



**Silicon Valley Bank**

# **Foreign Exchange Terms of Business**

October 2020

## Foreign Exchange Terms of Business

### ABOUT US

**Silicon Valley Bank** is registered at Companies House with company number FC029579 and with UK Establishment Registration number BRO14561. Our registered UK office is at Alphabeta, 14-18 Finsbury Square, London EC2A 1BR.

**Silicon Valley Bank** is incorporated in California. It is a subsidiary of SVB Financial Group, a Delaware corporation.

**Silicon Valley Bank** is authorised and regulated by the California Department of Financial Protection and Innovation (DFPI) and the United States Federal Reserve Bank; authorised by the Prudential Regulation Authority with number 577295; and subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details about the extent of our regulation by the Prudential Regulation Authority are available from us on request.

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### YOU CAN CONTACT US IN THE FOLLOWING WAYS:

- **by emailing** us at [ukclientservice@svb.com](mailto:ukclientservice@svb.com)
- **by telephone** on 0800 023 1441 (or +44 (0) 207 367 7881 if calling from outside the UK)
- **by visiting** our website at [www.svb.com/uk](http://www.svb.com/uk); or
- **by writing** to us at Alphabeta, 14-18 Finsbury Square, London EC2A 1BR

## Foreign Exchange Terms of Business

These Foreign Exchange Terms of Business (together with any Schedules, supplements or notices issued by us in connection with them, the “**FX Terms**”) constitute a legally binding contract between “**Client**” or “**you**” and the UK branch of Silicon Valley Bank (“**SVB**”, or “**we**” or “**us**” or “**our**”). In these FX Terms, Client and SVB are each referred to as a “**Party**” and collectively referred to as “**Parties**”.

These FX Terms govern all transactions involving the purchase and sale of foreign currency between you and SVB, other than any automatic currency conversions carried out in connection with payments to or from deposit accounts held with us under our Banking Terms and Conditions (available to view at <https://www.svb.com/uk/client-service/banking-terms/>).

**These FX Terms are only appropriate if you wish to enter into Contracts which do not require the exchange of variation margin under EMIR (e.g. Spot Contracts, physically settled forward and/or swap Contracts) due to your classification under EMIR and/or the nature of the product. If you are an FC, a Small FC, NFC- or an NFC+ under EMIR and wish to enter into any other form of FX transaction or contract please contact your SVB Market Risk Solutions representative.**

### 1. DEFINITIONS

In these FX Terms, the following terms shall have the following meanings:

1.1 **APA** means an approved publication arrangement authorised under MiFID II to provide the service of publishing trade reports.

1.2 **ARM** means an approved reporting mechanism authorised under MiFID II to provide the service of reporting details of transactions to competent authorities or to the European Securities and Markets Authority.

1.3 **Authorised Person(s)** is a person designated as being authorised to enter Contracts on your behalf in whichever of the following documents that you have most recently executed and delivered to us:

- (a) Section E of the FX Trading Application Form;
- (b) Section F of the FX Trading Application Form;
- (c) Resolution to Enter into Foreign Exchange Contracts; or
- (d) Superseding Authorised Person List

and, if you have entered into an SVB UK Branch Forex Addendum or an SVB Global Forex Addendum, also includes any Authorised User appointed by an Administrator (in each case, under and as defined in that SVB UK Branch or Global Forex Addendum).

1.4 **Base Rate** means the Bank of England’s base rate of interest as published from time to time.

1.5 **Business Day** (whether or not such term is capitalised) means any day when our UK Foreign Exchange Desk is open and conducting its normal business and when the foreign

currency being exchanged by you is available to us from the entity from which we will buy or sell such foreign currency.

1.6 **Contract** is your commitment to purchase from or sell to us a set amount of a specific foreign currency at a set price on or by a given date and is specified by us to you.

1.7 **Correspondent Bank** is the correspondent bank designated by us to receive Client’s Currency for us if you are selling foreign currency to us.

1.8 **Client’s Currency** is the currency to be delivered by you to us. If you are selling currency, you will deliver, in cleared and immediately available funds, the currency identified in the Contract to our account at the Correspondent Bank.

1.9 **Delivery/Settlement Date** means the value date set out in the Contract confirmation.

1.10 **EEA** is the European Economic Area, being each member state of the European Union (EU), Iceland, Lichtenstein and Norway.

1.11 **EMIR** means Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories, the European Markets Infrastructure Regulation, as amended by Regulation (EU) No 2019/834 (EMIR Refit) and as may be further amended from time to time. Following the withdrawal of the United Kingdom (“**UK**”) from the European Union, if you are subject to UK reporting obligations because you are incorporated in the UK or are otherwise captured by the UK EMIR reporting obligations, references in these FX Terms (including Schedule 2 – EMIR Delegated Reporting) to EMIR or other European legislation shall be construed to refer to EMIR or other European legislation as retained in UK domestic law in accordance with the European Union (Withdrawal) Act 2018 (“**UK EMIR**”).

1.12 **FC** means a Financial Counterparty for the purposes of EMIR.

1.13 **FCA Rules** are the rules made from time to time by the FCA.

1.14 **FCA** means the Financial Conduct Authority or any successor or organization.

1.15 **LEI** is Legal Entity Identifier.

1.16 **MiFID II** means Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (as amended from time to time) and related acts and regulations (as applicable) including the Markets in Financial Instruments Regulation.

1.17 **NFC-** means a Non-Financial Counterparty under the clearing threshold for the purposes of EMIR.

1.18 **NFC+** means a Non-Financial Counterparty over the clearing threshold for the purposes of EMIR.

1.19 **Non-Spot Contract** means any Contract that is not a Spot Contract.

1.20 **Regulatory Obligations** are the obligations under any applicable law and regulation including FCA Rules and the obligations imposed by any competent European regulatory bodies.

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1.21 **Settlement Limit** is a limit that we may establish for you to permit you to deliver Client's Currency after delivery by us of the currency purchased by you under the relevant Contract.

1.22 **Small FC** means a small financial counterparty for the purposes of EMIR.

1.23 **Spot Contract** means a Contract that settles via actual delivery of the relevant currencies within (i) two Business Days or (ii) the period generally accepted in the market for that currency as the standard delivery period.

1.24 **Superseding Authorised Persons List** means the SVB form document you will need to provide to us in order to amend the list of persons authorised to enter into Contracts on your behalf.

1.25 **TR** has the meaning given to that term in clause 1.1 of Schedule 2.

### 2. REGULATORY INFORMATION

2.1 **Client Categorisation.** For the purpose of these FX Terms and in accordance with our Regulatory Obligations, we will provide you with a client categorisation under MiFID, to ensure that you receive the appropriate level of client protection. If you are categorized as a 'Retail' client under MiFID, you will have more limited access to SVB non-spot products. However, if you meet certain minimum eligibility requirements you may elect to opt-up by contacting your relationship manager or emailing [ukfxtraders@svb.com](mailto:ukfxtraders@svb.com), confirming that you wish to be deemed a Professional client for the purposes of MiFID.

2.2 **FCA Rules.** If there is any conflict between these FX Terms and our Regulatory Obligations, the Regulatory Obligations will prevail. Nothing in these FX Terms excludes or restricts any obligation that we have under the Regulatory Obligations. We may take or omit to take any action we consider necessary to ensure compliance with our Regulatory Obligations and that action will be binding on you.

2.3 **Regulatory Terms.** The terms of the service set out in these FX Terms shall be provided in accordance with the regulatory terms set out in Schedule 1 (Regulatory Information) of these FX Terms.

2.4 **EMIR.** If you enter into Non-Spot Contracts with us provisions of Schedule 2 (EMIR Delegated Reporting) of these FX Terms apply to you. Please note that EMIR may, from time to time, impose new obligations or supplemental obligations on the Parties in connection with transactions between the Parties and/or may amend existing obligations. We are under no obligation to notify you of such obligations and it is your responsibility to ensure that you and/or the relevant transaction(s) comply with your obligations under EMIR.

2.5 **VM notification.** If you are subsequently required to post variation margin ("VM") under EMIR (for whatever reason), you shall notify us immediately upon becoming aware of the same.

### 3. FOREIGN EXCHANGE CONTRACT PROCEDURES

3.1 **No Commitment.** We may decline to enter into or settle any particular transaction for any reason including, without limitation that: (a) certain foreign currencies are not available to us; (b) certain foreign currency market conditions prevent us from purchasing or selling certain foreign currencies; (c) you are not an Eligible Contract Participant (as defined in the Commodity Exchange Act); (d) you have not provided a LEI satisfactory to us; or (e) if we require you to complete an appropriateness assessment and you do not provide full and complete responses to that assessment or if, having reviewed the information that you provide, we are not satisfied that the relevant products are appropriate for you.

3.2 **Execution of Contract; Contract Date.** You may request a Contract by telephoning, emailing, using other SVB approved electronic communication systems or using our electronic trading platforms. If so requested, we may provide a price in respect of a Contract. For Non-Spot Contracts only, you acknowledge that any price provided is indicative only and is subject to change. Your acceptance of the price constitutes your irrevocable execution of a Contract subject to the terms of these FX Terms. The date of your acceptance of the price shall be the date of the Contract (the "Contract Date").

3.3 **Confirmation of Contract.** We shall promptly deliver a written confirmation of a Contract transmission to you. Our failure to timely deliver the confirmation shall not in any way be construed as a cancellation of the Contract or evidence that a Contract was not executed. Please email us at [ukfxops@svb.com](mailto:ukfxops@svb.com) if you have not received a confirmation within one (1) Business Day of the relevant Contract Date.

3.4 **Non-Spot Contracts.** In respect of Non-Spot Contracts: (a) unless you object to the terms contained in a confirmation immediately after your receipt of the confirmation, the terms contained in the confirmation shall be deemed correct and accepted; (b) you shall notify us of any objections to or errors in the confirmation by calling our recorded telephone number 0800 023 1440 (UK only) / +44 (0)20 7367 7880 (from overseas) or emailing us at [ukfxtraders@svb.com](mailto:ukfxtraders@svb.com), and delivering to us a corrected confirmation immediately after your receipt of the confirmation; (c) within three (3) Business Days after our receipt of such objection, we shall provide by email to you a corrected confirmation or our response to such objection.

3.5 **Costs & Charges.** On an annual basis, you will receive an Ex-Post Costs & Charges report that summarises the costs and charges you have incurred for all Contracts executed with SVB that are in-scope of MiFID. The report is for your records only and no further action will be required from you.

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### 4. SETTLEMENT; PAYMENT; TRADING; LOSSES

#### 4.1 Settlement; Delivery

(a) **Settlement Limit.** If we have established a Settlement Limit, you shall deliver by bank transfer Client's Currency to our account at the Correspondent Bank no later than the Settlement Date. If you maintain a currency account with us in the same currency as the Client's Currency, we may debit your account with the agreed amount of currency no later than the Settlement Date.

(b) **No Settlement Limit.** If we have not established a Settlement Limit with you:

(i) you shall deliver by bank transfer Client's Currency to our account at the Correspondent Bank before we deliver the agreed amount of currency purchased by you under the Contract; or

(ii) if you maintain a currency account with us in the same currency as the Client's Currency, we may debit your account with the agreed amount of currency required in order for us to deliver on the Settlement Date the agreed amount of currency purchased by you under the Contract.

If we have received the agreed amount of Client's Currency as set out in this clause 4(b), we will deliver by the Delivery Date the agreed amount of currency purchased by you under the Contract.

(c) **Delivery to SVB.** You will deliver funds pursuant to these FX Terms using the payment instructions that we provide to ensure we receive good and cleared funds timely. The settlement funds received by us are for our own account and will not be subject to the FCA's client money rules.

(d) **Netting.** Notwithstanding anything to the contrary in this clause 4:

(i) subject to SVB's consent, any obligation of one Party to deliver currency (or otherwise make a payment in a given amount in connection with the settlement of one or more Contracts) may be fully or partially satisfied and discharged by setting off such amount from an obligation of the other Party to deliver the same currency (or otherwise make payments in such currency in connection with the settlement of one or more separate Contracts between the Parties);

(ii) where any amount is payable by SVB to you in respect of any Contract:

(a) SVB may reduce such amount by set-off against any other amounts ("**Other Amounts**") payable by you to SVB, whether or not arising under that Contract or any other Contract, matured or contingent and irrespective of the currency, place of payment or place of booking of the obligation. SVB will give you notice of any set-off effected under this para 4(d); and

(b) for this purpose, the Other Amounts (or the relevant portion of such Other Amounts) may be converted by SVB into the currency in which the other is denominated

at the rate of exchange at which SVB would be able, in good faith and using commercially reasonable procedures, to purchase the relevant amount of such currency. If an obligation is unascertained, SVB may in good faith estimate that obligation and set off in respect of the estimate, subject to SVB accounting to you when the obligation is ascertained.

4.2 **Settlement Failures and Breach.** Your failure to transfer the agreed amount of Client's Currency on or prior to the date or time required in clause 4.1 above shall constitute a breach of these FX Terms. If you breach these FX Terms, we are not obligated to deliver the currency, which you have contracted to receive, and we may cover our exposure for the Contract by purchasing or selling currency in the interbank market, as we deem appropriate. You shall be liable for all losses, damages, costs, and expenses (collectively, "**Trading Losses**") incurred by us from your failure to satisfy your obligations under these FX Terms. We shall not be liable to you for any gain in value of a Contract we may obtain in covering our exposure caused by your breach.

4.3 **Reimbursement of Trading Losses; Interest.** You shall be liable for all Trading Losses incurred by us and shall pay us, on demand, the amount of the Trading Losses. If we cannot reach you by telephone, we may, but are not required to, notify you by mail or email. From the date we incur any Trading Losses, you are liable for interest on the amount of the Trading Losses at a rate per annum equal to the Base Rate plus five percent, computed on a 365-day year (or, in any case where the practice in the London interbank market differs, computed in accordance with that market practice) for the actual number of days elapsed, plus any processing fees. If you do not immediately reimburse us for the Trading Losses, we may apply any collateral or reserve as security for Trading Losses and accrued interest, if any, or, in our sole discretion, treat the amount of the Trading Loss as an advance under any revolving loan with us, in any order, combination, or manner it desire. Nothing in these FX Terms shall limit our rights to collect the Trading Losses from you, including the exercise of our right to set off or resort to any other collateral granted to us for any of your other indebtedness. You authorise us to debit any of your account(s) with us for any amounts due.

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### 5. CLIENT REPRESENTATIONS AND ACKNOWLEDGEMENT

5.1 **Representations and warranties.** On a continuing basis, you represent and warrant to us that:

(a) you are duly organised and existing and in good standing under the laws of your jurisdiction of establishment;

(b) you have full power, authority and capacity to enter into and perform your obligations under these FX Terms;

(c) these FX Terms and any service or transaction contemplated or conducted or executed by you or for you constitute your legal, valid and binding obligations, enforceable against you in accordance with the provisions of these FX Terms, subject only to applicable bankruptcy, insolvency, reorganisation, moratorium or other similar laws affecting creditors' rights generally;

(d) all necessary corporate or other consents and authorities to enable you to conduct all transactions and contract to receive all services under these FX Terms have been obtained and will be maintained by you;

(e) no event of default with respect to you has occurred and is continuing, and no such event or circumstance will occur as a result of entering into or performing obligations under these FX Terms;

(f) any information given to us by you or on your behalf is complete, accurate and not misleading;

(g) any third party appointed by you to give and receive instructions, notices and/or other communications on your behalf under these FX Terms has all requisite power and authority to give and receive such instructions, notices or other communications;

(h) upon request from us, you will provide us with such information as is necessary for us to perform our obligations under applicable law;

(i) no Contract shall be for speculating in the value of any foreign currency;

(j) all Contracts shall be entered into only to offset or hedge your exposure for the fluctuation in value of foreign currency from bona fide commercial transactions;

(k) you are entering into these FX Terms (including each Contract) as principal and not as agent of any person or entity;

(l) there are no legal or regulatory constraints preventing you from performing your obligations under these FX Terms;

(m) you are not subject to or located in an area that is subject to sanctions laws administered by the U.S. Federal Office of Foreign Assets Control, HM Treasury's Asset Freezing Unit or similar laws in other nations (collectively, the "Sanctions Laws"); and

(n) you will not allow access to the services under these FX Terms to any person who (i) is a national of or member of a group, or is located in a country, that is subject to the

Sanctions Laws, or (ii) is subject to the Sanctions Laws.

#### 5.2 Disclosure; Limitation of Liability.

(a) You understand and acknowledge that:

(i) foreign exchange transactions can be highly risky;

(ii) losses may occur in short periods of time if there is an adverse movement of exchange rates; and

(iii) exchange rates can be highly volatile and are impacted by numerous economic, political, and social factors, as well as supply and demand and governmental intervention, control and adjustments.

(b) You further represent and warrant to us that you:

(i) are sophisticated and experienced as to these transactions; and

(ii) have undertaken to become both familiar and knowledgeable with all of the various aspects of foreign exchange transactions.

(c) We provide an "execution only" service for foreign exchange transactions. Subject to clause 5.2(d) below, you agree that:

(i) in making your decision to enter or not enter into any foreign exchange transactions, you shall not seek personal recommendations (as defined under the FCA rules) from us;

(ii) you are responsible for all decisions made about your foreign exchange transactions, and our employees are not authorised to suggest any specific trades to you;

(iii) any opinions expressed by any of our employees are personal opinions only and may not be relied on by you in making any trading decisions; and

(iv) we have no liability for any consequential damages from any transaction entered or not entered into by you.

(d) If you are a professional client or an eligible counterparty (each as defined in the FCA Rules) and we elect to offer and you agree to receive from us personal recommendations for foreign exchange transactions, you agree that:

(i) you are still responsible for all decisions made about your foreign exchange transactions; and

(ii) we have no liability for any consequential damages from any transaction entered or not entered into by you.

#### 5.3 Execution.

(a) You confirm that you consent to our Order Execution and Handling Policy. This policy can be found on our website at <https://www.svb.com/uk/foreign-exchange>.

(b) You acknowledge and agree that orders made by Authorised Persons on your behalf may be executed by us outside a trading venue (being a regulated market, a multilateral trading facility or an organised trading facility), in accordance with our Order Execution and Handling Policy.



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### 6. CONFIDENTIALITY

6.1 As used herein, “**Confidential Information**” means all information that is not generally known to the public and is the subject of reasonable efforts to maintain its confidentiality by the disclosing Party. Confidential Information includes confidential information of any third party used by us and confidential information of our licensors. Excepted from Confidential Information is information that (1) is made publicly available without restriction through no fault of the receiving party; (2) is lawfully received without restriction from a third party; or (3) was in the possession of the receiving party before the entry into these FX Terms.

6.2 The Parties agree to hold each other’s Confidential Information in strict confidence, to safeguard it and not to use or disclose the Confidential Information. Each Party agrees to take all reasonable steps to prevent any unauthorised access to, disclosure or other dissemination of Confidential Information.

6.3 Notwithstanding anything to the contrary in these FX Terms or in any non-disclosure, confidentiality or other agreement between the Parties, each Party hereby consents to the disclosure of Confidential Information:

(a) to the extent required or permitted under, or made in accordance with, the provisions of EMIR, MiFID II and any applicable supporting law, rule, or regulation (“**Relevant Financial Markets Regulation**”) which mandate reporting and/or retention of transaction and similar information or to the extent required or permitted under, or made in accordance with any order or directive in relation to (and including) Relevant Financial Markets Regulation regarding reporting and/or retention of transaction and similar information issued by any authority or body or agency in accordance with which the other Party is required or accustomed to act (“**Reporting Requirements**”); or

(b) to and between the other Party’s head office, branches, or affiliates or any persons or entities who provide services to such other Party or its head office, branches, or affiliates, in each case, in connection with such Reporting Requirements

(c) to the other Party’s officers, directors, agents, employees, consultants, accountants, auditors and professional advisors, in each case, to the extent such recipient has a bona fide need to know the relevant information and they are informed that the Confidential Information is confidential (unless already bound by professional duties of confidentiality).

(d) to any person to whom information is required or requested to be disclosed by any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation.

6.4 Each Party acknowledges that pursuant to Relevant Financial Markets Regulation, regulators require reporting of trade data to increase market transparency and enable regulators to monitor systemic risk to ensure safeguards are implemented globally.

6.5 Each Party further acknowledges that disclosures made pursuant hereto may include, without limitation, the disclosure

of trade information including a Party’s identity (by name, address, corporate affiliation, identifier, or otherwise) to any TR and any relevant regulators (including without limitation, the European Securities and Markets Authority and national regulators in the European Union) under Relevant Financial Markets Regulation and that such disclosures could result in certain anonymous transaction and pricing data becoming available to the public. Each Party further acknowledges that, for purposes of complying with regulatory reporting obligations, a Party may use a third party service provider to transfer trade information into TR and that TR may engage the services of a global trade repository regulated by one or more governmental regulators. Each Party also acknowledges that disclosures made pursuant hereto may be made to recipients in a jurisdiction other than that of the disclosing Party or a jurisdiction that may not necessarily provide an equivalent or adequate level of protection for personal data as the counterparty’s’ home jurisdiction. For the avoidance of doubt (i) to the extent that applicable non-disclosure, confidentiality, bank secrecy, data privacy, or other law impose non-disclosure requirements on transaction and similar information required or permitted to be disclosed as contemplated herein but permits a Party to waive such requirements by consent, the consent and acknowledgements provided herein shall be a consent by each Party for purposes of such law; (ii) any agreement between the Parties to maintain confidentiality of information contained in these FX Terms or in any non-disclosure, confidentiality, or other agreement shall continue to apply to the extent that such agreement is not inconsistent with the disclosure of information in connection with the Reporting Requirements as set out herein; and (iii) nothing in these FX Terms is intended to limit the scope of any other consent to disclosure separately given by each Party to the other Party.

6.6 You consent to us providing information about you and transactions executed with you to third party ARMs, APAs and national competent authorities in the course of submitting transaction or transparency reports in accordance with MiFID II.

6.7 Where disclosing information to us in respect of which you owe a duty of confidentiality to a third party, you represent and warrant that such third party has consented to the relevant disclosure.

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### 7. MISCELLANEOUS

**7.1 Telephone Communications; Recording.** You acknowledge that a substantial portion of the communications between us and you about the purchase or sale of Currencies and about the demands and settlements provided for in these FX Terms shall be by telephone. **YOU ACKNOWLEDGE THAT TELEPHONE CONVERSATIONS AND ELECTRONIC COMMUNICATIONS WILL BE RECORDED BY US.** Such recordings may commence without the provision of a warning, such as a warning message or tone and you agree to take all reasonable steps to inform your employees and representatives that such recording takes place.

**7.2 Authorised Persons.** Each of the individuals designated as an Authorised Person is specifically authorised to have telephone and email communication with us under these FX Terms, to enter into and execute Contracts with us as provided in these FX Terms, to give us instructions, and to take any and all actions related to any Contract. You shall give us written notice of any change of any Authorised Person by delivering to us a Superseding Authorised Persons List, unless we otherwise agree in writing. You authorise us to rely on telephone and written communications with any Authorised Person, and you assume all risks in connection with any communication purported to be made by an Authorised Person.

You release us from any liability or claim which may arise from any mistaken identity or lack of authority of any individual with whom we have such telephone or written contact.

**7.3 No Liability in Certain Circumstances.** We shall not be liable for any loss or adverse consequences resulting from or caused by circumstances beyond our reasonable control, including acts of God, riots, civil commotion, insurrection, wars, strikes, lockouts, irregularities in or break down of public communication, or circumstances arising out of laws and regulations imposed by domestic or foreign authorities or governments. We are not liable for the selection of or any delays, errors, omissions, claims or damages occasioned by the fault or negligence of the Correspondent Bank or any other Correspondent Bank through which any message or instruction related to a Contract passes once we have delivered it to such Correspondent Bank or other bank. We shall not be liable for any inaccuracy, interruption, delay, or default in the transmission of a Contract caused by circumstances beyond our reasonable control.

**7.4 Indemnity and Hold Harmless of Bank.** You hereby agree to indemnify and hold us, our affiliates and their respective directors, officers, agents, and employees (collectively, "Indemnified Persons") harmless against any and all losses, claims, causes of action, liabilities, lawsuits, demands, and damages (each a "Claim") arising from these FX Terms, including without limitation, and an all court costs and reasonable legal fees, in any way related to or arising out of or in connection with these FX Terms or any action taken or not taken pursuant hereto, including, but not limited to any Claims arising as a result of our adherence to instructions from you; provided that no Indemnified Person shall be entitled to be indemnified to the extent that such Claims result from an Indemnified Person's gross negligence or willful misconduct.

This provision shall survive the termination of these FX Terms.

**7.5 Sanctions.** We and/or any other member of SVB Financial Group may be subject to sanctions and/or embargos imposed by the international community, including the UK, EU, UN and the USA. We may not accept instructions, may refuse to make any payment under, terminate or take any other action pursuant to any Contract, if we reasonably consider you have placed us in a position where we might break a law, regulation, code, court order or other duty, requirement or obligation or we or another member of SVB Financial Group, may be exposed to action or censure from any government, regulator or law enforcement agency; and you hereby acknowledge and agree that we will not be liable for any loss, damage, cost or expense if any arises. You agree we may disclose to any relevant authority any information in relation to a Contract as may be required, or as such authority may request.

**7.6 Relationship of the Parties.** Nothing in these FX Terms shall create any fiduciary relationship between you and us.

**7.7 Waiver.** Notwithstanding anything to the contrary contained in these FX Terms or anywhere else, you waive, and agree that you shall not seek from us under any theory of liability, any special, indirect, and consequential or punitive damages arising in connection with these FX Terms.

**7.8 Use of Your Information.**

(a) You shall ensure that all your Authorised Persons at any time have authorised the use of their information by us for the purposes set out in this clause 7.7 (as amended from time to time).

(b) We will not disclose you or your Authorised Persons' information without your consent unless:

(i) we are legally required to do so by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction;

(ii) our legitimate business purposes require disclosure; or

(iii) it is disclosed as described in this clause 7.7 or as described in clause 6 above.

(c) We may collect and use information about you and your Authorised Persons (including your use of our services and products and your relationships with the SVB Financial Group) in the following ways:

(i) to supply you with and to process any applications you make in respect of products and services;

(ii) for customer service, product analysis, insurance, audit, and administrative purposes;

(iii) to notify you about changes to our services or products;

(iv) to carry out our obligations arising from any agreements entered into between you and us and to recover any payments due to us;



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(v) to monitor calls and other communications with you and your Authorised Persons to comply with any applicable law or registration, ensure to service quality, compliance with procedures and to combat fraud;

(vi) to share relevant information about you, your Authorised Persons, your transactions and your relationships with the SVB Financial Group and for credit assessment and detecting and preventing fraud and to facilitate the provision of banking services and products to you; and

(vii) for the purpose of complying with applicable laws or as required by a competent authority.

(d) You or your Authorised Persons' personal information may be accessed from, transferred to, and/or stored at, a destination outside the EEA in which data protection laws may be of a lower standard than in the EEA. Regardless of location, we will impose the same data protection safeguards that we deploy inside the EEA.

(e) We may share information about you and/or your Authorised Persons with credit reference agencies to verify you and/or your Authorised Persons' identity and to assess your suitability for an account. We may use information from the electoral register and other public sources for this purpose. If you apply for any account or credit we may use you and/or your Authorised Persons' credit history to assess your ability to meet financial commitments and the credit reference agencies will record the application which may form part of you or your Authorised Persons' credit history. We may share with credit reference agencies details of how you manage your accounts or borrowing and of any default by you on your repayment obligations. This may affect you or your Authorised Persons' ability to obtain credit.

(f) Where appropriate, we may share information about you and/or your Authorised Persons with other members of the SVB Financial Group, with credit reference agencies, debt recovery agencies, regulatory authorities and/or other organizations to prevent crime (including money laundering), verify you and your Authorised Persons' identity and/or to recover debt.

(g) In the event we transfer, or may transfer, any of our rights and obligations under these FX Terms to a third party or in connection with the sale to a third party or restructure of any member of the SVB Financial Group we may share information about you and your Authorised Persons with the restructured entity or third party provided they use such information for the same purposes for which it was supplied to us and/or used by us.

(h) We may permit other members of the SVB Financial Group and selected third parties to use you and your Authorised Persons' information in accordance with our instructions for the purposes set out in this clause 7.7 who will be subject to obligations to process such information in compliance with the same safeguards that we deploy.

(i) We may also use you and your Authorised Persons' information for marketing our own and selected third parties' services and products to you and your Authorised Persons by post, email, SMS, phone, where required by law. We will ask for your consent at the time we collect your data to conduct

any of these types of marketing. We will provide an option to unsubscribe or opt-out of further communication on any electronic marketing communication sent to you. If you or any of your Authorised Persons do not wish to be contacted for marketing purposes, please let us know by contacting us on 0800 023 1441 (or +44 207 367 7881 if calling from outside the UK).

(j) Under United Kingdom data protection legislation, individuals have the right to access certain personal information held about them. Any access request may be subject to a fee of £10 to meet our costs in providing such individuals with details of the personal information we hold about such individuals. For further information regarding our use of you or your Authorised Persons' personal information, please see our privacy policy at <https://www.svb.com/uk/Privacy-Policy/>.

**7.9 Language.** All communications between the Parties under these FX Terms shall be in the English language.

**7.10 Governing Law and Jurisdiction.** The Parties agree that these FX Terms shall be governed exclusively under and in accordance with the laws of England and Wales. The Parties submit to the exclusive jurisdiction of the courts of England.

**7.11 Service of Process.** Where you are incorporated or formed in a jurisdiction other than England and Wales or in a jurisdiction within the United States of America, you agree, without prejudice to any other mode of service allowed under any relevant law:

(a) within 20 days of request by us, to irrevocably appoint a process agent in England and Wales to act as your agent for service of process in relation to any proceedings before the English courts in connection with these FX Terms (the "**Process Agent**") and, within the same 20 day period, to notify us of the name and address of the Process Agent;

(b) that failure by the Process Agent to notify you of the process will not invalidate the proceedings concerned

(c) that if any Process Agent is unable for any reason to act as an agent for service of process or if you do not comply with a request from us to appoint a process agent pursuant to paragraph a. above, we may appoint another agent for this purpose.

**7.12 Legal Fees, Costs, and Expenses.** In any action or proceeding between us and any other party to these FX Terms, the prevailing party shall be entitled to recover its reasonable legal fees and other reasonable costs and expenses incurred in addition to any other relief to which it may be entitled.

**7.13 Termination; Survival.** These FX Terms remain effective until written notice has been received by the other party, but any termination does not release Client from any liability which it may have incurred.

**7.14 Variation.**

(a) We may vary these FX Terms at any time by giving you written notification of the changes at least 2 months before the change comes into effect (unless required sooner to comply with our legal or regulatory obligations), which may be sent to you by post or by email (or in any other way which we reasonably think is likely to come to your attention and which satisfies our legal and regulatory obligations).

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(b) If you object to any of these changes, you must tell us within 2 months of receiving notice of the change. If we do not hear from you before the change comes into effect, then you will be deemed to have accepted the change.

(c) If you give us notice that you object, then the changes will not be binding on you and we will treat such notice as a request to terminate these FX Terms (but any termination does not release you from any liability which you may have incurred).

**7.15 Third Party Rights.** A person who is not a party to these FX Terms shall have no rights under the Contracts (Rights of Third Parties) Act 1999.

**7.16 Notices.**

(a) Except as otherwise expressly provided in these FX Terms, all confirmations, notices, statements, and any other documents or correspondence shall be sent by email or first class pre-paid post, and, in the case of communications to the Client, to the last address notified in writing to SVB or, in the case of communications to SVB, to:

Silicon Valley Bank at Alphabeta, 14-18 Finsbury Square,  
London EC2A 1BR

Attention: Jim Watts, Assistant General Counsel, EMEA

Email: [JWatts2@svb.com](mailto:JWatts2@svb.com)

(b) Any communications sent in accordance with clause 7.15 (a) above shall (except where these FX Terms expressly or impliedly require actual receipt by SVB):

(i) in the case of email or other electronic messaging system, be deemed to take effect at the time the email or electronic message is received; and

(ii) in the case of first class pre-paid post be deemed to have been given 48 hours after dispatch,

(iii) in each case unless proved otherwise.

**7.17 Transfer and assignment.** You shall not assign or transfer any of your rights and obligations under these FX terms to any third party without our prior consent.

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### SCHEDULE 1 – REGULATORY INFORMATION

**Authorisation and Regulation.** Silicon Valley Bank is authorised and regulated by the California Department of Financial Protection and Innovation (DFPI) and the United States Federal Reserve Bank; authorised by the Prudential Regulation Authority with number 577295; and subject to regulation by the Financial Conduct Authority and limited regulation by the Prudential Regulation Authority. Details about the extent of our regulation by the Prudential Regulation Authority are available from us on request. The Financial Conduct Authority can be contacted at: 25 The North Colonnade, Canary Wharf, London, E14 5HS, United Kingdom. The Prudential Regulation Authority can be contacted at: 20 Moorgate, London, EC2R 6DA, United Kingdom.

**Financial Services Compensation Scheme.** SVB is a member of the Financial Services Compensation Scheme in the United Kingdom. The Financial Services Compensation Scheme is only available to certain types of claimants and claims where such eligible claims are against members of the Financial Services Compensation Scheme. If you have a bank account with us, your eligible deposits with Silicon Valley Bank UK are protected up to a total of £85,000 by the Financial Services Compensation Scheme, the UK's deposit guarantee scheme as set out in our Banking Terms and Conditions. Any deposits you hold above the limit are unlikely to be covered. Please click here for further information or visit [www.fscs.org.uk](http://www.fscs.org.uk). For more detailed information about coverage and limits, please review our FSCS Information Sheet available at: <https://www.svb.com/uk/depositor-preference/>.

**Complaints.** If you have any complaints regarding SVB, please contact our Client Advisory Services Team on 0800 023 1441 (or +44 207 367 7881 if calling from outside the UK) in the first instance. A copy of SVB's Complaints Handling Procedures is available at <https://www.svb.com/uk/complaint-handling-procedures/>. If you are an eligible complainant and we cannot resolve your complaint to your satisfaction, you are entitled as set out in our Complaints Handling Procedures to refer your complaint to the Financial Ombudsman Service ("FOS"). Information relating to the FOS can be accessed at [www.financial-ombudsman.org.uk/](http://www.financial-ombudsman.org.uk/) and you can contact them at:

The Financial Ombudsman Service, Exchange Tower,  
London E14 9SR  
Telephone: 0800 023 4567 or (+44 207 964 0500 if calling from outside the UK)

Email: [complaint.info@financial-ombudsman.org.uk](mailto:complaint.info@financial-ombudsman.org.uk).

**Nature of services.** We provide information about the nature of our FX services and our business practices at <https://www.svb.com/uk/foreign-exchange/>. The contents of this webpage may be updated from time to time.

**Product Information.** For each type of Non-Spot product we offer and depending on your client categorisation, we will provide you either with a key information document ("KID") about that product or a product information summary. MiFID Ex-Ante documents, providing further details of our Non-Spot products including guidance on costs and charges can also be found on our website at <https://www.svb.com/uk/foreign-exchange>.

**Risk.** Foreign exchange transactions can be highly risky, and losses may occur in short periods of time if there is an adverse movement

of exchange rates. Exchange rates can be highly volatile and are impacted by numerous economic, political, and social factors, as well as supply and demand and governmental intervention, control and adjustments. Investments in financial instruments carry significant risk, including the possible loss of the principal amount invested. Before entering any foreign exchange transaction, you should obtain advice from your own tax, financial, legal and other advisors, and only make investment decisions on the basis of your own objectives, experience, and resources.

**Order Execution and Handling.** You have been supplied a copy of our Order Execution and Handling Policy which explains the basis on which we will provide you with 'best execution' as required by the FCA's Conduct of Business Sourcebook. Please refer to our policy which is also available at [www.svb.com/uk/foreign-exchange/](http://www.svb.com/uk/foreign-exchange/).

**Conflicts of Interest.** SVB has arrangements in place to manage conflicts (Conflicts Policy). We will provide you by email or through our website, a summary of our Conflicts Policy. If the arrangements are not sufficient to ensure, with reasonable confidence on SVB's part, that risks of damage to you will be prevented, we will clearly disclose the general nature and/or the sources of the conflict of interest to you before undertaking the relevant business with or for you. We will only receive third party payments or non-monetary benefits which are not otherwise permitted by the FCA Rules where such benefit is designed to enhance the quality of the service we provide to you and does not impair our ability to act honestly, fairly and professionally in your best interests. We shall inform you about any inducements that we may receive from our hedging venues.

**Telephone Communications; Recording.** A substantial portion of the communications between us and you about the purchase or sale of Currencies and about the demands and settlements provided for in these FX Terms shall be by telephone. **YOU ACKNOWLEDGE THAT TELEPHONE CONVERSATIONS AND ELECTRONIC COMMUNICATIONS WILL BE RECORDED BY US.** Such recordings may commence without the provision of a warning, such as a warning message or tone and you agree to take all reasonable steps to inform your employees and representatives that such recording takes place.

**Language.** All communications between the Parties under these FX Terms shall be in the English language.

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### SCHEDULE 2 - EMIR DELEGATED REPORTING

The provisions of this Schedule 2 of the FX Terms apply only to Clients who enter into Non-Spot Contracts with SVB. Please note that this section only deals with delegated reporting for EMIR purposes. You may in certain circumstances be under an obligation to report transactions under MiFID II. We will not undertake any reporting under MiFID II unless expressly agreed by us in writing.

(a) **Definitions.** In this Schedule 2 of the FX Terms, the following terms shall have the following meanings:

(i) **“Common Data”** means, with respect to a Relevant Transaction, the information corresponding to the fields listed in Table 2 (Common Data) of the annex to the Technical Standards, as determined by SVB in its sole and absolute discretion.

(ii) **“Counterparty Data”** means, with respect to a Relevant Transaction and a party, the information required to complete the fields set out in Table 1 (Counterparty Data) of the annex to the Technical Standards.

(iii) **“Relevant Data”** means, in respect of each Relevant Transaction and unless otherwise agreed between the parties in writing (i) the Counterparty Data and (ii) the Common Data.

(iv) **“Relevant Transaction”** is an over-the-counter derivative transaction subject to EMIR (other than a derivative transaction in respect of commodities) entered into, modified, or terminated between Client and SVB.

(v) **“Technical Standards”** means for the purpose of EMIR, Regulation No. 148/2013 (the **“EU Technical Standards”**) and following the withdrawal of the UK from the European Union, for the purpose of UK EMIR, “Technical Standards” shall mean the EU Technical Standards as retained or amended under UK domestic law in accordance with the European Union (Withdrawal) Act 2018

(vi) **“TR”** is a trade repository registered or recognized in accordance with EMIR, and following the withdrawal of the UK from the European Union, EMIR or UK EMIR as the case may be. Unless otherwise notified, the TRs shall be DTCC Data Repository (Ireland) Plc to the extent that you are subject to reporting obligations under EMIR and/or, DTCC Derivatives Repository PLC to the extent you are subject to reporting obligations under UK EMIR.

(b) **Delegation of Reporting.** In respect of each Relevant Transaction:

(i) Client requests, appoints and authorises that SVB submit; and

(ii) subject to the other provisions of this Schedule 2, SVB agrees to submit, the Relevant Data to a TR by the deadline specified under EMIR.

(c) SVB will notify Client of each TR to which it submits Relevant Data as soon as reasonably practicable.

(d) In respect of each Relevant Transaction where the Relevant Data is to include (or is solely) Counterparty Data, Client:

(i) agrees it will deliver to SVB its Counterparty Data in time for SVB to comply with its obligation under clause (b) of this Schedule 2;

(ii) agrees and acknowledges that if it fails to comply with clause (d)(i) of this Schedule 2, SVB will be under no obligation to submit the Relevant Data to a TR by the deadline specified under EMIR;

(iii) represents to SVB that the information it delivers under clause (d)(i) of this Schedule 2 is, at the time of delivery, true, accurate, and complete in every material respect; and

(iv) acknowledges that SVB may rely on the Counterparty Data without investigation.

(e) Without prejudice to the terms of this Schedule 2 in respect of each Relevant Transaction, SVB will determine in its sole and absolute discretion whether the obligation to report under EMIR has arisen, the characterization of the Relevant Transaction and, where the Relevant Data is to include Common Data, the Common Data.

(f) If SVB does not or will not report the Relevant Data by the deadline specified under EMIR in accordance with clause (b) of this Schedule 2, SVB will notify Client as soon as reasonably practicable and Client will be entitled to report such Relevant Data. Other than in this instance or as otherwise agreed between the Parties in writing, Client will not report or arrange the reporting of the Relevant Data to a TR.

(g) **Relevant Data.** Client agrees that:

(i) it shall take all steps as are necessary, including completing required documentation, to on-board itself to the relevant TR so that Client has access to and is able to review Relevant Data reported by SVB on its behalf to the relevant TR and shall confirm promptly to SVB that such steps have been taken; and

(ii) it will make its own arrangements with the Relevant Data reported to the relevant TR by SVB on behalf of Client pursuant to the services provided under this Schedule 2; and

(iii) it will be responsible for any fees or charges incurred in carrying out its obligations under clauses (g) (i) and (g)(ii) above.

(h) **Correction of errors.** Notwithstanding the provisions of clause (i) of this Schedule 2, Client acknowledges and agrees that SVB is not obliged to discover errors in or check the accuracy, authenticity, or completeness, of any Relevant Data, whether that information derives from Client or any other person (other than SVB).

(i) Subject to the provisions of clause (h) of this Schedule 2, if either party becomes aware of a material error in any

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Relevant Data reported to a TR in accordance with the terms of this Schedule 2, it will notify the other party and both parties will use reasonable efforts, acting in good faith and a commercially reasonable manner, to resolve such error. Any information regarding material errors in Relevant Data shall be notified by Client to SVB by sending communications to: Jim Watts, EMEA Assistant General Counsel [jwatts2@svb.com](mailto:jwatts2@svb.com)

(j) The Parties agree that SVB may utilise the services of a third party service provider to facilitate the submission of Relevant Data or other performance by SVB of its obligations under this Schedule 2 (including but not limited to any platform, system, interface, or other technology developed by any such third party service provider for such purpose). If SVB appoints a third party service provider, it will notify Client of such appointment as soon as reasonably practicable.

(k) **Fees, Costs, and Expenses.** Unless otherwise notified by SVB to Client, SVB will not charge a fee for the provision of the services under this Schedule 2. However, if SVB is subject to a fee, charge, or other expense charged by a third party service provider or TR to report the Relevant Transactions on behalf of Client (in addition to any fees, charges, or expenses which may be charged by a third party service provider or TR directly to SVB for reporting the Relevant Transactions in respect of SVB's own obligation to report under EMIR, if any) and SVB notifies Client of its intention to pass on to Client any such fee, charge, or other expense then Client agrees that these additional fees, charges, or expenses shall be for its account.

(l) Client shall promptly pay to SVB any duly documented fees, charges, or expenses charged to or incurred by it in respect of the provision of the services under this Schedule 2.

(m) Client acknowledges and agrees that any fees, charges, or expenses charged by any TR for on-boarding purposes and for reviewing Relevant Data reported by SVB on behalf of Client shall be directly for the account of Client.

(n) **Client Acknowledgement.** Client acknowledges and agrees that:

(i) Client remains solely responsible and liable for (A) submission of all data subject to the obligation to report under EMIR which is not included in the Relevant Data; and (B) compliance with Client's obligation to report generally;

(ii) any submission by SVB of Relevant Data under this Schedule 2 is made with a view to facilitating Client's reporting of data pursuant to the requirements of EMIR;

(iii) where SVB is not itself required to report under EMIR, any submission by SVB of Relevant Data is solely for the purpose of fulfilling its obligations under this Schedule 2;

(iv) SVB will not be required to provide any services or otherwise perform under this Schedule 2 to the extent any failure by it to provide services or otherwise perform is due to a breach of this Schedule 2 by, or other act or omission of, Client, any TR or any third party service provider; and

(v) Client will not have recourse under or in relation to this Schedule 2 against any TR or any third party service

provider in respect of any Relevant Data submitted pursuant to this Schedule 2.

(o) **Liability.** SVB shall, at all times, perform its obligations and exercise discretion under this Schedule 2 with reasonable care, provided that SVB shall not be required to do or cause to be done anything which (i) is not permitted or is otherwise contrary to or inconsistent with the operating procedures of any third party service provider or any relevant TR or (ii) is contrary to any law, rule, or regulation or SVB is otherwise prevented from doing by any law, rule, or regulation.

(p) Notwithstanding any other provision of this Schedule 2, SVB and the directors, officers, employees, contractors, and agents of SVB shall not have any liability to Client (or any person claiming under or through it) whether in contract, tort (including negligence), breach of statutory or regulatory duty or otherwise, for any losses, damages, fines, penalties, costs, expenses, or other liabilities (including legal and other professional fees) arising from the provisions of this Schedule 2.

(q) **Force Majeure.** If SVB is prevented, hindered, or delayed from or in performing any of its obligations under this Schedule 2 as a result of any event which occurs due to reasons outside of SVB's control and which cannot be overcome by reasonable diligence and/or without unreasonable expense by SVB, such obligation(s) shall be suspended for so long as such event continues.

(r) **Amendment.** Notwithstanding anything to the contrary in these FX Terms, SVB may, by written notice to Client, amend (in whole or part) any operational or procedural documents or processes in respect of reporting delegated under this Schedule 2 to accommodate any change in law, rule, regulation, or operational requirement and any such amendment will be effective on receipt of such notice by Client.

(s) **Termination.** Either party may terminate the arrangements under this Schedule 2 by giving not less than one month's written notice to the other party. Such termination will be effective at the expiry of the notice period.