# Agreement Governing Syndicated New Issues Distributions

**October 2021**

**BETWEEN:**

**Clearstream Banking S.A.,** a *société anonyme* existing and incorporated under the laws of Luxembourg, having its registered office at L-1855, 42, avenue JF Kennedy, and registered with the Luxembourg Trade and Companies' register under number B 9248;

**AND**

**Client:** ________________________________________________ [*insert Lead Manager details*]

**WHEREAS:**

- The Parties wish to conclude the present Agreement in order for the client, acting as Lead Manager, to appoint CBL to act as commission agent (*commissionaire*) on the Lead Manager's behalf in relation to the Syndicated New Issues Distribution and to instruct CBL, in its capacity as commission agent (*commissionaire*), to open, in CBL's books, Syndicated New Issues Distribution Accounts in CBL's name, which shall be subject to and operated in accordance with the terms and conditions of the present Agreement.

## 1. Definitions

Capitalised terms used but not otherwise defined herein shall have the meaning ascribed to them in the Governing Documents as defined in the General Terms and Conditions of Clearstream Banking S.A., as amended from time to time, unless otherwise defined herein.

For the purposes of the present Agreement, the following terms shall have the following meaning:

**"Agreement"** means the present Syndicated New Issues Distribution agreement concluded between CBL and the client.

**"Allottee(s)"** means, in respect of each Syndicated New Issues Distribution, the client or clients (including, as the case may be, the Lead Manager) to which the newly issued securities have to be transferred in the CBL system.

**"Common Depository"** means the common depository appointed by CBL and Euroclear Bank S.A. / N.V. holding the global note representing the securities newly issued in CGN form by the Issuer.

**"Common Safekeeper"** means the entity appointed by CBL and Euroclear Bank S.A./NV holding the global note representing the securities newly issued in NGN or NSS form.

**"Common Service Provider"** means the entity appointed by CBL and Euroclear Bank S.A./NV to provide asset servicing for the securities newly issued in NGN or NSS form.

**"Final Settlement Date"** means the date agreed among the Issuer and the Lead Manager (and communicated to CBL) as latest date by which the delivery versus payment transfer set out in clause 6 (a) (i) of the present Agreement must be executed.

**"Insolvency Event"** means the opening, against the Lead Manager, of any insolvency procedure within the meaning of Article 111 (1) of the LPS.

**"Issuer"** means, in respect of each Syndicated New Issues Distribution, the entity having issued the relevant securities.

**"Lead Manager"** means the client which acts as the Lead Manager in connection with a Syndicated New Issues Distribution and for the account of which Syndicated New Issues Distribution Accounts are opened.

**"Lead Manager Syndication Accounts"** means the Lead Manager Syndication Cash Account and the Lead Manager Syndication Securities Account.

**"Lead Manager Syndication Cash Account"** means the cash account opened in the books of CBL in the name of the Lead Manager, which may be used in connection with the Syndicated New Issues Distributions for which the holder of such account acts as Lead Manager and which is linked to the Lead Manager Syndication Securities Account.

**"Lead Manager Syndication Securities Account"** means the securities account opened in the books of CBL in the name of the Lead Manager, which may be used in connection with the Syndicated New Issues Distributions for which the holder of such account acts as Lead Manager and which is linked to the Lead Manager Syndication Cash Account.

**"Lead Manager Trading Accounts"** means the Lead Manager Trading Cash Account and the Lead Manager Trading Securities Account.

**"Lead Manager Trading Cash Account"** means the cash account opened in the books of CBL in the name of the Lead Manager, which may be used in connection with the Syndicated New Issues Distributions for which the holder of such account acts as Lead Manager, or for any other purposes, and which is linked to the Lead Manager Trading Securities Account.

**"Lead Manager Trading Securities Account"** means the securities account opened in the books of CBL in the name of the Lead Manager, which may be used in connection with the Syndicated New Issues Distributions for which the holder of such account acts as Lead Manager, or for any other purposes, and which is linked to the Lead Manager Trading Cash Account.

**"LPS"** means the law of 10 November 2009 on payment services, as amended from time to time.

**"Parties"** means the Lead Manager and CBL.

**"Power of Attorney"** means the power of attorney referred to in clause 5 (c) of the present Agreement.

**"Syndicated New Issues Distribution"** means the distribution in the CBL system of securities newly issued in global note form, for which the client acts as Lead Manager according to the terms of the present Agreement.

**"Syndicated New Issues Distribution Accounts"** means the Syndicated New Issues Distribution Cash Account and the Syndicated New Issues Distribution Securities Account.

**"Syndicated New Issues Distribution Cash Account"** means the cash account opened in the books of CBL in the name of CBL, acting as commission agent (*commissionaire*) for the account of the Lead Manager, which is to be used in connection with any Syndicated New Issues Distributions and which is linked to the Syndicated New Issues Distribution Securities Account.

**"Syndicated New Issues Distribution Accounts Instructions"** means the transfer instructions set out in clause 6 of the present Syndicated New Issues Distribution Terms and Conditions.

**"Syndicated New Issues Distribution Securities Account"** means the securities account opened in the books of CBL in the name of CBL, acting as commission agent (*commissionaire* ) for the account of the Lead Manager, which is to be used in connection with any Syndicated New Issues Distributions and which is linked to the Syndicated New Issues Distribution Cash Account.

## 2. General

(a) The present Agreement governs the Syndicated New Issues Distribution. Any Syndicated New Issues Distributions shall be subject to and carried out in accordance with the present Agreement.

(b) The Lead Manager acknowledges and agrees to be bound by the terms of the present Agreement.

(c) The present Agreement is supplementary to the Governing Documents and, accordingly, except as otherwise expressly provided herein, the rights, duties and liabilities of CBL and each client and the limitations on such rights, duties and liabilities shall be governed by and determined in accordance with the Governing Documents.

In the event of any conflict between the present Agreement and the Governing Documents, the present Agreement shall prevail.

## 3. Syndicated New Issues Distribution Accounts

(a) The Lead Manager instructs CBL to open one Syndicated New Issues Distribution Securities Account and one Syndicated New Issues Distribution Cash Account in its books.

(b) The Syndicated New Issues Distribution Accounts will be opened by CBL, acting as a depositary, in the name of CBL and acting as a commission agent (*commissionaire*) for the account of the Lead Manager.

(c) CBL will hence act in two different capacities in relation to the Syndicated New Issues Distribution Accounts: (i) as the holder of the Syndicated New Issues Distribution Accounts and (ii) as the depositary in whose books the Syndicated New Issues Distribution Accounts are opened. When acting as account holder, CBL will act as commission agent (*"commissionaire"*), *i.e.* CBL will act in its own name but for the account of the Lead Manager. When acting as depositary, CBL will act in its own name and for its own account. The Lead Manager expressly accepts that CBL shall act in both of the above capacities.

(d) Any amount owed to CBL as fees, expenses, disbursements, or other costs and claims in respect of the Syndicated New Issues Distribution Accounts, as may be specified from time to time in accordance with the Governing Documents, shall be debited from a cash account opened in the name of the Lead Manager with CBL.

## 4. Lead Manager Syndication Accounts and Lead Manager Trading Accounts

(a) CBL will open a Lead Manager Syndication Securities Account and a Lead Manager Syndication Cash Account in its books for the client in case the client instructs CBL to do so. Such accounts may be used for all or some Syndicated New Issues Distributions for which the client acts as Lead Manager.

(b) CBL has opened or will, in addition or alternatively to the Lead Manager Syndication Accounts, open a Lead Manager Trading Securities Account and a Lead Manager Trading Cash Account in its books for the client in case the client instructs CBL to do so. Such accounts may, in addition or alternatively to the Lead Manager Syndication Accounts, be used for all or some Syndicated New Issues Distributions for which the client acts as Lead Manager.

(c) The Lead Manager Syndication Accounts and the Lead Manager Trading Accounts, where relevant, will be opened in the name of the Lead Manager.

## 5. Operation of the Syndicated New Issues Distribution Accounts, the Lead Manager Syndication Accounts and the Lead Manager Trading Accounts

(a) Each Syndicated New Issues Distribution Securities Account will only be used to (i) credit the securities newly issued by the Issuer as soon as such securities have been credited to CBL's securities account in the books of the Common Depository, the Common Safekeeper, or the Common Service Provider as part of a Syndicated New Issues Distribution and to (ii) perform delivery versus payment transfers between the Syndicated New Issues Distribution Accounts and the Lead Manager Syndication Accounts and/or between the Syndicated New Issues Distribution Accounts and the Lead Manager Trading Accounts, as the case may be.

Each Syndicated New Issues Distribution Cash Account will only be used (i) to perform delivery versus payment transfers between the Syndicated New Issues Distribution Accounts and the Lead Manager Syndication Accounts and/or delivery versus payment transfers between the Syndicated New Issues Distribution Accounts and the Lead Manager Trading Accounts, as the case may be and (ii) to transfer to the relevant Issuer (or to any other person as instructed by the Lead Manager acting in the name and on behalf of the Issuer) the amount of cash credited to the Syndicated New Issues Distribution Cash Account as a result of the abovementioned delivery versus payment transfers.

(b) The Lead Manager Syndication Accounts will only be used to perform delivery versus payment transfers between the Syndicated New Issues Distribution Accounts and the Lead Manager Syndication Accounts, delivery versus payment transfers between the Lead Manager Syndication Accounts and the Lead Manager Trading Accounts and/or delivery versus payment transfers between the Lead Manager Syndication Accounts and the accounts of the Allottee(s).

(c) The Lead Manager Trading Accounts may be used to perform delivery versus payment transfers between the Syndicated New Issues Distribution Accounts and the Lead Manager Trading Accounts, delivery versus payment transfers between the Lead Manager Trading Accounts and the Lead Manager Syndication Accounts and/or delivery versus payment transfers between the Lead Manager Trading Accounts and the accounts of the Allottee(s).

(d) CBL, acting in its capacity as commission agent (*commissionaire*) hereby grants a Power of Attorney to the Lead Manager pursuant to which the Lead Manager is:

- authorised to give the Syndicated New Issues Distribution Accounts Instructions in the name and on behalf of CBL, acting in its capacity as commission agent (*commissionnaire*) in relation to the Syndicated New Issues Distribution Accounts, to CBL, acting in as depositary;
- authorised to subscribe for reporting on the Syndicated New Issues Distribution Accounts (confirmations, statements), where CBL as depository would provide the Lead Manager with the status of both its securities settlement instructions and cash payments.

The Lead Manager may only give such Syndicated New Issues Distribution Accounts Instructions in relation to the Syndicated New Issues Distribution Accounts in accordance with the rules and principles set out in the present Agreement.

The Power of Attorney granted to the Lead Manager pursuant to the above paragraph shall automatically be terminated, without prior notice or penalty, upon the occurrence of an Insolvency Event. For the avoidance of doubt, the Parties confirm that the occurrence of such an Insolvency Event will not affect any Syndicated New Issues Distribution Accounts Instruction entered into the CBL system by the Lead Manager in the name and on behalf of CBL before the occurrence of such Insolvency Event, which will thus remain irrevocable.

## 6. Syndicated New Issues Distribution Accounts Instructions

(a) The client, acting in its capacity as holder of the Lead Manager Syndication Accounts and the Lead Manager Trading Accounts with respect to any transfers of assets out of the Lead Manager Syndication Accounts and the Lead Manager Trading Accounts respectively and acting on the basis of the Power of Attorney with respect to any transfers of assets out of the Syndicated New Issues Distribution Accounts, hereby irrevocably instructs CBL to perform the following actions:

i. Upon receipt of the newly issued securities on the Syndicated New Issues Distribution Securities Account, and provided (a) there is sufficient cash or credit on the Lead Manager Syndication Cash Account or the Lead Manager Trading Cash Account, as the case may be, and (b) the Lead Manager is not declared insolvent, CBL shall execute a delivery versus payment transfer of the newly issued securities between the Syndicated New Issues Distribution Accounts and the Lead Manager Syndication Accounts or between the Syndicated New Issues Distribution Accounts and the Lead Manager Trading Accounts, as the case may be:

   - CBL, acting as depositary, shall transfer the newly issued securities to the Lead Manager Syndication Securities Account or to the Lead Manager Trading Securities Account, as the case may be. CBL, acting as depositary, shall further subsequently transfer the newly issued securities, as the case may be:
     - from the Lead Manager Syndication Securities Account either directly to the Allottee(s), which the Lead Manager hereby undertakes to identify to CBL, acting as depositary, prior to the newly issued securities being credited to the Syndicated New Issues Distribution Securities Account, or first to the Lead Manager Trading Securities Account and then to such Allottee(s); or
     - from the Lead Manager Trading Securities Account to the identified Allottee(s).

   - CBL, acting as a depositary, is instructed to transfer the purchase price of the newly issued securities, as the case may be:
     - from the Lead Manager Syndication Cash Account to the Syndicated New Issues Distribution Cash Account; or
     - from the Lead Manager Trading Cash Account either directly to the Syndicated New Issues Distribution Cash Account or first to the Lead Manager Syndication Cash Account and then to the Syndicated New Issues Distribution Cash Account.

ii. Immediately after the delivery versus payment transfer referred to above in clause 6 (a) (i) of the present Syndicated New Issues Distribution Terms and Conditions, CBL shall, pursuant to prior instructions of the Lead Manager, execute the transfer of the amount of cash received from the Lead Manager Syndication Cash Account or, as the case may be, from the Lead Manager Trading Cash Account, on the Syndicated New Issues Distribution Cash Account, to the Issuer (or to any other person as instructed by the Lead Manager acting on behalf of the Issuer). Such instruction to transfer the cash shall be entered into the CBL system by the Lead Manager, under his sole responsibility, before the relevant delivery versus payment transfer is processed.

iii. In case there is not sufficient cash or available credit on the Lead Manager Syndication Cash Account or, as the case may be, on the Lead Manager Trading Cash Account, the newly issued securities will remain in the Syndicated New Issues Distribution Securities Account until there is sufficient cash or credit on the Lead Manager Syndication Cash Account or, as the case may be, on the Lead Manager Trading Cash Account [or the Final Settlement Date]. As soon as there is sufficient cash or credit on the Lead Manager Syndication Cash Account or, as the case may be, on the Lead Manager Trading Cash Account, the delivery versus payment transfer referred to above in clause 6 (a) (i) of the present Agreement may be processed.

iv. In case the Lead Manager is declared insolvent **before** the delivery versus payment transfer referred to above in clause 6 (a) (i) of the present Agreement is processed (*i.e*. while the newly issued securities remain in the Syndicated New Issues Distribution Securities Account awaiting sufficient cash or credit on the Lead Manager Syndication Cash Account or, as the case may be, on the Lead Manager Trading Cash Account) [or the Final Settlement Date], CBL shall no longer act as commission agent (*commissionaire*) for the account of the Lead Manager, but shall act as commission agent (*commissionaire*) for the account of the Issuer and shall instruct CBL, acting as depositary, to transfer the newly issued securities credited to the Syndicated New Issues Distribution Securities Account according to the instructions received from the Issuer (e.g. the transfer of the newly issued securities back to the Common Depository, the Common Safekeeper, or the Common Service Provider, who will receive the newly issued securities on behalf of the Issuer, instruct the transfer of the newly issued securities to another Lead Manager, *etc*.).

v. In case the Lead Manager is declared insolvent **after** the delivery versus payment transfer referred to above in clause 6 (a) (i) of the present Agreement has been processed, CBL shall no longer act as commission agent (*commissionaire*) for the account of the Lead Manager, but shall act as commission agent (*commissionaire*) for the account of the Issuer and shall instruct CBL, acting as depositary, to process the transfer of the cash received from the Lead Manager Syndication Cash Account or, as the case may be, from the Lead Manager Trading Cash Account, on the Syndicated New Issues Distribution Cash Account to the Issuer or to any other beneficiary indicated by the Issuer.

(b) The instructions referred to above in clauses 6 (a) (iv) and (v) of the present Agreement are deemed to constitute **a third-party beneficiary clause** (*stipulation pour autrui*) within the meaning of Article 1121 of the Luxembourg Civil Code, where the Lead Manager is the stipulating party (*stipulant*), CBL is the promising party (*promettant*) and the Issuer is the third party beneficiary (*tiers bénéficiaire*) and according to which the claim for the restitution of the assets held in the Syndicated New Issues Distribution Accounts is attributed to the Issuer in the event of the Lead Manager's insolvency [or the passing of the Final Settlement Date], with the result that:

- The Issuer may claim the restitution of the newly issued securities held in the Syndicated New Issues Distribution Securities Account, in case the Lead Manager is declared insolvent **before** the occurrence of the delivery versus payment transfer of the newly issued securities between the Syndicated New Issues Distribution Accounts and the Lead Manager Syndication Accounts or between the Syndicated New Issues Distribution Accounts and the Lead Manager Trading Accounts, as the case may be [or the Final Settlement Date has passed];

- The Issuer may claim the restitution of the cash held in the Syndicated New Issues Distribution Cash Account, in case the Lead Manager is declared insolvent after the occurrence of the delivery versus payment transfer of the newly issued securities between the Syndicated New Issues Distribution Accounts and the Lead Manager Syndication Accounts or between the Syndicated New Issues Distribution Accounts and the Lead Manager Trading Accounts, as the case may be.

The Lead Manager, as the stipulating party, hereby **unconditionally and irrevocably waives** any right that it may have to revoke the third-party beneficiary clause referred to above in this clause 6 (b) of the present Syndicated New Issues Distribution Terms and Conditions.

(c) The delivery versus payment transfers referred to above in clause 6 (a) of the present Agreement will be processed on a simultaneous basis.

## 7. Representation and Warranty; Indemnity

(a) The Lead Manager represents and warrants to CBL, acting in its two capacities as commission agent (*commissionaire*) and as depositary, that the documentation governing each Syndicated New Issues Distribution will state that the steps necessary for the creation of the newly issued securities (in particular the crediting of the newly issued securities to the relevant securities account(s) and the execution of the payment instructions to the Issuer and/or as directed by the Issuer) are deemed to take place simultaneously.

(b) The Lead Manager represents and warrants to CBL that (i) the beneficiary of the cash transfer instruction(s) referred to in 6 (a) (ii) above will be the person(s) identified in the closing documents of the relevant Syndicated New Issues Distribution as entitled to receive the issue price of the relevant newly issued securities, (ii) consequently, the processing by CBL of such cash transfer instruction(s) discharges CBL from any duty towards the Lead Manager for the creation of the newly issued securities and the Issuer shall be deemed to have received the issue price of the relevant newly issued securities.

(c) The Lead Manager undertakes to indemnify upon demand CBL for (and hold it harmless against) any loss or damage incurred by CBL (including as a result of actions, proceedings, claims or demands being taken or asserted against CBL, but excluding losses or damages caused directly by the gross negligence or wilful misconduct of CBL) as a result of CBL acting as commission agent (*commissionaire*) or depositary under these Syndicated New Issues Distribution Terms and Conditions.

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**For and on behalf of Clearstream Banking S.A.:**

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| Signature | Signature |
| Name | Name |
| Title | Title |
| Date | Date |

**For and on behalf of the client:**

Corporate denomination of the client

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| Signature | Signature |
| Name | Name |
| Title | Title |
| Date | Date |