

# Terms and Conditions for Mandatory Trade Reporting

Applicable from 18 June 2020

These terms and conditions (the “**Terms and Conditions**”) set out the terms and conditions that apply to you (the “**Customer**” or “**Party**”) and Danske Bank International (“**Danske Bank**” or “**Party**”) (together referred to as “**Parties**”) in relation to mandatory trade reporting under EMIR (as defined below).

## 1. Definitions

In addition to the terms defined above and below, the following terms have the following meaning.

“**Common Data**” means information regarding specific derivatives transactions as set out in Table 2 of the Annex to the Commission Implementing Regulation (EU) no. 1247/2012 of 19 December 2012 and in Table 2 of the Annex to the Commission Delegated Regulation (EU) no. 148/2013 of 19 December 2012, both as amended or replaced from time to time.

“**Counterparty Data**” means information about the counterparties to a derivatives transaction as set out in Table 1 of the Annex to the Commission Implementing Regulation (EU) no. 1247/2012 of 19 December 2012 and in Table 1 of the Annex to the Commission Delegated Regulation (EU) no. 148/2013 of 19 December 2012, both as amended or replaced from time to time.

“**Delegated Trade Reporting Service**” means any trade reporting service provided by Danske Bank on behalf of the Customer as its counterparty on the basis of an agreement with the Customer in cases where the Mandatory Trade Reporting Obligation does not apply.

“**Derivatives Transaction**” means an OTC derivative as defined in Article 2(7) of EMIR.

“**Eligible Customer**” means a ‘non-financial counterparty’ as described in Article 2(9) of EMIR that does not exceed any relevant clearing threshold for all asset classes under EMIR (also referred to as an “**NFC**”).

“**EMIR**” means Regulation (EU) no. 648/2012 on OTC derivatives, central counterparties and trade repositories and delegated acts issued thereunder, including, but not limited to, Regulation [EU] no. 2019/834 amending Regulation (EU) no. 648/2012 dated 20 May 2019 (EMIR REFIT Regulation), as amended or replaced from time to time.

“**Exempted Transaction**” means a foreign exchange forward transaction (FX forward) that is physically settled and is entered into in order to facilitate payment for identifiable goods, services or direct investments as described in Article 10.1(b) of the Commission Delegated Regulation (EU) no. 2017/565 of 25 April 2016 and is not traded on a trading venue.

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

“**Mandatory Trade Reporting Obligation**” means the obligation of Danske Bank under EMIR to report data regarding Derivatives Transactions on behalf of the Customer as its counterparty.

“**Mandatory Trade Reporting Start Date**” means 18 June 2020, unless the Customer does not have any outstanding Relevant Transactions with Danske Bank or is not an Eligible Customer on such date – in which case the Mandatory Trade Reporting Start Date will be the later of (i) the date on which the Customer becomes an Eligible Customer and (ii) the date on which the Customer enters into the Relevant Transactions with Danske Bank. For a Customer that has opted out of the Mandatory Trade Reporting Obligation and decides to opt in, the

Mandatory Trade Reporting Start Date will be the date agreed between the Parties at the time in question.

**“Master Agreement”** means an ISDA master agreement or other master agreement for trading in Derivatives Transactions entered into or deemed to be entered into between the Parties.

**“Relevant Transaction”** means a Derivatives Transaction entered into between an Eligible Customer and Danske Bank that is subject to the Mandatory Trade Reporting Obligation, as determined by Danske Bank at its sole discretion.

**“Reporting Information”** means information in respect of a Relevant Transaction that is required to be reported by the Customer to a Trade Repository pursuant to EMIR within applicable reporting deadlines, including Counterparty Data and Common Data.

**“Trade Repository”** means a trade repository approved or recognised under EMIR, selected by Danske Bank at its sole discretion. Where no Trade Repository is available for a Relevant Transaction, reporting must be made to the European Securities and Markets Authority or other competent public body.

## **2. Scope of these Terms and Conditions**

These Terms and Conditions apply when a Customer is an Eligible Customer and has Relevant Transactions with Danske Bank.

With respect to all Relevant Transactions, these Terms and Conditions supersede any Delegated Trade Reporting Service agreement that the Customer has or may have with Danske Bank. Any terms and conditions governing a Delegated Trade Reporting Service are deemed to be amended so that all Relevant Transactions subject to the Mandatory Trade Reporting Obligation are carved out from the scope of such terms and conditions.

## **3. Reporting Information**

### **3.1. Common Data**

Danske Bank will at its sole discretion determine the Common Data for a Relevant Transaction prior to reporting such Relevant Transaction to a Trade Repository. If a Relevant Transaction has not automatically been assigned a trade identifier (**“Unique Trade Identifier”**), Danske Bank will arrange for the assignment of a trade identifier to such Relevant Transaction. If a Relevant Transaction may be classified as belonging to one or more asset classes for reporting purposes, Danske Bank selects the asset class to be reported for the Relevant Transaction in question.

### **3.2. Obligation to provide information to Danske Bank**

The Customer must in a timely manner provide and/or regularly update, if needed, any information that is necessary for Danske Bank to perform the Mandatory Trade Reporting Obligation (including, but not limited to, information about the Customer’s legal entity identifier (**“LEI”**), the Customer’s regulatory status under EMIR and other data requested by Danske Bank).

If the Customer does not provide part or all of such information within the deadlines set by Danske Bank, Danske Bank may at its sole discretion determine the extent and content of the Reporting Information to be submitted to a Trade Repository in order to comply with its Mandatory Trade Reporting Obligations under EMIR. Danske Bank bears no responsibility to the Customer with respect to the accuracy or completeness of any of the submitted

Reporting Information and is under no obligation to the Customer to subsequently correct any such data submitted to a Trade Repository.

The Customer must maintain its LEI, and immediately renew the LEI if it lapses, throughout the lifetime of the Relevant Transactions. Compliance with this requirement is necessary for the submission of Reporting Information to a Trade Repository.

### 3.3. Representations and assumptions for Relevant Transactions

The Customer represents and warrants to Danske Bank and Danske Bank is entitled to assume that

- (i) all Relevant Transactions are directly linked to the commercial activity or the treasury financing of the Customer
- (ii) the Customer is acting as principal (not as agent) in relation to all Relevant Transactions
- (iii) Danske Bank may rely on the Counterparty Data without investigation
- (iv) all foreign exchange forward transactions (FX forward) entered into by the Customer with Danske Bank that are settled physically are Exempted Transactions, unless the Customer has given Danske Bank a different representation regarding their purpose
- (v) the Reporting Information and any other information provided by the Customer to Danske Bank pursuant to these Terms and Conditions is not, when provided to Danske Bank, false, incorrect, misleading, outdated, incomplete or otherwise inaccurate

The Customer must inform Danske Bank without undue delay and within applicable reporting deadlines if these assumptions are not correct for a Relevant Transaction.

### 3.4. Confidentiality waiver

Notwithstanding anything to the contrary stipulated elsewhere in these Terms and Conditions or any other agreement between the Customer and Danske Bank, and without limiting the scope of any other consent given by either Party to the other, each of Danske Bank and the Customer consents to the retention and disclosure by the other Party of information in connection with these Terms and Conditions and the reporting of Relevant Transactions

(a) to the extent required or permitted by any applicable law, rule or regulation, including, without limitation, EMIR, which mandates reporting and/or retention of transaction data and similar information

(b) to the extent required or recommended by any authority or body or agency in accordance with which that other Party is required or accustomed to act, or

(c) to and between that other Party's head office, branches or affiliates, or any persons or entities who/that provide services to such other Party or its head office, branches or affiliates, in each case in connection with such reporting and retention.

The Customer further acknowledges that, for the purpose of complying with the Mandatory Trade Reporting Obligation, Danske Bank may appoint one or more reporting delegates to report all or part of the Reporting Information and perform all or some of the trade reporting steps on its behalf and may use a third-party service provider to process or transfer trade information to a Trade Repository, and that a Trade Repository may engage the services of a global trade repository regulated by one or more governmental regulators.

#### 4. Limitation of liability

To the extent permitted by applicable law, Danske Bank will not be liable for any Losses incurred by the Customer that arise out of or in connection with any reporting of transactions by Danske Bank on behalf the Customer, unless such Losses are directly caused by Danske Bank's wilful default, gross negligence or fraud. Danske Bank does not assume any liability for any indirect, special or consequential Losses of any kind.

The foregoing limitation of liability will continue to apply even after termination or expiration of these Terms and Conditions.

#### 5. Changes to the Mandatory Trade Reporting Obligation

##### 5.1. Customer's right to opt out of the Mandatory Trade Reporting Obligation

The Customer may choose to opt out of the Mandatory Trade Reporting Obligation in accordance with the relevant provisions of EMIR. In such case, the Customer must submit prior written notice about this to Danske Bank. Such notice must be submitted as soon as possible and no later than at least 5 working days before the Mandatory Trade Reporting Start Date to avoid duplicated reporting. The Customer acknowledges and agrees that in such case, the Customer will retain sole responsibility and liability for reporting Derivatives Transactions under EMIR on its behalf and Danske Bank will not have any liability towards the Customer in relation thereto.

The decision to opt out, if made by the Customer, should cover all Relevant Transactions. If the Customer decides to partially perform the reporting of certain Relevant Transaction types, the Customer must clearly specify this in the notice to Danske Bank submitted in accordance with the abovementioned paragraph. In such case Danske Bank and the Customer will determine the relevant scope of opt out and the rules and procedures that will apply in relation to such partial opt out.

If the Customer decides to revoke its original opt-out of the Mandatory Trade Reporting Obligation, it must notify Danske Bank thereof in writing as soon as possible and no later than at least 5 working days in advance. Danske Bank and the Customer will agree at the relevant time on the date that will be the Mandatory Trade Reporting Start Date in such case, and on any actions necessary to facilitate the switch to the Mandatory Trade Reporting Obligation (such as the transfer of data if the Customer is reporting trades to a different trade repository than Danske Bank). As of such Mandatory Trade Reporting Start Date, Danske Bank will start performing Mandatory Trade Reporting Obligation on behalf of the Customer in accordance with these Terms and Conditions.

##### 5.2. Customer ceasing to be an Eligible Customer

If the Customer ceases to be an Eligible Customer, Danske Bank will no longer have a Mandatory Trade Reporting Obligation with respect to any Derivative Transaction with the Customer that would otherwise be a Relevant Transaction. The Customer must notify Danske Bank of any change to its regulatory status whereby the Customer would cease to be an Eligible Customer within a reasonable time in advance.

The Customer alone is responsible and liable for any reporting errors (including, but not limited to, duplicate reporting) in connection with the change in the Customer's regulatory status, if the Customer fails to notify Danske Bank of such change in advance in accordance with these Terms and Conditions.

##### 5.3. Equivalent obligation under UK law

If a mandatory trade reporting obligation equivalent to the Mandatory Trade Reporting Obligation defined herein comes into effect under UK law ("**UK EMIR Mandatory Reporting Obligation**") and applies to Danske Bank in respect of any Derivatives Transactions with the

Customer, these Terms and Conditions will govern reporting in accordance with the UK EMIR Mandatory Reporting Obligation instead of, or, as the case may be, as well as, in accordance with EMIR. For this purpose only, any references to EMIR in these Terms and Conditions will be deemed to include the equivalent UK law provisions.

To the extent that the UK EMIR Mandatory Reporting Obligation is not applicable to Danske Bank, this clause does not apply.

## **6. Changes to these Terms and Conditions**

Due to any change in applicable law or its interpretation, or for other reasons, it may become relevant to amend or supplement these Terms and Conditions. In such case, Danske Bank may unilaterally amend these Terms and Conditions by giving one (1) month's notice to the Customer.

## **7. Duration and termination**

These Terms and Conditions will be in effect between the Parties from the Mandatory Trade Reporting Start Date until they are terminated or replaced on the basis of an agreement entered into between the Parties or by Danske Bank giving one (1) month's prior notice of their termination to the Customer.

## **8. No amendments**

Nothing in these Terms and Conditions will change or amend, or be deemed to change or amend, any derivatives transactions or other agreements entered into between the Customer and Danske Bank.

Failure by a Party to meet its obligations under these Terms and Conditions will not constitute default or an event of default (howsoever described) under any other agreement between the Parties.

## **9. Notices**

The Customer must deliver any information set out in these Terms and Conditions to Danske Bank digitally via email or in such other format as the Parties have agreed.

Notwithstanding the above, a notice from the Customer under clauses 5.1 and 5.2 of these Terms and Conditions or a copy thereof must, for the purposes of these Terms and Conditions, be submitted to the following contact at Danske Bank:

[emir-tradereporting@danskebank.com](mailto:emir-tradereporting@danskebank.com)

The Customer consents to receiving notices from Danske Bank via email in non-encrypted form.

## **10. Law and venue**

These Terms and Conditions are governed by and construed in accordance with the laws of Luxembourg and all disputes arising out of or relating to the Terms and Conditions shall be subject to the non-exclusive jurisdiction of the Court of Luxembourg city.

Nothing in these Terms and Conditions confers or purports to confer any right to enforce any of its terms on any person or entity who is not a party to these Terms and Conditions.