

Agreement Governing Syndicated New Issues
Distributions for Settlement Agents serving a
unique Lead Manager

December 2022

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

Customer: _____ [insert
Settlement Agent details]

WHEREAS:

- The Settlement Agent shall from time to time act as settlement agent of a lead manager of a new issue of securities that will be settled in the books of CBL.
- The Settlement Agent shall act vis-à-vis CBL in its own name and on its own behalf and CBL shall neither have any relationship with nor owe any duty to any lead manager on whose behalf the Settlement Agent shall act.
- The Parties wish to conclude the present Agreement in order for the Customer, acting as Settlement Agent, to appoint CBL to act as commission agent (*commissionaire*) on the Settlement Agent'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 Customer.

“Allottee(s)” means, in respect of each Syndicated New Issues Distribution, the Customer or Customers (including, as the case may be, the Settlement Agent) 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 communicated to CBL by the Settlement Agent 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 Settlement Agent, 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.

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

“Parties” means the Settlement Agent and CBL.

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

“Settlement Agent” means the Customer which acts as the Settlement Agent in connection with a Syndicated New Issues Distribution and for the account of which Syndicated New Issues Distribution Accounts are opened.

“Settlement Agent Syndication Accounts” means the Settlement Agent Syndication Cash Account and the Settlement Agent Syndication Securities Account.

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

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

“Settlement Agent Trading Accounts” means the Settlement Agent Trading Cash Account and the Settlement Agent Trading Securities Account.

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

“Settlement Agent Trading Securities Account” means the securities account opened in the books of CBL in the name of the Settlement Agent, which may be used in connection with the Syndicated New Issues Distributions for which the holder of such account acts as

Settlement Agent, or for any other purposes, and which is linked to the Settlement Agent Trading Cash Account.

“Syndicated New Issues Distribution” means the distribution in the CBL system of securities newly issued in global note form, for which the Customer acts as Settlement Agent 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 Settlement Agent, 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 Settlement Agent, 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 Settlement Agent 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 Customer 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 Settlement Agent 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 depository, in the name of CBL and acting as a commission agent (*commissionaire*) for the account of the Settlement Agent.

(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 depository 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 Settlement Agent. When acting as depository, CBL will act in its own name and for its own account. The Settlement Agent 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 Settlement Agent with CBL.

4. Settlement Agent Syndication Accounts and Settlement Agent Trading Accounts

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

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

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

5. Operation of the Syndicated New Issues Distribution Accounts, the Settlement Agent Syndication Accounts and the Settlement Agent 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 Settlement Agent Syndication Accounts and/or between the Syndicated New Issues Distribution Accounts and the Settlement Agent 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 Settlement Agent Syndication Accounts and/or delivery versus payment transfers between the Syndicated New Issues Distribution Accounts and the Settlement Agent Trading Accounts, as the case may be and (ii) to transfer to the relevant Issuer (or to any other person as instructed by the Settlement Agent 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 Settlement Agent Syndication Accounts will only be used to perform delivery versus payment transfers between the Syndicated New Issues Distribution Accounts and the Settlement Agent Syndication Accounts, delivery versus payment transfers between the Settlement Agent Syndication Accounts and the Settlement Agent Trading Accounts and/or delivery versus payment transfers between the Settlement Agent Syndication Accounts and the accounts of the Allottee(s).

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

(d) CBL, acting in its capacity as commission agent (*commissionnaire*) hereby grants a Power of Attorney to the Settlement Agent pursuant to which the Settlement Agent 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 its capacity as depository;
- authorised to subscribe for reporting on the Syndicated New Issues Distribution Accounts (confirmations, statements), where CBL as depository would provide the Settlement Agent with the status of both its securities settlement instructions and cash payments.

The Settlement Agent 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 Settlement Agent 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 Settlement Agent 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 Customer, acting in its capacity as holder of the Settlement Agent Syndication Accounts and the Settlement Agent Trading Accounts with respect to any transfers of assets out of the Settlement Agent Syndication Accounts and the Settlement Agent 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 Settlement Agent Syndication Cash Account or the Settlement Agent Trading Cash Account, as the case may be, and (b) the Settlement Agent 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 Settlement Agent Syndication Accounts or between the Syndicated New Issues Distribution Accounts and the Settlement Agent Trading Accounts, as the case may be:
 - CBL, acting as depository, shall transfer the newly issued securities to the Settlement Agent Syndication Securities Account or to the Settlement Agent Trading Securities Account, as the case may be. CBL, acting as depository, shall further subsequently transfer the newly issued securities, as the case may be:
 - from the Settlement Agent Syndication Securities Account either directly to the Allottee(s), which the Settlement Agent hereby undertakes to identify to CBL, acting as depository, prior to the newly issued securities being credited to the Syndicated New Issues Distribution Securities Account, or first to the Settlement Agent Trading Securities Account and then to such Allottee(s); or
 - from the Settlement Agent Trading Securities Account to the identified Allottee(s).

- CBL, acting as a depository, is instructed to transfer the purchase price of the newly issued securities, as the case may be:
 - from the Settlement Agent Syndication Cash Account to the Syndicated New Issues Distribution Cash Account; or
 - from the Settlement Agent Trading Cash Account either directly to the Syndicated New Issues Distribution Cash Account or first to the Settlement Agent 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 Settlement Agent, execute the transfer of the amount of cash received from the Settlement Agent Syndication Cash Account or, as the case may be, from the Settlement Agent Trading Cash Account, on the Syndicated New Issues Distribution Cash Account, to the Issuer (or to any other person as instructed by the Settlement Agent acting on behalf of the Issuer). Such instruction to transfer the cash shall be entered into the CBL system by the Settlement Agent, 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 Settlement Agent Syndication Cash Account or, as the case may be, on the Settlement Agent 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 Settlement Agent Syndication Cash Account or, as the case may be, on the Settlement Agent Trading Cash Account [or the Final Settlement Date]. As soon as there is sufficient cash or credit on the Settlement Agent Syndication Cash Account or, as the case may be, on the Settlement Agent 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 Settlement Agent 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 Settlement Agent Syndication Cash Account or, as the case may be, on the Settlement Agent Trading Cash Account) [or the Final Settlement Date], CBL shall no longer act as commission agent (*commissionaire*) for the account of the Settlement Agent, but shall act as commission agent (*commissionaire*) for the account of the Issuer and shall instruct CBL, acting as depository, 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 Settlement Agent, *etc.*).

- v. In case the Settlement Agent 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 (*commissionnaire*) for the account of the Settlement Agent, but shall act as commission agent (*commissionnaire*) for the account of the Issuer and shall instruct CBL, acting as depositary, to process the transfer of the cash received from the Settlement Agent Syndication Cash Account or, as the case may be, from the Settlement Agent 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 Settlement Agent 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 Settlement Agent'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 Settlement Agent 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 Settlement Agent Syndication Accounts or between the Syndicated New Issues Distribution Accounts and the Settlement Agent 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 Settlement Agent 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 Settlement Agent Syndication Accounts or between the Syndicated New Issues Distribution Accounts and the Settlement Agent Trading Accounts, as the case may be.

The Settlement Agent, 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 Settlement Agent 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 Settlement Agent 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 Settlement Agent 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 Settlement Agent 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 fraud, 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.

The Settlement Agent shall be solely responsible vis-à-vis the Issuer, the lead manager and any other third party with respect to anything undertaken under this Agreement and / or the Power of Attorney and the Settlement Agent shall indemnify and hold CBL harmless upon demand in accordance with the preceding paragraph in case of any action by any such parties against CBL.

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

Signature

Signature

Name

Name

Title

Title

Date

Date

For and on behalf of the Customer:

Corporate denomination of the Customer

Signature

Signature

Name

Name

Title

Title

Date

Date