EMIR – Non-financial counterparty

The 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 and subsequent implementing regulations set the obligations for banks, financial institutions and also its clients.

Any and all capitalised terms used in this document shall, for the purpose of this document, have the same meaning as definitions in the Master Agreement (as defined in this document) entered into between you (the "Client") and Československá obchodní banka, a. s. (hereinafter the "Bank" or "ČSOB"; the Client and the Bank jointly also the "Parties"), in the Regulation or the Commission Delegated Regulation, or the meaning specified in Article 8 of this document, as the case may be. Unless explicitly stipulated otherwise, any references to articles shall mean references to the articles of this document.

1. Representations and Covenants

1.1. ČSOB represents that it qualifies as a FC pursuant to the Regulation.

1.2. The Counterparty represents that it qualifies as a NFC pursuant to the Regulation.

1.3. The Counterparty represents that as at the date of the conclusion of the Master Agreement, the clearing obligation applicable to NFC pursuant to Article 10 of the Regulation does not apply to it and that the clearing obligation would not apply to it had the Counterparty been established in the European Union.

1.4. Except as stated in Article 1.5 below, in connection with any Transaction with a Counterparty of a type that has been declared as being subject to the clearing obligation pursuant to Article 5 of the Regulation, ČSOB shall rely on the representation made by the Counterparty in Article 1.3 in deciding whether clearing pursuant to the Regulation and Commission Delegated Regulation is required for such a Transaction.

1.5. The Counterparty shall continuously monitor whether the possibility has arisen that the clearing obligation pursuant to Article 10.1(b) of the Regulation may apply to it, as an NFC, or that the clearing obligation would apply to it had it been established in the European Union. As soon as the Counterparty determines, in its reasonable opinion, that that obligation pursuant to Article 10.1(b) of the Regulation does apply to it, the Counterparty shall promptly notify ČSOB thereof, on the day of such determination. Following such notification, Transactions with a trade date occurring four months after the date of such determination will only be entered into on a cleared basis. The Counterparty will notify any further change of its clearing status in the same manner, in each case indicating its new clearing status and the date of determination and reason of such change.

1.6. Should ČSOB, following the conclusion of any Transaction, learns that (1) the representations made by the Counterparty pursuant to Article 1.3 are in any material respect incorrect or misleading or that the Counterparty has failed to notify ČSOB pursuant to Article 1.5, and that the (2) Parties have not performed clearing of a Transaction although it should have been performed:
   - (i) if the Transaction Clearing Deadline Date has not occurred in relation to such Transaction, the parties will use all reasonable efforts to ensure that such Transaction is cleared by the Transaction Clearing Deadline Date; or
   - (ii) If the Transaction Clearing Deadline Date has already occurred, such a situation shall constitute an event of default (if it is defined in the Master Agreement) or another default with respect to the Counterparty and the relevant Transaction (Transactions), on the basis of which ČSOB will be entitled to set an Early Termination Date and terminate the relevant Transaction in line with the Master Agreement.

1.7. Both Parties confirm that pursuant to Article 9.2 of the Regulation, they will keep records of any Transaction concluded by them and of any changes thereto for at least five years following the termination of such Transaction.

2. Data Portfolio Reconciliation Agreement

The Parties agree to carry out portfolio reconciliation (i.e., the approval of the valuations of outstanding Transactions between the Parties sent to the Client by ČSOB) as frequently and in the manner required by Article 13 of the Commission Delegated Regulation, in accordance with the following provisions:

2.1. Determination and adaptation of the Portfolio Reconciliation Dates

After the Master Agreement conclusion date, ČSOB shall regularly and as frequently as appropriate, set and modify a timeline of dates on which the Parties must reconcile their portfolios in order to comply with Article 13 of the Commission Delegated Regulation (each such date a "**Portfolio Reconciliation Date**").

2.2. Procedure for delivery and reconciliation Portfolio Data

The Parties agree to the following arrangements pursuant to which portfolio reconciliation shall be carried out:

(i) ČSOB shall provide Portfolio Data to the Counterparty for each Portfolio Reconciliation Date,

(ii) having received Portfolio Data, the Counterparty may review the Portfolio Data provided by ČSOB against its own accounts and records of all outstanding Transactions between the Parties in order to identify promptly any misunderstandings of Key Terms;

(iii) if the Counterparty identifies one or more discrepancies which such Party determines, acting reasonably and in good faith, are material to the rights and obligations of the Parties in respect of one or more Transaction(s), it will notify ČSOB in writing as soon as reasonably practicable and the Parties 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 Portfolio Data produced during the period in which such discrepancy remains outstanding; and

(iv) should the Counterparty fail to inform ČSOB by 16:00 hours Prague time on the fifth (5^{th}) Joint Business Day after having received the Portfolio Data that the Portfolio Data contains discrepancies, the Portfolio Data shall be deemed confirmed by the Counterparty.

2.3. Use of Agents

Each Party shall inform the other Party by a written notice should it wish to appoint a Affiliate or, with the consent of the other Party (which shall not be unreasonably withheld or delayed), any other person, as its Agent for carrying out all or some of the actions listed in Articles 2.1 and 2.2.

3. Dispute identification and resolution procedure

3.1. In order to comply with Article 11.1(b) of the Regulation as supplemented by Article 15 of Chapter VIII of the Commission Delegated Regulation, the Parties have agreed to use the following procedure to identify and resolve Disputes between them:

(i) either Party may identify a Dispute by sending a Dispute Notice to the other Party;

(ii) on and following the Dispute Date, the Parties will consult in good faith to resolve the Dispute in a timely manner, including, without limitation, by exchanging any relevant information and 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, by determining and applying a resolution method for the Dispute;

(iii) with respect to any Dispute that is not resolved within five Joint Business Days, escalate issues internally to appropriately senior members of staff of such Party or of its Affiliate, adviser or agent in addition to the actions under (ii) above; and

3.2. Each Party agrees that it will have internal procedures and processes in place to record and monitor any Dispute for as long as the Dispute remains outstanding.

4. Reporting

4.1. The Counterparty hereby delegates to ČSOB its reporting obligation with respect to Transactions pursuant to Article 9 of the Regulation concerning (i) Transactions outstanding as at 16 August 2012 and (ii) Transactions entered into on or after 16 August 2012. The Counterparty shall itself not take any other initiative to comply with such reporting obligation, so as to avoid duplication.

4.2. In connection with any Transaction, the Counterparty:

(i) agrees at the simple request of ČSOB, to promptly deliver all relevant client-specific data required to allow ČSOB to comply with its reporting obligation on its behalf.

(ii) represents to ČSOB that the information it delivers under Article 4 is, at the time of the delivery, true, accurate and complete in every material respect.

(iii) undertakes to provide to ČSOB, should any information delivered by the Counterparty to ČSOB prove untrue, incorrect, or incomplete, any and all cooperation required to ensure that the information is, in all material respects, true, correct, and complete;

(iv) agrees that should it fail to deliver without undue delay, at ČSOB’s request, all of the relevant information about the Counterparty that ČSOB requires in order for it to be able to perform the reporting obligation on behalf of the Counterparty, ČSOB may obtain the information about the Counterparty itself. In that case the Counterparty undertakes to reimburse ČSOB for any and all expenses incurred by ČSOB in connection with obtaining the relevant information about the Counterparty that ČSOB needs to be able to perform the reporting obligation on behalf of the Counterparty.

(v) agrees that should it fail to deliver at ČSOB’s request, without a reasonable reason, any and all relevant information about the Counterparty that ČSOB needs in order for it to be able to perform the reporting obligation on behalf of the Counterparty and should ČSOB decide to not exercise its right to obtain that information itself in line with Article 4.2. (iv), ČSOB shall not be obliged to perform the Counterparty’s reporting obligation on behalf of the Counterparty. ČSOB shall inform the Counterparty of that fact.

4.3. ČSOB shall not verify the accuracy of any information (nor accepts any responsibility for it) about the Counterparty that ČSOB either holds or that the Counterparty delivers to ČSOB, as reported and recorded by the trade repository pursuant to Article 4.1.

5. Relationship to other portfolio reconciliation and dispute resolution processes

This document and any action or inaction of either Party in respect of it are without prejudice to any rights or obligations the Parties may possess in respect of each other under any Agreed Process or other contractual agreement (including Master Agreement), by operation of law or otherwise.

Action or inaction by a Party in respect of this document will not be presumed to operate as an exercise or waiver, in whole or part, of any right, power or privilege such Party may possess in respect of each other under any Agreed Process or other contractual agreement (including Master Agreement), by operation of law or otherwise.

In particular, but without limitation, (a) any valuation in respect of one or more Transactions for the purposes of this document will be without prejudice to any other valuation with respect to such Transaction(s) made for collateral, close out, dispute or other purpose; (b) the Parties may seek to identify and resolve issues and discrepancies between themselves before either Party delivers a Dispute Notice; and (c) nothing in this document obliges a Party to deliver a Dispute Notice following the identification of any such issue or discrepancy (notwithstanding that such issue or discrepancy may remain unresolved) or limits the rights of the Parties to serve a Dispute Notice or otherwise to pursue any dispute resolution process in respect of any such issue or discrepancy.

6. Confidentiality

Each Party (a “consenting party”) hereby consents to the communication and disclosure by the other Party (a “disclosing party”) of any information relating to the Master Agreement, any Transactions between the Parties (whether or not such transactions form part of the Master Agreement), and any accounts maintained by the disclosing party in the name of the consenting party, to:

(i) the disclosing party's head office, branches and Affiliates (wherever situated);

(ii) any agent, contractor, third party provider or professional adviser (wherever situated) who needs to know such information and who is under a duty of confidentiality to the disclosing party;

(iii) with the limitations stated in the Master Agreement, any person to (or through) whom the disclosing party assigns or transfers (or may potentially assign or transfer) all or any of its rights or obligations under the Master Agreement, or with (or through) whom it enters into (or may potentially enter into) any Transaction under which payments are to be made by reference to the Master Agreement; and

(iv) any person to whom the disclosing party is required to make disclosure under the requirements of any law, regulation or practice, or under the requirements of orders or directives issued by an authority, body or agency with which the disclosing party is required or accustomed to act in relation to such law, regulation or practice.

7. Remedies for a breach

Without prejudice to what is said in Article 1.6.(ii) and to the rights, powers, remedies and privileges provided by law, failure by a Party to take any actions required by or to otherwise comply with this document or any inaccuracy of the representation and warranty in this document, in either case, will not give the right to either Party to terminate any or all Transactions under the Master Agreement.

8. Definitions

For the purposes of this document:

"**Affiliate**" means, in relation to a Party, a person that directly or indirectly controls the Party or that is directly or indirectly controlled by the Party, or a person that has provided security for the Party's obligations from the Master Agreement or in connection with it, or a person for whose obligations the Party has provided security. For this purpose, "control" of any entity or person shall mean the ownership of the majority of the voting rights in the given entity or person.

"**Agent**" means an entity appointed to deal, exclusively on behalf of the Party that appointed it, with the other Party with respect to all or certain actions pursuant to the relevant provision.

"**Agreed Process**" means any procedure agreed by and between the Parties in connection with a Dispute other than that stated in Article 3.

"**Business Day**" means in relation to any Party, a day so defined in the Master Agreement, and if it is not defined therein, a day when banks and foreign-exchange markets make payments and are open for clients at the place of the seat of the branch that a Party has designated as the branch through which that Party carries out the transaction.

"**Business Day in the Czech Republic**" means a day when banks and foreign-exchange markets make payments and are open for clients in the Czech Republic.

"**Commission Delegated Regulation**" means Commission Delegated Regulation (EU) No. 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP, as amended.

"**Counterparty**" means solely for the purpose of this document, the ČSOB counterparty. For the avoidance of doubt, the Counterparty shall be understood to mean the Client.

"**Dispute**" means any dispute between the Parties (a) which is, according to the sole opinion of the Party giving the relevant Dispute Notice, subject to the provisions of Article 3 (or another Agreed Process), and (b) in connection with which a Dispute Notice has been effectively delivered.

"**Dispute Date**" means, in connection with a Dispute, the date when a Dispute Notice is effectively delivered by one Party to the other Party and in the event that both Parties deliver a Dispute Notice in connection with a Dispute, the Dispute Date shall be the date on which the first of the notices was effectively delivered. A Dispute Notice shall be deemed effectively delivered if it is delivered in the manner agreed between the Parties for giving notices in connection with the Master Agreement.

"**Dispute Notice**" means a written notice which states that it is a notice of a dispute for the purpose of this document and which sets out in reasonable detail the Dispute (including, in particular, the Transaction/Transactions to which the Dispute relates).

"**Financial Counterparty**" or "**FC**" means a financial counterparty as defined in the Regulation.

"**Joint Business Day**" means a day that is a Business Day for both Parties.

"**Key Terms**" means, with respect to a Transaction and a party, the Valuation of such Transaction and such other details the relevant Party deems relevant from time to time which may include the effective date, the scheduled maturity date, any payment or settlement dates, the notional value of the contract and currency of the Transaction, the underlying instrument, the position of the counterparties, the business day convention and any relevant fixed or floating rates of the Transaction. For the avoidance of doubt, "Key Terms" do not include details of the calculations or methodologies underlying any term.

"**Master Agreement**" means a master agreement governing one or more Transactions between the Parties.

"**Non-financial Counterparty**" or "**NFC**" means a non-financial counterparty as defined in the Regulation, not listed in Article 10 of the Regulation.

"**Portfolio Data**" means in relation to any Party providing such data or requested to provide such data, Key Terms concerning all outstanding Transactions between the Parties, in a form and standard enabling reconciliation to the extent and at the level of detail reasonably acceptable to ČSOB, if it were the accepting Party. Portfolio Data means the data stated in the valuation of outstanding Transactions between the Parties sent to the Client by ČSOB. Unless the Parties agree otherwise, information consisting of Portfolio Data that is to be provided by ČSOB in connection with the Portfolio Reconciliation Date shall be prepared as at the end of the business hours of the previous Business Day in the Czech Republic.

"**Portfolio Reconciliation Date**" means the date determined by ČSOB pursuant to Article 2.1(i).

"**Regulation**" or "**EMIR**" means Regulation (EU) of the European Parliament and of the Council No. 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended.

"**Transaction Clearing Deadline Date**" or "**Clearing Date**" means the date by which any Transaction is or was required to be cleared under and in accordance with the Regulation.

"**Transaction**" means any outstanding OTC derivative transaction concluded by the Parties which is governed by the Master Agreement.

"**Valuation**" means a valuation determined by ČSOB for such Valuation Date.

"**Valuation Date**" means, in connection with a Transaction, a Business Day in the Czech Republic prior to the Portfolio Reconciliation Date.