

FMIA Agreement

of

between

And

("Party A")

("Party B")

LEI: _____

LEI: _____

Email: _____

Email: _____

1. Scope

- 1.1 Party A and Party B (the "Parties" and each a "Party") enter into transactions (the "Transactions") for which they may become subject to risk mitigation and reporting obligations under the Financial Market Infrastructure Act of 19 June 2015 ("FMIA"). With this FMIA Agreement (the "Agreement"), the Parties intend to inform each other of their counterparty classification under the FMIA and to agree on certain aspects of the implementation of the risk mitigation and reporting obligations under the FMIA.
- 1.2 This Agreement applies to all Transactions irrespective of the contracts under which they have been or will be entered into (e.g. ISDA Master Agreements, Swiss Master Agreements for OTC Derivative Instruments or bank-internal Master Agreements), including undocumented Transactions.
- 1.3 The provisions of Sections 3 to 5 of this Agreement do not apply to physically settled FX Forwards and Swaps and other derivatives exempted from the risk mitigation obligations of the FMIA.
- 1.4 The provisions of Sections 3 to 5 of this Agreement apply to each Party only to the extent that the respective obligations under the FMIA apply to that Party and such obligations are not fulfilled under a foreign jurisdiction that is recognized by the FINMA as equivalent to the FMIA.
- 1.5 This Agreement also applies to Parties incorporated or domiciled abroad.

2. Classification under the FMIA

- 2.1 Each Party confirms to the other Party that it has the FMIA status specified in Annex 1, B, provided that this confirmation shall be deemed to be repeated every time a Transaction is entered into.
- 2.2 If such classification specified in Annex 1, B, changes, the relevant Party shall inform the other Party as soon as practicable of its new classification.

3. Portfolio Reconciliation

- 3.1 The Portfolio Reconciliation will be conducted as follows:
 - a) On each Data Delivery Date, the Sending Party will provide Portfolio Data to the other Party, provided that, for these purposes, both Parties may be Sending Parties;
 - b) On each PR Due Date, the Party receiving the Portfolio Data will perform a Portfolio Reconciliation;
 - c) If the Reconciling Party identifies one or more discrepancies between the Portfolio Data and its own books and records of the Relevant Transactions, which such Party qualifies, acting reasonably and in good faith, as material to the rights and obligations of the Parties under the Relevant Transactions, it will inform the other Party as soon as practicable;
 - d) In a case of c) above, the Parties will discuss this with each other and work towards resolving such discrepancies as soon as practicable; and
 - e) Unless the Reconciling Party informs the other Party by 4 p.m. (Zurich) on the fifth Banking Day following the later of the PR Due Date and the date on which Portfolio Data was provided by such other Party, of any contradictions or discrepancies pursuant to c), the Reconciling Party shall be deemed to have affirmed such Portfolio Data.
- 3.2 If the Parties engage a third-party service provider for the performance of the Portfolio Reconciliation, the procedures of such service provider, as mentioned in Annex 1, D, shall apply instead of the provisions of Section 3.1, provided that the Parties may agree on a different method how to perform the Portfolio Reconciliation.
- 3.3 If a Party believes that the Parties are required to perform a Portfolio Reconciliation at a greater or lesser frequency than that being used by the Parties at such time, it will notify the other Party accordingly. Such a change is deemed to have been agreed upon, if the Party that receives the request does not object within five Banking Days.

4. Agreement on Dispute Resolution

- 4.1 The Parties agree on the following procedure for the identification and resolution of Disputes:
- A Party identifies a Dispute by sending a notice to the other Party mentioning the subject of the Dispute (including the Transactions concerned);
 - On receipt of a notice in accordance with a) above, the Parties will consult with each other in an attempt to resolve the Dispute as soon as practicable. This may occur, without limitation, by identifying and using an agreed process for resolving the Dispute; and
 - If the Dispute is not resolved within five Banking Days from the date of receipt of the notice as mentioned in a) above, the Dispute shall be escalated accordingly.

5. Exchange of confirmations

- 5.1 For the purpose of complying with the obligation to exchange confirmations in a timely manner, a confirmation shall be deemed to have been exchanged if the addressee of a confirmation agrees to the confirmation or does not object within the deadlines applicable to the timely exchange of confirmations as set by the FMIA.
- 5.2 This shall be without prejudice to any rights of the recipient of the confirmation to object to its content at a later date, to the extent possible under the relevant agreement.

6. Miscellaneous

- 6.1 If the Parties have already entered into another agreement on the subject matter of this Agreement, in the event of any conflicting provisions, the more onerous obligation shall prevail, provided that the obligations of the Parties under the FMIA are met thereby.
- 6.2 This Agreement shall prevail over any documentation governing the Transactions.
- 6.3 The agreements reached in [Annex 1](#) and [Annex 2](#) are integral parts of this Agreement.

7. Applicable law and Jurisdiction

- 7.1 This Agreement shall be governed by the substantive law applicable to the Transactions and will be interpreted accordingly, provided that, where different laws are specified as the applicable laws for the Transactions (under the relevant master agreement or the confirmations) or, in respect of one or more Transactions, no applicable law is specified as governing law (under the relevant master agreement or the confirmations), this Agreement shall be governed by Swiss law.
- 7.2 For disputes, controversies or claims arising from or in connection with this Agreement, including any question regarding its validity, invalidity, breach or termination, the courts specified as the competent courts in respect of the Transactions shall be the competent courts. In the event that different courts were competent or no choice of jurisdiction was made in respect of one or more Transactions (under the relevant master agreement or the confirmations), the courts of the city of Zurich (city districts 1 and 2) shall be exclusively competent.

8. Definitions

The following terms used in this Agreement shall have the meaning set out below:

- **"Banking Day"** is any business day on which the banks at the domicile of both Parties are open.
- **"Data Delivery Date"** means each date agreed between Party A and Party B as such, provided that, in the absence of such agreement, such date shall be deemed to be the Banking Day immediately preceding the PR Due Date.
- **"Determination Day"** means the Banking Day immediately preceding a Data Delivery Date.
- **"Disputes"** means disputes in the sense of Art. 97 of the Ordinance on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FMIO) of 25 November 2015.

- **"Financial Counterparty"** is a Party that falls into one of the following categories, or a Party incorporated or domiciled outside Switzerland falling into an equivalent category: (i) a bank in the sense of Art. 1(1) of the Swiss Federal Banking Act of 8 November 1934, (ii) a securities dealer or broker in the sense of Art. 2(d) of the Swiss Federal Stock Exchanges and Securities Trading Act of 24 March 1995, (iii) an insurance or reinsurance company in the sense of Art. 2(1)(a) of the Swiss Federal Insurance Supervision Act of 17 December 2004, (iv) a parent company of a financial or insurance group or financial or insurance conglomerate, (v) a fund management company or an asset manager of collective investment schemes in the sense of Art. 13(2)(a) and (f) of the Swiss Federal Collective Investment Schemes Act of 23 June 2006, (vi) a collective investment scheme in the sense of the Swiss Federal Collective Investment Schemes Act of 23 June 2006 or (vii) a pension fund or an investment foundation in the sense of Art. 48-53k of the Swiss Federal Professional Pensions Act of 25 June 1982.

- **"large Financial Counterparty"** means a Financial Counterparty with rolling average gross positions in OTC derivatives over 30 business days of more than CHF 8 Billion (calculated according to the applicable regulatory requirements, provided that, where the relevant Party exceeds this threshold, it shall only count as a large Financial Party four months after such date).

- **"small Financial Counterparty"** means a Financial Counterparty that is not a large Financial Counterparty, provided that, where a large Financial Counterparty falls below the relevant threshold, it shall immediately count as a small Financial Counterparty.

- **"Key Terms"** means, with respect to a Relevant Transaction and a Party, all details that the respective Party deems relevant for the valuation and execution of the Transaction which may include the effective date, the scheduled maturity date, any payment or settlement dates, the notional amount and the currency of the Relevant Transaction, the business day convention, the underlying instrument, the settlement method and any applicable fixed or floating interest rate of the Relevant Transaction.

- **"Non-Financial Counterparty"** is an undertaking that is not a Financial Counterparty. A counterparty incorporated or domiciled in Switzerland is deemed to be an undertaking if it is registered with the Swiss Commercial Register. A counterparty incorporated or domiciled abroad is deemed to be an undertaking if it engages in a commercial activity and is a legal entity, trust or similar structure under the applicable law.

- **"large Non-Financial Counterparty"** means a Non-Financial Counterparty with rolling average gross positions in OTC derivatives over 30 business days for at least one of the following asset classes exceeding the relevant threshold (calculated according to the applicable regulatory requirements, provided that, where the relevant party exceeds any such threshold, it shall only count as a large Non-Financial Counterparty four months after such date):

Asset Class	Threshold
Equity Derivatives	CHF 1,1 Billion
Credit Derivatives	CHF 1,1 Billion
Interest Rate Derivatives	CHF 3,3 Billion
FX Derivatives	CHF 3,3 Billion
Commodity and other Derivatives	CHF 3,3 Billion

- **"small Non-Financial Counterparty"** means a Non-Financial Counterparty that is not a large Non-Financial Counterparty, provided that, where a large Non-Financial Counterparty falls below all thresholds, it shall immediately count as a small Non-Financial Counterparty.

- **"OTC derivative"** means a derivative in the sense of the FMIA that is not traded on a trading venue (*Handelsplatz*) in the sense of the FMIA.

- **"Portfolio Data"** means the Key Terms in relation to all outstanding Relevant Transactions between the Parties, determined as at the close of business on the Determination Day.

nation Day, with a scope and level of detail that allows the performance of the Portfolio Reconciliation.

- **"Portfolio Reconciliation"** means a comparison of the Portfolio Data provided by the other Party with the own books and records of the Relevant Transactions for the purposes of identifying any contradictions and discrepancies.
- **"Portfolio Reconciliation Period"** means:
 - (i) if 500 or more Relevant Transactions are outstanding, each Banking Day;
 - (ii) if between 51 and 499 Relevant Transactions are outstanding, one calendar week;
 - (iii) if 50 or less Relevant Transactions are outstanding, three calendar months.
- **"PR Due Date"** means each date agreed as such between the Parties, provided that, in the absence of such agreement or if the agreed date would be a later date, such date shall be the last Banking Day of the relevant Portfolio Reconciliation Period or, if the Portfolio Reconciliation Period is one Banking Day, the relevant Banking Day.

- **"Reconciling Party"** is the Party performing a Portfolio Reconciliation in the sense of Section 3.1b).

- **"Relevant Transaction"** means any Transaction subject to the obligation to perform Portfolio Reconciliations pursuant to the FMA.

- **"Sending Party"** means the Party specified as such in Annex 1, C, provided that both Parties may be Sending Parties.

Party A

Name: _____

Place, Date: _____

Signature: _____

Name: _____

Place, Date: _____

Signature: _____

Party B

Name: _____

Place, Date: _____

Signature: _____

Name: _____

Place, Date: _____

Signature: _____¹

¹Only include signature block if the Agreement is not entered into by "negative affirmation".

Annex 1

By entering into the FMIA Agreement, Party A and Party B agree that the following terms apply:

A) The Parties confirm to each other that they:	Party A	Party B	
- are incorporated or domiciled in Switzerland	<input type="checkbox"/>	<input type="checkbox"/>	
- are incorporated or domiciled outside Switzerland	<input type="checkbox"/>	<input type="checkbox"/>	
B) The Parties confirm to each other that they qualify as follows (please select for each of Party A and Party B only one option):	Party A	Party B	
- as a "large Financial Counterparty"	<input type="checkbox"/>	<input type="checkbox"/>	
- as a "small Financial Counterparty"	<input type="checkbox"/>	<input type="checkbox"/>	
- as a "large Non-Financial Counterparty"	<input type="checkbox"/>	<input type="checkbox"/>	
- as a "small Non-Financial Counterparty"	<input type="checkbox"/>	<input type="checkbox"/>	
- as one of the following public sector entities: Swiss Confederation, Canton, Municipality, Swiss National Bank, Bank for International Settlements	<input type="checkbox"/>	<input type="checkbox"/>	
- as a public sector entity held by or guaranteed by the Swiss Confederation, a Canton or Municipality (not qualifying as a Financial Counterparty)	<input type="checkbox"/>	<input type="checkbox"/>	
- as a multilateral development bank	<input type="checkbox"/>	<input type="checkbox"/>	
- as a foreign central bank or as the ECB, EFSF or ESM	<input type="checkbox"/>	<input type="checkbox"/>	
- as an entity responsible for administration of public debt	<input type="checkbox"/>	<input type="checkbox"/>	
- as a sovereign financial institution providing loans for business development purposes	<input type="checkbox"/>	<input type="checkbox"/>	
C) "Sending Party" (the Party that sends the Portfolio Data to the other Party – please select only one of the three options):	Party A only	Party B only	Both Parties
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
D) The Parties confirm that the following method shall apply to the Portfolio Reconciliation:	Party A	Party B	
- Transfer of Portfolio Data on the portfolio statement of the bank	<input type="checkbox"/>	<input type="checkbox"/>	
- Reconciliation of the Portfolio Data via the following third-party service provider:	<input type="checkbox"/>	<input type="checkbox"/>	
E) The Parties confirm that they have adhered to the ISDA 2013 EMIR Portfolio Reconciliation, Dispute Resolution and Disclosure Protocol:	Party A	Party B	
	<input type="checkbox"/>	<input type="checkbox"/>	

Annex 2

Party A and Party B hereby agree that the following provisions shall apply instead of the text of the FMI Agreement between them: