purchase from (or sell to) Us a specific amount of funds in one currency and to settle, on an agreed future date, in a corresponding amount of funds in another currency at an agreed fixed exchange rate;

**“PPE & FP Termination Amount”** has the meaning given to it in clause 24.20 of these Standard Terms and Conditions;

**“PR Due Date”** means the 15th of December in each calendar year, provided that if such day does not fall on a Business Day, the PR Due Date shall be the next Business Day. We may notify You at any time that PR Due Dates shall occur at more frequent intervals;

**“Premium”** means the amount that is payable by the Buyer to the Seller on the Premium Payment Date for the Option;

**“Premium Payment Date”** means the date 2 Business Days after the Trade Date;

**“Process”** or **“Processing”**, in relation to Personal Data, means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;



**“Product Disclosure Statement”** means a document named as such prepared by Us and delivered to You along with these Standard Terms and Conditions setting out, amongst other things, a detailed description of the Derivative Contracts and the risks that may be applicable to such Derivative Contracts;

**“Put Currency”** means the currency specified as such in the Option Confirmation or, if such currency is not specified, the currency that is to be sold by the Buyer;

**“Put Currency Amount”** means the amount of the Put Currency to be sold on exercise of the Option as specified in the related Option Confirmation;

**“Put Option”** means a transaction which gives the Buyer the right but not the obligation to sell to the Seller, at the Expiration Time, the Put Currency Amount at the Strike Price;

**“Release Date”** means the date on which a Future Payment becomes due for release and settlement (such date being up to one hundred and twenty (120) days after the contract unless We in Our sole discretion extend the term of the Future Payment). The Release Date must be a Business Day in all jurisdictions involved in the Future Payment, including both countries of the currencies involved in the transaction;

**“Relevant Trade Repository”** means, in respect of a Relevant Transaction, the Trade Repository selected by Us from time to time for such Relevant Transaction and notified to You or, where no Trade Repository is available to record the details of such Relevant Transaction and where the Reporting Obligation requires, ESMA. We notify You that the Relevant Trade Repository will be DTCC Data Repository (Ireland) Plc until We notify You otherwise;

**“Relevant Transaction”** means a Derivative Contract between Us and You, each acting as principal and not as agent for any other person, that is subject to the Reporting Obligation;

**“Report”** means the data reported by Us on behalf of You to the Relevant Trade Repository pursuant to the Reporting Obligation;

**“Reporting Annexes”** means (i) the Annex to the Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012, and (ii) the Annex to the Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012, as amended or replaced over time;

**“Reporting Deadline”** means, in respect of a Relevant Transaction, the deadline for reporting the Relevant Transaction, as specified in Article 9 of EMIR;

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

**“Representative”** means any person whom You have specified in the attached signing powers document, as being authorised to send Requests and approve the Confirmations that We send You;

**“Request”** means a request made by You for Us to provide Services including any request made by telephone, facsimile, electronic mail, using the Online System or using a TPP under clause 7.5;

**“Required Data”** means: (a) the Counterparty Data (other than the Excluded Counterparty Data) in relation to You and (b) the Common Data;

**“Sanctions”** means any trade, economic or financial sanctions laws, regulations, embargoes or restrictive measures administered, enacted or enforced by a Sanctions Authority;

**“Sanctions Authority”** means:

- (a) the Security Council of the United Nations;
- (b) the United States of America;
- (c) the European Union;
- (d) the member states of the European Union;
- (e) the United Kingdom; and

(f) the governments and institutions or agencies of any of the foregoing, including OFAC, the US Department of State, the Council of the European Union, Her Majesty's Treasury, the Ministry of Finance of Luxembourg, the Ministry of Foreign and European Affairs and the Luxembourg Commission of Supervision of the Financial Sector (CSSF);

**"Sanctions List"** means the Specially Designated Nationals and Blocked Persons list maintained by OFAC, the Consolidated List of Persons and Entities subject to Sanctions maintained by the European Commission, the Consolidated List of Sanctions Targets maintained by Her Majesty's Treasury, or any similar list maintained by, or public announcement of a Sanctions designation made by, a Sanctions Authority, each as amended, supplemented or substituted from time to time;

**"Security Administrator"** means the person appointed by You to ensure the confidentiality of the Online System Access Methods in the context of the Online System;

**"Seller"** means the party specified as such in the related Option Confirmation;

**"Services"** means the Payment Services and the Derivative Services, and any other service that We will provide to You in accordance with Your Request;

**"Service Providers"** has the meaning given to it in clause 12.9 below;

**"Settlement Amount"** means the total amount, including the cost of currency acquisition as well as any fees and charges You owe Us pursuant to a Forward Contract, PPE Forward Contract or a Future Payment;

**"Settlement Currency"** means the currency nominated as the settlement currency. This is the currency that the Cash Settlement Amount must be paid in;

**"Settlement Date"** means, in relation to an Option Contract, the date for settlement of the payment rights and obligations under the Option Contract following the exercise of the option under clause 26.3.4 below, as specified in the relevant Option Confirmation. The Settlement Date of a European Option is 2 Business Days after the Expiration Date;

**"Standard Terms and Conditions"** means the conditions on which We supply Our Services, as set forth in this document; including any Addenda, attachments, schedules and/or Confirmations unless agreed otherwise in Writing, all the Services that We perform on Your behalf will be governed by these Standard Terms and Conditions;

**"Standing Order Effective Period"** means the period of time, which shall not exceed 60 days, within which You have instructed Us to purchase or sell the Contract Funds at the Target Rate;

**"Standing Order Instruction"** means Your instruction, which must be in Writing or through the Online System, given by Your Representative, to purchase/sell for Your account Contract Funds at the Target Rate within the Standing Order Effective Period;

**"Statement of Advice"** has the meaning given to it in clause 26.5.2.4 below;

**"€STR"** means the euro short-term rate published by the European Central Bank on its website;

**"Strike Price"** means the currency exchange rate specified as such in the related Option Confirmation, which is the currency exchange rate at which the Put Currency will be exchanged for the Call Currency if the Option is exercised, as agreed on the Trade Date;

**"Subscription to the Services"** means the form that You fill in when we enter into contractual relations and in which You must provide a certain amount of information concerning You and Your authorised signatories;

**"Sustainable and Purchasable"** means where a foreign exchange rate is traded in the market with volume sufficient to sustain that rate level for a commercially reasonable timeframe;

**"Target Rate"** means Our rate stipulated by You, if and when such stipulated rate becomes Sustainable and Purchasable, at which You have instructed Us to purchase/sell Contract Funds;

**"Third Party Service Provider"** means a third party including, without limitation, a Convera Affiliate, appointed by Us to submit Required Data to a Relevant Trade Repository;

**"Timely Confirmation Deadline"** means 5:00 p.m. (CET) on the Business Day following the Trade Date or such earlier time as we may notify to you;

**"TPP"** has the meaning given to it in clause 7.5 below;

**“Trade Date”** means the date on which the Request has been accepted under clause 2.3 below;

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

**“Us”, “We” and “Our”** means or refers to Convera Europe and/or Convera Europe Financial, as the context requires;

**“User of the Online System”** means You, in Your capacity as a user of the Online System;

**“Written” or “in Writing”** includes transmissions made by fax as well as data sent to Us by e-mail; and

**“You” and “Your”** means you, our client, identified on the Subscription to the Services.

## **2 Benefiting from Our Services: the general principles governing Our commercial relations**

- 2.1** Save as provided in clause 2.2 below, You may make a Request by phone, email, letter, via an authorized TPP pursuant to clause 7.5 below and/or by using the Online System. For the purposes of these Standard Terms and Conditions, a Request related to Payment Services shall be deemed a payment order delivered by You for the execution of a payment transaction.
- 2.2** Requests related to Derivative Contracts cannot be made via an authorized TPP and requests related to Option Contracts can only be made by phone or by email.
- 2.3** We agree to process transactions for You in accordance with Your Request on the same day of the Request if the Request is received before 3 p.m. on a Business Day. The deemed time of receipt of Your Request by Us shall be as follows: (i) Requests made on the Online System including using a TPP pursuant to clause 7.5 below, are received at the time that the Request is confirmed on the Online System (to You or the TPP, as the case may be); (ii) Requests by phone are deemed received at the time a Request is confirmed by Us; (iii) Requests by letter are deemed to be received three (3) Business Days after the date of posting if sent by registered letter or four (4) Business Days if sent by standard letter; (iv) Requests by fax are deemed as received at the time the fax is received by Us at Our offices; and (v) Requests by email are deemed to be received at the time the email is received by Us at the email address notified to You. Requests received after the cut-off time of 3 p.m CET or on a day other than a Business Day will be deemed to have been received on the next Business Day.
- 2.4** For each Request that You make and is deemed received pursuant to clause 2.3 above, We will send You a Confirmation in Writing setting out the relevant details of the instructions that You have given Us, as We have understood them, confirming to You both the price applied by Us and accepted by You and the charges associated with the Request concerned. Please note that for Requests made via the Online System, including using a TPP pursuant to clause 7.5 below, Confirmations will be sent electronically. Once We have received Your Request, such Request is binding upon You, unless these Standard Terms and Conditions expressly provide otherwise. We will inform You of the deemed time of receipt of a Request. For the avoidance of doubt and subject to clause 10.1 below, We will not execute a payment transaction for You until a Request has been received from You including using a TPP pursuant to clause 7.5 below.
- 2.5** The Confirmation is an important document, and We request that You verify the Confirmation when You receive it and inform Us immediately by email or phone if You consider that any of the details of Your instructions specified in the Confirmation are incorrect.
- 2.5.1** If We receive such a notification from You, We will double-check the details of the Confirmation in relation to Our record of the communication whereby Your Request was made, whether a phone recording or any other type of record. We will inform You of the results of Our verification and, on request, will provide You with a copy of the records of the communications concerned, whether phone recordings or any other type of record.
- 2.5.2** If this new verification shows that the Confirmation is in conformity with the record, whether a telephone recording or any other type of record, of the communication whereby the Request concerned was made, We reserve the right to continue to perform the Services described in the Confirmation. If however You request a modified Confirmation, We will take reasonable steps to provide this, but We

cannot guarantee in this case that the commercial terms and conditions indicated in the initial Confirmation can be complied with and You alone must bear the financial consequences.

**2.5.3** If on the contrary, this new verification reveals that the Confirmation did not conform to the record, whether this was a phone recording or any other type of record, of the communication whereby the Request concerned was made. We undertake to remit to You a modified Confirmation as quickly as possible.

**2.5.4** With regard to the above provisions concerning Confirmations, We would like to draw Your attention to the fact that telephone conversations with Our clients are recorded, in order to protect both Your interests and Ours, in the unlikely event of a disagreement. The length of time for which recordings are kept is limited, however, to the duration that is strictly necessary for verification of the regularity of transactions carried out and their conformity to Your instructions in the event of a disagreement.

**2.6** If You have not received the Confirmation within twenty-four (24) hours following the deemed receipt of a Request pursuant to clause 2.3 above, We request You and You undertake to inform Us immediately of this non-receipt by telephone.

**2.7** We are authorised by the mere fact of receiving a Request from You, and even before receipt by You of a Confirmation, to perform such Request.

### **3 Standing Order Instructions**

**3.1** If You submit a Standing Order Instruction to Us, You authorise Us to accept and act in accordance with the Standing Order Instruction. Each Standing Order Instruction shall be effective only after We have received it and have had a commercially reasonable opportunity to act upon it. Each Standing Order Instruction must set out the currency, the amount, the Standing Order Effective Period and delivery instructions (if any). Standing Order Instructions are accepted on Business Days between 9:00 a.m. and 3:00 p.m. (CET). Standing Order Instructions placed outside of this time shall be deemed to be received at 9:00 a.m. (CET) the following Business Day.

**3.2** If the Target Rate becomes Sustainable and Purchasable during the Standing Order Effective Period, We will execute the Standing Order Instruction and send You a Confirmation. For avoidance of doubt, unless You cancel the Standing Order Instruction in accordance with clause 11.3 below, the Standing Order Instruction will be binding on You once the Target Rate becomes Sustainable and Purchasable during the Standing Order Effective Period and You will be liable to Us for the full amount payable pursuant to the Standing Order Instruction. You agree to promptly review each Confirmation for accuracy and immediately advise Us of any error or discrepancy therein.

**3.3** Standing Order Instructions may not be cancelled by You at any time after the Target Rate has become Sustainable and Purchasable. In order to cancel a Standing Order Instruction during the Standing Order Effective Period, We must receive from You an instruction, either in Writing or through the Online System, directing cancellation and such cancellation shall be effective once We will have had a commercially reasonable opportunity to act upon such Written instruction, before the Contract Funds have been purchased by or sold by You. In the absence thereof, We shall act in accordance with the Standing Order Instruction and You shall be liable for the amount payable pursuant to the Standing Order Instruction.

**3.4** If the Target Rate does not become Sustainable and Purchasable during the Standing Order Effective Period, the Standing Order Instruction shall automatically expire at the end of the Standing Order Effective Period. Unless otherwise stated in the Standing Order Instruction, Standing Order Instructions shall remain in effect until 11:59 p.m. (CET) on the last day of the Standing Order Effective Period.

### **4 Circumstances where We cannot accept Your Request**

**4.1** We cannot accept a Request from You in the following circumstances:

**4.1.1** If You have not complied with these Standard Terms and Conditions or any other agreement or arrangement reached with Us;

**4.1.2** Where accepting and/or executing the Request would be illicit or illegal, or would contravene the requirements stipulated by a regulatory body, or would as determined by Us in Our sole discretion

generate expenses or costs that are unduly high for Us and/or would otherwise contravene Applicable Laws;

**4.1.3** Subject to the mandatory provisions of the Austrian Insolvency Code (*Insolvenzordnung - IO*), if You cease Your payments or admit that You are generally unable to settle Your debts when they become due for payment, if You are in a state of insolvency, if You have ceased Your activities, if You are insolvent or over indebted within the meaning of §§ 66 and 67 of the Austrian Insolvency Code, or if You have requested the commencement of insolvency proceedings or reorganisation proceedings pursuant to the Austrian Insolvency Code, if You have requested the appointment of an insolvency receiver (*Masseverwalter*) or a reorganisation receiver (*Sanierungsverwalter*), or more generally, if You are the subject of insolvency proceedings, if You are the subject of an order or a resolution for winding up and/or liquidation, or if you are subject to any measures or proceedings, under Applicable Law, similar to the aforementioned. If any other company belonging to Your Group has become insolvent or is the subject of one of the measures or proceedings mentioned in this clause 4.1.4; or

**4.1.4** If We are prevented, by an event or circumstances out of Our control, from executing the Request.

**4.2** If We decide, pursuant to the provisions of clause 4.1 above, not to accept a Request or not to perform a Service, or decide to delay the handling of a Request or performance of a Service, We will notify You to that effect as soon as reasonably possible, save where Our refusal to deal with Your Request is required by Applicable Law. We will provide You with the reasons why We did not accept Your Request to the extent We are legally permitted to do so as soon as practicable, but no later than the following Business Day. If Our refusal to deal with Your Request is caused by an error which can be corrected, We will provide you with the process to be followed by You to correct such error.

## **5 Cancellation**

### **5.1 Cancellation on Your initiative**

In the event of cancellation by You of a Request relating to Payment Services (which You can only effect if Your payment order has not yet been received by Us as provided for under clause 20.2 below and at the latest at the end of the Business Day preceding the date of execution of the payment as provided for under clause 20.2 below) prior to any payment made by Us pursuant to these Standard Terms and Conditions, We may have to interrupt any measure that We have initiated in execution of Your Request and You will be required to indemnify Us in full for all losses, expenses, damages, costs and disbursements that We have incurred as a result of this interruption or cancellation.

### **5.2 Cancellation on Our initiative**

We shall have the right to cancel and not execute a Request, regardless of whether or not a Confirmation has been issued and whether or not the payment order has been received by Us, in any of the following circumstances:

**5.2.1** If You have not complied with these Standard Terms and Conditions or any other agreement or arrangement concluded with Us, including but not limited to the non-receipt of the transfer of funds/sums that You owe Us;

**5.2.2** Where accepting and/or executing the Request would be unlawful or illegal, or would contravene the requirements stipulated by a regulatory body having oversight over Us and/or any Convera Affiliate, or would as determined by us in Our sole discretion (acting reasonably in Your interest) generate expenses or costs that are unduly high for Us or would otherwise contravene Applicable Law;

**5.2.3** Where there are reasonable grounds to believe that, for Us, executing the Request would constitute a criminal offence;

**5.2.4** Where We determine (in Our sole discretion exercised reasonably) that You are using the Services for (or in connection with): (i) gambling, pornography or other similar activities; (ii) purposes that are not in direct relation to Your commercial or professional payment requirements; or (iii) speculative ends;

- 5.2.5** Subject to the mandatory provisions of the Austrian Insolvency Code, if You cease Your payments or admit that You are generally unable to settle Your debts when they become due for payment, if You are in a state of insolvency, if You have ceased Your activities, if You are insolvent or over indebted within the meaning of §§ 66 and 67 of the Austrian Insolvency Code, or if You have requested the commencement of insolvency proceedings or reorganisation proceedings pursuant to the Austrian Insolvency Code, if You have requested the appointment of an insolvency receiver or a reorganisation receiver, or more generally, if You are the subject of insolvency proceedings, if You are the subject of an order or a resolution for winding up and/or liquidation or if you are subject to any measures or proceedings, under Applicable Law, similar to the aforementioned. If any other company belonging to Your Group has become insolvent or is the subject of one of the measures or proceedings mentioned in this clause 5.2.5;
- 5.2.6** If You omit to inform Us of the desired date pursuant to clause 20.2 below; or
- 5.2.7** If We are prevented, by an event or circumstances out of Our control, from executing the Request.
- 5.3** If We decide, subject to the provisions of clause 5.2 above, to cancel a Request that was duly accepted, We will notify You as soon as possible.
- 5.4** In the event of the cancellation, pursuant to clause 5.2 above, of a duly accepted Request, We may have to interrupt any measure that We have initiated in the performance of Your Request and You will be required to indemnify Us in full for all losses, expenses, damages, costs and disbursements that We have incurred as a result of these measures, this interruption or cancellation.

## **6 Licence Agreement and Special Terms and Conditions for Users of the Online System**

- 6.1** You may use the Online System for the purpose of obtaining the Services, including sending or receiving global business payments, or buying or selling currency subject to any restrictions or limitations imposed by Us.
- 6.2** We grant to You, for so long as these Standard Terms and Conditions remain in effect, a non-exclusive, non-transferable, non-sublicensable license to use the Online System for the sole purpose of facilitating Your use of the Services in the ordinary course of Your business. You agree to use the Online System in accordance with these Standard Terms and Conditions.
- 6.3** The Online System and all reproduction rights and other intellectual property rights relating to the Online System are and will remain Our exclusive property.
- 6.4** You can only use the Online System to access the Services as part of normal business activity, in compliance with clause 7.5 below and applicable Luxembourg laws and regulations and international treaties. You must ensure that access to the Online System is limited to those of Your employees or representatives whose functions require them to access the Online System as part of normal business activity. You must make each of these employees or representatives aware of these Standard Terms and Conditions and ensure that no persons or legal entities permitted to have access to the Online System contravene these Standard Terms and Conditions or allow any other party to contravene them.
- 6.5** Except in circumstances expressly provided for by law, You must not duplicate or modify the Online System or its components; similarly, You must not carry out any decompilation operation on all or any part of the Online System, or seek to copy or reproduce its operation or source code by any other means.
- 6.6** You must keep a recording of all Requests that are transmitted to Us.
- 6.7** The responsibility relating to the transmission of the Request to Us lies with You, and You must verify that all the information contained in Your Request is correct before the Request is transmitted to Us.
- 6.8** If You discover an error in the Request after its transmission, You must immediately notify Us in Writing.
- 6.9** Should errors occur in the Online System or in Our systems, resulting in the Online System, the software or the Services no longer being available for use, You must use another method to transmit a Request to Us.

## **7 Your use of the Online System**

- 7.1** Unauthorised use on Your part of the Online System will constitute failure to comply with, and breach of, the terms of the licence that was granted to You under the terms of these Standard Terms and Conditions.
- 7.2** By Your agreement to these Standard Terms and Conditions, and in Your capacity as User of the Online System, You confirm that You, Your employees and Your representatives will be bound by and must comply with these Standard Terms and Conditions. You represent and warrant that the person agreeing to these Standard Terms and Conditions on Your behalf, in Your capacity as User of the Online System, is Your duly authorised Representative and that she/he has the powers necessary to make undertakings that are binding on You in Your capacity as User of the Online System in respect of these Standard Terms and Conditions.
- 7.3** We shall use the information supplied below by You, in Your capacity as User of the Online System, to grant You access to the Online System. In Your capacity as User of the Online System, You declare and warrant that the information supplied is accurate, and agree to inform Us of any changes relating to it.
- 7.4** In Your capacity as User of the Online System, You must appoint individuals to act on Your behalf as Security Administrator and Assistant Security Administrator. The Security Administrator is the person who has the power to determine who can access and use the Online System on Your behalf. The Assistant Security Administrator will act as a backup to the Security Administrator if the latter loses or forgets its Online System Access Methods.
- 7.5** We will provide access to account information service providers and payment initiation service providers (each as defined in § 3(18) and (19) of the Austrian Payment Services Act 2018) ("**TPPs**") to Your account designated by Us for the purposes of executing Your payments to the extent that such account is accessible online on the Online System provided that, on each occasion the TPP requests access to the Online System:
- 7.5.1** You have contracted with a TPP that is appropriately authorised or registered with the Austrian Financial Market Authority (*Finanzmarktaufsichtsbehörde* – "**FMA**") or an equivalent regulator in the EEA;
  - 7.5.2** You have expressly consented to such TPP being given such access;
  - 7.5.3** You successfully carry out all security protocols including authentication of any User on the Online System;
  - 7.5.4** the TPP adheres to any relevant access protocols that We may apply from time to time.

Nothing in this clause 7.5 shall disapply or otherwise conflict with any provision of these Standard Terms and Conditions where You assume liability or responsibility to Us for any damage, charge and expense (including without limitation, any foreign exchange loss) incurred by Us in connection with the performance of the Services or delivery of any Request including a payment order.

## **8 The security of the Online System Access Methods**

- 8.1** A Request will be considered to have been authorised by You if it was transmitted using the Online System Access Methods, subject to the transmission containing the amounts, currencies, and payment details. You agree to be solely responsible for the protection of the Online System Access Methods and agree that the use of the Online System Access Methods constitutes a valid instruction from You, whether it was authorised or not. You agree to notify Us immediately if an Online System Access Method has been disclosed, or if this is suspected, and You agree to indemnify Us and discharge Us from all liability of any kind that We may incur or bear as a result of such disclosure.
- 8.2** Your Security Administrator must keep an up-to-date list of authorised users of the Online System. We will have the right to consider that any user of the Online System is a user authorised by You.
- 8.3** Your Assistant Security Administrator must give Us his personal Online System Access Methods if the Security Administrator requires a new Online System Access Method.
- 8.4** You accept that, once a Request has been transmitted, We have the right to take it into account and execute the Request made on the Online System immediately.
- 8.5** You hereby acknowledge that we may block your access where this would be necessary for security reasons, suspicion of unauthorized or fraudulent use or, as the case may be, where we deem that you may not be able to fulfil your ability to pay.

## 9 Online System Support services

We will provide You with support for the use of the Online System to access the Services by placing at Your disposal Our support staff during office hours. We can be reached at the details set out in clause 19.1 below.

## 10 Payment from You

### Settlement of Requests by You

- 10.1** Regardless of whether or not We have issued a Confirmation, unless otherwise agreed in Writing, You must irrevocably transfer the funds (and if relevant with respect to Forward Contracts, PPE Forward Contracts or Option Contracts, any Advance Payments and Margin Deposits You owe to Us with respect to a Request) pursuant to a Request or payment order made by You (or using a TPP under clause 7.5 above) into an account maintained by Us (or in the case of Services to be provided by Convera Europe where the funds to be transferred by You are in an Other Currency, into an account maintained by Convera International) for the purpose of executing Your payment transactions, the details of which will be communicated by Us to You (by means that We shall have agreed or specified in due time), before We make any payments in Your name. You agree to promptly deliver the payment to settle your obligations under a payment order to Us in final, non-revocable cleared funds (i.e. not subject to recall).
- 10.2** If the said funds are not received, there may be a delay in the performance of the Services and the Beneficiary may receive the payment due to it late. In this circumstance, We cannot be held liable for any loss, costs, charges or expenses incurred by You or Your Beneficiary insofar as We shall have been put in a position where We were unable to adhere to the date stated in the Confirmation or that was agreed between You and Us in Writing, which could only be adhered to on condition that the funds were received by Us in conformity with the provisions of these Standard Terms and Conditions.
- 10.3** Where You place funds with Us into an account maintained by Us and/or an account maintained by Convera International, as directed by Us, for the purpose of executing Your payment transactions in the same currency as such account, We shall ensure that the amount is made available to You and with a specified date for delivery no later than the end of the next Business Day after the receipt of the funds on Your account maintained by Us.

### Payment of Our Fees and Charges

- 10.4** You understand and agree that We will charge certain fees for the Services. These fees shall be set forth in a fee schedule that will be provided to You before carrying out the relevant Service or upon Your express request. Unless otherwise agreed in Writing, We may change the fees charged for the Services at any time upon a one (1) month prior notice to You before the date of entry into effect of the relevant amendment.
- 10.5** Payments that remain due to Us from You after the date they are due (without prejudice to Our other rights and without it being possible for this provision to be considered as constituting an obligation for Us to grant You credit facility) will bear interest at the €STR rate increased by 4% per annum. This interest will start to accrue as from the due payment date and will be calculated on a daily basis. If the €STR rate is less than zero, it shall be deemed equal to zero.
- 10.6** If the currency is paired with euro, We shall charge only fees on a fixed basis to reflect the costs incurred in relation to the currency conversion plus our margin.
- 10.7** For the avoidance of doubt, You agree that We may deduct our fees from an Incoming Payment or from any fund delivered to Us for the purposes of executing a payment transaction pursuant to a Request.

### Direct Debit

- 10.8** If You have, and/or an authorized TPP pursuant to clause 7.5 above has, instructed Us to initiate a direct debit(s) (including any amendments or cancellations thereto) to Your bank, such direct debit will be made in accordance with the direct debit mandate signed by You and in accordance with the applicable direct debit scheme rules. You agree that We and Your bank are authorised to credit Your account from time to time in the event that credit adjustments become necessary. You authorise Us to communicate with Your bank as necessary to effectuate the Services contemplated in these Standard Terms and Conditions.

## 11 Set-off



- 11.1** We will be entitled to set off any sums that We have received from You or that We hold on Your behalf or are otherwise due by You to Us, against any sums that are due to Us in relation to the Services governed by these Standard Terms and Conditions, including, amongst other things:
- 11.1.1** any sums that are due to Us pursuant to clause 10.1 above;
  - 11.1.2** any interest that becomes due to Us pursuant to clause 10.3 above;
  - 11.1.3** any sums that become due to Us in relation to compensation pursuant to the provisions of clauses 5.1 and/or 5.4 above in the event of the cancellation of any Request on Your part;
  - 11.1.4** any sums that become due to Us in relation to compensation pursuant to the provisions of clause 26.4.7 below;
  - 11.1.5** any charges/expenses which are due to Us pursuant to clauses 22.1.5 and/or 22.2 below;
  - 11.1.6** any sums that become due to Us in relation to compensation pursuant to the provisions of clauses 8.1, 15.1, 16.1, 23.3 and/or 23.6, of these Standard Terms and Conditions;
  - 11.1.7** in relation to Derivative Contracts, We will be entitled to set off any amounts that would otherwise be payable in respect of two or more Derivative Contracts by Us to You or by You to Us (irrespective of whether the set off sums relate to Option Contracts, Forward Contracts, or both);
  - 11.1.8** in relation to PPE Forward Contracts and Future Payments, We will be entitled to set off any amounts that would otherwise be payable in respect of two or more PPE Forward Contracts and/or Future Payments by Us to You or by You to Us (irrespective of whether the set off sums relate to PPE Forward Contracts, Future Payments or both).
- 11.2** We cannot be held liable for any loss or expenses that may be incurred by You when We exercise Our right to set off sums due to Us under the conditions set forth in this clause 11.
- 11.3** You agree that We may perform the set-off pursuant to clause 11.1 above against any of Your claims against Us, irrespective whether these are due or not and irrespective of their currency. In order to perform the set-off where the respective claims are denominated in different currencies, You agree that We may convert one currency into another at the relevant reference exchange rate published by the Austrian National Bank (*Oesterreichische Nationalbank* – "OeNB") on its website on the day We perform such set-off.

## **12 Compliance with the laws and regulations relating to professional secrecy, exchange control, anti-money laundering and FATCA**

### Professional secrecy and Outsourcing

- 12.1** Pursuant to Article 41 of the Banking Act 1993 and Article 30 of the PSA 2009, We are obliged to keep confidential all customer-related information of which We are or become aware (professional secrecy), including, but not limited to, information relating to You, Your registered address, Your directors' and employees' names, their addresses, nationalities, dates and places of birth, professions and sources of wealth, information on identification documents, account numbers, transactional and credit data, tax domicile and other tax related documents and information, investment objectives, assets, financial situation and knowledge and experience in investment matters, information about Your investors, beneficial owners or third parties (such as Your representatives, or contact persons) or more generally any information which may allow for Your direct or indirect identification (the "**Confidential Data**"). We may only disclose Confidential Data where legal provisions require or allow it, where You consent or implicitly or expressly instruct Us to do so (under certain circumstances and conditions). In the event of resolution, reorganisation and winding up measures in relation to Us, We may be obliged to disclose Confidential Data to authorities and/or counterparties involved in such process, including (but not limited to) potential acquirers contacted in the context of the Bank's resolution,
- 12.2** In addition, in a number of jurisdictions, provisions applicable to (transactions involving) financial instruments and similar rights, may require the disclosure of the identity and the holding of (in)direct holders and/or beneficial owners of the financial instruments. Non-compliance with disclosure request may lead to the blocking of the financial instruments (in the sense that voting rights may not be exercised, dividends or other rights may not be

received, and the financial instruments cannot be sold or disposed of in any other manner). You expressly instruct Us to disclose at Our own discretion, without delay and without being required to revert to You, Your (and/or Your beneficial owner's) identity and holding of financial instruments and similar rights if the national or foreign law provisions in question require such disclosure. In particular, You expressly acknowledge that We may disclose Confidential Information to intermediaries (if any) for the purposes of performing Our services, in particular, when purchasing or redeeming financial instruments. You expressly accept and instruct Us to disclose any relevant Confidential Information to the relevant intermediary (if any). We accept no liability for any damages whatsoever suffered by You (or your beneficial owner) that may result from the disclosure of Your identity and holdings.

- 12.3** You further acknowledge and agree that certain laws, regulations or international payment settlement systems may require the identification of the person placing a payment order and/or its beneficiary. Where funds are to be transferred, stored or payments processed, We may have to disclose Confidential Data. You shall provide any information as may be required by Us for these purposes.
- 12.4** You also acknowledge that We may have to disclose the information provided in a transfer order in the context of the execution of a payment to the payment service provider of your counterparty (and, where relevant, also to banking partners and other intermediary(ies) involved in the execution of a payment). You expressly accept and instruct Us to disclose such information. In that context, We also have the right to request from You any information necessary to identify the beneficiary of payments, before executing a transfer in accordance with the Standard Terms and Conditions.
- 12.5** In addition, information included in money transfers (including, but not limited to, Your Confidential Data) is processed by Us, by other specialised companies, such as SWIFT (Society for Worldwide Interbank Financial Telecommunication). Such processing may be operated through centres located in countries outside of Luxembourg, according to their local legislation. As a result, the relevant foreign authorities can request access to Your data held in such operating centres for the purposes of fighting terrorism or combating money laundering or other legitimate reasons. When instructing Us to execute a payment order or any other operation, You instruct Us to disclose at Our own discretion all data elements, including, but not limited to, Your Confidential Data, necessary for the correct completion of the transaction which may be processed outside of Luxembourg.
- 12.6** You further acknowledge that, in the context of a refund request, We may have to disclose information concerning You to the payment service provider of the person that (unduly) initiated a payment in Your favour by a transfer to the account in Our books. You expressly accept and instruct Us to disclose such information to the payment service provider of that payer.
- 12.7** Furthermore, You instruct and expressly authorise Us to disclose and transfer Confidential Data to:
- 12.7.1** Convera Europe, Convera Europe Financial, Custom House Financial (UK) Limited (in the process of changing its name to Convera UK Limited), Western Union Business Solutions (USA), LLC (in the process of changing its name to Convera USA, LLC), Western Union Business Solutions (Australia) Pty Limited (in the process of changing its name to Convera Australia Pty Limited), Convera Lithuania UAB and Convera Payments Costa Rica, S.R.L.;
  - 12.7.2** supervisory authorities and other competent authorities (including tax authorities) located outside Luxembourg upon valid request of such authorities under Applicable Law.
- 12.8** The disclosure of Confidential Data by Us to the other entities of Our Group mentioned above and the authorities serves the purpose of enabling Us to comply with Our regulatory obligations (to the extent applicable) and Our tax and other statutory reporting obligations, as well as to ensure compliance with internal policies of Our group, in particular for the prevention of money laundering and terrorism financing, and compliance with trade and economic sanctions laws and/or regulations. You acknowledge that such transfer, storage or processing of information furthers the business relationship between You and Us.
- 12.9** You further acknowledge and expressly agree that, in order to improve the efficiency and quality of the operational tasks relating to the services that We offer under these Standard Terms and Conditions or under any other related agreement, as the case may be, and in order to offer You the benefit of the full added-value services offered by Us, We may outsource, in whole or in part, business, control or operational functions (or any other relevant function as

the case may be) to other entities of Our Group (where relevant) or to third party service providers (together the Service Providers) and that We will not need to further obtain Your consent or to send You any further notice thereof, except if required by Applicable Law or if otherwise specifically agreed between You and Us hereunder. As of the date hereof, we have engaged Convera International and Convera Lithuania as Service Providers and have outsourced certain operational functions to them. This outsourcing has been done in compliance with all applicable regulations including the EBA Guidelines and the CSSF Circular on Outsourcing. We shall be liable for the work of the Service Providers.

In this context, the Service Providers may have access to and process certain information and documents (including, but not limited to, Confidential Data) that have been created or collected by, or communicated to Us (whether provided by mail, email, fax, telephone, through the Online System or any other means).

We have taken reasonable technical and organisational measures to ensure the confidentiality of the Confidential Data transmitted and to protect the Confidential Data against any unauthorised processing, taking into account that the level of protection for personal data, and confidential information in general, in third-countries may not be the same as in Luxembourg. The Service Providers are either subject by law to a professional secrecy obligation or will be contractually bound to comply with strict confidentiality rules. Information that will be transferred in accordance with the purposes described above will only be accessible to a limited number of persons within the relevant Service Providers, on a need to know basis. Unless otherwise authorised by law or to comply with requests from, and requirements of, national or foreign regulatory or law enforcement authorities, the relevant data will not be transferred to entities other than the Service Providers. You hereby acknowledge and accept that the Service Providers may not be subject to Luxembourg professional secrecy rules and that professional secrecy obligations applicable to them may be less stringent than the Luxembourg professional secrecy legislation.

Consequently, You hereby expressly consent and mandate, authorise and empower Us to transfer Confidential Data to Service Providers.

- 12.10** Where Your consent is required in connection with the transfer of Confidential Data, You will be notified of any new transfer of Confidential Data under new outsourcing arrangements or any change in the features of an existing outsourcing arrangement related to the transfer of Confidential Data (including the country of establishment of the above mentioned Service Providers receiving the Confidential Data) through appropriate means, such as account statements or email. Any such new transfer of Confidential Data under a new outsourcing or change in the features of an existing outsourcing arrangement related to the transfer of Confidential Data (including the country of establishment of the above mentioned Service Providers) is deemed to be accepted by You if You have not addressed a written objection to Us within thirty (30) calendar days from the date of the notice of the transfer of Confidential Data under a new outsourcing arrangement or the change in existing outsourcing arrangement related to the transfer of Confidential Data.
- 12.11** Finally, You expressly acknowledge and accept that in case We transfer or assign any of Our rights under these Standard Terms and Conditions to a third-party, We shall be authorised to transfer all necessary Confidential Data to the transferee or assignee.
- 12.12** For the purposes of any disclosure of Confidential Data pursuant to this clause 17, Personal data can be processed only in accordance with the conditions set out in clause 14.
- 12.13** In addition to the above and for the avoidance of doubt, you expressly agree to the above-described transfers for the purposes of, and to release Us from Our banking secrecy duties for the purpose of this agreement under, any applicable professional secrecy obligations under Austrian law.

*Exchange control, Anti-money laundering and FATCA*

- 12.14** You understand that We take appropriate measures to ensure that We are not participating or assisting in money laundering or terrorist financing. You undertake to comply with all the laws and regulations applicable to exchange control and anti-money laundering in relation to any Request and undertake to respect Our own obligations with regard to such laws and regulations. In particular, You guarantee that all information contained in Your Subscription to the Services and in Your Request is accurate and that the transfer of funds will not constitute a breach of the laws or regulations applicable to exchange control and anti-money laundering.

- 12.15** If You breach these laws or regulations, You agree that We will retain all sums or funds that have been remitted to Us in compliance with these Standard Terms and Conditions and/or that We shall not execute a Request if We are ordered by any regulatory authority (including any foreign regulatory authority) not to execute it; these funds will not bear interest that will be due by Us.
- 12.16** You understand, acknowledge and agree that all transactions, wherever originated, may be processed by Us or may be processed on Our behalf by one or more of its affiliated group companies, one or more of which may be located outside of Austria and the European Union. As such, all transactions, wherever originated, shall be processed in accordance with the laws and regulations of the jurisdiction where the transaction is being processed, including but not limited to, those laws and regulations relating to anti-money laundering, anti-terrorism and foreign asset control.
- 12.17** For the avoidance of doubt, the Parties acknowledge and agree that it is Your responsibility to determine the source of the payment(s) and the chapter 3 and chapter 4 status of the payee in accordance with United States Internal Revenue Code sections 861 through 865, 1441 through 1446 and 1471 through 1474, and that the parties' expectation is that We would not know or have reason to know of the source of the payment(s) and the withholding status of a payment to a payee. Accordingly, You represent and warrant to Us that, to the extent the U.S. regulations under code Section 1441 through 1446 and 1471 through 1474 apply to Your transaction, You have determined the chapter 3 and chapter 4 status of the payee in accordance with Internal Revenue Code sections 1441 through 1446 and 1471 through 1474, and the regulations promulgated thereunder, and have withheld the appropriate amount, if any, required. You shall indemnify and hold Us harmless from and against any claims by the U.S. Internal Revenue Service ("**IRS**") for tax, interest, and penalties, and expenses incurred by Us arising out of or in respect of Your under-withholding or other noncompliance with respect to the IRS withholding rules, including but not limited to FATCA. This indemnity will survive the completion of any payment and the termination of these Standard Terms and Conditions.

### **13 Confidentiality**

- 13.1** Subject to the provisions of clauses 12 and 14 of these Standard Terms and Conditions, the Parties agree to protect the integrity and confidentiality of all the information and the Online System supplied or made available to the other Party, and agree (subject to clause 7.5 above) only to make such information or Online System available to personnel that need to be able to have access to it or them in relation to the Services.
- 13.2** The duty to maintain confidentiality defined above will not apply to any information that:
- 13.2.1** was already in the possession of the said other Party and was lawfully obtained, on the date of its transmission, and this can be proven by Written documentation;
  - 13.2.2** comes into the possession of the said other Party, in good faith, via an independent third party after the date of its transmission; or
  - 13.2.3** has become public information without any breach of this confidentiality undertaking having taken place.

### **14 Data Protection**

#### **14.1 Personal Data Necessary to Services; Control**

We must collect and Process Personal Data in order to perform the Services (including, amongst others, for purposes such as administration, accurate order processing, customer identification purposes as required by law, customer service, user validation, fraud prevention and product and business development activities, transaction history and marketing preferences).

Such Personal Data may be provided by You, such as when you provide beneficiary details, and may also be collected by Us, such as in cases where We collect supplementary information to verify information You have provided. You understand that We are an independent service provider who separately controls Personal Data that You provide or that We collect, obtain, and/or Process in connection with providing the Services. We will Process Personal Data obtained in connection with the Services in a manner consistent with these Standard Terms and

Conditions including this clause 14, as otherwise expressly agreed between You and Us in writing, or as is otherwise necessary in light of any Request You (or using a TPP under clause 7.5 above) make which We accept.

## **14.2** Consent Pursuant to Applicable Payment Services Law in Connection with Your Transactions

**14.2.1** You acknowledge that we must Process Personal Data in order to perform the Services. You hereby expressly consent to Our collection, Processing, and retention of Personal Data in relation to performing the Services. Furthermore, you agree that by requesting We perform a transaction, You are consenting to and authorizing Us to collect, Process, and retain all Personal Data necessary to execute the transaction; in the case of a Request, you consent to us Processing and retaining any Personal Data set forth in the Confirmation. For the avoidance of doubt: We only request these consents mentioned in this clause in order to fulfil Article 94(2) of Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC. This consent has not the purpose to Process further Personal Data than is necessary for contractual performance.

**14.2.2** You hereby represent and warrant that the undersigned individual executing these Standard Terms and Conditions on your behalf has the capacity and is authorized by You to grant the above authorisation on Your behalf, as well as on behalf of any companies, corporations, organizations, or businesses affiliated with You who may make use of or receive the benefit of Our Services.

**14.2.3** To the extent Applicable Law permits You to withdraw Your consent regarding a particular transaction, You agree that the Cancellation provisions contained in clause 7 constitute the exclusive method for withdrawing Your consent, subject to the restrictions and limitations set forth therein. You acknowledge and agree that Your withdrawal of consent, even if effective, shall not affect the lawfulness of any Processing that occurred prior to the withdrawal. Furthermore, You acknowledge that Your withdrawal of consent shall not prejudice Our rights to Process, continue Processing, and/or retain Personal Data to the extent permitted by Applicable Law and/or these Standard Terms and Conditions.

## **14.3** Representations and Warranties

You guarantee Us that when You communicate Personal Data to Us or when You ask Us to perform the Services, You are acting in compliance with the laws and regulations applicable to You. In particular (and without limitation), you represent and warrant that: (a) any Personal Data You provide to Us has been lawfully collected and Processed; (b) You have collected all necessary consents and/or authorizations, provided all necessary notices, and done all such other things as are required under applicable law for You to lawfully disclose Personal Data to Us for purposes of any transaction you request and any Processing permitted under these Standard Terms and Conditions; and (c) the Processing You are requesting We perform in relation to any Personal Data is lawful. You agree to indemnify Us in respect of any claim that may be filed against Us by a third party (including any governmental or supervisory agency) in the event of any breach by You of the laws or regulations applicable to You, or in respect of any claim filed against Us by a third party (including any governmental or supervisory agency) that arises out of or relates to a breach of the representations and warranties set forth herein.

## **14.4** Information Security

We will implement appropriate technical and organisational measures to protect Personal Data against unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. Such measures shall be appropriate to the harm that might result from unauthorised or unlawful Processing or accidental loss, destruction or damage to Personal Data, and to the nature of the Personal Data to be protected.

## **14.5** Permitted Data Processing

We Process Personal Data consistent with and to the extent permitted by the provisions of applicable data protection law applicable to data controllers. Personal Data that We process includes information You provide to Us, as well as information we may obtain from other Convera programs or services, Convera Affiliates, third-party individuals or entities, or from publicly available sources. The manner in which we Process Personal Data obtained

in connection with the Services is set forth in the applicable privacy notice. We will reasonably ensure that the applicable privacy notice accurately reflects how Personal Data is processed in connection with the Services, and will provide reasonable notice of any modifications.

#### **14.6 Third Parties and Transfers**

- 14.6.1** We may disclose Personal Data to vendors, contractors, TPPs under clause 7.5 above, and/or business partners, for any purpose or Processing permitted under these Standard Terms and Conditions. These third parties may be located outside the EEA, including in countries outside the EEA whose privacy laws may not provide the same level of data protection as the law in force within the EEA. Other than TPPs under clause 7.5 above, We ensure that third parties who receive Personal Data are subject to such contractual terms and that transfers to third parties outside of the EEA are subject to such safeguards as required by applicable data protection law. Where required by applicable law, We will request Your express consent. For the avoidance of doubt, We shall not assume any liable for compliance with applicable data protection laws in the delivery of Personal Data to a TPP under clause 7.5 above.
- 14.6.2** We may disclose Personal Data or any other information we hold to law enforcement authorities or other government officials if required to do so by domestic or foreign law or legal process, or as needed to assert or defend Our rights or interests or those of others.
- 14.6.3** Personal Data and any other information We hold may be accessed by Us and Convera Affiliates for any purpose set forth in these Standard Terms and Conditions, including but not limited to: Custom House Financial (UK) Limited (in the process of changing its name to Convera UK Limited), Western Union Business Solutions (USA), LLC (in the process of changing its name to Convera USA, LLC), Western Union Business Solutions (Australia) Pty Limited (in the process of changing its name to Convera Australia Pty Limited). We ensure that access by Convera Affiliates located outside of the EEA is subject to such safeguards as required by applicable data protection law.

#### **14.7 Notification and Cooperation**

Each Party shall notify the other promptly upon receiving a request for information, claim, complaint or allegation relating to the other Party's compliance with applicable data protection and/or information security law in relation to Personal Data Processed in connection with this agreement. Each Party shall provide the other Party with all such assistance in dealing with and responding to such Enquiry as the other party shall reasonably request.

### **15 Indemnification and limitation of liability**

- 15.1** You agree to indemnify Us in full for all losses, damages, costs and expenses incurred by Us or that We are obliged to pay in relation to any Request made by You (or using a TPP under clause 7.5 above).
- 15.2** Unless stipulated otherwise in these Standard Terms and Conditions, all representations, warranties, conditions or other terms provided for by law are set aside to the maximum extent permitted by law.
- 15.3** We shall not be liable towards You (including a TPP under clause 7.5 above) and cannot be considered as having failed to perform Our obligations on the basis of these Standard Terms and Conditions in the case of a delay in executing, or the failure to execute, a Request that was duly accepted if the delay or non-execution is attributable either in full or in part to any event attributable to You or to a third party (including a TPP under clause 7.5 above), or owing to an event having the nature of Force Majeure.
- 15.4** To the fullest extent permitted by law, We cannot accept any liability towards You (or any TPP under clause 7.5 above) for any indirect loss or damage (loss of profit, know-how, clients or other), costs, expenses (including without limitation the cost of lawyers' fees and disbursements) or other claims for indirect damage, regardless of its nature (and regardless of whether it was caused by Us, Our employees, Our representatives or other parties) incurred on the occasion of, or in relation to, any Request or Services executed or performed, or that was due to be executed or performed, in accordance with these Standard Terms and Conditions. Similarly, We cannot accept any liability for any omission under the conditions provided for in these Standard Terms and Conditions.
- 15.5** You expressly agree that any unauthorised or incorrectly executed payment transaction and any claim for damages or losses of any kind whatsoever arising hereunder must be notified to Us as soon as You are aware of such

unauthorised or incorrectly executed payment transaction or claim and in any case within two (2) months of the circumstances that allegedly caused the incident giving rise to the unauthorised or incorrectly executed payment transaction or claim. Notwithstanding any other provision in these Standard Terms and Conditions to the contrary, provided that the notification requirements in this clause 15.5 have been met, should any payment be made by Us after receipt of such notification, pursuant to a Request which has not been authorised by You then We shall forthwith refund the amount of the payment delivered to the Beneficiary in the currency of the payment so delivered as if the unauthorised or incorrectly executed payment transaction had never occurred no later than the end of the Business Day following the day on which We become aware of the unauthorised or incorrectly executed payment transaction. The credit value date of the refund shall be no later than the date on which the unauthorised or incorrectly executed transaction was debited (and where delivered to the Beneficiary in the currency of the payment so delivered). Nothing in this clause 15.5 shall be construed to limit Your liability for any and all losses incurred in respect of an unauthorised payment transaction where You have acted fraudulently or has with intent or gross negligence: (a) failed to comply with these Standard Terms and Conditions; (b) failed to notify Us without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the Services; or (c) failed to take all reasonable steps to keep Online Systems Access Methods or other personalised security features secure.

- 15.6** We will indemnify You for any damages, costs and disbursements that You are sentenced to pay by a court on the grounds that Your use of the Online System in accordance with the provisions of these Standard Terms and Conditions constitutes a breach of the intellectual property rights of a third party, provided that:
- 15.6.1** You notify Us promptly of any claim or action, or risk of a claim or action, that is being or may be made or brought by a third party in relation to the Online System;
  - 15.6.2** We have control over all actions, claims or proceedings relating to the Online System
  - 15.6.3** You do not accede to the request and You do not admit to any responsibility or liability whatsoever in the context of these actions, claims or proceedings without Our Written approval; and
  - 15.6.4** You cooperate fully with Us in the context of these actions, claims or proceedings relating to the Online System.
- 15.7** With the exception of what is provided for in clause 15.5 above, to the fullest extent permitted by law, We cannot accept any liability in relation to any claims made against You by any third party (including a TPP under clause 7.5 above). In particular, We will not be a party to any commercial dispute that may arise between You and the Beneficiary.
- 15.8** We agree to do all that We reasonably can, within the limits of the state of the art, to ensure the correct operation of the Online System under optimum conditions, and to execute the Requests that are transmitted to Us through the Online System. Accordingly, all personal information, and in particular banking data, codes and Online System Access Methods that You enter will be systematically encrypted. However, We will not assume any liability with regard to the circulation and conservation of data or its transformation or use by third parties and will not accept any liability for any losses or costs that You may incur or bear as a result of:
- 15.8.1** malfunctioning of the Online System, of Our or Your telecommunications systems or networks, resulting in it being impossible to use all or part of the functions that they should offer;
  - 15.8.2** unavailability of all or part of the Service caused by a malfunction of the Online System, of Our or Your systems, of any ancillary equipment or telecommunications networks, or any other circumstance;
  - 15.8.3** delay or error in the performance of a Service or the execution of a Request caused by the Online System, Our or Your systems, any ancillary equipment or telecommunications networks, or any other circumstance.
- 15.9** You acknowledge that:
- 15.9.1** the security of information transmitted through electronic means cannot be guaranteed and the transmission of Requests, including using TPPs under clause 7.5 above, and Confirmations takes place at

Your risk. You authorise Us to act in conformity with the Requests, in the format and in accordance with the content that We receive; and

- 15.9.2** the right to use the Online System is granted to You subject to compliance with the provisions of these Standard Terms and Conditions.
- 15.10** Notwithstanding the other exclusions and limitations of Our liability provided for in these Standard Terms and Conditions, any liability that We incur in relation to the Services performed or due to be performed by Us in accordance with these Standard Terms and Conditions will be limited to the value in euro of the transaction concerned on the date of the said transaction or, if no date has been agreed, on the date of the Request concerned.
- 15.11** Any complaint concerning Our Services, Our performance or Our failure to perform, Our team or any of Our sub-contractors should be addressed to Us as follows:
- 15.12** You can raise a complaint with Us by sending an email, telephoning or visiting Our offices in person, using the contact details set out in Clause 19 above. You agree that We may communicate with You in English and may provide information on a durable medium also in electronic form, including email.
- 15.13** We will always try to resolve concerns by the close of the third Business Day. Where this is not possible, We will acknowledge the complaint within five (5) Business Days of the date of receipt of such complaint.
- 15.14** We will investigate any complaint and will send a reply to You within fifteen (15) Business Days of the date of receipt. If We are unable to provide a full response within fifteen (15) Business Days of receipt for reasons beyond Our control, We shall send a holding reply, clearly indicating the reason for the delay and specifying a deadline for a full reply, which will be no later than thirty-five (35) Business Days after receipt of the complaint. A copy of Our complaint handling procedure is available upon request and can also be viewed via Our website.
- 15.15** Without prejudice to the right to bring proceedings before a court, You are also entitled to file an out-of-court complaint with the CSSF ([www.cssf.lu](http://www.cssf.lu)) regarding any alleged infringement by Us of the PSA 2009 or the Banking Act 1993. Further details about the CSSF's competence in that respect and the manner in which a request may be submitted to the CSSF are also provided on Our website or by Us upon request.
- 15.16** You may also contact the Joint Conciliation Committee of the Austrian credit industry (*Gemeinsame Schlichtungsstelle der Österreichischen Kreditwirtschaft*), which offers an out of court redress mechanism. The "Gemeinsame Schlichtungsstelle der Österreichischen Kreditwirtschaft" can be contacted by telephoning on +43 1 505 42 98, sending an email to: [office@bankenschlichtung.at](mailto:office@bankenschlichtung.at) or writing to Gemeinsame Schlichtungsstelle der Österreichischen Kreditwirtschaft, Wiedner Hauptstraße 63, 1045 Vienna, Austria.

## **16 Indemnification relating to faxes and other means of telecommunication**

- 16.1** You agree to indemnify Us, and discharge Us from all liability, in respect of any action, proceedings, liability, responsibility, claims, requests for damages, costs, losses and expenses that may be the consequence of the execution of instructions transmitted by fax or any other telecommunication means coming, apparently, from You or Your representatives, managers, employees or authorised agents, including use of a TPP under clause 7.5 above.
- 16.2** You agree, at Our request, to send Us Your Written confirmation for all instructions sent by fax or by any other means of telecommunication (including use of a TPP under clause 7.5 above) to enable verification by telephone or any other means acceptable to Us; in any case however, the absence of a Written confirmation or verification, or any difference between a Written Confirmation and the instructions originally received by fax cannot in any way reduce Our rights to indemnification or to recover sums due, in application of the provisions of clause 16.1 above.

## **17 Representations and warranties**

By agreeing to these Standard Terms and Conditions, You make the following representations and warranties and undertake that, both on the date of Your acceptance of these Standard Terms and Conditions and on the date of any Requests made by You:

- 17.1** You have the capacity, and have received all the necessary authorisations, to subscribe to the Services and make Requests;



- 17.2** You are not subject to any Sanctions;
- 17.3** The Representative(s) executing the Requests in accordance with these Standard Terms and Conditions are authorised to do so by virtue of the powers of attorney attached to this document, which You may modify whenever deletions or additions become necessary. Such modifications must be confirmed in Writing by an existing authorised signatory;
- 17.4** Your Requests, and all payments to which they pertain, are made in conformity with these Standard Terms and Conditions, constitute for You a binding commitment, are enforceable against You, and will not contradict or breach the terms of any contract or agreement that You have concluded;
- 17.5** All Requests made by You, and all payments to which they pertain, are legal, in direct relation to Your commercial or professional payment requirements, and are not made for any illegal purpose, or speculative purposes;
- 17.6** All Requests made by You are not made in connection with gambling or pornography;
- 17.7** The funds provided by You as Advance Payments and Margin Deposits are unencumbered, not subject to any security interest, preference, quasi security interest, claw back, preferential arrangement, retention of title provisions or a third party right;
- 17.8** You have taken and will take all appropriate measures to protect the data and/or software stored or loaded in Your computer equipment from contamination by viruses and intrusion attempts;
- 17.9** The Services are being used by You solely for business/commercial purposes and that each use of the Services by You is exercised to manage the risk associated with an asset or liability owned or incurred in the conduct of Your business; and
- 17.10** You act as a principal and have legal title to all funds used in connection with the Services, and that any transaction conducted with Us is being undertaken in accordance with Applicable Law. You also confirm that You will not act on the account of a third party.

## **18 General provisions**

- 18.1** These Standard Terms and Conditions, and any dispute that may arise between the Parties in relation to their validity, interpretation or performance, will be governed by Austrian law (however excluding the Austrian conflict of laws rules) and will be subject to the exclusive jurisdiction of the courts competent for commercial matters in Vienna, first district.
- 18.2** You cannot under any circumstances transfer Your rights and/or obligations under these Standard Terms and Conditions without Our prior agreement in Writing. We may transfer Our rights and/or obligations under these Standard Terms and Conditions and/or any transaction entered into pursuant to a Request to any person.
- 18.3** These Standard Terms and Conditions may be modified by Us subject to Our sending You the text of the said modifications, signed by one of Our authorised representatives, at least one (1) month before they come into force. You will be deemed to have accepted the modifications unless You notify Us to the contrary before the effective date of such modifications. Should You not agree to the modifications You have the right to terminate the contract immediately and without charge prior to the effective date of such modifications.
- 18.4** Any written notification required or permitted under of these Standard Terms and Conditions shall be deemed to be received:
  - 18.4.1** five (5) days after sending of a registered letter sent by Us to You at Your business address or sent by You to Us at Our business address as indicated in these Standard Terms and Conditions;
  - 18.4.2** upon receipt by the addressee in the case of a fax or e-mail, subject to the said notification being sent during the addressee's office hours; if the notification is sent out of office hours, it will be considered to have been received on the addressee's next working day.
- 18.5** If, after You have been notified by Us of any modification made to these Standard Terms and Conditions or the fee schedule pursuant to clause 18.3 above, You use or continue to use Our Services, You will be considered to have accepted the modified Standard Terms and Conditions.

- 18.6** You understand and agree that, to the extent possible, We will respond to any reasonable request for copies of historical transaction or other similar information (e.g., a copy of a cashed cheque). You acknowledge and agree that any costs associated with retrieving and providing such information will be billed to and payable by You.
- 18.7** You may terminate these Standard Terms and Conditions at any time, by giving Us a one (1) month's prior notice. Termination for any reason including a breach of these Standard Terms and Conditions by Us shall not affect Your obligation to pay any sums due to Us or other outstanding or accrued liabilities owed to Us at the time of termination.
- 18.8** Save as provided in clause 18.8 below, We may terminate these Standard Terms and Conditions by giving You at least two (2) months' notice. The provisions relating to indemnification in clauses 5.1 and 5.4 above, reimbursement obligations in clauses 22.2 and 22.3 below, and all of clauses 8, 14, 16, 17, 18 and 23 shall survive completion by Us of the Services and termination of these Standard Terms and Conditions.
- 18.9** These Standard Terms and Conditions may be instantly terminated by Us, without the notice period stipulated in clause 18.7 for an important reason (*aus wichtigem Grund*) including but not limited to the following reasons:
- 18.9.1** if there is continuous non-use of the Services by You for a period of one (1) year;
  - 18.9.2** if a Change of Control occurs;
  - 18.9.3** if You breach the terms of the Agreement;
  - 18.9.4** if You breach or fail to comply with any Applicable Law;;
  - 18.9.5** if We are required to do so to comply with any Applicable Law relevant to Us and/or any Convera Affiliate;
  - 18.9.6** if We determine (in Our sole discretion acting reasonably) that You are using the Services for (or in connection with): (A) pornography or other similar activities; (B) purposes that are not in direct relation to Your commercial or professional payment requirements; (C) speculative purposes, (D) if You appear on a Sanctions List; and/or (E) subject to the mandatory provisions of the Austrian Insolvency Code (*Insolvenzordnung - IO*), if You cease Your payments or admit that You are generally unable to settle Your debts when they become due for payment, if You are in a state of insolvency, if You have ceased Your activities, if You are insolvent or over indebted within the meaning of §§ 66 and 67 of the Austrian Insolvency Code, or if You have requested the commencement of insolvency proceedings or reorganisation proceedings pursuant to the Austrian Insolvency Code, if You have requested the appointment of an insolvency receiver (*Masseverwalter*) or a reorganisation receiver (*Sanierungsverwalter*), or more generally, if You are the subject of insolvency proceedings, if You are the subject of an order or a resolution for winding up and/or liquidation, or if you are subject to any measures or proceedings, under Applicable Law, similar to the aforementioned.
- 18.10** In case of continuous non-use of the Services by You for a period of one (1) year, and if We are unable to return any monies to You for any reason, such monies will be kept by Us in a non-interest bearing account and, if applicable, in accordance with Applicable Law, transferred to the relevant public authorities for consignment and subsequent discharge of Our obligations by Us. The holding of such monies by Us shall trigger dormant account fees, which may be deducted from the monies from time to time. We may also assign the monies to a third-party service provider in such a case, which You expressly acknowledge and accept. You expressly authorise Us to transfer Confidential Data to the assignee for that specific purpose.
- 18.11** Should You wish to submit an instruction after termination resulting from continued non-use of Services, You will be required to accept the version of the Standard Terms and Conditions then in force and undergo a full accreditation in line with Our accreditation and other policies in force at that time.

## **19 Notices - Language - Regulatory information**

- 19.1** Any notice to be given to Us under these Standard Terms and Conditions shall be in Writing and shall be deemed duly given if delivered to Us at the fax number, e-mail address or mail address set out below or any other fax number or address notified by Us to You for the purposes of these Standard Terms and Conditions:

**Convera Europe S.A., Austria Branch**

Kohlmarkt 8-10/1. OG, 2.OG

1010 Vienna, Austria

Attention: Branch Manager

Telephone: +43 1 928 055 616

Email: CustomerServiceCE@convera.com

**Convera Europe Financial S.A., Austria Branch**

Kohlmarkt 8-10/1. OG, 2.OG

1010 Vienna, Austria

Attention: Branch Manager

Telephone: +43 1 928 055 616

Email: CustomerServiceCE@convera.com

**19.2** We may provide and You irrevocably consent to receiving any and all notices or documents, including without limitation any legally required disclosure documents via electronic transmission either by the provision of a web-site address or in the form of a portable document format ("**PDF**") accessible on the Online System and/or via email. Hardcopies of such documents or notices will only be submitted upon Your prior written request. The Parties acknowledge and assume the security, corruption, transmission error and access availability risks associated with using open networks such as the internet. The provision of information by means of electronic communications will be considered to be appropriate to the context in which the business between You and Us is conducted where You have regular access to the internet. The provision of an email address by You will be sufficient evidence of such access for these purposes.

**19.3** All communications between You and Us shall be made in English or German.

**19.4** Convera Europe S.A. is supervised and duly authorised by the CSSF as a payment institution and Convera Europe Financial S.A. is supervised and duly authorised by the CSSF as an investment firm. Convera Europe S.A., Austria Branch is supervised under the EU passporting system by the FMA and Convera Europe Financial S.A., Austria Branch is supervised under the EU passporting system by the FMA. You may request any regulatory information concerning Us from the following regulatory authorities:

**Commission de Surveillance du Secteur Financier (CSSF)**

283, route d'Arlon

L-1150 Luxembourg

Tel. : (+352) 26 25 1 – 1

Email: direction@cssf.lu

Website: <https://www.cssf.lu/en/>

**Finanzmarktaufsichtsbehörde (FMA)**

Otto-Wagner-Platz 5

1090 Vienna, Austria

Telephone: +43 1 249 59 0

Fax: +43 1 249 59-5499

Contact forms: <https://www.fma.gv.at/en/contact/>

Website: [www.fma.gv.at](http://www.fma.gv.at)

**20 Requests**

- 20.1** You shall ensure that the information You provide concerning the Beneficiary and the payment instructions are correctly transmitted to Us, in order to avoid any delay in the Beneficiary's receipt of the payment. We will take reasonable steps to rectify any error that has been adequately notified to us, but We cannot be held liable for any harm or loss caused by errors or inaccuracies contained in Your Request.
- 20.2** The time of receipt of a payment order shall be deemed to be either (i) the date of receipt by Us (or by Convera International) of the payment to Our benefit provided for in clause 10.1 above; or (ii) the date for delivery of the funds agreed between You and Us as indicated in the Confirmation (in this case, You undertake to inform Us in Writing of the requested date for delivery of the funds at least three (3) Business Days before this date). If You do not inform Us of the date for the delivery of the funds within the aforesaid timeframe, We shall not be obliged to fulfil Your order and will not incur any liability for failure to comply with the date that We were notified of late. We will inform You of the deemed time of receipt of a payment order. We wish to draw Your attention to the provisions of clause 5.2.6 above, which authorise Us to cancel any Request under these circumstances. If, however, We choose to continue to perform the Service and We realise that We are unable to comply with the date that We were informed of late, We will inform You of this as soon as possible). In accordance with Applicable Law and with clauses 10.1 and 10.2 above (i.e., the underlying settlement having been received by Us), we will deliver the electronic funds transfer payment(s) requested by You as follows:
- 20.2.1** if the payment is to be delivered in the EEA and in euro, payment will be delivered to the account of the Beneficiary's payment services provider by no later than the end of the Business Day following the time of receipt by Us of the payment order; and
- 20.2.2** if the payment is to be delivered in any EEA currency other than euro but in the EEA, the payment will be delivered to the account of the Beneficiary's payment services provider by no later than the end of the fourth Business Day following the time of receipt by Us of the payment order settled pursuant to clause 10.1 above; and
- 20.2.3** payments transactions to be delivered outside of the EEA or in any non-EEA currency and payments to be delivered by draft shall be processed and delivered by Us in accordance with Our standard processing times. For the avoidance of doubt, in the event that funds form part of a Holding Balance processing times will be measured from the date of delivery requested by You.
- 20.3** You may instruct a third party to electronically deliver a certain amount of funds for Your benefit into a correspondent bank account designated, owned and maintained by Us or by Convera International (the **"Incoming Payment"**). You shall require that the third party sender includes Your name and company ID as designated by Us in the memo or reference line of any such Incoming Payment. We may, in Our sole discretion, attempt to contact the third party sender to secure any additional information that may be needed to ensure accurate processing of the Incoming Payment. We shall not be liable to You for any loss, damage, cost or expense incurred by You as a result of any delay in delivery of the Incoming Payment which occurs in connection with the receipt by Us of incomplete or inaccurate Incoming Payment information.
- 20.4** When We accept an Incoming Payment from a third party and the Incoming Payment is not credited to an account maintained by Us or by Convera International for the purposes of executing Your payment transactions, We shall make such Incoming Payment available to You immediately after the Incoming Payment has been received by Us or by Convera International. Where You elect to have such Incoming Payment directed to Us, We shall ensure that the credit value date shall be no later than the Business Day on which the amount of the Incoming Payment is credited to the correspondent bank account designated, owned and maintained by Us or by Convera International. Where the Incoming Payment either: (i) does not involve a currency conversion; or (ii) involves only a currency conversion between euro and another EU currency or between two EU currencies, We shall ensure that the Incoming Payment is at Your disposal immediately, subject to any applicable know your customer checks and Our internal reconciliation requirements, after it is credited to Our (or to Convera International's) bank account.

- 20.5** We shall use Our reasonable endeavours to provide the Services in accordance with Your instructions. However, in the event that You, including using a TPP pursuant to clause 7.5 above, provide a Request to Us for the initiation of a payment in a particular currency (the "**Instruction Currency**") that is different from the local currency used in the jurisdiction where the Beneficiary's payment account is located (the "**Payee Currency**"), You hereby authorise and instruct Us to initiate the payment in the Payee Currency and agree that We shall convert the Instruction Currency into the Payee Currency by applying an exchange rate of 2% above the rate, which is applied to the payment by Our counterparty bank (an "**Automatic Currency Conversion**"). After an Automatic Currency Conversion is executed, You may request the details of the rate applied to the payment by Our counterparty bank. Upon Your request, We shall confirm to You the rate applied to the payment.
- 20.6** You are aware that in cases where We execute an Automatic Currency Conversion, the Confirmation provided by Us to You will not state the foreign exchange rate applied to the Automatic Currency Conversion, because at the time the Confirmation is issued, We will not be able to predict whether or not an Automatic Currency Conversion will be necessary. You agree and acknowledge that once We have become aware of the foreign exchange rate to be applied to an Automatic Currency Conversion, We shall be under no obligation to inform You about such foreign exchange rate, unless You request such information.

## **21 Holding Balances**

- 21.1** Funds may be maintained in a Holding Balance for a maximum of 180 (one hundred and eighty) days. The funds maintained in a Holding Balance will bear no interest. You shall be responsible for all risks (including without limitation, fluctuations in the value of the currency held) associated with maintaining Holding Balances in one or more foreign currencies.
- 21.2** The funds maintained in the Holding Balance shall be used for the sole purpose of providing You the Services. If We do not receive a timely Request for the disposition of such funds prior to the expiry of the one hundred and eighty (180) day period, the funds will be converted to Your home currency at the then prevailing exchange rate(s) and returned to You.
- 21.3** We will not use the funds provided by You. The funds received by You will be deposited in a specific account opened with an appropriate credit institution.

## **22 Cashing of a cheque denominated in a foreign currency**

- 22.1** If You receive cheques denominated in a foreign currency and request Us to cash them and convert them into Euros or another currency of Your choice, and if We have agreed to this, We will proceed as follows:
- 22.1.1** You will send Us a Request to cash cheques denominated in a foreign currency and convert them into a foreign currency, together with the cheques concerned.
- 22.1.2** We will verify the validity of all the cheques that You present to Us. Any cheques that We consider to be invalid will be returned to You as quickly as possible.
- 22.1.3** All cheques shall be endorsed by You, to the benefit of Convera Europe, and shall bear the signature of one of Your authorised representatives.
- 22.1.4** The value date for settlement to Your benefit in euro or in a foreign currency will correspond to Our usual practices in this field, and will depend on the currency concerned and the country where the cheque was issued. The multiplicity of scenarios renders it impossible to determine it in advance, but we can provide You with any relevant information at the time of receipt of Your Request.
- 22.1.5** You agree to pay all the charges relating to cashing and currency conversion, which We shall invoice You for. It is possible that You will not be able to obtain a precise figure for these charges on the date of Your Request, insofar as it is possible that We shall not know on that date the exchange rate terms and charges that will be re-invoiced to Us by the bank on which the cheque is drawn, and in some cases the clearing agent, or the date on which payment will be made. In general, the exchange rate and the charges and commissions applied will be calculated and You will be informed on the day of receipt by Us of the clearing agent's clearing statement. We will keep at Your disposal, in return for payment of a

flat-rate commission, a copy of the documentary evidence relating to the charges invoiced to Us by Our correspondents.

- 22.2** All cheques that are returned to Us unpaid or classified as non-negotiable or non-bankable will be returned to You immediately, and You agree to reimburse Us upon receipt. You also agree to reimburse Us for all the charges invoiced to Us by the entity that returned the cheque that We have had to pay.
- 22.3** You will be informed of any case of loss, theft or destruction of the cheque during its transfer within 24 hours of Our being notified of this. We will send You a request for compensation in which We confirm that We have not received from any bank involved in the clearing or payment of the cheque the sum corresponding to the value of the said cheque. You hereby agree to immediately reimburse to Us the amount corresponding to this value if it has already been paid to You.

### **23 Indemnification relating to a cheque denominated in a foreign currency drawn by Us on Your account held with one of Our correspondents**

- 23.1** If a cheque denominated in a foreign currency issued by Us further to Your instructions is not received by the Beneficiary You have designated, for any reason whatsoever, including without limitation the loss, theft or destruction of the said cheque, You agree to inform Us as soon as You receive notice that the cheque has not been received by the Beneficiary.
- 23.2** As soon as You have notified Us of the non-receipt of the cheque in accordance with the provisions of clause 13.1 above, We will take all reasonable steps to stop the cheque as quickly as possible. You shall not however hold Us liable for delays in stopping, or failure to stop, the cheque if We have taken all reasonable steps to stop the said cheque as quickly as possible. Please also consider the provisions of clause 23.6 below.
- 23.3** We agree to issue a new cheque in replacement or to reimburse You at an exchange rate that We deem appropriate, once We have first been able to stop the cheque concerned. We may however make the replacement or reimbursement of the cheque contingent on the prior provision by You of a bank guarantee guaranteeing Us against any cashing of the cheque initially issued by a third party, despite the stop that We have placed on it. You agree not to hold Us in any way liable and to indemnify Us for any losses, costs, claims, damages and expenses that We incur or are the subject of, as a result of the stopping of the cheque initially issued and its replacement or reimbursement.
- 23.4** If the cheque that was initially issued comes into Your possession or into the possession of the Beneficiary at any time after a stop has been put on it, You hereby undertake to ensure that no attempt will be made to cash this cheque, that it will be returned to Us as soon as possible, and that it will be held on Our behalf while We await receipt of it.
- 23.5** We shall not be under any obligation to issue a replacement cheque or make a reimbursement in the event of Our being able to establish that the cheque initially issued was cashed before a stop was put on it.
- 23.6** If it can be established that the cheque that was initially issued was cashed before it was possible to put a stop on it, but: (i) You informed Us as soon as You became aware that the cheque had not been received; and (ii) You have adequately demonstrated to Us that the loss, theft or destruction of the cheque was in no way due to negligence on Your part or failure to exercise due care when sending the cheque, or in respect of any other operation involving the cheque, We may issue a replacement cheque or make a reimbursement at an exchange rate that We consider appropriate, it being understood however that the replacement or reimbursement of the cheque may be contingent on the prior provision of a bank guarantee by You which secures Us against the event that it is impossible to obtain reimbursement of the cheque that was initially issued by the bank that was to clear/pay this cheque. In the light of the facts set out above, You hereby agree to reimburse Us the value of the cheque initially issued in the event it is impossible for Us to obtain its reimbursement from the bank that was to clear/pay the cheque or in the event of it being established that You, the Beneficiary or any other party known to You or the Beneficiary, cashed this cheque. If it is established that the cheque was cashed by You, the Beneficiary or any other party known to You or the Beneficiary, We will have the right to immediately stop, at Your expense, the cheque issued in replacement, and any sums that have been reimbursed to You must be repaid to Us immediately.

## 24 PPE Forward Contracts and Future Payments

### *PPE Forward Contracts*

- 24.1** We will enter into a PPE Forward Contract with You at Your Request only if You are a non-financial counterparty (as such term is defined in EMIR) and on the condition subsequent that, save as expressly contemplated by any OTM Facility and/or ND Facility we extend to You, You promptly, but no later than by an agreed date, make an Advance Payment equal to an agreed percentage of the nominal value of the PPE Forward Contract.
- 24.2** You confirm, represent and warrant that: (i) You are a non-financial counterparty (as such term is defined in EMIR); and (ii) each PPE Forward Contract that You enter into with Us is to facilitate payment for identifiable goods or services.
- 24.3** We shall only be obliged to perform a PPE Forward Contract once We have received from You the outstanding balance of the sums that You owe Us under the conditions set out in clause 10.1 above.
- 24.4** Once the Settlement Amount for a PPE Forward Contract has been received by Us, We will deliver the funds into Your Holding Balance or to a Beneficiary in accordance with Your Request(s).
- 24.5** If specifically so agreed between You and Us You may Draw Down against a PPE Forward Contract during an agreed Delivery Window; provided, however, We have received settlement in immediately available funds corresponding to the amount of the Draw Down. Notwithstanding any Draw Down, You shall be required to provide full Settlement Amount (or any remaining balance) to Us in immediately available funds in connection with a PPE Forward Contract on or before the end of the Maturity Date.
- 24.6** We may, in Our sole discretion limit PPE Forward Contracts to a predetermined maximum transaction value that will be expressed in Euro and/or to a maximum term of the PPE Forward Contract (i.e. the period between entering into the PPE Forward Contract and its Maturity Date).
- 24.7** Any Advance Payment to the extent not properly applied or set off by Us in accordance with these Standard Terms and Conditions, in particular clauses 24.10 or 24.20 below, is recoverable by You once the payment obligations of the PPE Forward Contract have been discharged in full.
- 24.8** During the term of each PPE Forward Contract, We may, at our discretion, at any time request You to pay an additional amount - a Margin Deposit - with respect to your PPE Forward Contracts for the following reasons: (i) if as a result of any market revaluation we carry out, Your PPE Forward Contract moves Out of the Money beyond your OTM Facility (if any); and/or (ii) a deterioration in Your financial standing or creditworthiness. The amount of such Margin Deposit shall be determined by Us and shall be based on the actual Out of the Money position and/or the adverse change in Your financial standing or creditworthiness. If We ask You to pay a Margin Deposit You agree to pay the Margin Deposit to Us within two (2) Business Days of each such request. We may repeatedly request You to make additional Margin Deposits should the PPE Forward Contract continue to move further Out of the Money beyond Your OTM Facility (if any) or if Your financial standing and/or creditworthiness further deteriorates.
- 24.9** In case you have two or more outstanding PPE Forward Contracts, each of them will be re-valued individually and each PPE Forward Contract exposure will be netted with other such contracts individual exposures to establish Our overall exposure for all Your outstanding PPE Forward Contracts. Accordingly, We will ask You to pay the Margin Deposit if the net mark to market value of all these contracts moves Out of the Money beyond Your OTM Facility (if any) and/or if there is relevant deterioration of Your financial standing or creditworthiness.
- 24.10** The Advance Payments as well as the Margin Deposits are provided to Us by way of transfer of ownership to such funds and constitute the Financial Collateral securing Your debts (corresponding to Our receivables) from all outstanding PPE Forward Contracts and/or Future Payments at any time. We are entitled to hold the Advance Payments as well as the Margin Deposits received from You in our ownership and may apply them to satisfy Your total payment obligations owed to Us with respect to any outstanding PPE Forward Contract and/or Future Payment on its Maturity Date, Release Date or any other applicable due date. In such situation or following your default or in circumstances described in clause 24.19 below, We will satisfy Our receivables by withdrawing the funds held as Financial Collateral and setting-off the Financial Collateral against Our receivables or by any other

possible means allowed by Applicable Law. Following a dispatch of the notice pursuant to clause 24.20 below, the Financial Collateral will be included in the close out netting arrangement pursuant to this clause and Our receivables will be satisfied by means described in clauses 24.20 and 24.21 below.

- 24.11** If You fail to comply with any of Your obligations set out in this clause 24 or those contained in the provisions of any PPE Forward Contract, You will indemnify Us in full for all the losses, costs, charges or expenses that We incur, including those related to the settlement or continuation of any currency contract that We have entered into with other parties.
- 24.12** We may change and/or withdraw any OTM Facility, ND Facility and/or the maximum limits referred to in clauses 24.1 and 24.6 above: (i) based upon their periodic review in Our sole discretion; (ii) in cases described in the provisions of clause 5.2 above; or (iii) if there has been material adverse change in the cash flow, business activities, assets, financial (or other) condition or perspectives of You as from the date of the last notification on the relevant limit or, as applicable, the last regular review as per item (i) above or other detrimental circumstances which in Our reasonable opinion could have a material adverse effect on Your ability to comply with any of Your obligations towards Us. We will notify You in Writing of any change or withdrawal of any OTM Facility, ND Facility and/or the maximum limits referred to in clauses 24.1 and 24.6 above and pursuant to previous sentence; these may be further changed based on a Written agreement between You and Us.
- 24.13** Until any payments or deliveries due on any date from You to Us in respect of any PPE Forward Contracts have been satisfied in full, including by way of the set-off as described in clause 11.1.8 above, We may, in Our discretion, withhold any payment or delivery due from, or incurred by, Us to you on that date under or pursuant to the PPE Forward Contracts.

#### Future Payments

- 24.14** You may authorise Us to enter into a Future Payments by delivering a Request to Us from You or a TPP under clause 7.5 above. We may, in Our sole discretion limit the provision of Future Payments services to You to a predetermined maximum transaction value that will be expressed in Euros for each Future Payments transaction. We will advise You of any limit that applies before We commence providing Services related to Future Payments to You. You confirm, represent and warrant that each Future Payment that You enter into with Us is to facilitate payment for identifiable goods or services.
- 24.15** You must deliver the Settlement Amount to Us in the same currency as the currency specified by You in Your Request for Future Payments.
- 24.16** Once the Settlement Amount has been received by Us, We will release the payment in accordance with Your Request. We may charge You a fee for the transfer of the funds as set out in the fee schedule.
- 24.17** In the event that You desire to change the Release Date of the Future Payments, or any portion thereof, before the Release Date, You may do so subject to Our express agreement; provided, however, that the maximum length of any amendment to the Release Date shall not exceed one hundred and twenty (120) days after the Contract Date of the Future Payments unless We in Our sole discretion extend the term of the Future Payments.
- 24.18** You may amend Your release instructions prior to the Release Date by submitting a Request to Us not to release the full amount of the funds on the Release Date. In such case, You may instruct Us to immediately resell the excess funds at the current market exchange rate or otherwise We will place the balance of the excess funds in a Holding Balance in accordance with clause 21 above. You will remain liable for the full amount of the funds to Us. Once the funds have been placed in a Holding Balance, if We do not receive a timely Request for the disposition of such funds prior to the expiry of one hundred and eighty (180) days, the funds will be converted to Your home currency at the then prevailing exchange rate and returned to You as indicated in clause 21 above.

#### Provisions applicable to PPE Forward Contracts and Future Payments

- 24.19** If You fail to provide the Advance Payment or Margin Deposit required in relation to a PPE Forward Contract at the latest on the due date or, communicate to Us an intent not to provide the Advance Payment or Margin Deposit, or dispute the validity or existence of a PPE Forward Contract and/or a Future Payment or default, or communicate Your intent to default on any of Your obligations, or admit that You are generally unable to settle Your debts when



they become due for payment, if You are in a state of insolvency, if You have ceased Your activities, if You are insolvent or over indebted within the meaning of §§ 66 and 67 of the Austrian Insolvency Code, or if You have requested the commencement of insolvency proceedings or reorganisation proceedings pursuant to the Austrian Insolvency Code, if You have requested the appointment of an insolvency receiver or a reorganisation receiver, or more generally, if You are the subject of insolvency proceedings, if You are the subject of an order or a resolution for winding up and/or liquidation, or if you are subject to any measures or proceedings, under Applicable Law, similar to the aforementioned We may terminate and unwind, without any prior notice to You, any PPE Forward Contract and/or Future Payment and/or any other steps that We deem appropriate (pursuant to clause 5 above) to mitigate the potential loss(es) caused by Your failure to honour Your contractual obligations under the PPE Forward Contract(s) and/or Future Payment(s). In the event of such termination, You agree to pay to Us on demand within five (5) Business Days the amount of any and all losses and expenses incurred by Us in connection with the termination and unwinding of the PPE Forward Contract(s) and/or Future Payment(s) including any loss incurred by Us arising from the Contract Date to the date of termination of the PPE Forward Contract and/or Future Payment.

**24.20** If We terminate any PPE Forward Contract(s) and/or Future Payment(s) pursuant to clause 24.19 above, we shall send You a notice describing the respective event for termination, date of dispatch of the notice and the Termination Amount (as defined below; if already calculated at such date). With effect from the date of dispatch of such notice, all further payments and performances in respect of all PPE Forward Contracts and/or Future Payments shall be discharged and existing duties and obligations of You and Us shall be replaced by a single obligation of either Us or You to be calculated by Us pursuant to clause 24.21 below (the "**PPE & FP Termination Amount**"). The PPE & FP Termination Amount is the sole settlement receivable resulting from a close-out netting arrangement. The PPE & FP Termination Amount shall be payable by the relevant debtor by electronic transfer within three (3) Business Days of the date of the request for its payment.

**24.21** On, or as soon as practicable after, the date of dispatch of the notice pursuant to clause 24.20, We shall calculate in a manner commercially reasonable at the Luxembourg or European financial markets, as applicable, and shall notify You of the PPE & FP Termination Amount (if any) to be received or paid by You. The PPE & FP Termination Amount shall be calculated as of the date of dispatch of the notice pursuant to clause 24.20 above as a difference between present values of: (i) all Your claims; and (ii) Our claims under the Relevant Transaction(s) and/or related to these PPE Forward Contract(s) and/or Future Payment(s) (including without limitation any Advance Payments and Margin Deposit, funds pursuant to clause 6.1 above, damages, losses and expenses pursuant to clauses 24.11 or 24.19 above). The PPE and FP Termination Amount shall be denominated in Euro. For the purpose of its calculation, the reference foreign exchange rate published by the OeNB on its website as of the date of dispatch of the notice pursuant to clause 24.20 above shall apply.

## **24A Funds transferred to Convera Europe and/or Convera International**

Convera Europe shall be responsible for any funds that you transfer (or that a third party transfers for your benefit) to Convera Europe and/or Convera International and shall remain responsible for such funds until such time as such funds are received by a Beneficiary (or in the case of funds received for your benefit from a third party, until such time as such funds are received by You or received by a Beneficiary in accordance with your Instructions).

## **24B Safeguarding**

**24B.1** As noted in Clause 19.4 above, Convera Europe is authorised by the CSSF as a payment institution, which allows Convera Europe to offer payment services.

**24B.2** As a payment institution, Convera Europe is required to ensure that all funds which have been received from a client for the execution of payment transactions (the "**Relevant Funds**") are appropriately "safeguarded". There are different ways in which this can be achieved. Currently we use a combination of:

- (i) the comparable guarantee method which means that we have procured a guarantee from an insurance company or a credit institution (the "**Guarantee**") to cover the amounts of Relevant Funds we hold for all clients; and
- (ii) the "segregation method" which means that Relevant Funds are held in a segregated bank account (the "**Segregated Account**") separately from our own funds, in accordance with the PSA 2009.

**24B.3** In the event of Our insolvency, bankruptcy or in any other situation of equal ranking or in the event that We are unable to meet Our financial obligations:

- (i) the Guarantee shall become payable and the proceeds of the guarantee will be paid into the Segregated Account; and
- (ii) all the funds in the segregated account the funds are not part of the mass of Our asset and You (and our other clients for whom we are holding Relevant Funds will be entitled to be reimbursed from this pool (in priority to other creditors).

**25 Your classification as retail client or professional client**

- 25.1** Prior to entering into any Derivative Contract with Us, You shall be classified and treated as either: (a) a retail client (*Privatkunde*) or (b) a professional client (*professioneller Kunde*) according to the Austrian Securities Supervision Act 2018 (*Wertpapieraufsichtsgesetz 2018 – WAG 2018*). Each category of clients is afforded a different level of protection. Within the professional client category it is relevant whether You will be classified as a: (i) per se professional client pursuant to § 66(2)(1) of the Austrian Securities Supervision Act 2018; (ii) professional client based on the balance sheet, turnover and shareholder's equity of such client pursuant to § 66(2)(2) of the Austrian Securities Supervision Act 2018; or (iii) professional client upon request pursuant to § 67(1) of the Austrian Securities Supervision Act 2018 ("**Professional Client upon Request**").
- 25.2** Before providing to You the Services relating to the Derivative Contracts, We will communicate to You, in a durable medium, Your classification as a retail client or a professional client.
- 25.3** You may request a different classification from that assigned to You. In particular:
- 25.3.1** if You have been classified as a professional client (other than a Professional Client upon Request), You may request to be treated as a retail client. Such request is subject to Our approval. In order to be classified as a retail client, You must conclude a written agreement with Us providing in relation to which Derivative Contracts and/or investment Services the treatment as retail client shall apply;
- 25.3.2** if You have been classified as a retail client You may request to be treated as a professional client (Professional Client upon Request), provided that the following criteria and procedures are satisfied and followed: (i) You must communicate to Us, in writing Your intention to be treated as a professional client in relation to your relationship with Us or to which Derivative Contracts and/or investment Services You want to be so treated; (ii) further to Your request, We will answer You in writing indicating the rights and protections You will lose further to the requalification as a Professional Client upon Request; and (iii) You shall declare in writing through an attachment to the request that You are aware of, and accept, the consequences of losing such protections. Any request made by You pursuant to this clause 25.3.2 is subject to Our approval. We will only be able to treat You as a professional client if you meet the criteria set out in § 67(2)(5) of the Austrian Securities Supervision Act 2018.
- 25.3.3** if you have been classified as a Professional Client upon Request (following the procedure in clause 25.3.2 above), You may request in writing to be treated as a retail client again; Your request must stipulate in relation to which Derivative Contracts and/or investment Services You want to be so treated;
- 25.4** When You request to upgrade Your classification from a retail to a professional client, We may reject such request because, for example, We deem that You merit the highest level of protection.
- 25.5** Furthermore, on Our initiative, We may treat You as a retail client notwithstanding You could be classified as professional client. In such case we will inform you accordingly about the downgrade of Your classification. In such notice We will inform you in relation to which Derivative Contracts and/or investment Services You will be so treated.
- 25.6** If You are a Professional Client upon Request You must communicate to Us changes that could influence Your classification. However, if We become aware that You do not satisfy the conditions necessary to be treated as professional client. We shall adopt the requisite measures.

**26 Derivative Contracts**

**26A** The Client hereby confirms and agrees that it shall use the payment services offered by Convera Europe to fulfil its obligations to pay any settlement amounts due to Convera Europe Financial pursuant to a Derivative Contract.

**26.1** Forward Contracts

- 26.1.1** We will enter into a Forward Contract with You at Your Request provided that, save as expressly contemplated by any OTM Facility and/or ND Facility we extend to You, You promptly, but no later than by an agreed date, make an Advance Payment equal to an agreed percentage of the nominal value of the Forward Contract.
- 26.1.2** We shall only be obliged to perform a Forward Contract once We have received from You the outstanding balance of the sums that You owe Us under the conditions set out in clause 10.1 above.
- 26.1.3** Once the Settlement Amount for a Forward Contract has been received by Us, We will deliver the funds into Your Holding Balance and You hereby agree that such delivery of funds to Your Holding Balance shall constitute a good discharge for Convera Europe Financial of Our obligations to pay the amount due to You pursuant to a Forward Contract.
- 26.1.4** If specifically so agreed between You and Us You may Draw Down against a Forward Contract during agreed Delivery Window; provided, however, We have received settlement in immediately available funds corresponding to the amount of the Draw Down. Notwithstanding any Draw Down, You shall be required to provide full Settlement Amount (or any remaining balance) to Us in immediately available funds in connection with a Forward Contract on or before the end of the Maturity Date.

## **26.2 NDFs**

- 26.2.1** You may authorise Us to enter into an NDF with You by delivering a Request provided that, save as expressly contemplated by any OTM Facility and/or ND Facility We extend to You, We promptly, but no later than by an agreed date, receive an Advance Payment equal to an agreed percentage on the basis of the evaluation of Your creditworthiness of the nominal value of the NDF. This may be waived in case an OTM Facility and/or a ND Facility have been made available to you. You agree to perform the NDF entered into in conformity with its provisions, including those concerning the Value Date and the Cash Settlement Amount.
- 26.2.2** On the Value Date:
- (a) if the Contract Rate is more favourable for You than the Fixing Rate, We will pay You the difference in the Settlement Currency into Your Holding Balance and You hereby agree that such delivery of funds to Your Holding Balance shall constitute a good discharge for Convera Europe Financial of Our obligations to pay the amount due to You pursuant to a NDF;
  - (b) if the Contract Rate is less favourable for You than the Fixing Rate, You will pay Us the difference in the Settlement Currency, in accordance with clause 10 above.
- 26.2.3** If specifically so agreed between You and Us, You may: (a) bring forward; or (b) extend, the Value Date of an existing NDF; to achieve this We will cancel the existing NDF and You will enter into a new NDF with a new Contract Rate and Value Date.

## **26.3 Option Contracts**

- 26.3.1** You and We may enter into an Option Contract at Your Request. We will enter into an Option Contract with You at Your Request provided that, save as expressly contemplated by any OTM Facility and/or ND Facility we extend to You, You promptly, but no later than by an agreed date, make an Advance Payment equal to an agreed percentage of the nominal value of the Option Contract.
- 26.3.2** Once the Options Settlement Amount has been received by Us, We will deliver the funds into Your Holding Balance and You hereby agree that such delivery of funds to Your Holding Balance shall constitute a good discharge for Convera Europe Financial of Our obligations to pay the amount due to You pursuant to an Option Contract.
- 26.3.3** You must, where applicable, pay to Us the Premium in cleared funds during business hours on the Premium Payment Date in accordance with Our instructions. The Premium is non-refundable. If You fail to pay the Premium in full, We are not obliged to accept exercise or other Requests as advised by You in relation to the Option Contract and may terminate the Option Contract and recover all costs and expenses incurred by Us in connection with the Option Contract.

#### **26.3.4** Exercise

- (a) Where You hold the right to exercise an Option Contract at the Expiration Time on the Expiration Date and where such Option Contract is In the Money, such Option Contract shall (unless You otherwise instruct Us by telephone or by email) be deemed to be exercised on the Expiration Date at the Expiration Time, without the need for You to serve a Notice of Exercise on Us.
- (b) Where You hold the right to exercise an Option Contract and such Option Contract is not deemed to be exercised pursuant to clause 26.3.4(a) above, You may exercise such Option Contract by giving a Notice of Exercise to Us on the Expiration Date, not later than the Expiration Time.
- (c) Where We hold the right to exercise an Option Contract at the Expiration Time on the Expiration Date, such Option Contract shall be deemed to be exercised on the Expiration Date at the Expiration Time without the need for Us to serve a Notice of Exercise on You.

**26.3.5** The Buyer of an Option Contract may at any time during the term (the period from the Trade Date to the Expiration Time) notify the Seller of the Option Contract that it intends to surrender or close the Option Contract, provided that, where relevant, the total amount of the Premium has been received by Us in cleared funds. Any notice of surrender or closure must be received by Us before the Expiration Time. We will establish the close-out strike rate and total premium. The net premium difference (i.e. whether In the Money or Out of the Money) will be passed onto the Buyer.

**26.3.6** Unless the Option is surrendered or exercised in accordance with this clause 26.3, the Option Contract(s) will lapse at the Expiration Time.

#### **26.4 Provisions applicable to Derivative Contracts**

**26.4.1** We may, in Our sole discretion limit Derivative Contracts entered into with You to a predetermined maximum transaction value that will be expressed in Euro and/or to a maximum term of the Derivative Contract (i.e. the period between entering into the Derivative Contract and its Maturity Date or Expiration Date, as applicable). We will advise You of any limit that applies before We commence providing Services related to Derivative Contracts to You.

**26.4.2** Any Advance Payment to the extent not properly applied or set off by Us in accordance with these Standard Terms and Conditions, in particular clauses 26.4.5 or 26.4.11 below, is recoverable by You once the payment obligations of the Derivative Contract have been discharged in full.

**26.4.3** During the term of each Derivative Contract, We may, at our discretion, at any time request You to pay an additional amount - a Margin Deposit - with respect to your Derivative Contracts for the following reasons: (i) if as a result of any market revaluation we carry out, Your Derivative Contract moves Out of the Money beyond your OTM Facility (if any); and/or (ii) a deterioration in Your financial standing or creditworthiness. The amount of such Margin Deposit shall be determined by Us and shall be based on the actual Out of the Money position and/or the adverse change in Your financial standing or creditworthiness. If We ask You to pay a Margin Deposit You agree to pay the Margin Deposit to Us within two (2) Business Days of each such request. We may repeatedly request You to make additional Margin Deposits should the Derivative Contract continue to move further Out of the Money beyond Your OTM Facility (if any) or if Your financial standing and/or creditworthiness further deteriorates.

**26.4.4** In case you have two or more outstanding Derivative Contracts, each of them will be re-valued individually and each Derivative Contract exposure will be netted with other such contracts individual exposures to establish Our overall exposure for all Your outstanding Derivative Contracts. Accordingly, We will ask You to pay the Margin Deposit if the net mark to market value of all these contracts moves Out of the Money beyond Your OTM Facility (if any) and/or if there is relevant deterioration of Your financial standing or creditworthiness.

**26.4.5** For professional clients, the Advance Payments as well as the Margin Deposits are provided to Us by way of full title transfer (*Vollrechtsübertragung*) to such funds and constitute the Financial Collateral securing Your debts (corresponding to Our receivables) from all outstanding Derivative Contracts at any

time. We are entitled to hold the Advance Payments as well as the Margin Deposits received from You in our ownership and may apply them to satisfy Your total payment obligations owed to Us with respect to any outstanding Derivative Contract on its Maturity Date or Settlement Date or Premium Payment Date or any other applicable due date. In such situation or following your default or in circumstances described in clause 26.4.9 below, We will satisfy Our receivables by withdrawing the funds held as Financial Collateral and setting-off the Financial Collateral against Our receivables § 5(1)(2) of the Austrian Financial Collateral Act by applying the Advance Payments and the Margin Deposits in lieu of payment (*Verwendung an Zahlungs statt*) or by any other possible mean provided for under the Austrian Financial Collateral Act. Following a dispatch of the notice pursuant to clause 26.4.15 below, the Financial Collateral will be included in the close-out netting arrangement pursuant to clause 26.4.15 below and Our claims will be satisfied by means described in clauses 26.4.15 below and 26.4.16 below.

- 26.4.6** For retail clients, the Advance Payments and the Margin Deposits will be held in relation to Your debts (corresponding to Our receivables) from all outstanding Derivative Contracts at any time. The Advance Payments and Margin Deposits shall be maintained in a separate dedicated Client Money Account maintained by Us at an appropriate credit institution which shall be held by the credit institution in favour of all Our clients to Derivative Contracts who have provided to Us Advanced Payments and Margin Deposits. Please refer to Our Financial Services Guide for further information on how these funds will be held and any risk associated with such safeguarding. You will continue to own the Advance Payments and the Margin Deposits transferred to Us, but We will be entitled to set off those Advance Payments and Margin Deposits against Your total payment obligations owed to Us with respect to any outstanding Derivative Contract on its Maturity Date or Settlement Date or Premium Payment Date or any other applicable due date. Following a dispatch of the notice pursuant to clause 26.4.11 below, any amounts set off pursuant to this clause 26.4.6 shall be accounted for in the close out netting arrangement pursuant to clause 26.4.13 below and Our receivables will be satisfied by means described in clauses 26.4.11 and 26.4.12 below.
- 26.4.7** If You fail to comply with any of Your obligations set out in this clause 26 or those contained in the provisions of any Derivative Contract, You will indemnify Us in full for all the losses, costs, charges or expenses that We incur, including those related to the settlement or continuation of any currency contract that We have entered into with other parties.
- 26.4.8** We may change and/or withdraw any OTM Facility, ND Facility and/or the maximum limits referred to in clauses 26.1.1, 26.2.1 and 26.3.1 above: (i) based upon their periodic review in Our sole discretion; (ii) in cases described in the provisions of clause 5.2 above; or (iii) if there has been material adverse change in the cash flow, business activities, assets, financial (or other) condition or perspectives of You as from the date of the last notification on the relevant limit or, as applicable, the last regular review as per item (i) above, or other detrimental circumstances which in Our reasonable opinion could have a material adverse effect on Your ability to comply with any of Your obligations towards Us. We will notify You in Writing of any change to or withdrawal of any OTM Facility, ND Facility and/or the maximum limits referred to in clauses 26.1.1, 26.3.1 and 26.4.1 above pursuant to the previous sentence; these may be further changed based on a Written agreement between You and Us.
- 26.4.9** Until any payments or deliveries due on any date from You to Us in respect of any Derivative Contracts have been satisfied in full, including by way of the set-off as described in clause 11.1.7 above, We may, in Our discretion, withhold any payment or delivery due from, or incurred by, Us to you on that date under or pursuant to the Derivative Contracts.
- 26.4.10** If You fail to provide the Advance Payment or Margin Deposit required in relation to a Derivative Contract at the latest on the due date or, communicate to Us an intent not to provide the Advance Payment or Margin Deposit, or dispute the validity or existence of a Derivative Contract (the "**Relevant Transactions**") or default, or communicate Your intent to default on any of Your obligations, or admit that You are generally unable to settle Your debts when they become due for payment, if You are in a state of insolvency, if You have ceased Your activities, if You are insolvent or over indebted within the

meaning of §§ 66 and 67 of the Austrian Insolvency Code, or if You have requested the commencement of insolvency proceedings or reorganisation proceedings pursuant to the Austrian Insolvency Code, if You have requested the appointment of an insolvency receiver or a reorganisation receiver, or more generally, if You are the subject of insolvency proceedings, if You are the subject of an order or a resolution for winding up and/or liquidation or if you are subject to any measures or proceedings, under the applicable law, similar to the aforementioned (each a "**Termination Event**"), We may terminate and unwind, without any notice to You, the Relevant Transaction and/or any other steps that We deem appropriate (pursuant to clause 26.4.7 above) to mitigate the potential loss(es) caused by Your failure to honour Your contractual obligations under the Relevant Transaction(s). In the event of such termination, You agree to pay to Us on demand within five (5) Business Days the amount of any and all losses and expenses incurred by Us in connection with the termination and unwinding of the Relevant Transaction(s) including any loss incurred by Us arising from the Contract Date to the date of termination of the Relevant Transactions.

**26.4.11** If We terminate any Relevant Transactions(s) pursuant to clause 26.4.10 above, We shall send You a notice describing the respective event for termination, date of dispatch of the notice and the Termination Amount (as defined below; if already calculated at such date). With effect from the date of dispatch of such notice, all further payments and performances in respect of all Relevant Transactions shall be discharged and existing duties and obligations of You and Us shall be replaced by a single obligation of either Us or You to be calculated by Us pursuant to clause 26.4.12 (the "**Termination Amount**"). The Termination Amount is the sole settlement receivable resulting from: (a) in the case of professional clients, a close-out netting within the meaning § 9 of the Austrian Financial Collateral Act; and (b) in the case of retail clients, a set-off of all mutual payment obligations. The Termination Amount shall be payable by the relevant debtor by electronic transfer within three (3) Business Days of the date of the request for its payment.

**26.4.12** On, or as soon as practicable after, the date of dispatch of the notice pursuant to clause 26.4.11 above, We shall calculate, in accordance with the principles of fair business dealings (*Grundsätzen des redlichen Geschäftsverkehrs*), and shall notify You of, the Termination Amount (if any) to be received or paid by You. The Termination Amount shall be calculated as of the date of dispatch of the notice pursuant to clause 26.4.11 above as the difference between present values of: (i) all Your claims; and (ii) Our claims, under the Relevant Transaction(s) and/or related to these Relevant Transaction(s) (including without limitation any Advance Payments and Margin Deposit, funds pursuant to clause 10.1 above, damages, losses and expenses pursuant to clauses 26.4.7 or 26.4.10 above). The Termination Amount shall be denominated in Euro. For the purpose of its calculation, the reference foreign exchange rate published by the OeNB on its website as of the date of dispatch of the notice pursuant to clause 26.4.13 above shall apply.

**26.4.13** Information in relation to the Derivative Contracts, including, without limitation, a more detailed description of their nature and risks may be found in the Product Disclosure Statement and the Financial Services Guide available on Our website or upon request.

## **26.5 Investment Advice**

### **26.5.1 General**

**26.5.1.1** We are authorised to provide You with Investment Advice.

**26.5.1.2** Your personal needs and situation shall be established based on information You provide to Us including information contained in the Customer Profile Document. We will not be able to provide You with Investment Advice unless You have provided Us with all information required under the Customer Profile Document.

**26.5.1.3** You acknowledge that We may rely on and treat any information provided to Us in the Customer Profile Document or otherwise as true, accurate and up to date until You inform Us that any information so provided is no longer true, accurate or up to date.

**26.5.1.4** The agreements to buy or sell any financial instrument covered by the Services following an Investment Advice may be concluded using distance means of communication, which may prevent the prior delivery of a statement on suitability to You. In such a case, You hereby consent to receiving such a Written suitability statement without undue delay after the purchase or selling of the relevant financial instrument, and hereby expressly waive the option to delay any transaction in order to receive such a statement in advance.

## **26.5.2 How We provide Investment Advice**

**26.5.2.1** We may provide You with Investment Advice either at Your own initiative or at Our initiative. We may also refuse to provide You with Investment Advice requested by You for any reason without justification.

**26.5.2.2** We provide Investment Advice on a non-independent basis as we only advise in relation to products We issue. Investment Advice will be based on our assessment of the suitability and appropriateness of the relevant product(s) to You including Your relevant knowledge and experience in relation to such product(s), Your financial situation, including Your capacity to bear financial losses arising from such product(s) and Your investment objectives including Your risk tolerance.

**26.5.2.3** We may provide You with Investment Advice either in written or in oral form. If in written form, Investment Advice shall be provided in a Statement of Advice. If in an oral form, each piece of Investment Advice will be followed by a Statement of Advice documenting the Investment Advice provided to You in oral form.

**26.5.2.4** A statement of advice is a document prepared for You by Us covering, amongst other things: (i) Investment Advice; (ii) a merit justification of the Investment Advice; (iii) information about the sources used to prepare the Investment Advice; and (iv) information about the period of time the Investment Advice remains valid ("**Statement of Advice**").

**26.5.2.5** If for any reason Investment Advice provided to You in oral form is not properly reflected in a Statement of Advice or if You have not received a Statement of Advice following being provided with oral Investment Advice, You may contact Us and request a Statement of Advice correctly reflecting the oral Investment Advice previously given to You to be delivered.

**26.5.2.6** We do not provide ongoing periodic statements of the suitability of the financial instruments recommended to You.

## **26.5.3 No fees payable for Investment Advice**

We do not charge fees for the Investment Advice provided to You.

## **26.5.4 Responsibility for taking investment decisions**

**26.5.4.1** You are not obliged to follow any Investment Advice We provide to You.

**26.5.4.2** You acknowledge that You are exclusively responsible for taking Your investment decisions and for any consequences of Your investment decisions irrespective of whether You have followed Our Investment Advice or not.

**26.5.4.3** We are not liable for any consequences of Your investment decisions whether taken as a result of Our Investment Advice or not unless these consequences are due to Our gross negligence or willful misconduct when providing Investment Advice to You.

**26.5.4.4** Subject to any mandatory provisions of Applicable Laws to the contrary You should not disclose the Investment Advice We have provided to You to any third party without Our prior consent.

## **26.6 Investor Protection Scheme**



- 26.6.1** In respect of derivative transactions, in accordance with applicable Luxembourg law, We are a member of the Luxembourg investor compensation scheme ("*Système d'indemnisation des investisseurs Luxembourg*") (the "**Investor Protection Scheme**").
- 26.6.2** To the extent applicable, Your total claims against Us generated by Our inability to:
- 26.6.2.1** repay funds owed to You or held on Your behalf by Us and linked to investment transactions; or
- 26.6.2.2** redeem financial instruments held on the Your behalf by Us or managed on Your behalf by Us and linked to investment transactions,
- is guaranteed by the Investor Protection Scheme up to an amount of EUR20,000.
- 26.6.3** The share of each investor will be taken into account in case of joint investment transactions and Your liabilities towards Us are taken into account when calculating the repayable amount.
- 26.6.4** The protection of the Investor Protection Scheme is triggered at the earliest of: (a) the determination by the CSSF of Our inability to satisfy the investment claims of Our customers; or (b) a court decision whereby a suspension of payments (*sursis de paiement*) or a liquidation proceeding (*liquidation*) is opened against Us.
- 26.6.5** To the extent that they are eligible, the Investor Protection Scheme will inform the investors, including You, of the occurrence of a trigger event and You must file Your claims within a ten (10)-year period following the date of the decision of the CSSF or the court or the publication of such decisions.
- 26.6.6** You will be reimbursed within three (3) months once Your eligibility and the amount of the guarantee have been decided upon.
- 26.6.7** No claim can be indemnified under both the Deposit Guarantee Scheme and the Investor Protection Scheme. All claims resulting from a deposit within the meaning given to such term in the Luxembourg law of 18 December 2015 on the failure of credit institutions and certain investment firms, as amended, must be guaranteed by the *Fonds de Garantie des Dépôts Luxembourg*.
- 26.6.8** As a matter of principle, professional and institutional investors are unlikely to benefit from the protection of the Investor Protection Scheme.

## **26.7 Conflicts of Interest**

We are required to treat You (or, where applicable, Your principal or principals) fairly in relation to conflict of interest or material interests. To that effect, we maintain a conflict of interest policy in relation to the Services We provide. A summary of Our policy is provided in the Financial Services Guide which is available on our website. Further details may be obtained upon request to Us.

## **27 EMIR Requirements**

### **27.1 Timely Confirmation of Derivative Contracts**

- 27.1.1** The terms of each Derivative Contract shall be confirmed in the Confirmation delivered by Us to You under these Standard Terms and Conditions.
- 27.1.2** We will deliver a Confirmation in respect of each Derivative Contract to You as soon as possible and at the latest by the Confirmation Delivery Deadline.
- 27.1.3** The Parties agree in respect of each Derivative Contract that if We deliver a Confirmation to You by the Confirmation Delivery Deadline and You do not deliver to Us a Not Confirmed Notice by the Timely Confirmation Deadline, You agree to the terms of the Confirmation and confirm the Confirmation at the Timely Confirmation Deadline.
- 27.1.4** If You deliver a Not Confirmed Notice to Us by the Timely Confirmation Deadline, Us and You will use reasonable efforts, acting in good faith and a commercially reasonable manner, to attempt to resolve the difference and agree a modified Confirmation in respect of the Derivative Contract as soon as possible.

## 27.2 Portfolio Reconciliation

27.2.1 We and You agree to reconcile portfolios as required under EMIR.

27.2.2 each Data Delivery Date, We will provide Portfolio Data to You.

27.2.3 On each PR Due Date, You will perform a Data Reconciliation.

27.2.4 If You identify one or more discrepancies which You determine, acting reasonably and in good faith, are material to the rights and obligations of Us and You in respect of one or more Derivative Contracts, You will notify Us in writing as soon as reasonably practicable and We and You will consult with each other in an attempt to resolve such discrepancies in a timely fashion for so long as such discrepancies remain outstanding, using, without limitation, any applicable updated reconciliation data produced during the period in which such discrepancy remains outstanding.

27.2.5 The Parties agree that if You do not notify Us that the Portfolio Data contains discrepancies by close of business (CET) time on the Business Day following the later of the PR Due Date and the date on which We provided such Portfolio Data to You, You affirm such Portfolio Data.

## 27.3 Dispute Resolution

27.3.1 The Parties agree that they will use the following procedure to identify and resolve Disputes between them:

- (i) We or You may identify a Dispute by sending a Dispute Notice to the other Party;
- (ii) on or following the Dispute Date, We and You will consult in good faith in an attempt to resolve the Dispute in a timely manner including, without limitation, by identifying and using any Agreed Process which can be applied to the subject of the Dispute or, where no such Agreed Process exists or the Parties agree that such Agreed Process would be unsuitable, determining and applying a resolution method for such Dispute; and
- (iii) We and You shall refer any Dispute that is not resolved within five Business Days of the Dispute Date internally to appropriately senior members of staff.

27.3.2 The Parties agree that with respect to differences in the valuation of Collateral or a Derivative Contract, a difference between the lower valuation and the higher valuation of less than 10 percent of the higher valuation shall not be deemed a discrepancy that gives rise to a Dispute.

27.3.3 The right of both Parties to approach ordinary courts is not affected.

## 27.4 Reporting

27.4.1 Notwithstanding anything to the contrary in these Standard Terms and Conditions or in any non-disclosure, confidentiality or other agreement between the Parties, each Party hereby consents to the disclosure of information:

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

Each Party acknowledges that pursuant to EMIR and Supporting Regulation, regulators require reporting of trade data to increase market transparency and enable regulators to monitor systemic risk to ensure safeguards are implemented globally.

Each Party further acknowledges that disclosures made pursuant hereto may include, without limitation, the disclosure of trade information including a Party's identity (by name, address, corporate affiliation, identifier or otherwise) to any Trade Repository or one or more systems or services operated by any such Trade Repository and any relevant regulators (including without limitation, ESMA and national regulators in the European Union) under EMIR and Supporting Regulation and that such disclosures could result in certain anonymous transaction and pricing data becoming available to the public. Each Party further acknowledges that, for purposes of complying with regulatory reporting obligations, a Party may use a third party service provider to transfer trade information into a Trade Repository and that a Trade Repository may engage the services of a global trade repository regulated by one or more governmental regulators. Each Party also acknowledges that disclosures made pursuant hereto may be made to recipients in a jurisdiction other than that of the disclosing party or a jurisdiction that may not necessarily provide an equivalent or adequate level of protection for personal data as the counterparty's home jurisdiction. For the avoidance of doubt: (i) to the extent that applicable nondisclosure, confidentiality, professional secrecy, data privacy or other law imposes non-disclosure requirements on transaction and similar information required or permitted to be disclosed as contemplated herein but permits a Party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by each Party for purposes of such law; (ii) any agreement between the Parties to maintain confidentiality of information contained in this agreement or in any non-disclosure, confidentiality or other agreement shall continue to apply to the extent that such agreement is not inconsistent with the disclosure of information in connection with the Reporting Requirements as set out herein; and (iii) nothing herein is intended to limit the scope of any other consent to disclosure separately given by each Party to the other Party.

**27.4.2** You acknowledge that We are required, or may be requested, under EMIR to report to Our national competent authority:

- (i) any Derivative Contracts the Confirmations in respect of which are outstanding for more than five Business Days after the expiry of the relevant confirmation deadline imposed by EMIR; and
- (ii) any Dispute relating to a Derivative Contract, its valuation, or the exchange of Collateral for an amount or a value higher than EUR 15 million and outstanding for at least fifteen Business Days, and, accordingly, You consent to such disclosure.

**27.4.3** You acknowledge that for the purposes of making any report under clause 27.4.2(i) above, We shall assume that the most stringent confirmation deadlines under EMIR are applicable to You.

#### Reporting the Required Data

**27.4.4** In respect of each Relevant Transaction and where You make the representation in clauses 27.5.1(i) and 27.5.1(ii) below, You:

- (i) agree You will deliver to Us (in such format and via such communication channel as We may specify to You from time to time by reasonable notice) Your Counterparty Data in time for Us to comply with Our Reporting Obligation, as notified by Us;
- (ii) acknowledge that We may, if You fail to provide Counterparty Data in accordance with clause 27.4.4(i) above, determine the values to be submitted to the Relevant Trade Repository in Our sole discretion (which may, for the avoidance of doubt, comprise default values) in order to comply with Our Reporting Obligation and We shall not incur any liability to You with respect to the accuracy or completeness of any such values and shall be under no obligation to You to subsequently correct any such data submitted to the Relevant Trade Repository; and
- (iii) acknowledge that We may rely on the Counterparty Data without investigation.

**27.4.5** In respect of each Relevant Transaction, We will determine in Our sole and absolute discretion whether Our Reporting Obligation has arisen and the characterisation of the Relevant Transaction. If unique

reference(s) need(s) to be generated for inclusion in the Required Data, You agree that We shall generate such unique reference(s).

Further obligations of Client in relation to Reporting Obligations under EMIR

**27.4.6** You agree to provide or complete such documentation and perform such acts as We require in connection with the performance by Us of the Reporting Obligation.

Use of Third Parties

**27.4.7** The Parties agree that We may utilise the services of a Third Party Service Provider to facilitate the submission of Required Data under these Standard Terms and Conditions or other performance by Us of our reporting obligations under these Standard Terms and Conditions (including but not limited to any platform, system, interface or other technology developed by such Third Party Service Provider for such purpose).

**27.4.8** Where the Third Party Service Provider is a Convera Affiliate, the provisions of clauses 27.4.1 to 27.4.3 above and clauses 27.4.10 below apply in respect of such Third Party Service Provider as if such Third Party Service Provider were Us.

Liability

**27.4.9** To the extent permitted by applicable law, You agree that We, each Third Party Service Provider and Our directors, officers, employees, contractors and agents and the directors, officers, employees, contractors and agents of each Third Party Service Provider shall not have any liability to You (or any person claiming under or through You), whether in contract, tort (including negligence), breach of statutory or regulatory duty or otherwise, for any Losses arising directly from, or in connection with Your performance of, or failure to perform, Your obligations under any applicable law or regulation.

**27.4.10** To the extent permitted by applicable law, You agree to indemnify and hold harmless each of Us, each Third Party Service Provider and the directors, officers, employees, contractors and agents of Us and each Third Party Service Provider from and against any and all Losses in relation to the Reporting Obligation incurred by or awarded against them arising from or in connection with:

- (i) any information provided to Us and/or each Third Party Service Provider by You including, but not limited to, all information included in any Required Data made known to Us and/or each Third Party Service Provider by You or Your failure to provide, on a timely basis or at all, information reasonably required by Us to fulfil Our reporting obligations, under these Standard Terms and Conditions or otherwise;
- (ii) any corrections required to be made by Us to Required Data previously submitted to a Relevant Trade Repository in consequence of You providing inaccurate information or failing to provide information; and
- (iii) any failure on Your part to maintain Your LEI in full force and effect, except to the extent that such Losses are the direct result of:
  - (a) Our gross negligence, wilful default or fraud or the gross negligence, wilful default or fraud of Our directors, officers, employees, contractors or agents; or
  - (b) the gross negligence, wilful default or fraud of any company or its directors, officers, employees, contractors or agents.

Correction of Errors

**27.4.11** If You identify an error in any information previously provided to Us which is material to the Reporting Obligation, You will notify Us as soon as reasonably practicable and both Parties will use reasonable efforts to resolve such error.

**27.4.12** Any information provided to a Trade Repository for the purposes of complying with the Reporting Obligation is provided without prejudice to any present or future dispute between the Parties in relation

to the information provided. Any failure or delay in exercising any right, power or privilege in respect of this clause 27.4 will not be presumed to operate as a waiver in respect of any dispute between the parties and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise of that right, power or privilege or the exercise of any other right, power or privilege in respect of any dispute between the Parties.

#### LEI (Legal Entity Identifier)

- 27.4.13** You shall obtain and maintain, at Your own expense, a LEI and shall provide such LEI, and evidence of each renewal of such LEI, to Us on demand.
- 27.4.14** You acknowledge that Your LEI may be provided by Us, or a Third Party Service Provider, to the Relevant Trade Repository.
- 27.4.15** You understand that We and/or a Third Party Service Provider will have no ability to ensure whether the Relevant Trade Repository maintains Your LEI on a confidential basis and You hereby indemnify Us and /or any Third Party Service Provider from any disclosure of Your LEI by the Relevant Trade Repository or any party acting on its behalf.

#### Changes to the Reporting Obligation

- 27.4.16** You agree that should We notify You of any guidance or information given by ESMA or another regulatory body, or any change in operational requirements (including the requirements of the Relevant Trade Repository) which We consider will affect the Reporting Obligation and these Standard Terms and Conditions, You shall enter into such changes to these Standard Terms and Conditions as We consider to be appropriate in order to address such guidance or information.

#### Third Party Rights

- 27.4.17** The Parties acknowledge and agree that nothing in these Standard Terms and Conditions shall exclude any rights that the any Third Party Service provider and the directors, officers, employees, contractors and agents of such Third Party Service Provider or any rights that Our directors, officers, employees, contractors, and agents are granted under clause 27.4 below.

### **27.5 Client Representations**

- 27.5.1** You are deemed to represent to Us on both on the date of Your signature of the Subscription to the Services and on the date of any Requests made by You that:
- (i) You are either: (A) a non-financial counterparty (as such term is defined in EMIR) or (b) an entity established outside the European Union that, to the best of its knowledge and belief, having given due and proper consideration to its status, would constitute a non-financial counterparty (as such term is defined in EMIR) if it were established in the European Union; and
  - (ii) You are not: (A) a non-financial counterparty that meets the conditions set out in the second subparagraph of Article 10(1) of EMIR; or (B) in respect of an entity under clause 27.5.1(i)(B) above, would not be a non-financial counterparty that meets the conditions set out in the second subparagraph of Article 10(1) of EMIR.
- 27.5.2** Should Your status under EMIR change after the date of Your signature of the Subscription to the Services, such that You are no longer able to give the representation in clause 27.5.1(ii) above, You shall immediately notify Us of such change in status and with effect from such date and on each subsequent date on which You submits Requests to Us, You shall be deemed to make only the representation in clause 27.5.1(i) above.
- 27.5.3** Should You be unable to give the representation in clause 27.5.1(ii) above on the date of Your signature of the Subscription to the Services, You shall notify Us prior to Your signature of the Subscription to the Services. Provided You have given such notification, You shall be deemed to make only the representation in clause 27.5.1(i) above on the date of Your signature of the Subscription to the Services and on each subsequent date on which You submit Requests to Us.

- 27.5.4** If clause 27.5.2 or 27.5.3 above applies to You, You may notify Us should Your status under EMIR change after the date of Your signature of the Subscription to the Services such that You are able to give the representation in clause 27.5.1(ii) above and with effect from such date and on each subsequent date on which You submit Requests to Us, You shall be deemed to make the representation in clause 27.5.1(i) and 27.5.1(ii) above.
- 27.5.5** In circumstances where You give a notification under clauses 27.5.2, 27.5.3 or 27.5.4 above, We may notify You of a new PR Due Date.
- 27.5.6** On each occasion on which You deliver information to Us under clause 27.4 above, You represent to Us that the information You deliver is, at the time of delivery, true, accurate and complete in every respect.
- 27.5.7** You acknowledge and agree that if You wish to retrieve reports directly from the Relevant Trade Repository, You shall register with the Relevant Trade Repository.
- 27.5.8** You acknowledge and agree and represent and warrant that:
- (i) each Relevant Transaction shall be considered directly linked to the commercial activity or treasury financing of You pursuant to field 15 of Table 1 of the Reporting Annex; and
  - (ii) You shall be considered to be the beneficiary of each Relevant Transaction for the purposes of field 11 of Table 1 of the Reporting Annexes.

For further information please contact us

[CustomerServiceCE@convera.com](mailto:CustomerServiceCE@convera.com)